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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**

**MEMORIAL  
OF THE  
DEMOCRATIC REPUBLIC OF THE CONGO**

**September 2016**

*[Translation by the Registry]*

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## INTRODUCTION

6 0.01. In its Judgment rendered on 19 December 2005 in the case concerning *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, the Court found, in particular, that:

- “the Republic of Uganda, by engaging in military activities against the Democratic Republic of the Congo on the latter’s territory, by occupying Ituri and by actively extending military, logistic, economic and financial support to irregular forces having operated on the territory of the DRC, violated the principle of non-use of force in international relations and the principle of non-intervention”;
- “the Republic of Uganda [violated] its obligations under international human rights law and international humanitarian law in the course of hostilities between Ugandan and Rwandan military forces in Kisangani”;
- “by the conduct of its armed forces, which committed acts of killing, torture and other forms of inhumane treatment of the Congolese civilian population, destroyed villages and civilian buildings, failed to distinguish between civilian and military targets and to protect the civilian population in fighting with other combatants, trained child soldiers, incited ethnic conflict and failed to take measures to put an end to such conflict; as well as by its failure, as an occupying Power, to take measures to respect and ensure respect for human rights and international humanitarian law in Ituri district, violated its obligations under international human rights law and international humanitarian law”;
- “by acts of looting, plundering and exploitation of Congolese natural resources committed by members of the Ugandan armed forces in the territory of the Democratic Republic of the Congo and by its failure to comply with its obligations as an occupying Power in Ituri district to prevent acts of looting, plundering and exploitation of Congolese natural resources, violated obligations owed to the Democratic Republic of the Congo under international law”;
- “the Republic of Uganda is under obligation to make reparation to the Democratic Republic of the Congo for the injury caused”;
- “failing agreement between the Parties, the question of reparation due to the Democratic Republic of the Congo shall be settled by the Court, and . . . for this purpose the subsequent procedure in the case [is reserved]”<sup>1</sup>.

7 The Court thus did not determine the nature, form and amount of the reparation, reserving those steps of the procedure for a later phase in the event that the Parties were unable to reach an agreement on the matter. The Democratic Republic of the Congo (hereinafter “the DRC”) had moreover “stated its intention to seek initially to resolve the issue of reparation by way of direct negotiations with Uganda and to submit the question to the Court only ‘failing agreement thereon between the parties’”<sup>2</sup>. The Court also stated that “in the phase of the proceedings devoted to

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<sup>1</sup>*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, I.C.J. Reports 2005, pp. 280-281, para. 345.

<sup>2</sup>*Ibid.*, p. 257, paras. 260-261.



reparation, neither Party may call in question such findings in the present Judgment as have become *res judicata*<sup>3</sup>.

0.02. Uganda is thus required to provide adequate reparation for the various forms of injury suffered by the DRC and for which, by its 2005 Judgment, the Court found Uganda to be responsible, on account of the various breaches of international law that it had committed<sup>4</sup>.

0.03. Shortly after the Judgment was delivered, the DRC began work on an assessment of the damage with a view to opening discussions with Uganda. The Parties then conducted negotiations for several years, without success. Without going into the details of the various procedures involved, or recapitulating all of the work carried out by the services concerned in the DRC itself, the principal official bilateral meetings that have taken place in recent years can be outlined briefly as follows.

0.04. The issue of reparations was first raised in Ngurdoto, Tanzania, during a bilateral meeting between the two Heads of State held on 8 December 2007. The DRC and Uganda reached an agreement on bilateral co-operation, referred to as the “Ngurdoto Agreement”<sup>5</sup>. The Agreement contains several provisions relating to defence and security, economic co-operation and political and diplomatic co-operation. Article 8, entitled “Implementation of the Judgment of the International Court of Justice (ICJ)”, provides for the establishment of an *ad hoc* committee for the purpose of implementing the Court’s decision:

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“The Parties agree to constitute, with each Party nominating not more than 7 members, an ad hoc committee to study the ICJ judgment in the Case Concerning Armed Activities on the DRC Territory (DRC v. Uganda) and recommend to the JPC modalities of implementing its orders on the question of Reparations.”<sup>6</sup>

0.05. A meeting between the Ministers for Foreign Affairs and the Ministers of Justice was then held in Kampala on 24 and 25 May 2010. The DRC presented an initial assessment of the damage suffered, with a number of supporting documents. That assessment was categorically rejected by Uganda. A committee comprising seven experts from each of the two countries was established, but was unable to reach agreement on the development of a timetable. It was nonetheless agreed that certain meetings should be held in a neutral country, with South Africa being designated for that purpose.

0.06. A meeting took place in Johannesburg on 13 and 14 September 2012 to discuss Uganda’s response to the DRC’s requests. Since an agreement could not be reached, it was decided that the experts should be tasked with preparing further documents in support of the Parties’ respective claims.

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<sup>3</sup>*Ibid.*, and *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, I.C.J. Reports 1986, p. 143, para. 284.

<sup>4</sup>*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, I.C.J. Reports 2005, pp. 280-281, para. 345.

<sup>5</sup>Ngurdoto-Tanzania Agreement between the Democratic Republic of Congo and the Republic of Uganda on Bilateral Cooperation, Ngurdoto, Tanzania, 8 Sept. 2007, Ann. 0.1.

<sup>6</sup>*Ibid.*

0.07. A few weeks later, from 10 to 14 December 2012, a technical bilateral co-operation meeting was held in Kinshasa. All the documentation assembled by the DRC, including thousands of forms establishing the identity of victims, was submitted to Uganda, which stated that it would examine it thoroughly<sup>7</sup>.

0.08. A ministerial meeting took place in Johannesburg from 23 to 30 November 2014. However, the Parties continued to have differing views on the parameters, methodology and jurisprudence that are applicable to reparation. The Parties then agreed that a final attempt to harmonize their positions should be made in early 2015<sup>8</sup>.

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0.09. A meeting was held in Pretoria from 13 to 19 March 2015. The experts convened from 13 to 17 March, followed by the ministers during the last two days of negotiations. However, a joint communiqué from the two Ministers of Justice, dated 19 March 2015, observed that the negotiations had failed: “Since there is no consensus reached, the Parties resolved that there should be no further negotiations at technical and Ministerial level and that the matter should be referred to the Heads of State within the framework of the Ngurdoto Agreement . . . of 2007”<sup>9</sup>. The same document indicates the DRC’s intention to seise the Court pursuant to its Judgment of 19 December 2005: “The DRC insists that since there is no agreement, the matter should be referred to the ICJ.”<sup>10</sup>

0.10. Thus, nearly ten years after the delivery of the Court’s Judgment on the merits, the DRC had to resign itself to sending a letter to the Registry of the Court, asking the latter to settle the Parties’ ongoing disagreement as to the amount of the reparation. Accordingly, on 13 May 2015, the DRC filed with the Registry of the Court a “New Application to the International Court of Justice” signed by the Congolese Minister of Justice and Human Rights and Keeper of the Seals. In the Application, the DRC observes that “the negotiations on the question of reparation owed to the Democratic Republic of the Congo by Uganda . . . have failed, as is made clear in the joint communiqué signed by both Parties in Pretoria, South Africa, on 19 March 2015”. It then asserts that:

“it therefore behoves the Court, as provided for in paragraph 345 (6) of the Judgment of 19 December 2005, to reopen the proceedings that it suspended in the case, in order to determine the amount of reparation owed by Uganda to the Democratic Republic of the Congo, on the basis of the evidence already transmitted to Uganda and which will be made available to the Court”.

0.11. In its Order of 1 July 2015, the Court indeed noted that:

“whereas although the Parties have tried to settle the question of reparations directly, they have been unable to reach an agreement in that respect; whereas the joint communiqué of the fourth ministerial meeting held in Pretoria from 17 to

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<sup>7</sup>Minutes of the 3rd Meeting of Uganda and Congolese Experts on the Implementation of the Ruling of the International Court of Justice of 19 December 2005, 10-14 Dec. 2012, Kinshasa; Ann. 0.2.

<sup>8</sup>Item 4.0, Agreed Minute of the 2nd Ministerial Meeting of the *Ad Hoc* Committee of Uganda/Democratic Republic of Congo on the Implementation of the Ruling of the ICJ (2005), 24-27 Nov. 2014, Indaba, Johannesburg; Ann. 0.3.

<sup>9</sup>The Agreed Minutes of the 4th Meeting of Ministers of the Democratic Republic of Congo and the Republic of Uganda on the Implementation of the Judgement of ICJ of 19th December 2005, held in Pretoria, South Africa, on 17-19 Mar. 2015; Ann. 0.4.

<sup>10</sup>*Ibid.*

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19 March 2015 expressly states that the ministers responsible for leading the said negotiations decided that there should be ‘no further negotiations’ since ‘no consensus [had been] reached’ between the Parties”<sup>11</sup>.

Consequently, the Court decided to:

“resume the proceedings in the case with regard to the question of reparations; . . . fi[x] 6 January 2016 as the time-limit for the filing, by the Democratic Republic of the Congo, of a Memorial on the reparations which it considers to be owed to it by the Republic of Uganda, and for the filing, by the Republic of Uganda, of a Memorial on the reparations which it considers to be owed to it by the Democratic Republic of the Congo”<sup>12</sup>.

The Order thus set a time-limit of 6 January 2016 for the Parties to file their respective memorials simultaneously.

0.12. The DRC having requested two extensions of this time-limit on account of difficulties encountered in preparing its Memorial<sup>13</sup>, the Court made a further Order dated 11 April 2016. According to the Order,

“Whereas, by a letter dated 31 March 2016 and received in the Registry on the same day, the Congolese Minister of Justice and Human Rights and Keeper of the Seals asked the Court, for the reasons given in that letter, for an additional time-limit of ten months for the filing of his Government’s Memorial;

Whereas, by a letter dated 6 April 2016 and received in the Registry on the same day, the Agent of the Republic of Uganda indicated, *inter alia*, that his Government was prepared to agree to a three-month extension of the time-limit for the filing of the Memorial of the Democratic Republic of the Congo on reparations;

Taking account of the views of the Parties;

[The Court e]xtends to 28 September 2016 the time-limit for the filing, by the Democratic Republic of the Congo, of a Memorial on the reparations which it considers to be owed to it by the Republic of Uganda, and for the filing, by the Republic of Uganda, of a Memorial on the reparations which it considers to be owed to it by the Democratic Republic of the Congo”<sup>14</sup>.

0.13. In accordance with that Order, this Memorial presents and explains the DRC’s arguments on the reparations owed by the Republic of Uganda for all the breaches of international law established by the Court in its Judgment of 19 December 2005.

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0.14. Although it is difficult to draw comparisons in areas so varied as those which the Court has had occasion to deal with over the course of its history, the present case is probably

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<sup>11</sup>*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Order of 1 July 2015, para. 7.

<sup>12</sup>*Ibid.*, para. 8.

<sup>13</sup>First see *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Order of 10 Dec. 2015.

<sup>14</sup>*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Order of 11 Apr. 2016.

unprecedented. A State has effectively been convicted of serious breaches of the basic rules of public international law. The principal elements of the operative part of the 2005 Judgment, recalled above, speak volumes in this regard. By militarily intervening in DRC territory, by lending military support to the irregular forces acting in that territory, and by being responsible for “acts of killing, torture and other forms of inhumane treatment of the Congolese civilian population” and “acts of looting, plundering and exploitation of Congolese natural resources”, Uganda “violated the principle of non-use of force in international relations and the principle of non-intervention . . . , violated its obligations under international human rights law and international humanitarian law [and other] . . . obligations owed to the Democratic Republic of the Congo under international law”<sup>15</sup>. Uganda was thus recognized as being guilty of breaches of such imperative rules as the prohibition of the use of force and the prohibition of torture, as well as other fundamental rules relating, in particular, to the law of occupation.

0.15. The DRC is entitled to reparation for all the damage resulting from the numerous breaches of international law committed by Uganda in Congolese territory between 1998 and 2003. The scale and diverse nature of these breaches have obviously made the task at hand particularly difficult for the Applicant, which has had to identify, assess and prove the extent of particularly serious damage occurring over a period of nearly five years in a territory covering several hundred thousand square kilometres.

0.16. Never in the history of the Court has a State been faced with such a monumental task. In the *Military and Paramilitary Activities in and against Nicaragua* case, which is undoubtedly the one that bears most resemblance to the present case, a State that was the victim of serious breaches of international law also had to conduct an assessment of the damage that had been caused by foreign military intervention<sup>16</sup>. It should of course be noted, however, that the intervention in that case cannot be likened to that for which Uganda was responsible, by invading and then occupying a substantial part of DRC territory, thereby causing many human casualties and considerable damage to property, and by massively plundering its very diverse natural resources.

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0.17. In this Memorial, the DRC will endeavour to present and quantify the extent of the damage in question. First, taking a geographical approach, the damage caused by the invasion as such will be presented for each of the regions concerned (Chapter II), dealing separately with the particular case of the occupation of Ituri (Chapter III) and that of the hostilities which took place in Kisangani in 1999 and 2000 (Chapter IV). Next, the more specific damage caused by the illegal exploitation of natural resources in the Congo will be examined (Chapter V). Lastly, the harm that was done to the DRC’s economy as a whole by the war which ravaged the country between 1998 and 2003 will be reviewed, bearing in mind that only part of the overall damage will be attributed to Uganda (Chapter VI). The final amount of the reparation requested will be determined on this basis in the final section of the DRC’s arguments (Chapter VII). First, however, the DRC will recall the legal principles which apply to this phase of the procedure (Chapter I).

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<sup>15</sup>*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, *I.C.J. Reports 2005*, pp. 280-281, para. 345.

<sup>16</sup>*Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Memorial of Nicaragua (Compensation), 29 Mar. 1988, available at <http://www.icj-cij.org/docket/files/70/9621.pdf>.

CHAPTER 1. THE APPLICABLE LEGAL PRINCIPLES AND THE METHODOLOGY  
FOLLOWED BY THE DRC

1.01. The legal principles applicable in respect of reparation were set forth by the Permanent Court of International Justice in the *Factory at Chorzów* case. On that occasion, the Court pointed out that it is well-established in international law that a State which is responsible for an internationally wrongful act must make good the injury which it has caused<sup>17</sup>. In that precedent, regarded as emblematic for all issues relating to reparation, the PCIJ stated that:

“The essential principle contained in the actual notion of an illegal act . . . is that reparation must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed. Restitution in kind, or, if this is not possible, payment of a sum corresponding to the value which a restitution in kind would bear . . . such are the principles which should serve to determine the amount of compensation due for an act contrary to international law.”<sup>18</sup>

1.02. This conception was reiterated in the International Law Commission’s 2001 articles on State responsibility. Article 31 provides that “[t]he responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act”, adding that the injury “includes any damage, whether material or moral, caused by the internationally wrongful act of a State”<sup>19</sup>. The principle of full reparation has also been systematically confirmed and applied in the most varied international jurisprudence, including that of regional courts, arbitral tribunals and claims commissions, as well as human rights bodies. With specific regard to the jurisprudence of the International Court of Justice, the first case that should be mentioned is that of the *Corfu Channel*, in which the Court affirmed that “there [was] a duty upon Albania to pay compensation to the United Kingdom”<sup>20</sup>. A judgment specifically focusing on the issue of compensation followed a few months after the Court’s Judgment on the merits in that case<sup>21</sup>. The principle of the obligation to make reparation has since been consistently reconfirmed in extensive jurisprudence. References to it have been made in the cases concerning *Reparation for Injuries Suffered in the Service of the United Nations*<sup>22</sup>, the *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*<sup>23</sup>, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*<sup>24</sup>, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*<sup>25</sup>, *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*<sup>26</sup> and *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*<sup>27</sup>.

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<sup>17</sup>*Factory at Chorzów, Jurisdiction, Judgment No. 8, 1927, P.C.I.J., Series A, No. 9, p. 21.*

<sup>18</sup>*Factory at Chorzów, Merits, Judgment No. 13, 1928, P.C.I.J., Series A, No. 17, p. 47.*

<sup>19</sup>*Yearbook of the International Law Commission (YILC)*, 2001, Vol. II, and Annex to resolution 56/83 adopted by the United Nations General Assembly on 12 Dec. 2001.

<sup>20</sup>*Corfu Channel (United Kingdom v. Albania), Merits, Judgment, I.C.J. Reports 1949, p. 23.*

<sup>21</sup>*Corfu Channel (United Kingdom v. Albania), Assessment of Amount of Compensation, Judgment, I.C.J. Reports 1949, pp. 244 et seq.*

<sup>22</sup>*Advisory Opinion, I.C.J. Reports 1949, p. 184.*

<sup>23</sup>*Judgment, I.C.J. Reports 1997, p. 81, para. 152.*

<sup>24</sup>*Advisory Opinion, I.C.J. Reports 2004 (I), p. 198, para. 152.*

<sup>25</sup>*Judgment, I.C.J. Reports 2007 (I), pp. 232-233, para. 460.*

<sup>26</sup>*Judgment, I.C.J. Reports 2010 (I), pp. 103-104, paras. 273-274.*

<sup>27</sup>*Merits, Judgment, I.C.J. Reports 2010 (II), p. 691, para. 161.*

1.03. On the basis of this very general principle, the DRC has already, in previous phases of these proceedings, made several observations regarding the legal principles applicable in respect of reparation. Before setting out the DRC's current position on that issue (Section 2) and providing details of the methodology employed for collecting the evidence used in this Memorial and annexed to it (Section 3), the positions previously adopted by the Parties in this respect will be briefly recalled, particularly in so far as a common position might be discerned from them with regard to the applicable principles (Section 1).

### **Section 1. The Parties' positions on the issue of reparation in previous phases of the proceedings**

1.04. The Parties, and more particularly the DRC, have presented relatively clear views on the issue of reparation in previous phases of these proceedings. The relevant excerpts from the various written pleadings filed during the merits phase will be reproduced here, with the aim of recalling the positions previously expressed on this subject.

## **15 A. The DRC's Memorial**

1.05. In its Memorial filed on 6 July 2000, the DRC sought to identify the legal principles which were to govern the reparation phase. Those principles have essentially been established and defined on the basis of the International Law Commission's proceedings relating to the international responsibility of States, which are generally considered to have codified customary international law to a large extent<sup>28</sup>. This applies in particular to what became Article 34 of the text ultimately adopted in 2001, which establishes the principle of "full reparation"<sup>29</sup>, and to Article 36, which focuses specifically on compensation. According to that provision,

“1. The State responsible for an internationally wrongful act is under an obligation to compensate for the damage caused thereby, insofar as such damage is not made good by restitution.

2. The compensation shall cover any financially assessable damage including loss of profits insofar as it is established.”<sup>30</sup>

1.06. In the present case, restitution can now be envisaged only on an exceptional basis. It could be appropriate only in respect of the material losses suffered by the State (through its army, whose equipment was destroyed or taken by the invader), by private individuals whose property was stolen, by businesses whose equipment was damaged or taken by the invader, etc. Considering how much time has elapsed since the events, however, this means of reparation appears largely theoretical. One must therefore refer primarily to the principle of compensation in order to remedy the breaches of international law committed by Uganda against the DRC between 1998 and 2003. That forms the basis for all the legal principles that can be applied in the present case. Those principles may be summarized as follows, moving from the general to the particular.

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<sup>28</sup>James Crawford, *The International Law Commission's Articles on State Responsibility: Introduction, Text and Commentaries*, Cambridge, Cambridge University Press, 2002.

<sup>29</sup>*Draft articles on the Responsibility of States for Internationally Wrongful Acts*, Annex to resolution 56/83 adopted by the United Nations General Assembly on 12 Dec. 2001.

<sup>30</sup>*Ibid.*

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1.07. In general terms, the DRC first recalled in its 2000 Memorial that, since reparation had to be “full” and to cover “any financially assessable damage” (according to the terms of the above-mentioned Articles 34 and 36), the obligation applied:

- regardless of the international obligation that was breached<sup>31</sup>, whether it concerns *jus contra bellum*, *jus in bello*, human rights or other applicable legal principles; there should thus be no question of the Respondent claiming that the specific nature of a particular rule of law precludes the Applicant’s right to reparation;
- no matter how remote the causal link between the wrongful act and the damage suffered<sup>32</sup>; there should thus be no question of the Respondent claiming that a particular type of damage cannot be made good because it is not the immediate consequence of the wrongful act;
- irrespective of the type of damage caused<sup>33</sup>; there should thus be no question of the Respondent claiming that the specific nature of a particular type of damage, whether material or moral, precludes the Applicant’s right to reparation.

Several references to the proceedings of the International Law Commission codifying customary international law were provided in support of these three general principles<sup>34</sup>.

1.08. The DRC then focused on the more specific issue — particularly relevant in the present case — of multiple causes of a particular injury. Indeed, some of the damage discussed in the body of this Memorial was caused not only by wrongful conduct on the part of Uganda, but also by other factors and conduct, sometimes attributable to other actors, such as third-party States or non-State groups.

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1.09. In this context, the DRC has relied on the following customary principle established by the International Law Commission:

“[r]ather than the directness of the damage, the criterion is thus indicated as the presence of a clear and unbroken causal link between the unlawful act and the injury for which damages are being claimed”<sup>35</sup>.

Consequently, and in accordance with international jurisprudence, the only exclusion from the obligation of reparation is:

“damage that is connected to the initial act only by an unforeseen chain of exceptional circumstances which occurred only because of a combination of causes alien to the author’s will and not foreseeable on his part”<sup>36</sup>.

On that basis, the Commission established the following criteria:

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<sup>31</sup>Memorial of the Democratic Republic of the Congo (MDRC), p. 248, paras. 6.34-6.35.

<sup>32</sup>*Ibid.*, pp. 248-253, paras. 6.36-6.45.

<sup>33</sup>*Ibid.*, pp. 254-258, paras. 6.46-6.56.

<sup>34</sup>*Ibid.*

<sup>35</sup>*Report of the International Law Commission on the work of its forty-fifth session (3 May-23 July 1993)*, document A/48/10, YILC, 1993, Vol. II, Part Two, p. 69, para. 7.

<sup>36</sup>*Naulilaa case (Portugal v. Germany)*, Award of 31 July 1928, *United Nations Reports of International Arbitral Awards (RIAA)*, Vol. II, p. 1031.

- “(a) Damages must be *fully paid* in respect of injuries that have been caused immediately and exclusively by the wrongful act;
- (b) Damages must be *fully paid* in respect of injuries for which the wrongful act is the exclusive cause, even though they may be linked to that act not by an immediate relationship but by a series of events each exclusively linked with each other by a cause-and-effect relationship. *Causation is thus to be presumed not only in the presence of a relationship of ‘proximate causation’. It is to be presumed whenever the damage is linked to the wrongful act by a chain of events which, however long, is uninterrupted;*
- (c) Consideration must be given to cases in which injuries are not caused exclusively by an unlawful act but have been produced also by concomitant causes among which the wrongful act plays a decisive but not exclusive role [ . . . In this case, t]he solution should be the payment of damages in proportion to the amount of injury presumably to be attributed to the wrongful act and its effects, the amount to be awarded being determined on the basis of the criteria of normality and predictability.”<sup>37</sup>

The key is thus to establish an uninterrupted chain of events linking the damage to Uganda’s wrongful conduct, even if there are also concomitant causes which may have played a role in the occurrence or extent of the damage in question.

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1.10. From the outset, these criteria were pointed to by the DRC as those which should guide the Court in assessing the extent of the reparations owed by Uganda. More specifically, and to quote the DRC’s Memorial again:

“If we apply these criteria to the instant case, we may state provisionally and subject to adjustment in the light of the specific circumstances of each injury, that:

- damage caused by acts attributable directly to Ugandan agents falls into the first category and therefore entails an obligation of compensation in full;
- damage that was caused by acts of Congolese irregular forces but could not have been caused without the support of Uganda fall, in principle, into the second category and should accordingly be compensated in full;
- damage flowing from the costs incurred by the Government of the Democratic Republic of the Congo in seeking to repel the attack by several foreign States fall into the third category and should therefore entail compensation in proportion to the wrongful acts attributable to Uganda.”<sup>38</sup>

Applying that rationale, the DRC then explicitly referred to the following approach in its submissions<sup>39</sup>:

“To recapitulate, the compensation will cover damage that cannot be made good by restitution in kind, including, purely by way of illustration:

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<sup>37</sup>MDRC, pp. 252-253, para. 6.44; emphasis added.

<sup>38</sup>*Ibid.*, p. 253, para. 6.45.

<sup>39</sup>*Ibid.*, para. 4 of the submissions, pp. 274-275.



- material damage caused by Uganda’s armed activities or its support to irregular forces, such as the destruction of military *matériel*, buildings or public installations, including components of road, rail or river communication facilities and the exploitation and plundering of many natural resources;
  - losses or loss of profits sustained by the Democratic Republic of the Congo, *inter alia* as a result of the suspension or termination of economic, commercial or financial activities, including mining— especially diamond mining—, agriculture, fishing and stock farming, as well as losses of export earnings and the resulting increase in the cost of imports;
  - the costs incurred by the Democratic Republic of the Congo, on a scale to be determined in due course, in seeking to bring about the cessation of the Ugandan attack and its consequences, in particular the increase in its military budget and its disbursements for the purpose of territorial defence, including payments made to secure external military assistance;
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- the human losses sustained as a result of human rights violations ensuing from acts of oppression committed by the Ugandan armed forces and from their support for irregular forces operating on the territory of the Democratic Republic of the Congo; the costs that these violations entailed, particularly in terms of health and medical care, including non material injuries suffered by relatives and dependents of the victims;
  - in more general terms, the harm inflicted on the development potential of the Democratic Republic of the Congo, both by the direct economic losses referred to above and the decline in short and medium term investment due to the climate of insecurity prevailing on Congolese territory following the Ugandan attack, and by the sense of insecurity that this climate may generate in the longer term, even after peace has been restored;
  - interest on the principal amount in respect of earnings on the sum that the Democratic Republic of the Congo has been unable to use owing to all the above-mentioned heads of damage.”<sup>40</sup>

1.11. However, from the beginning, the DRC also sought to temper the inherent complexity of making reparation for such diverse types of damage, by pointing out that “there is nothing to prevent the Court from fixing a global sum . . .”<sup>41</sup>. In view of the particular circumstances and extreme difficulties which characterize the case under consideration, the DRC stressed from the outset that such an approach presented significant advantages. It is difficult to imagine how war damages could be calculated simply by making an exhaustive tally of individual injuries and then adding them up mathematically. That is why the DRC’s Memorial indicated that an overall sum was both necessary and desirable, “be it a global sum or a sum broken down more clearly into compensation for damage *stricto sensu* and satisfaction consisting of damages reflecting the gravity of the infringements . . .”<sup>42</sup>. The DRC did not, however, call into question the evidentiary requirements applicable to the damage.

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<sup>40</sup>*Ibid.*, pp. 261-263, para. 6.65.

<sup>41</sup>*Ibid.*, pp. 267-268, para. 6.76.

<sup>42</sup>*Ibid.*, pp. 267-268, paras. 6.76-6.77.

1.12. In short, from the moment the first written pleading was filed by the DRC in the present case, the legal principles applicable to reparation were identified and clarified, and even began to be applied to the proceedings.

## 20 B. Uganda's Counter-Memorial

1.13. In its Counter-Memorial, filed on 21 April 2001, Uganda raised no objections to the DRC's arguments as to the legal principles applicable in respect of reparation. At most, the Respondent characterized them as "abstract questions of the law of reparation . . ." <sup>43</sup>, without going so far as to challenge them or even qualify their content.

## C. The DRC's Reply

1.14. In its Reply of 29 May 2002, the DRC noted this absence of protest and concluded that there was:

"agreement between the Parties on all the principles relating to reparation which were stated and elaborated by the DRC in its Memorial and were not disputed by Uganda. The DRC notes this with satisfaction, and will therefore confine itself to restating in the present Reply the claim for reparation already set out in its Memorial" <sup>44</sup>.

Accordingly, point 4 of the DRC's submissions stated as follows:

"in light of all the violations set out above, the Republic of Uganda shall, in accordance with customary international law: . . .

- make reparation for all types of damage caused by all types of wrongful act attributable to it, no matter how remote the causal link between the acts and the damage concerned;
- accordingly, make reparation in kind where this is still physically possible, in particular in regard to any Congolese resources, assets or wealth still in its possession;
- failing this, furnish a sum covering the whole of the damage suffered, including, in particular, the examples set out in paragraph 6.65 of the Memorial of the Democratic Republic of the Congo and restated in paragraph 1.58 of the . . . Reply;
- further, in any event, render satisfaction for the injuries inflicted upon the Democratic Republic of the Congo, in the form of official apologies, the payment of damages reflecting the gravity of the violations and the prosecution of all those responsible . . ." <sup>45</sup>.

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The DRC's position on reparation was thus clearly reiterated, both in the Reply itself and in the submissions formally transmitted to the Court.

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<sup>43</sup>Counter-Memorial of the Republic of Uganda (CMU), p. 85, para. 123.

<sup>44</sup>Reply of the Democratic Republic of the Congo (RDRC), p. 35, para. 1.60.

<sup>45</sup>*Ibid.*, p. 399.

#### **D. Uganda's Rejoinder**

1.15. In its Rejoinder filed on 6 December 2002, Uganda made no arguments in respect of the right to reparation. It simply asserted that there was: “a fundamental confusion in the Memorial between the proof of violations of legal obligations and the issue of quantum of damage (or compensation) . . . the confusion persists”<sup>46</sup>. On the other hand, the substance of the DRC's arguments as to the principles which should guide the Court in assessing reparations was not called into question. In a passage of fewer than 15 lines concerning the “alleged” or “so-called admissions by Uganda”<sup>47</sup>, Uganda does not revisit this particular issue but seems instead to focus its criticism on other elements of the DRC's written pleadings<sup>48</sup>. Nor do the Respondent's submissions contain any refutation of the viewpoint expressed and set forth in detail by the DRC with regard to the issue of reparation<sup>49</sup>.

#### **E. The oral phase of the proceedings**

1.16. The issue of reparation was not addressed during the oral proceedings, which took place from 11 to 29 April 2005.

### **22 F. The negotiation phase following the Court's Judgment of 19 December 2005**

1.17. During the negotiations — briefly recalled above<sup>50</sup> — which took place over a period of several years after the Court had rendered its Judgment, the Parties put forward various claims and arguments of fact and law. All the views expressed in this context were done so for the sole purpose of the negotiations, and not in the context of judicial proceedings. In particular, neither Party adopted any official, public legal position during that period. As recalled above, the dispute could not be settled through negotiations, and hence was eventually referred to the Court. It is thus only in the context of the present proceedings that legal positions will be officially exchanged, with the Parties remaining completely free to revise, adjust or withdraw all or part of the positions they expressed during the informal negotiation phase. Here, the DRC's stance on the legal principles applicable to the reparation phase remains unchanged from the position it has asserted in previous phases of the proceedings before the Court.

#### **Section 2. The DRC's current position on the issue of reparation**

1.18. The DRC fully stands by the position that it has expressed since 6 July 2000 with regard to the legal principles applicable to reparation. As indicated above, this position is based on the proceedings of the International Law Commission which have codified customary law to a large extent<sup>51</sup>. Those proceedings form the basis on which all the issues relating to reparation in the present case must be examined.

1.19. The Court applied these principles, moreover, in the Judgment of 19 December 2005, in affirming:

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<sup>46</sup>Rejoinder of the Republic of Uganda (RU), p. 10, paras. 30-31.

<sup>47</sup>*Ibid.*, p. 15, paras. 43-44.

<sup>48</sup>*Ibid.*, p. 15, para. 44.

<sup>49</sup>*Ibid.*, p. 333.

<sup>50</sup>See above, Introduction to this Memorial, paras. 0.02-0.10.

<sup>51</sup>James Crawford, *The International Law Commission's Articles on State Responsibility: Introduction, Text and Commentaries*, *op. cit.*

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“that it is well established in general international law that a State which bears responsibility for an internationally wrongful act is under an obligation to make full reparation for the injury caused by that act (see *Factory at Chorzów, Jurisdiction*, 1927, *P.C.I.J., Series A, No. 9*, p. 21; *Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment, I.C.J. Reports 1997*, p. 81, para. 152; *Avena and Other Mexican Nationals (Mexico v. United States of America), Judgment, I.C.J. Reports 2004*, p. 59, para. 119). 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 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*”<sup>52</sup>.

Accordingly, coverage extends to both the damage suffered by the Congolese State itself (whether to its property or organs) and the damage suffered by persons (natural or legal) who were on the DRC’s territory at the time of the events.

1.20. There is also extensive jurisprudence illustrating the relevance of the principles established by the International Law Commission. For example, in its Judgment of 2012 on the claim for compensation presented by Guinea in the case concerning *Ahmadou Sadio Diallo*, the Court stated that, in the light of the “fundamental character of the human rights obligations breached and [the] claim for reparation in the form of compensation, [ . . .it] is of the opinion that, in addition to a judicial finding of the violations, reparation due . . . must take the form of compensation”<sup>53</sup>. In that same case, the Court set forth the methodology to be applied in dealing with such a claim — a methodology which fully reflects the customary principles recalled above:

“As to each head [of damage identified by Guinea], the Court will consider whether an injury is established. It will then ascertain whether, and to what extent, the injury asserted by the Applicant is the consequence of wrongful conduct by the Respondent [ . . . analysing] whether there is a sufficiently direct and certain causal nexus between the wrongful act . . . and the injury suffered by the Applicant (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, I.C.J. Reports 2007 (I)*, pp. 233-234, para. 462). If the existence of injury and causation is established, the Court will then determine the valuation.”<sup>54</sup>

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A similar approach had been taken in the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*. On that occasion, the Court examined “whether, and to what extent, the injury

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<sup>52</sup>*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, I.C.J. Reports 2005*, p. 257, para. 259; emphasis added.

<sup>53</sup>*Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Merits, Judgment, I.C.J. Reports 2010 (II)*, p. 691, para. 161.

<sup>54</sup>*Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Compensation, Judgment, I.C.J. Reports 2012 (I)*, p. 332, para. 14.

asserted by the Applicant is the consequence of wrongful conduct by the Respondent”, so as to establish whether there was in fact “a sufficiently direct and certain causal nexus between the wrongful act . . . and the injury suffered by the Applicant, consisting of all damage of any type, material or moral”<sup>55</sup>.

1.21. However, it should first be noted that no particular precedent is transposable wholesale to the present case. Without revisiting here all the cases in which the issue of reparation has given rise to legal debate, it should be mentioned that a number of those cases are based either on particular treaty régimes or the like (as in the case of the Treaty of Versailles and those that followed it<sup>56</sup>, or the reparations sought from Iraq following the invasion of Kuwait<sup>57</sup>), or, in terms of jurisprudence, on special agreements restricting the law to be applied by the tribunal in question (as in the Eritrea/Ethiopia case<sup>58</sup>).

1.22. In the end, and while the DRC has already pointed out that the violations identified were of a much smaller scale, the only precedent similar to the present case is that of the *Military and Paramilitary Activities in and against Nicaragua*. In its Memorial on the question of compensation, filed on 29 March 1988, Nicaragua asked the Court to apply legal principles that bear some similarity to those which the DRC is reasserting now<sup>59</sup>. In particular, Nicaragua sought reparation for all the injuries caused by the Respondent, regardless of the type of wrongful act or damage concerned and no matter how remote the causal link between them. However, the case was removed from the general list on 26 September 1991<sup>60</sup>, and the Court therefore did not, in the end, deliver any judgment that might have set a precedent with regard to injury caused by violation of the principles of non-use of force, non-intervention or respect for human rights. In these circumstances, it is necessary to refer to the general principles established by the International Law Commission in its proceedings on State responsibility, which are reflected not only in the jurisprudence of the Court, but also in scholarly opinion<sup>61</sup>.

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1.23. As previously mentioned (see Section 1 above), Uganda has never challenged those legal principles in these proceedings. One might even consider that, given its utter silence, Uganda has implicitly accepted them, while the DRC, in contrast, has expressed and reiterated its position in the body of its Memorial and Reply, as well as in its submissions. There is thus no reason, at this stage, for the DRC to expand further on these legal questions. However, attention should be briefly drawn to two points.

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<sup>55</sup>*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007 (I), pp. 233-234, para. 462.

<sup>56</sup>*Treaty of Versailles, 1919*, pp. 5 *et seq.*, [available at <https://www.loc.gov/law/help/us-treaties/bevans/must000002-0043.pdf>].

<sup>57</sup>See the exclusions established by the United Nations Compensation Commission in its decision S/AC.26/1992/11 of 26 June 1992 and decision S/AC.26/Dec.19 (1994) of 24 Mar. 1994.

<sup>58</sup>Art. 5.1 *in fine* of the Algiers Agreement of 12 Dec. 2000 (doc. A/55/686-S/2000/1183); *Eritrea-Ethiopia Claims Commission, Final Award — Eritrea’s Damages Claims*, 17 Aug. 2009, RIAA., Vol. XXVI, pp. 505 *et seq.*

<sup>59</sup>*Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Memorial of Nicaragua (Compensation), 29 Mar. 1988, available at <http://www.icj-cij.org/docket/files/70/9621.pdf>.

<sup>60</sup>*Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Order of 26 September 1991, I.C.J. Reports 1991, pp. 44 *et seq.*

<sup>61</sup>See, for example, Brigitte Stern, “The Obligation to Make Reparation” in *The Law of International Responsibility*, James Crawford, Alain Pellet and Simon Olleson (eds.), Oxford, Oxford University Press, 2010, pp. 563-571.

1.24. First, it is recalled that a distinction will be made between:

- the injury caused by the organs of the Ugandan State themselves — damage for which full reparation will be sought;
- the injury caused by the irregular forces supported by Uganda in breach of international law — damage for which full reparation will also be sought, given that, save in exceptional and unforeseeable circumstances, such damage logically stems from that unlawful support, in the sense that it could not have been caused without it; in this instance, it is not a question of *attributing* the acts of irregular forces to Uganda, but of making reparation for damage which presents an uninterrupted *causal link* with the wrongful conduct constituted by Uganda's support for those forces;
- the injury caused by the wrongful conduct of both Uganda and other States or groups which were not supported by Uganda — damage for which partial reparation will be sought, taking account of the multiple causes involved; more specifically, in light of the importance of Rwanda's role in the conflict, and the existence of the — more limited — role played by Burundi, the DRC finds it reasonable that Uganda could be obliged to make reparation for only 45 per cent of the damage falling into this category.

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1.25. Next, and as a preliminary, it needs to be explained why, in the remainder of this Memorial, the DRC will not be distinguishing between types of injury according to the types of rules of international law which have been breached by Uganda. In its Judgment of 19 December 2005, the Court condemned Uganda for violating the principle of non-use of force and the principle of non-intervention (paragraph 1 of the operative part), international human rights law and international humanitarian law (*ibid.*, paragraph 3) and other “obligations owed . . . under international law” (*ibid.*, paragraph 4)<sup>62</sup>. In practice, however, all of the damage caused by Uganda's wrongful conduct actually stems from the invasion of Congolese territory that began in August 1998 and from the support which Uganda provided to irregular groups as from that date. There is no reason — and this is in keeping with the legal principles recalled above — to distinguish between types of injury on the basis of the legal rule that was breached, even if the specific nature of certain rules may on occasion be taken into account in order to gauge the seriousness of the damage. What is important, on the whole, is to demonstrate that all of this damage was in fact the consequence of wrongful conduct by Uganda, regardless of whether that consequence was immediate or resulted from an uninterrupted chain of events.

1.26. This general approach will of course be applied according to the particular nature of the events described in the following chapters. However, an explanation will first be provided as to the methodology employed by the DRC in collecting the documents annexed to this Memorial, which represent one of the principal factual bases for its claim.

### **Section 3. The methodology employed by the DRC in collecting evidence in support of the present claim**

1.27. Following the Judgment delivered by the Court on 19 December 2005, the DRC took all reasonable steps in seeking to produce evidence that could be used to assess the countless instances of damage which resulted from Uganda's breach of its international obligations.

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<sup>62</sup>*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, I.C.J. Reports 2005, pp. 280-281, para. 345.

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1.28. After several months spent examining different aspects of the case in minute detail, the DRC's Ministry of Justice and Human Rights set up a commission composed of 23 Congolese experts appointed by the Office of the President of the Republic, the Prime Minister's Office, the Ministry of National Defence and Former Combatants, the Ministry of Foreign Affairs and International Co-operation, the Ministry of Justice and Human Rights, the Planning Ministry, the Budget Ministry, the Finance Ministry, the Economy Ministry, the Ministry of Mines, the Environment Ministry, the Tourism Ministry, the Central Bank of the DRC and other public services directly affected by the findings of the Judgment rendered by the Court<sup>63</sup>. The commission included a co-ordination committee composed of a chairman (the Justice Minister), a co-ordinator and a secretary. It met twice a week at the Ministry of Justice and Human Rights.

1.29. Data was initially collected in 2007 by a group of civil-society investigators, with the support of an international non-governmental organization known as the International Centre for Transitional Justice (or ICTJ). A second phase was carried out in 2013 by a civil-society action committee from Kisangani, composed of local non-governmental organizations and victims' associations, with technical and financial support from the ICTJ. The victim identification operations carried out by civil-society groups in those two years were limited to the cities of Kisangani and Bunia, however.

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1.30. More extensive data collection then took place in several stages. First, the groundwork was begun, which involved developing a questionnaire to be given to victims. This questionnaire, known as a "victim identification form", includes essential information on the identity of the victim, the nature of the injury suffered, the time and place of the events, and the type of reparation envisaged. Teams were then sent to the communes in question to meet the victims where they lived. These teams were made up for the most part of police officers and sworn public officials, under the authority of senior members of the judiciary. They travelled to the cities of Kisangani (in Orientale province at the time), Beni and Butembo (North Kivu province), Gemena and its vicinity (in Equateur province at the time), and Bunia (administrative centre of the Ituri district). In order to identify and subsequently to have access to certain victims, the investigators contacted, in particular, the *Fédération des Entreprises du Congo* (Congolese business federation), the heads of large public corporations, members of the national parliament elected in the areas in question, the provincial and local administrative authorities, leaders of tribal communities, certain heads of NGOs (such as FIDH), and various media outlets present on site.

1.31. In 2008, the Commission thus met face-to-face with thousands of victims who were still alive, or with the dependants of victims who had died. Victims who could read and write completed the forms on their own, in the presence of police officers who had come from Kinshasa or been requisitioned locally by the Public Prosecutor's offices in Kisangani, Bunia, Beni, Butembo, Gemena and Gbadolite. Illiterate victims were accompanied by an interpreter and a witness, whose names appear on the back of each form, so as to ensure the authenticity and conformity of the declaration made and its translation into French. At the end of each interview, the victim would append his or her signature or fingerprint, and the interpreter or witness would do likewise. Many forms also bear the seal of the Congolese courts with jurisdiction in the areas where the investigations took place.

1.32. All these forms were sorted into different categories (natural persons, the Congolese State, public corporations, commercial companies, private establishments, not-for-profit

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<sup>63</sup>Ministerial Order No. 0002/CAB/J&DH/2008 of 26 February 2008 establishing an Expert Commission in charge of identifying and assessing the damage caused by Uganda to the DRC and its peoples following the armed attack and occupation of Congolese territory by Ugandan troops between 1998 and 2003; Ann. 1.1.

associations, NGOs and other entities) and then examined in detail and analysed using tables and comparison grids, indicating, amongst other things, the locations involved and the types of injury suffered. The latter varied, and included death, bodily harm, loss of property, and fleeing into the forest as a result of the use of violence by the Ugandan forces or the groups supported by Uganda. It also affected different categories of victims: public bodies or corporations, private commercial companies, non-governmental associations, private individuals, etc. In addition to the forms, the Commission also collected other evidence, such as documentary films, photographs, war-related objects and remnants (shrapnel, ammunition, etc.), reports from local and international NGOs, video testimonies of victims, death certificates and other medical or judicial documents.

1.33. This work of gathering information from the victims themselves, several years after the end of the war, proved to be a particularly difficult and delicate task. A number of factors made collecting evidence in the field more complicated, such as:

- the low level of education of the majority of the victims;
- the difficulty for the victims of remembering the precise circumstances of events which were both deeply traumatising and, in some instances, took place long ago;
- 29** — the difficulties involved in finding official documents, such as identity papers and death certificates, for the whole of the war period, which was characterized by serious disorganization across all public and administrative services;
- the destruction of houses and buildings, which led to the deterioration or loss of evidence.

1.34. The administrations of certain ministries, public services, businesses and associations also provided the Commission with documents showing the damage they had suffered as a consequence of the internationally wrongful acts committed on the territory of the Congo between 1998 and 2003, for which Uganda was responsible. These data were consolidated and classified by category.

1.35. On this basis, almost 10,000 records (documents consisting of between two and four pages) were drawn up, taken back to Kinshasa and subsequently studied by a new commission created by a Ministerial Order dated 19 December 2015<sup>64</sup>. Each record contains the information collected in the field, including the victim's name, details of the injury suffered and, in some cases, an approximate evaluation of the damage. These records are annexed to this Memorial; they are accessible via a piece of software which allows searches to be carried out using various criteria, such as location, type of damage or a victim's name<sup>65</sup>.

1.36. Alongside this empirical approach, based on research carried out on the ground, the DRC collected information from reports drawn up by various — mainly international — sources which had access to the areas in question during the critical period. These include, in particular:

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<sup>64</sup>Ministerial Order No. 049/CAB/MIN/JGS&DH of 19 December 2015 establishing a commission responsible for defending the interests of the DRC in the second phase of the proceedings before the International Court of Justice relating to the fixing of the amount of the reparations owed by Uganda; Ann. 1.2.

<sup>65</sup>Ann. 1.3.



- the Report of the Mapping Exercise of the United Nations High Commissioner for Human Rights (hereinafter “the Mapping Report”)<sup>66</sup>;
- a report drawn up in 2000 by the United Nations Commission on Human Rights on the situation of human rights in the DRC<sup>67</sup>;

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- MONUC’s 2004 special report “on the events in Ituri”<sup>68</sup>;
- various reports and addenda of the United Nations Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo (hereinafter the “United Nations Panel of Experts”)<sup>69</sup>;
- the report of Uganda’s Judicial Commission of Inquiry into Allegations into Illegal Exploitation of Natural Resources and Other Forms of Wealth in the Democratic Republic of Congo (hereinafter “the Porter Commission”)<sup>70</sup>.

1.37. The DRC’s use of the reports produced by international organizations (especially the United Nations) and national and international NGOs, as well as various experts, has focused on identifying as accurately as possible the injury caused by Uganda’s conduct. When cost evaluations of the extent of the damage suffered were provided in these documents, they have generally formed the basis of the claims presented in this Memorial.

1.38. Sometimes, the differences in assessment between these two approaches — one inductive, based on research carried out on the ground once the conflict had ended; the other deductive, based on local and international sources published during or after the war — are not insignificant. There is nothing surprising in this. These differences are due above all to the fact that the inquiries launched by the DRC in the regions concerned could only be carried out several years after the facts — often long after most of the international reports had been produced on the basis of information collected *in situ* at the time of the events.

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1.39. They can also be explained by the methodologies used. The records were drawn up by police officers on an individual basis, with a view to establishing the precise injuries suffered in the course of the conflict. Despite the efforts of the Congolese State to conduct that exercise

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<sup>66</sup>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*, Aug. 2010; Ann. 1.4.

<sup>67</sup>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 Jan. 2000; Ann. 1.5.

<sup>68</sup>MONUC, *Special report on the events in Ituri, January 2002-December 2003*, document S/2004/573, 16 July 2004, Ann. 1.6.

<sup>69</sup>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 Apr. 2001; Ann. 1.7; 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 Nov. 2001; Ann. 1.8; 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; Ann. 1.9; 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 Oct. 2002; Ann. 1.10.

<sup>70</sup>Judicial Commission of Inquiry into Allegations into Illegal Exploitation of Natural Resources and Other Forms of Wealth in the Democratic Republic of Congo 2001 (“Porter Commission”), *Final Report*, Nov. 2002; Ann. 1.11.

thoroughly, the resources available to the investigators for the purpose were limited and did not allow them to produce an exhaustive map of the damage suffered in this context. In particular, a number of areas were still difficult to access at the time those inquiries were conducted, due mainly to the continuing lack of security there. The international reports, on the other hand, clearly did not have the same objective. Their purpose was to make a general assessment of the material and human damage caused by the conflict. While they provide valuable information on a series of specific events, they are in no way detailed enough to allow the injuries suffered on an individual level as a result of those events to be established. The overall assessments they contain are nonetheless of value, because they indicate the orders of magnitude of the injuries resulting from Uganda's breaches of its international obligations.

1.40. Consequently, in conducting these inquiries after the end of the war, the DRC does not claim to have been exhaustive or to have succeeded in establishing all the injuries suffered. The thousands of cases registered are merely examples illustrating the reality and extent of the damage suffered on the ground. They must be viewed alongside the figures resulting from the various reports, which have a more general and overall purpose. Ultimately, and in view of the particular nature of war-related damage, which, by definition, cannot be identified and evaluated systematically, the DRC has thus been obliged to make assessments which, while general, are based on a variety of solid and reliable evidence.

1.41. This evidence will be presented in the following chapters, with the final chapter devoted to an overall monetary evaluation, which will represent the DRC's claim at this stage of the proceedings.

**CHAPTER 2. THE INJURIES SUFFERED BY THE DEMOCRATIC REPUBLIC OF THE CONGO  
FOLLOWING THE INVASION OF ITS TERRITORY BY UGANDA**

2.01. The advance of the Ugandan army (Uganda People's Defence Forces, hereinafter UPDF) into Congolese territory, from early August 1998 onwards, took place in several different stages, each of which was marked by considerable damage inflicted upon the Congolese people and State. In the terms of the Judgment handed down by the Court on 19 December 2005, "[t]he evidence has shown that the UPDF traversed vast areas of the DRC, violating the sovereignty of that country. It engaged in military operations in a multitude of locations."<sup>71</sup>

2.02. The aim of this chapter is to determine the injuries arising from the invasion of the DRC's territory by Uganda, subject to both geographical and thematic limitations. First, the losses and damage caused in Ituri province and in the city of Kisangani will not be included at this stage, since they are the subject of separate chapters<sup>72</sup>. Nor will harm done to natural resources and damage of a macro-economic nature be included here, since these issues are also dealt with in two specific chapters<sup>73</sup>. At this stage the main focus will therefore be on harm done to persons (death, injury, torture, deportation, abduction, arbitrary arrest, flight into the forest, etc.) or damage to property (buildings or goods destroyed or stolen, extortion, looting, theft, embezzlement, etc.) caused by the arrival and subsequent stationing of Ugandan troops in various parts of Congolese territory, other than the Ituri region and the city of Kisangani.

2.03. The invasion of the DRC's territory by Ugandan forces took place in various stages, which will be outlined briefly in the first part of this chapter, taking the Court's Judgment as a basis (Section 1). Subsequently, a number of injuries will be described, following the order in which the Ugandan troops advanced, province by province. That part of the chapter will thus start with the damage caused in North Kivu province (Section 2) and continue with the damage recorded in Orientale province (Section 3), then in Equateur province, in the north-west of the country (Section 4). Finally, on the basis of these various findings, an overall assessment will be made of the damage which occurred in those areas (Section 5).

2.04. Before the steps described above are taken, reference must be made to three methodological precautions, which are derived from the legal principles set out above<sup>74</sup>.

2.05. First and foremost, no distinction will be drawn between injuries according to the rule of international law which was broken in each instance — that is, whether they are primarily the result of the breach of the prohibition on the use of force in international relations, the infringement of the law of armed conflict, or the violation of international human rights law. In practical terms, all the damage to persons and property in question results in any case from the invasion of the DRC by Ugandan forces, whether in the short term (because such damage was incurred upon the arrival of Ugandan troops) or the longer term (when it resulted from the repression of acts of resistance or, more generally, from atrocities committed after the invasion *strictu sensu* had taken place).

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<sup>71</sup>*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, I.C.J. Reports 2005, p. 224, para. 153.

<sup>72</sup>See Chaps. 3 and 4 below, respectively.

<sup>73</sup>See Chaps. 5 and 6 below, respectively.

<sup>74</sup>See Chap. 1, above.

2.06. Secondly, and, as before, in accordance with the legal principles which were highlighted in Chapter 1 of this Memorial, account will be taken of the damage caused both by the Ugandan forces themselves and by the irregular forces with which the UPDF operated hand in glove, in particular the self-styled Congo Liberation Movement (MLC, with its armed wing, the “Congo Liberation Army”, ALC). In this instance, the approach is justified in so far as the damage in question could not have been caused without Uganda’s support. It will be recalled that this support was held to be contrary to international law by the Court, as shown by this passage from the operative part of the Judgment of 19 December 2005:

“the Republic of Uganda, by engaging in military activities against the Democratic Republic of the Congo on the latter’s territory, by occupying Ituri *and by actively extending military, logistic, economic and financial support to irregular forces having operated on the territory of the DRC*, violated the principle of non-use of force in international relations and the principle of non-intervention”<sup>75</sup>.

34

Whether or not the damage in question arises from violations of humanitarian law or other rules of international law on the part of the irregular forces concerned is, on the other hand, irrelevant. Hence, for example, the killing of soldiers belonging to the Congolese armed forces by members of the Congo Liberation Army, even though this practice allegedly complies, in theory, with the law governing armed conflicts, constitutes an injury for which the DRC has a right to seek reparation. The decisive criterion is not whether these acts are intrinsically lawful, still less whether they can be attributed to Uganda. It lies in the finding that this harmful act would not have occurred without Uganda’s support, which the Court explicitly deems unlawful, for these irregular forces.

2.07. Thirdly, and lastly, it should be noted that the DRC will highlight various examples taken from international and national sources, and will also draw on the investigations it has carried out on the ground<sup>76</sup>. Given the massive extent of the damage caused, it would obviously be illusory to aspire to identify individually each specific injury caused during one of the deadliest conflicts of recent decades. As a document on this subject drawn up by the Office of the United Nations High Commissioner for Human Rights puts it: “No report . . . can adequately describe the horrors experienced by the civilian population in Zaire, now the Democratic Republic of the Congo (DRC), where almost every single individual has an experience to narrate of suffering and loss.”<sup>77</sup> It is with this caveat in mind that the various stages of the Ugandan invasion and the ensuing damage should now be reviewed.

### **Section 1. The different stages of the Ugandan invasion**

2.08. From early August 1998 onwards, Ugandan forces invaded the DRC and took over a significant number of localities in the east of the country. The progress of Ugandan troops can be succinctly described in chronological order on the basis of the account provided by the Court in its 2005 Judgment. The maps, attached to the paragraphs which follow for purely illustrative purposes, will clearly show how Ugandan troops gradually invaded substantial parts of Congolese territory.

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<sup>75</sup>*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, I.C.J. Reports 2005, p. 280, para. 345; emphasis added.

<sup>76</sup>See paras. 1.27 *et seq.* above.

<sup>77</sup>United Nations Office of the High Commissioner for Human Rights, *Report of the Mapping Exercise*, *op. cit.*, Foreword, Navanethem Pillay, p. 1, available at [http://www.ohchr.org/Documents/Countries/CD/DRC\\_MAPPING\\_REPORT\\_FINAL\\_EN.pdf](http://www.ohchr.org/Documents/Countries/CD/DRC_MAPPING_REPORT_FINAL_EN.pdf); Ann. 1.4.

35

2.09. The Judgment of 19 December 2005 first refers to the advance of Ugandan troops along a route starting at Beni, in North Kivu, and subsequently moving northwards towards Bunia, then Watsa: “The Court is satisfied that Beni was taken on 7 August, and Bunia on 13 August. . . . [Subsequently, a 7th infantry Battalion operational force] ‘proceeded to Watsa which is 40 km [away] where [it] arrived on 24 August 1998.’”<sup>78</sup> The Court thereby makes explicit reference to the taking of various localities, initially in North Kivu province, then in Orientale province, without, of course, professing to describe every practical detail of the invasion during this first month.



Map No. 2.1.

Legend:

- |                    |   |                    |
|--------------------|---|--------------------|
| Soudan             | = | Sudan              |
| Ouganda            | = | Uganda             |
| Province orientale | = | Orientale province |
| Nord-Kivu          | = | North Kivu         |

2.10. In the next part of its account, the Court mentions troop movements along three routes. The first two start from Watsa, one heading northwards up to Faridje, the other proceeding westwards to Isiro via Munubele. The third route leads from Kisangani, a city taken under Ugandan control on 1 September<sup>79</sup>, northwards towards Banalia, then Tele:

“Ugandan evidence before the Porter Commission in relation to the month of September 1998 refers to Kisangani (1 September); Munubele (17 September); Bengamisa (18 September); Banalia (19 September); Isiro (20 September); Faladje (23 September); and Tele Bridge (29 September). Kisangani (1 September) and Isiro

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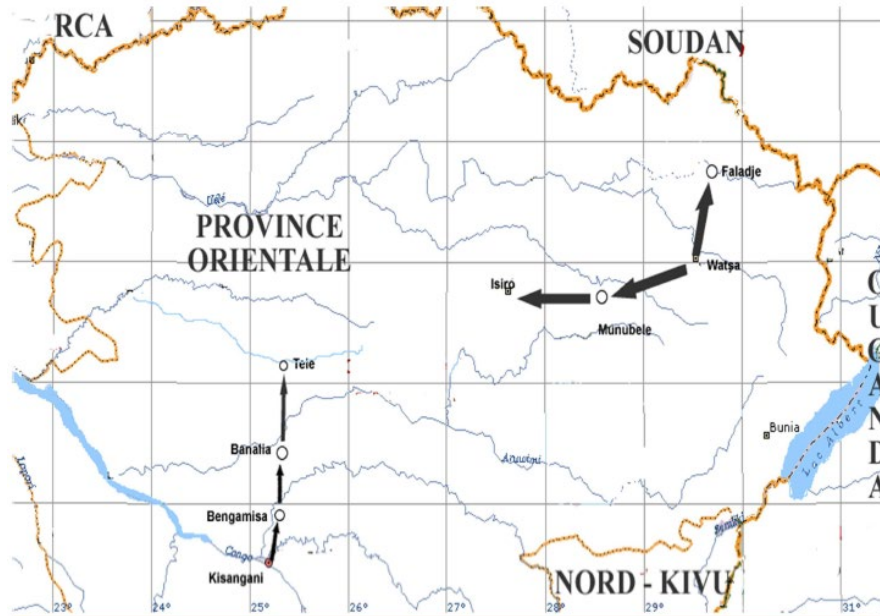
<sup>78</sup>*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, I.C.J. Reports 2005, p. 207, para. 79; here the Court quotes a document from the Porter Commission (the mandate of this body and the circumstances in which it was established are recalled in para. 18 of the Judgment; see also Chap. 5 below).*

<sup>79</sup>For further details see Chap. 4 below.

(20 September) are acknowledged by Uganda as having been ‘taken’ by its forces (and not just as locations passed through)<sup>80</sup>.

36

Here again, the Court confines itself to mentioning the best-known locations, and by no means claims to provide an exhaustive list. Its account does, nonetheless, provide a clear picture of the advance of Ugandan troops into northern DRC, and their movements from east to west and from south to north, during this initial stage of the conflict.



Map No. 2.2.

Legend:

- |                    |   |                    |
|--------------------|---|--------------------|
| Soudan             | = | Sudan              |
| Ouganda            | = | Uganda             |
| Province orientale | = | Orientele province |
| Nord-Kivu          | = | North Kivu         |

2.11. The Court subsequently describes how Ugandan troops advanced and entered Equateur province, following on from their previous movements. For example, although the Court does not mention this explicitly, Isiro, which fell on 20 September 1998, was the starting-point from which Ugandan forces made for Buta, to the west, then Dulia, in Equateur province. From there, they followed two main routes: not only did they proceed down to Bafwasende, to the south-east, but they also advanced on Bumba, Lisala and Benda, to the west. Furthermore, again with Buta as a starting-point, Ugandan soldiers took Titire, and then Poko, before proceeding westwards, deeper within Equateur province, towards Businga and Gemena:

“Both Parties agree that Buta was taken on 3 October and Dulia on 27 October. The Porter Commission was informed that Ugandan troops were present at Bafwasende on 12 October.

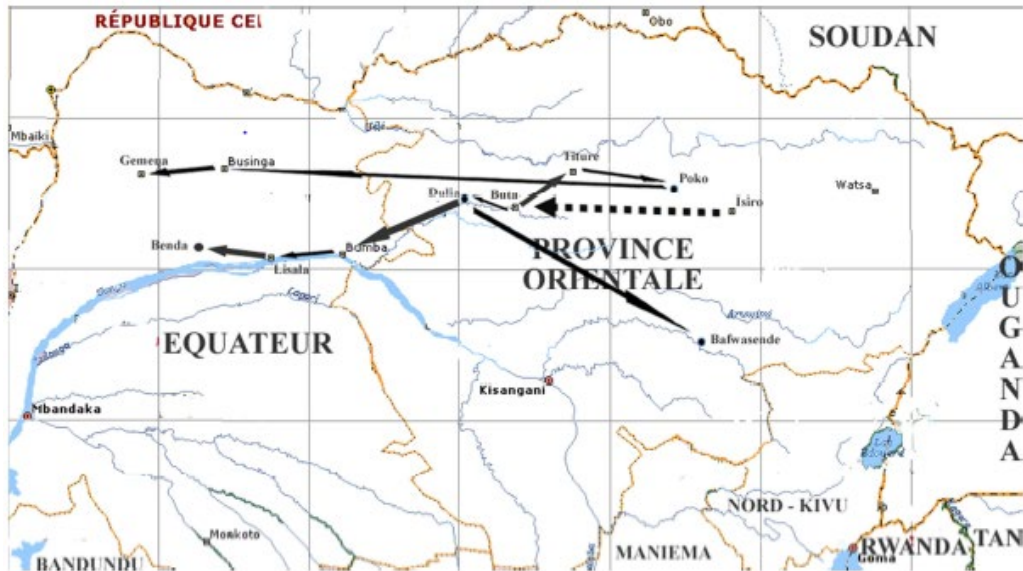
.....

There is agreement between the Parties that Bumba was taken on 17 November 1998.

<sup>80</sup>Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, I.C.J. Reports 2005, p. 207, para. 81.

Uganda claims that Lisala was taken on 12 December 1998. The list contained in the Porter Commission exhibits makes reference to the location of Benda, with the date of 13 December. Also listed are Titire (20 December) and Poko (22 December). Uganda insists it ‘came to’ Businga on 28 December 1998 and not in early February 1999 as claimed by the DRC; and to Gemena on 25 December 1998, and not on 10 July 1999 as also claimed by the DRC.”<sup>81</sup>

37



Map No. 2.3.

Legend:

- République Ce = Central African Republic
- Soudan = Sudan
- Province orientale = Orientale province
- Nord-Kivu = North Kivu

2.12. The Court follows the same approach for the second year of the conflict, establishing the chronological order of the various military operations, which led to the successive capture of a number of locations during the first half of 1999<sup>82</sup>. The Court also mentions the operations carried out from Gbadolite in various parts of Equateur province<sup>83</sup>. The advance of Ugandan troops into eastern DRC thus continued throughout 1999, and also during part of 2000.

2.13. In the next part of its Judgment, the Court mentions and analyses the Lusaka Agreements (July 1999), which provided for the orderly withdrawal of foreign troops present in the DRC, and the Kampala and Harare Disengagement Plans of 8 April and 6 December 2000 respectively. In that context, it describes “the major Ugandan military deployment across vast areas of the DRC and the massive loss of life over the preceding months”<sup>84</sup>.

It cannot therefore be claimed that the presence of UPDF forces in the DRC was short-term, nor that it was confined to a small portion of Congolese territory. The Court reconfirms this point

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<sup>81</sup>*Ibid.*, p. 208, paras. 82, 84 and 85.

<sup>82</sup>*Ibid.*, para. 86.

<sup>83</sup>*Ibid.*, para. 87.

<sup>84</sup>*Ibid.*, p. 211, para. 99.



later on in its Judgment, noting that the UPDF “engaged in military operations in a multitude of locations, including Bunia, Kisangani, Gbadolite and Ituri, and many others”<sup>85</sup>.

2.14. In more general terms, the Court’s Judgment shows that the invasion of the DRC took place in two complementary ways. On the one hand, the Ugandan army crossed the border and marched on various locations in the DRC, moving from east to west and concentrating on the north of the country. On the other hand, Uganda also acted in close co-operation “with various factions which sought to overthrow the Government of the DRC”<sup>86</sup>.

2.15. The next part of this chapter will focus on the specific material damage arising from the violations of international law committed by Uganda when it invaded Congolese territory, whether these were committed by its own agencies or by the irregular forces which would not have been able to cause this damage without its unlawful support. It will follow the Court’s approach of taking events in chronological order, starting with the province of North Kivu before moving on to Orientale province and then Equateur province.

## Section 2. The damage caused in North Kivu province



Map No. 2.4.

### North Kivu province

Legend:

- |                    |   |                    |
|--------------------|---|--------------------|
| Soudan             | = | Sudan              |
| Ouganda            | = | Uganda             |
| Province orientale | = | Orientale province |

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<sup>85</sup>*Ibid.*, p. 224, para. 153.

<sup>86</sup>*Ibid.*, p. 225, para. 155.



Tanzanie	=	Tanzania
Kasai Orientale	=	Kasai-Oriental
Kasai Occidentale	=	Kasai-Occidental
Zambie	=	Zambia

39

2.16. As the DRC described in detail in its Reply, filed during the merits stage, the irregular forces used by Uganda were partly drawn from elements of the Congolese Armed Forces, led by a senior officer who took his orders directly from Uganda and Rwanda, Colonel Kabarebe<sup>87</sup>. In preparation for the invasion, the latter had deliberately deployed soldiers under his control across all areas of eastern Congo. These were the units, commanded by officers on whose loyalty he could count, that Uganda used, once it had “turned them” against the Kinshasa Government. At the same time, Uganda made use of irregular Congolese forces, to which it provided substantial support and *de facto* co-ordination.

2.17. The above circumstances explain the fact that, in a number of cases, the taking of locations mentioned by the Court in its Judgment did not entail violent clashes, and hence did not lead to extensive damage being incurred, in terms of loss of human life or direct damage to property. This does not mean, however, that no reparation is due from Uganda for the conquest of these locations. Macro-economic damage, due in large part to the utter chaos in the country that was engendered by the war, and harm arising from the wrongful exploitation of natural resources, as well as non-material damage caused by Uganda’s very serious violations of the rules of *jus cogens* (in particular, the prohibition on the use of force in international relations which is set out in Article 2 (4) of the Charter), will obviously need to be taken into account. As previously stated, damage of a macro-economic nature and damage arising from the wrongful use of natural resources will be covered in other chapters of this Memorial<sup>88</sup>, whereas non-material damage will be dealt with in Chapter 7.

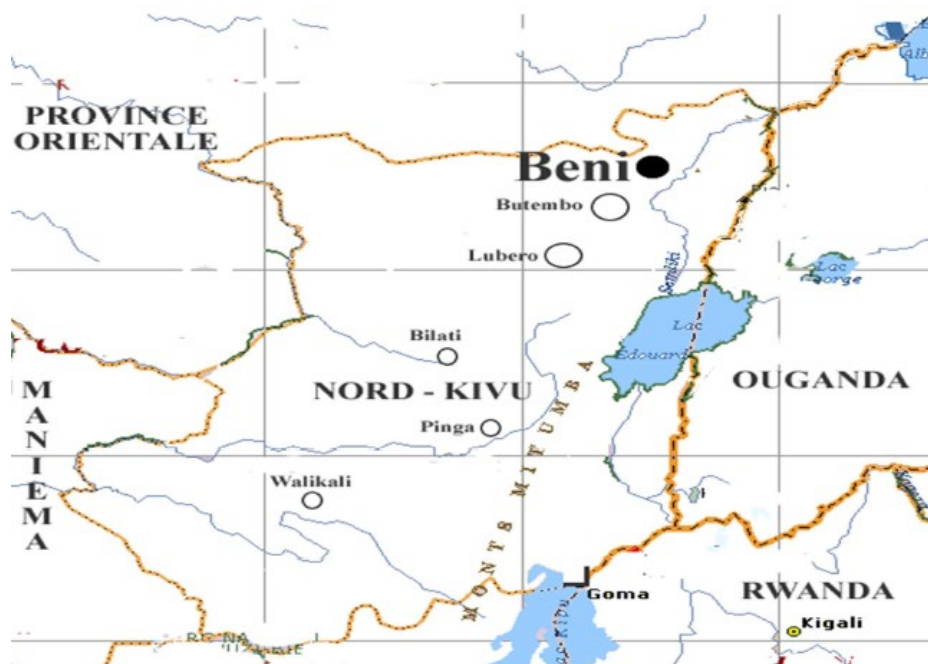
2.18. The remainder of this chapter, however, will identify cases in which damage to persons and property was the direct result of Uganda’s violation of its international obligations. It will start with the damage caused in the two large towns of Beni and Butembo, before giving some examples relating to other localities in North Kivu.

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<sup>87</sup>RDRC, pp. 73 *et seq.*, paras. 2.21 *et seq.*

<sup>88</sup>See Chaps. 5 and 6 below.

40 A. Beni (1999-2003)



Map No. 2.5.

**Beni**

Legend:

- |                    |   |                    |
|--------------------|---|--------------------|
| Province orientale | = | Orientale province |
| Nord-Kivu          | = | North Kivu         |
| Ouganda            | = | Uganda             |

2.19. This city in North Kivu, which had a population of approximately 200,000 at the time of the events, was taken without a fight by the UPDF and their allies at the start of the invasion of the DRC. The resistance which was subsequently organized led to appalling acts of repression on a number of occasions. Hundreds of men and women were to be slaughtered there between 1999 and 2003.

2.20. For example, Roberto Garretón, Special Rapporteur of the United Nations Commission on Human Rights on the human rights situation in the DRC, mentions the deaths of around a hundred civilians caused by irregular forces supported by Uganda on 15 February 1999<sup>89</sup>.

2.21. On 14 November of the same year, Mai-Mai fighters launched an attack in the course of which a Ugandan officer, Major Reuben Ikondere, lost his life. The Ugandan army reacted with extreme violence, firing indiscriminately. When the fighting was over, the Red Cross counted

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<sup>89</sup>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 Jan. 2000, p. 33, para. 112, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G00/102/29/pdf/G0010229.pdf?OpenElement>; Ann. 1.5.

**41** 86 bodies in the streets, most of them in civilian dress. These facts are confirmed by the African Association for the Defence of Human Rights in a report dating from late 1999<sup>90</sup>.

2.22. In the course of March 2000, still in Beni, Ugandan soldiers, reigning supreme over conquered territory, committed massacres, the direct effect of which was to inspire terror in the civilian population. A report by the Office of the United Nations High Commissioner for Human Rights (which may be referred to more succinctly as the *Mapping Report*) gives a good description of the general situation prevailing at the time:

“[i]n the town of Beni, UPDF soldiers instituted a reign of terror for several years with complete impunity. They carried out summary executions of civilians, arbitrarily detained large numbers of people and subjected them to torture and various other cruel, inhuman or degrading treatments. They also introduced a particularly cruel form of detention, putting the detainees in holes dug two or three metres deep into the ground, where they were forced to live exposed to bad weather, with no sanitation and on muddy ground.

— In March 2000, UPDF soldiers allegedly killed four civilians and wounded several others in the town of Beni during an operation to quell a demonstration. The victims had been protesting against the murder of a woman, the arbitrary arrest of her husband and the pillaging of their house, committed a few days earlier by UPDF soldiers.”<sup>91</sup>

2.23. The Special Rapporteur on the situation of human rights in the DRC mentions, more specifically, that “[a] married couple named Joseph and Sylvia were murdered by Ugandan soldiers in Beni”, that, likewise, “Prosecutor Kahanya was murdered by Ugandan soldiers”<sup>92</sup>, and that in September 2000, “Kakule Gabriel, a Congolese citizen, was arrested and tortured in Beni by Ugandan soldiers . . . He was scalded with boiling water, whipped, crucified and humiliated, and died of his injuries.”<sup>93</sup>

**42** 2.24. The aforementioned *Mapping Report* confirms that over the course of 2001 there was close co-ordination between Ugandan forces and the irregular forces they supported, noting fighting “between the troops from the APC (the armed wing of the RCD-ML) and the UPDF on the one hand and the various Mayi-Mayi groups on the other”. It goes on to record that “[i]n 2001, elements of the APC allegedly killed at least five civilians and set fire to houses in the village of Kiantsaba, 15 kilometres from Beni”<sup>94</sup>. It also states that:

“From 2001, Mayi-Mayi groups and UPDF soldiers, sometimes supported by elements of the APC, engaged in fierce fighting to gain control of the village of Irango, around 20 kilometres from Beni.

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<sup>90</sup>African Association for the Defence of Human Rights (ASADHO), *Uganda is sacrificing the Congolese civilian population — Enquiry into violations of human rights and of international humanitarian law in Beni Territory by Ugandan troops and other armed groups*, Feb. 2001, p. 7, RDRC, Ann. 93; Ann. 2.5.

<sup>91</sup>United Nations Office of the High Commissioner for Human Rights, *Report of the Mapping Exercise, op. cit.*, p. 173, para. 349; Ann. 1.4.

<sup>92</sup>United Nations Commission on Human Rights, Fifty-seventh 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 2000/15*, document E/CN.4/2001/40, 1 Feb. 2001, p. 64; Ann. 4.23.

<sup>93</sup>*Ibid.*, p. 30, para. 112.

<sup>94</sup>United Nations Office of the High Commissioner for Human Rights, *Report of the Mapping Exercise, op. cit.*, p. 243, para. 442; Ann. 1.4.

- In 2001, elements of the UPDF allegedly killed an unknown number of people in the village of Irango. The victims had been accused of supporting the Mayi-Mayi. The soldiers also raped numerous girls. During the attack, they set fire to and looted several houses.”<sup>95</sup>

2.25. The events described above are confirmed by the investigation carried out on the ground years later by the Expert Commission of the DRC Government. The individual records drawn up during this exercise add up to the following results as regards the town of Beni:

- 642 cases of loss of human life were reported. In a number of cases, the relatives of the victims of these massacres have provided the names of the deceased as well as indicating their relationships with the latter. The list of these victims is annexed to this Memorial<sup>96</sup>.
- There were 132 victims of injury, bodily harm or rape. A list, annexed to this Memorial, compiles the relevant information gleaned from the individual victims’ records<sup>97</sup>.
- At least 433 people had to flee into the bush, to escape the acts of violence perpetrated by Ugandan soldiers. Here again, a table listing the victims identified as well as the number of days spent in the bush is attached as an annex<sup>98</sup>.
- Finally, a number of documents list the damage to property suffered both by individuals and their families and by various institutions, including local churches and public institutions which had their premises destroyed and ransacked. A list of 816 victims is annexed to this Memorial, giving details of the items lost by category and their market value<sup>99</sup>.

## 43

2.26. The most reliable and varied sources thereby attest to the scale and severity of the damage arising from Uganda’s violation of its international obligations in the Beni region. And the same is true of other regions, as can be seen from the situations which will now be described.

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<sup>95</sup>*Ibid.*, para. 443.

<sup>96</sup>Assessment of deaths in Beni, Butembo and Gemena, 1998-2003 (sub-total for Beni); Ann. 2.1.

<sup>97</sup>Assessment of injuries and other bodily harm in Beni, Butembo and Gemena, 1998-2003 (sub-total for Beni); Ann. 2.2.

<sup>98</sup> Assessment of cases of flight into the forest in Beni, Butembo and Gemena, 1998-2003 (sub-total for Beni); Ann. 2.3.

<sup>99</sup>Detailed assessment of loss of property in Beni, 1998-2003; Ann. 2.4*bis*.

## B. Butembo and the surrounding area (1999-2003)



Map No. 2.6.

### Butembo and the surrounding area

Legend:

Province orientale	=	Orientale province
Ouganda	=	Uganda
Nord-Kivu	=	North Kivu

2.27. In December 1999, the village of Biambwe, north-west of Butembo, was the scene of various atrocities and instances of looting, which are mentioned in the White Paper drawn up shortly after the events. Numerous victims were recorded on that occasion, as well as considerable damage to property:

“Ugandan troops laid waste to the village of Biambwe, located 62 km west of the town of Butembo, on the road to Manguredjipa. According to local sources, more than 250 civilians were murdered in cold blood and 150 houses were deliberately set on fire. Women, children, elderly and physically handicapped people, who were not able to flee the village, were burnt to death in their homes.”<sup>100</sup>

**44** The following events are recounted in another part of the report:

“According to the information received from non-governmental organisations based in Bukavu, as well as from the Beni-Butembo Civil Society Co-ordination Office in North Kivu: . . . in North Kivu province, during the period from 28 March to 9 April 2001, 193 houses were torched, including 123 in Biambwe (62 km from Butembo), 22 in Kirima (32 km from Butembo), 12 in Tihe (25 km from Butembo), 6 in Kambala (20 km from Butembo), and 30 in Katambi (15 km from Butembo), causing a number of deaths among the civilian population, some of whom were buried in clearly identified mass graves in Biambwe. These crimes were committed immediately after the expedition made by Ugandan UPDF soldiers and Congolese FLC soldiers to Manguredjipa, 92 km west of Butembo, for the purpose of

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<sup>100</sup>See Congo European Network (Brussels), *REC-info No.5/2001*, 23 May 2001, heading “North Kivu”, point No. 15, reporting news gathered from local sources on 14 Apr. 2001; RDRC, Ann. 98; Ann. 2.6 [translation by the Registry; NB: this particular passage is not included in the Annex].

collecting a consignment of at least 5,000 kg of coltan which had been stockpiled in the Manguredjipa quarries.”<sup>101</sup>

2.28. The United Nations Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo states that “Ugandan troops . . . committed massacres . . . in a restaurant in Kirima on 28 August, when the owners and 10 customers were killed”<sup>102</sup>; Kirima is about 30 km west of Butembo.

2.29. In the course of 2000, in Butembo itself, UPDF soldiers murdered a number of Congolese civilians. For example, “Muhino Fiston was murdered by Ugandan soldiers in Butembo [just as Mr.] Kapisa was murdered by [the same] Ugandan soldiers in Butembo”<sup>103</sup>. A few months later, on 25 April 2001, seven people were killed by gunfire, including four schoolchildren in uniform. Congo European Network also reports that 14 vans were requisitioned by Ugandan soldiers<sup>104</sup>.

2.30. Another local source also describes victims in the aftermath of fighting which had occurred in the area at that time:

“The bodies of dozens of civilians lie unburied at Biambwe (. . . north-east of Butembo, Nord-Kivu, in the east of the Democratic Republic of the Congo), after the withdrawal of the Ugandan troops that attempted to take control of the area last week. Almost all buildings have been destroyed . . . The terrified population fled, but has no food.”<sup>105</sup>

45

2.31. The same source also records the murder of three Mai-Mai by Ugandan soldiers in the same area<sup>106</sup>. A local NGO, the Société Civile du Grand Nord (the Far-North Civil Society), informed MONUC that after the population had fled, almost all the houses in Biambwe had their doors broken down and all their contents either carried off or burned. Even the Catholic church in Biambwe was not spared<sup>107</sup>.

2.32. Several members of local civil society report that looting by Ugandan soldiers also took place on other occasions:

“There have been many cases in which Ugandan soldiers have taken property belonging to private individuals by force in the regions occupied by the UPDF. As we have seen, it is not unusual for members of the UPDF to go as far as killing Congolese

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<sup>101</sup>Report entitled *The Société Civile Grand Nord's view on Uganda's military interventions in the Democratic Republic of the Congo*, produced by the Beni-Butembo Civil Society Co-ordination Office in North Kivu, 25 June 2001, p. 2; RDRC, Ann. 95; Ann. 2.7 [translation by the Registry; NB: this particular passage is not included in the Annex].

<sup>102</sup>United Nations Commission on Human Rights, Fifty-seventh 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 2000/15, op. cit.*, p. 35, para. 148; Ann. 4.23.

<sup>103</sup>*Ibid.*, p. 64.

<sup>104</sup>Congo European Network, *REC-info No.5/2001, op. cit.*; RDRC, Ann. 98; Ann. 2.6.

<sup>105</sup>Article by Missionary Service News Agency, 12 Apr. 2001, “Nord Kivu: Biambwe reduced to rubble by Ugandan soldiers, several dozen casualties”, RDRC, Ann. 22; Ann. 2.9.

<sup>106</sup>*Ibid.*

<sup>107</sup>Société Civile du Grand Nord, *Alarm call to the Head of MONUC in Kinshasa/DRC*, June 2001; RDRC, Ann. 96; Ann. 2.10.

citizens, outside any context of military action, simply in order to steal from them. However, even without going to such extremes, the acts of plunder or theft committed by members of the Ugandan armed forces in the DRC are legion, whether they are individual or collective. Some of them resemble organized crime pure and simple, like the hold-up on 19 April 2001 in a shop in Biambwe by eight soldiers including a Ugandan officer in which 60,000 United States dollars were stolen.”<sup>108</sup>

This example confirms that the consequences of the Ugandan invasion could be seen not just in the short term, when the troops arrived, but also in the longer term, when some members of the UPDF committed atrocities once the territories had been invaded.

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2.33. The various accounts mentioned above tally with the outcome of the victim identification exercises carried out by the governmental commission. These record many statements of injury suffered by inhabitants during 2001 in Biambwe. Following the mass exodus of civilian populations, there were reports of deaths in the bush, in addition to numerous cases of serious bodily harm, systematic looting of goods and destruction of houses. The lists in the annexes to this Memorial include the names of a number of victims who suffered harm in Biambwe<sup>109</sup>. The damage assessment software accompanying this Memorial gives access to individual handwritten victim forms which have been scanned in PDF format<sup>110</sup>.

2.34. In the area around Biambwe, the governmental commission also took statements from relatives of persons who had lost their lives as a result of UPDF operations, as well as from victims who had suffered serious bodily harm or loss of possessions, or spent several days in the forest to escape the atrocities committed by Ugandan troops over the period from 1999 to 2003<sup>111</sup>.

2.35. In Kanyabayonga, also in the Butembo region, the victims, probably still in a state of shock as a result of these traumatic memories, did not dwell on the losses of material possessions that they had suffered. Instead, they focused on the numerous deaths which occurred, as well as the acts of torture or inhuman or degrading treatment that they had had to endure. Out of ten cases of rape recorded in Butembo and the surrounding area, six took place in Kanyabayonga. Those are just a few examples. The damage assessment software provides direct access to the records of the victims concerned<sup>112</sup>. Also reported in this area are ten cases of death or disappearance without return<sup>113</sup>, eleven other cases of serious bodily harm<sup>114</sup>, and two instances of loss of property<sup>115</sup>.

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<sup>108</sup>RDRC, p. 333, para. 5.39, quoting the joint letter to the MONUC by seven officials of organizations representing civil society in the Far North (Beni-Butembo), 13 June 2001; Ann. 2.10.

<sup>109</sup>Assessment of deaths in Beni, Butembo and Gemena, 1998-2003 (sub-total Butembo); Ann. 2.1; Assessment of injuries and other bodily harm in Beni, Butembo and Gemena, 1998-2003 (sub-total Butembo); Ann. 2.2; Assessment of cases of flight into the forest in Beni, Butembo and Gemena, 1998-2003 (sub-total Butembo); Ann. 2.3; Detailed assessment of loss of property in Butembo, 1998-2003; Ann. 2.4*ter*.

<sup>110</sup>Ann. 1.3.

<sup>111</sup>See fn. 39 above.

<sup>112</sup>Report on cases of physical injury in Butembo, No. 2 (2 cases): Butembo CCF04032016\_0006\_011; No. 10: Butembo CCF04032016\_0013; No. 11: Butembo CCF04032016\_0003; No. 27: Butembo CCF04032016\_0004\_02; No. 31: Butembo CCF04032106\_0005\_007. These specific records can be accessed via the software included in Ann. 1.3.

<sup>113</sup>Assessment of deaths in Beni, Butembo and Gemena, 1998-2003 (sub-total Butembo); Ann. 2.1.

<sup>114</sup>Assessment of injuries and other bodily harm in Beni, Butembo and Gemena, 1998-2003 (sub-total Butembo); Ann. 2.2.

<sup>115</sup>Detailed assessment of loss of property in Butembo, 1998-2003; Ann. 2.4*ter*.

2.36. In Njapanda, a village a few kilometres from Butembo, the records compiled on the basis of direct testimony by victims reveal enormous losses of property in 2001. These witness statements make reference to a policy of systematic looting of homes, which led to damage of various types: famine, disease, death, etc.

47

2.37. When missions were despatched to Butembo to assess the damage caused by the Ugandan invasion, the DRC authorities managed to identify 37 deaths, 76 victims of injury and other bodily harm, 216 victims of looting and 93 persons forced to flee into the forest<sup>116</sup>.

**C. Lubero (2000)**



Map No. 2.7.

**Lubero**

Legend:

- |                    |   |                    |
|--------------------|---|--------------------|
| Province orientale | = | Orientale province |
| Ouganda            | = | Uganda             |
| Nord-Kivu          | = | North Kivu         |

2.38. This town, the principal one in the Lubero region, approximately 42 km south of Butembo, saw sustained exchanges of fire between UPDF and Mai-Mai elements during August 2000. According to the *Mapping Report*, this fighting caused “tens of deaths among the Mayi-Mayi and an unknown number of civilian victims. Some sources suggest that 17 civilians were killed and seven Mayi-Mayi prisoners summarily executed.”<sup>117</sup>

Consequently:

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“[f]ollowing these incidents, the Mayi-Mayi restarted and intensified their attacks on UPDF convoys between Beni and Butembo. In retaliation, the UPDF forces led operations against villages suspected of sheltering Mayi-Mayi groups. UPDF soldiers

<sup>116</sup>These specific forms can be accessed via the software included in Ann. 1.3.

<sup>117</sup>United Nations Office of the High Commissioner for Human Rights, *Report of the Mapping Exercise, op. cit.*, p. 172, para. 346; Ann. 1.4.



often made disproportionate use of force during these attacks, killing combatants and civilians indiscriminately.”<sup>118</sup>

This was also the case in the villages of Maboya and Loya.

#### D. Maboya and Loya (November 2000)



Map No. 2.8.

#### Maboya and Loya

Legend:

Province orientale	=	Orientale province
Ouganda	=	Uganda
Nord-Kivu	=	North Kivu

2.39. The *Mapping Report* mentions similar events in these two villages, located between Butembo and Beni:

“On 1 November 2000, UPDF soldiers allegedly killed between seven and eleven people during an attack on the population of the villages of Maboya and Loya, 16 kilometres north of the town of Butembo. A few hours before the attack, four UPDF soldiers had been killed by Vurondo Mai-Mai during an ambush close to the village of Maboya. During the afternoon, UPDF soldiers apparently launched an indiscriminate attack on the inhabitants of both villages and set 43 houses on fire. Some victims were shot and killed, whilst others were burned alive.”<sup>119</sup>

These events are recounted by another, local, source, according to which,

“[s]ince September 2000 fighting between the UPDF and the Mai-Mai has intensified. The Ugandan troops have responded systematically to attacks by Mai-Mai fighters by massacring civilian populations regarded as sympathisers of the native fighters, and by deliberately setting fire to their villages. On 2 November 2000 the localities of Maboya (between the towns of Butembo and Beni) and Loya were sacked by Ugandan soldiers some hours after Mai-Mai fighters had passed through. More than 42 civilian dwelling-houses were torched by Ugandan soldiers. When the local Red Cross aid

<sup>118</sup>*Ibid.*, p. 172, para. 347.

<sup>119</sup>*Ibid.*, pp. 172-173, para. 347.

teams arrived they found 6 charred bodies in the houses, including the bodies of Mrs. Kasereka and her baby, aged about 4 months. To this total should be added 7 dead, 5 women and two men, shot at point-blank range by Ugandan soldiers.”<sup>120</sup>

There is no doubt, given these victims and the torching of these additional houses, that a definite policy of repression was being pursued, causing damage as considerable as it was wide-ranging.

#### E. Kikere (November 2000)



Map No. 2.9.

#### Kikere

Legend:

Province orientale	=	Orientale province
Ouganda	=	Uganda
Nord-Kivu	=	North Kivu

2.40. The *Mapping Report* also mentions that, on 9 November 2000 in Kikere, Ugandan soldiers used their weapons indiscriminately, blindly slaughtering civilian populations and destroying their belongings, animals and homes:

“On 9 November 2000, UPDF soldiers are alleged to have killed indiscriminately 36 people in the village of Kikere, close to Butuhe, north of Butembo. The soldiers fired blindly on civilians using rifles and rocket-launchers. Some civilians died as a result of being burned alive in their homes. The soldiers also systematically killed domestic animals and destroyed civilian property.”<sup>121</sup>

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The systematic nature of the killing and the destruction of property is explicitly emphasized in the report. The mindless violence exhibited by Ugandan forces in this region explains the scale of material and human damage suffered by the Congolese people.

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<sup>120</sup>African Association for the Defence of Human Rights (ASADHO), *Uganda is sacrificing the Congolese civilian population — Enquiry into violations of human rights and of international humanitarian law in Beni Territory by Ugandan troops and other armed groups*, Feb. 2001, cited in the *Report of the Mapping Exercise, op. cit.*, pp. 172-173; Ann. 1.4.

<sup>121</sup>United Nations Office of the High Commissioner for Human Rights, *Report of the Mapping Exercise, op. cit.*, pp. 173, para. 348; Ann. 1.4.

**F. Bunyuka (April 2001)**



**Map No. 2.10.**

**Bunyuka**

Legend:

- |                    |   |                    |
|--------------------|---|--------------------|
| Province orientale | = | Orientele province |
| Ouganda            | = | Uganda             |
| Nord-Kivu          | = | North Kivu         |

2.41. The Congo European Network reports an attack on four priests by Ugandan soldiers in Bunyuka. The clergymen were ill-treated, and the collection money, microphones and a sound system were stolen, as well as sundry personal effects<sup>122</sup>.

2.42. The manifold damage caused by Uganda in North Kivu province between 1999 and 2003 was sometimes the result of hostilities which erupted with local resistance forces, but at other times it occurred outside any context of military conflict, as part of the looting and atrocities committed by certain UPDF elements. The same pattern can be seen in Orientale province, as the DRC will now describe.

**51**

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<sup>122</sup>Congo European Network, *REC-info No.5/2001*; Ann. 2.6.

**Section 3. The damage caused in Orientale province**



**Map No. 2.11.**

**Orientale province**

Legend:

- |                    |   |                    |
|--------------------|---|--------------------|
| Soudan             | = | Sudan              |
| Province orientale | = | Orientale province |
| Ouganda            | = | Uganda             |
| Nord-Kivu          | = | North Kivu         |
| Tanzanie           | = | Tanzania           |
| Kasai Orientale    | = | Kasai-Oriental     |
| Sud-Kivu           | = | South Kivu         |
| Kasai Occidentale  | = | Kasai-Occidental   |
| Zambie             | = | Zambia             |

2.43. Ugandan troops and their allies entered the DRC's Orientale province soon after their invasion of North Kivu province. This time, the first stage of the invasion was not concluded without a struggle, nor was it, as a result, without victims. Witnesses to the troops' advance have drawn attention to several episodes which allow some of the damage caused to the Congolese State to be identified. Once again, just a few examples will be mentioned, for the most part in chronological order.

52 A. Isiro (September 1998)



Map No. 2.12.

Isiro

Legend:

- |                    |   |                    |
|--------------------|---|--------------------|
| Soudan             | = | Sudan              |
| Province orientale | = | Orientale province |
| Ouganda            | = | Uganda             |
| Nord-Kivu          | = | North Kivu         |
| Sud-Kivu           | = | South Kivu         |

2.44. The White Paper drawn up by the Congolese authorities at a very early stage of the conflict allows the following facts to be established:

“On 20 September 1998, Ugandan troops, under the cover of the ‘rebels’, entered Isiro after battles which caused 3 deaths, injuries and material damage:

- A tailor named Philippe, killed in his living room, where he was lying on the floor out of fear of stray bullets. He lived in the N’Sele district;
- A mentally ill person in military gear, shot point-blank;
- The driver of the Dominican convent, severely wounded;
- A classroom in the ITCA-Isiro building, destroyed by a tank of the enemy forces;
- Among the losses of rolling stock, the following are attributed to elements of the Ugandan Government forces;
- A Land Rover 110 belonging to the office of the superintendent of the religious missions;
- A Land Rover 110 belonging to the Clinique de l’Est;



— A private motorcycle.”<sup>123</sup>

## 53 B. Tele Bridge (September 1998)



Map No. 2.13.

### Tele Bridge

Legend:

Soudan	=	Sudan
Province orientale	=	Orientale province
Ouganda	=	Uganda
Nord-Kivu	=	North Kivu
Sud-Kivu	=	South Kivu

2.45. As previously mentioned<sup>124</sup>, the UPDF captured Tele Bridge on 29 September 1998, following fighting with troops from the Congolese Armed Forces (FAC). The toll taken by these battles was a particularly heavy one for the troops: 9 officers and 150 men lost their lives<sup>125</sup>.

2.46. The above examples attest to the violence of the fighting which accompanied the advance of Ugandan troops into Orientale province, as well as to the significance of the damage caused in its wake. This violence was also in evidence as Ugandan troops continued their advance into the north-west of the country and when they entered Equateur province.

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<sup>123</sup>White Paper on Massive Violations of Human Rights and of the basic rules of International Humanitarian Law by the aggressor countries (Uganda, Rwanda and Burundi) in the eastern part of the Democratic Republic of the Congo covering the period from 2 August 1998 to 5 November 1998, Kinshasa, Dec. 1998, p. 31; Ann. 2.11.

<sup>124</sup>See para. 2.11 above.

<sup>125</sup>Verbatim record of the hearing of Kabengele Muvuale, 18 Nov. 2001; RDRC, Ann. 50; Ann. 2.12.

### Section 4. The damage caused in Equateur province



Map No. 2.14.

#### Equateur province

Legend:

- |                    |   |                   |
|--------------------|---|-------------------|
| Soudan             | = | Sudan             |
| Ouganda            | = | Uganda            |
| Province orientale | = | Oriental province |
| Nord-Kivu          | = | North Kivu        |
| Tanzanie           | = | Tanzania          |
| Kasai orientale    | = | Kasai-oriental    |
| Sud-Kivu           | = | South Kivu        |
| Kasai occidentale  | = | Kasai-occidental  |
| Zambie             | = | Zambia            |

2.47. In this province, it was in close co-ordination with Congo Liberation Movement forces that Uganda caused major human and material damage. As the Court states in its Judgment of 19 December 2005, “[f]or its part, Uganda acknowledges that it assisted the MLC during fighting between late September 1998 and July 1999”<sup>126</sup>.

The damage here was undoubtedly more extensive than that in evidence in eastern Congo, since in this province it was not possible to implement the strategy of “turning” FAC troops against the legitimate authorities of the DRC. As a consequence, the battles between the Congolese armed forces and the UPDF and its allies in this region were the most ferocious of all. The book written

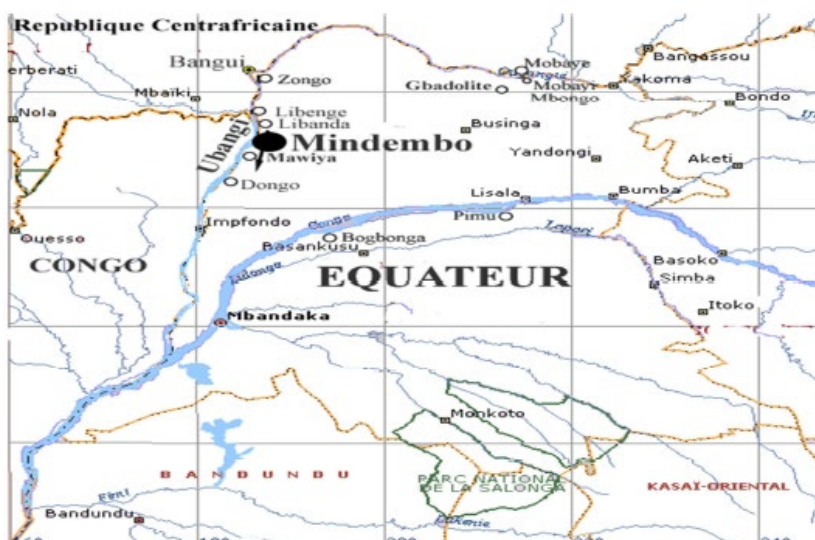
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<sup>126</sup>Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, I.C.J. Reports 2005, p. 225, para. 157.

55

by Jean-Pierre Bemba<sup>127</sup>, supreme leader of the MLC, a work deemed reliable in the Court's Judgment<sup>128</sup>, enables some of the injuries caused in this context to be quantified. These injuries are also documented by other relevant sources, both national and international. Once again, a number of examples will be given, with events categorized by location.

#### A. Mindembo (October-December 1998)



Map No. 2.15.

#### Mindembo

Legend:

- |                             |   |                          |
|-----------------------------|---|--------------------------|
| République Centrafricaine   | = | Central African Republic |
| Parc National de la Salonga | = | Salonga National Park    |

2.48. The MLC leader mentions an incident here which, in addition to material damage, caused around 200 casualties among the Congolese armed forces, thanks to the support of the Ugandan artillery:

“Major Fred Ngalimo, supported by the gunners of the UPDF 7th battalion, laid an ambush in the plantations at Mindembo, 80 km from Lisala. In their flight from Bumba, the FAC scattered and fell into a deadly trap. Nearly 200 FAC lay dead in the plantation. A battle tank and an ammunition truck were destroyed.”<sup>129</sup>

This operation by the Congo Liberation Army could only have been carried out with UPDF support. There is no doubt, therefore, that the 200 victims of this massacre were the direct consequence of Uganda's conduct.

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<sup>127</sup>Jean-Pierre Bemba, *Le choix de la liberté* [I chose Freedom], Gbadolite (DRC), Ed. Vénus [English page numbers for this source not available]; Ann. 2.13.

<sup>128</sup>*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, I.C.J. Reports 2005, p. 225, para. 158.*

<sup>129</sup>Jean-Pierre Bemba, *Le choix de la liberté, op. cit.*; Ann. 2.13.



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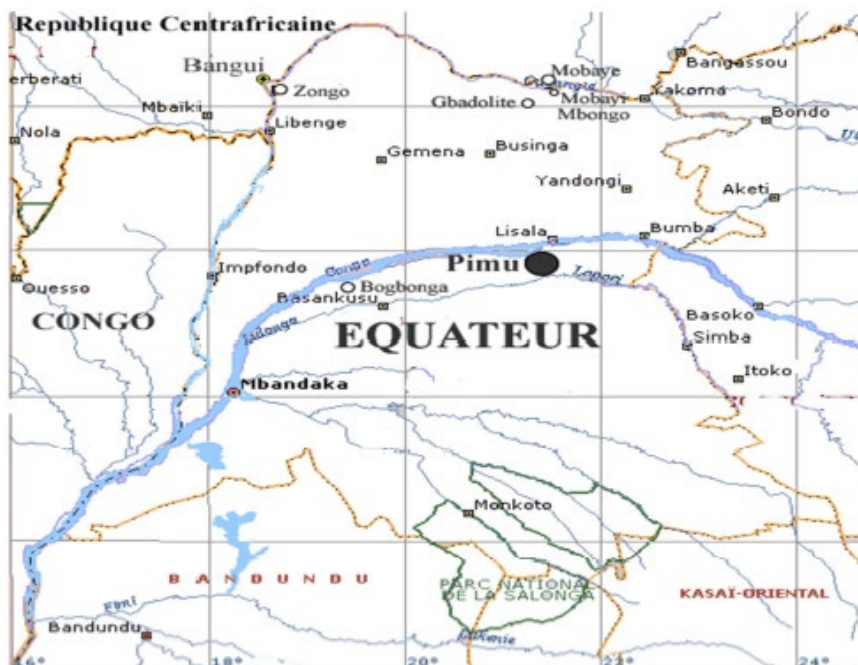
2.49. AFP despatches add that on 3 December 1998, after the MLC had taken Mindembo, once again with Ugandan support, ALC members killed two soldiers from the Congolese armed forces and carried away various items of army equipment belonging to the FAC<sup>130</sup>.

**B. Mozamboli (November-December 1998)**

2.50. Mozamboli was likewise the scene of violent clashes between the Ugandan armed forces and those of the DRC, which sustained major loss of life. When questioned on 20 November 2001, Major Buyuni Faray, who commanded the Congolese troops involved in these battles, stated that “[o]n 4 December 1998, there was a skirmish at Mondjomboli, in the course of which I lost one company commander, two platoon commanders and 37 men”<sup>131</sup>.

There was thus a death toll of 40 from this single day of fighting, in this small town in the DRC.

**C. Pimu (May 1999)**



Map No. 2.16.

**Pimu**

Legend:

- République Centrafricaine = Central African Republic
- Parc National de la Salonga = Salonga National Park

57

2.51. The village of Pimu was also the scene of fierce fighting which caused major damage to persons and property. The battle which took place there in May 1999 is described by Jean-Pierre Bemba as follows:

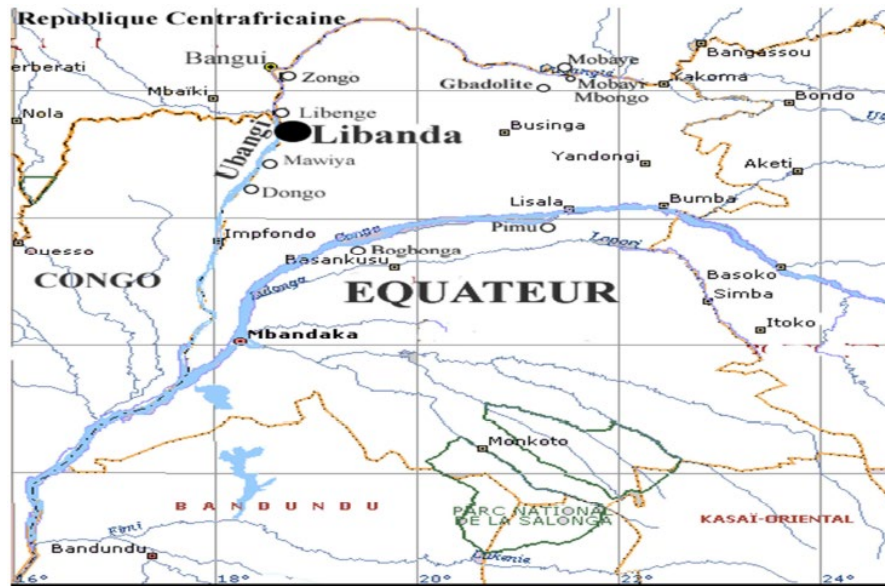
<sup>130</sup>RDRC, Ann. 14; Ann. 2.14.

<sup>131</sup>Verbatim record of the hearing of Major Buyuni A. Faray (20 Nov. 2001), RDRC, Ann. 49; Ann. 2.15.

“After numerous and vain attempts, the FAC were discouraged. Each assault ended with major losses among FAC ranks. They were unable to withstand an ALC sortie and left behind four heavy machine-guns, two 82 mm mortars, four 60 mm mortars, one 75 mm gun and several rocket-launchers.”<sup>132</sup>

Although the exact number of victims is not given (only “major losses” are mentioned), the military equipment stolen from the Congolese army is clearly identified.

#### D. Libanda (June 1999)



Map No. 2.17.

#### Libanda

Legend:

- |                             |   |                          |
|-----------------------------|---|--------------------------|
| République Centrafricaine   | = | Central African Republic |
| Parc National de la Salonga | = | Salonga National Park    |

2.52. Another fierce fight in which the Congolese armed forces were pitched against the MLC-UPDF coalition was the battle of Libanda, in June 1999. Jean-Pierre Bemba gives the following account:

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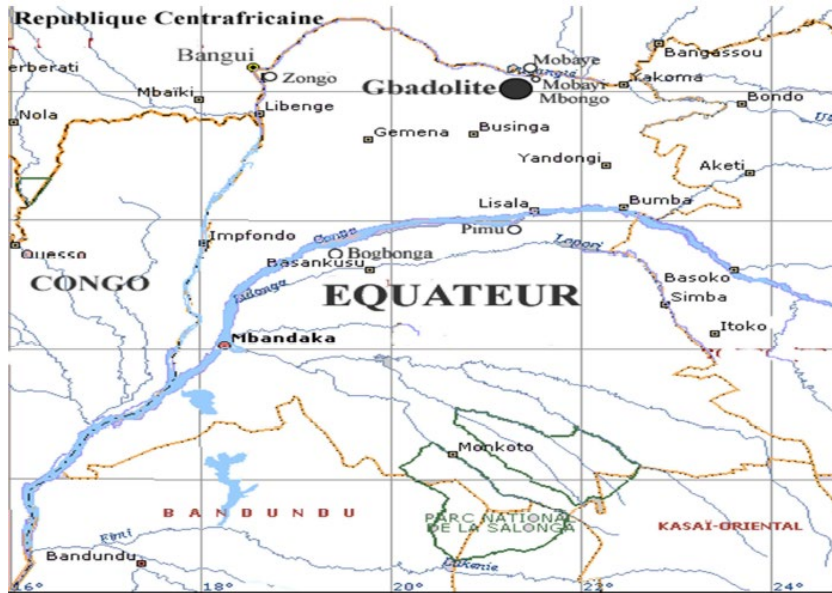
“At that point, the FAC leadership threw all its resources into retaking Libanda. Two vessels docked at the river bank. FAC troops faced the 4th battalion. Hardly had landing been completed when ALC men, who had been dug into trenches for the past few weeks, opened fire. After their heavy shelling, the FAC were no longer expecting to encounter the slightest resistance. From the moment the first shots were fired by the ALC, the surprise effect created a movement of panic in the ranks of the young recruits straight off the boat from Kinshasa. *Many of them plunged into the river and drowned. The boats abandoned two battalions on the shore. Dozens of bodies were left to float with the current.*”<sup>133</sup>

<sup>132</sup>Jean-Pierre Bemba, *Le choix de la liberté*, op. cit.; Ann. 2.13 [translation by the Registry; NB: this particular passage is not included in the Annex].

<sup>133</sup>*Ibid.*; emphasis added; Ann. 2.13 [translation by the Registry; NB: this particular passage is not included in the Annex].

Once again, these are extremely significant losses, since reference is made to several dozen victims.

**E. Gbadolite (June-July 1999)**



Map No. 2.18.

**Gbadolite**

Legend:

- République Centrafricaine = Central African Republic
- Parc National de la Salonga = Salonga National Park

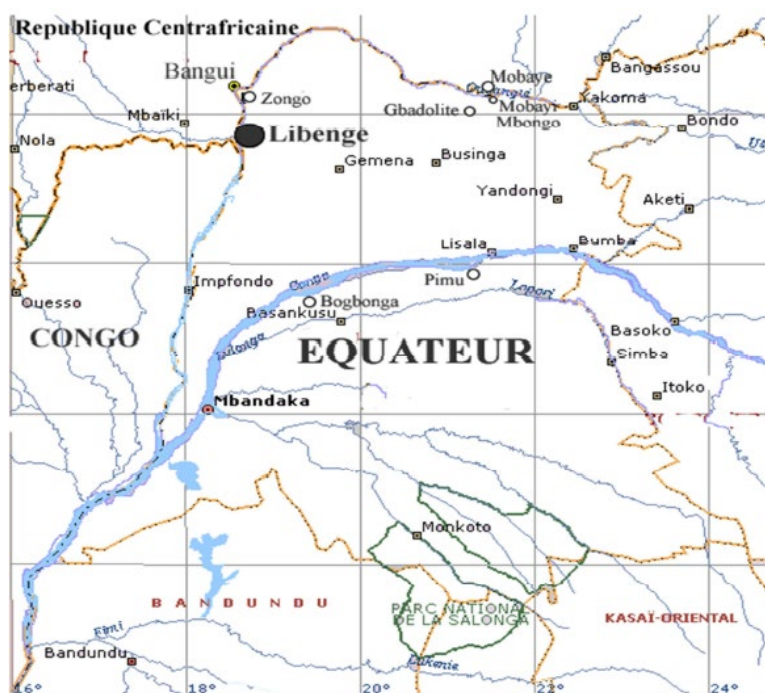
59

2.53. Having pointed out that when this strategic town in the north-west of the DRC was taken, “the ALC benefited from the effective support of the artillery of the 8th UPDF battalion”, Jean-Pierre Bemba goes on to state that: “As they fled, the government troops abandoned more than 400 tons of equipment and ammunition. These valuable reinforcements were to be put to use when Gemena, Libenge and Zongo were captured.”<sup>134</sup> Four hundred tons of equipment were thus purloined from the Congolese armed forces with the “effective support” of the Ugandan army.

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<sup>134</sup>*Ibid.* [translation by the Registry; NB: this particular passage is not included in the Annex].

## F. Libenge (August 2000)



Map No. 2.19.

### Libenge

Legend:

- |                             |   |                          |
|-----------------------------|---|--------------------------|
| République Centrafricaine   | = | Central African Republic |
| Parc National de la Salonga | = | Salonga National Park    |

2.54. A report of the UN Secretary-General illustrates the intensity of the fighting which occurred on the outskirts of Libenge during August 2000. Ugandan troops, in conjunction with the armed wing of the MLC, carried out concerted attacks on the FAC:

“Following the reinforcements reportedly received by units of the Ugandan People’s Defence Force (UPDF), MLC launched a major counter-attack in the south of Libenge, resulting in a high number of casualties”<sup>135</sup>.

A reference to these events may also be found in the *Mapping Report*, according to which: “On 9 August 2000, a UPDF tank is said to have fired on a boat transporting FAC soldiers and at least several dozen soldiers drowned near the Protestant Mission in Kala, a village 30 kilometres from Libenge”<sup>136</sup>. Local sources give an idea of the number of victims. The declaration made by the Council of the Apostolate of the Catholic Laity of the Congo (CALCC) states that 300 people were slaughtered<sup>137</sup>.

60

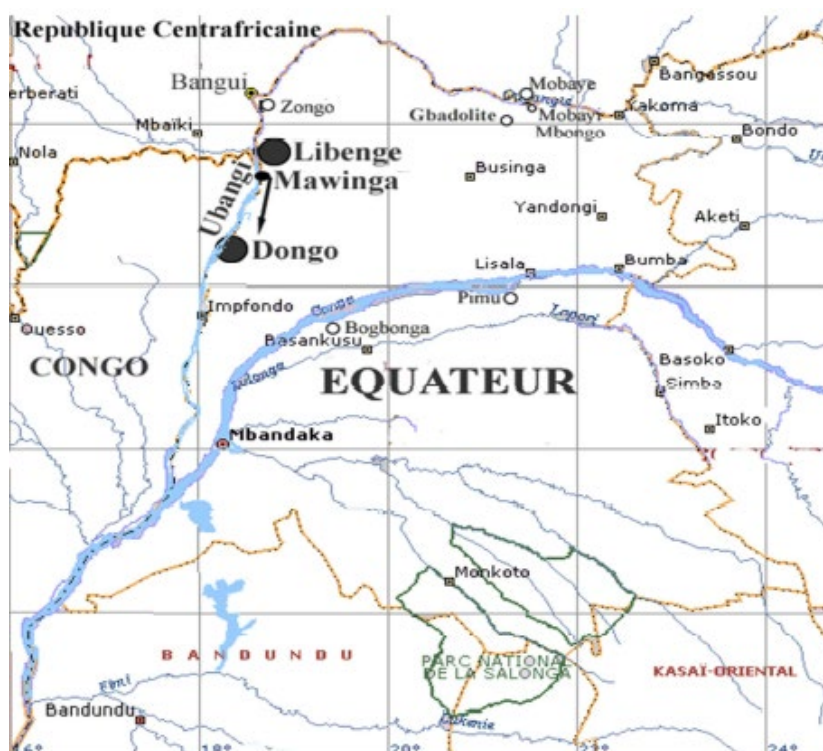
<sup>135</sup>United Nations Security Council, *Fourth Report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo*, document S/2000/888, 21 Sep. 2000, p. 4. para. 23, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N00/649/45/IMG/N0064945.pdf?OpenElement>.

<sup>136</sup>United Nations Office of the High Commissioner for Human Rights, *Report of the Mapping Exercise*, *op. cit.*, p. 212, para. 392.

<sup>137</sup>CALCC declaration on the massacres in the RDC, particularly in the east of the country, annexed to the *White Paper on Massive Violations of Human Rights and the basic rules of International Humanitarian Law by the aggressor countries (Uganda, Rwanda and Burundi) in the eastern part of the Democratic Republic of the Congo covering the period from 2 August 1998 to 5 November 1998*, *op. cit.*, p. 31; Ann. 2.11.



### G. Ubangi (August 2000)



Map No. 2.20.

#### Ubangi

Legend:

- |                             |   |                          |
|-----------------------------|---|--------------------------|
| République Centrafricaine   | = | Central African Republic |
| Parc National de la Salonga | = | Salonga National Park    |

2.55. A record of these events exists in the narrative provided by one of the main protagonists in the battle of Ubangi, Mr. Bemba. The supreme leader of the MLC, when describing the build-up to the battle, mentions first of all that “a UPDF battalion was sent as reinforcements”<sup>138</sup>. He then provides an account which is instructive, to say the least:

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“The six vessels travelled back down the river towards Mawiya. Between 11 a.m. and noon, ALC artillery trained their guns on M.B. *Ibeka* and *Accor 25*. Both were hit. The damage to the first two vessels prompted the others to flee downstream towards Dongo. M.S. *Kolwezi* and M.S. *Gungu*, both loaded with food supplies and reinforcements, escaped our artillery fire. However, M.B. *Lubue*, carrying 500 barrels of diesel plus an entire battalion, was hit with full force on the bridge. The vessel’s engine continued to run, and the boat, in flames, carried on at full steam before running aground a few hundred metres from the ALC’s defensive position . . . Throughout the night, the fuel and ammunition transported by M.B. *Lubue* were ablaze, causing a series of explosions and fireworks which could be seen for dozens of kilometres around. The FAC 10th brigade of 4,000 men lost nearly 800, drowned or burned, at a stroke. Along the river banks, the mayhem was in keeping with the apocalyptic vision of the shattered boat. Kabila’s men abandoned all their equipment:

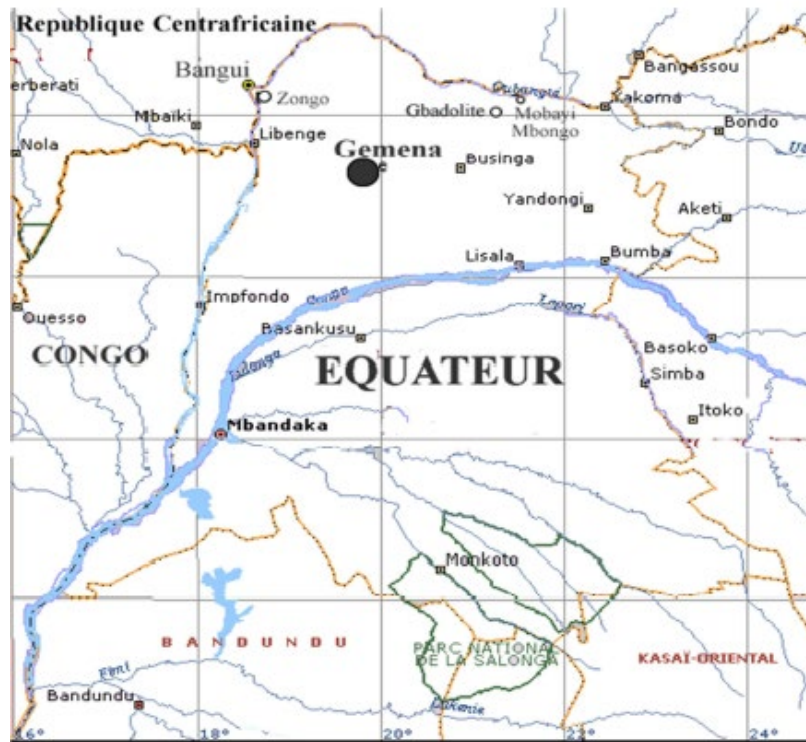
<sup>138</sup>Jean-Pierre Bemba, *Le choix de la liberté*, op. cit.; Ann. 2.13.

8 trucks, 5 jeeps, heavy artillery, light weapons and hundreds of boxes of ammunition.”<sup>139</sup>

During that battle alone, almost 800 men were thus killed thanks to the support given to the irregular forces by the Ugandan army.

2.56. Just from these few examples, it can be seen that more than 1,000 Congolese soldiers lost their lives in the wake of the invasion of Equateur province by Ugandan forces. Additionally, there was material damage of various kinds on a scale which was considerable, to put it mildly.

#### H. Gemena (1998-2003)



Map No. 2.21.

#### Gemena

Legend:

- |                             |   |                          |
|-----------------------------|---|--------------------------|
| République Centrafricaine   | = | Central African Republic |
| Parc National de la Salonga | = | Salonga National Park    |

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2.57. In its Judgment, the Court takes note of Uganda’s position that its troops entered Gemena on 25 December 1998, in these terms:

“Uganda claims that Lisala was taken on 12 December 1998. The list contained in the Porter Commission exhibits makes reference to the location of Benda, with the date of 13 December. Also listed are Titire (20 December) and Poko (22 December). Uganda insists it ‘came to’ Businga on 28 December 1998 and not in early

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<sup>139</sup>*Ibid.*

February 1999 as claimed by the DRC; and to Gemena on 25 December 1998, and not on 10 July 1999 as also claimed by the DRC.”<sup>140</sup>

The Victim Identification Commission deployed by the Congolese Government was able to compile precise information relating to events in Gemena between 1998 and 2002. The following were recorded: four cases of loss of life<sup>141</sup>, five victims of physical injury<sup>142</sup>, twelve people forced to flee into the forest<sup>143</sup>, and seventeen cases of loss of property<sup>144</sup>.

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\* \*

2.58. In conclusion, these examples taken together give some idea of the scale of the damage caused in the wake of Uganda’s invasion of North Kivu, Orientale and Equateur provinces. Although the various localities concerned were sometimes initially entered without a fight, due to the strategy outlined above<sup>145</sup>, the subsequent months and years have shown that Uganda, whether through its soldiers or through the massive support it provided to irregular forces, caused manifold and inestimable damage to both persons and property. Nevertheless, at this stage an attempt should be made to evaluate the injury in question, in order to determine the extent of the reparation claimed by the DRC from the Ugandan State.

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### Section 5. Evaluation of the damage caused by the Ugandan invasion

2.59. As just indicated, it is extremely difficult, not to say impossible, to determine accurately the number of victims and the scale of the material damage arising from Uganda’s invasion of a significant portion of the DRC’s territory. However, it is important to work out the amount of reparation owed by Uganda in as specific a way as possible, by establishing distinct categories: loss of human life (A), injury and bodily harm (B), rape (C), population flight and displacement (D), and the destruction or theft of property (E).

#### A. Loss of human life

2.60. The sources mentioned in this chapter provide some indication of the number of victims caused by Uganda’s invasion of substantial parts of the DRC, particularly in North Kivu, Orientale and Equateur provinces. Perusal of the relevant documents will have shown, however, that it is extremely difficult to engage in quantified assessments. Some texts describe an “unknown

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<sup>140</sup>*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, I.C.J. Reports 2005, p. 208, para. 85.

<sup>141</sup>Assessment of deaths in Beni, Butembo and Gemena, 1998-2003 (sub-total for Gemena), Ann. 2.1.

<sup>142</sup>Assessment of injuries and other bodily harm in Beni, Butembo and Gemena, 1998-2003 (sub-total for Gemena), Ann. 2.2.

<sup>143</sup>Assessment of cases of flight into the forest in Beni, Butembo and Gemena, 1998-2003 (sub-total for Gemena), Ann. 2.3.

<sup>144</sup>Detailed assessment of loss of property in Gemena, 1998-2003, Ann. 2.4*quater*.

<sup>145</sup>See para. 2.16 above.

number”<sup>146</sup>, a “high number”<sup>147</sup> or even “tens of”, “several dozen” or “dozens”<sup>148</sup> of victims. Others use terms such as “nearly 200”<sup>149</sup> or “major losses”<sup>150</sup>.

2.61. Examination of the records drawn up by the Congolese mission of inquiry does not enable an exact figure to be determined either. The documents do enable precise identification of a number of victims<sup>151</sup>, but they merely illustrate examples of the injuries suffered and by no means do they purport to be exhaustive.

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2.62. In order to overcome these difficulties, another approach may be followed, involving consultation of scientific studies in the fields of epidemiology or demography which have examined the excess mortality caused by the conflict. Such studies allow all the deaths caused by the war in the DRC between 1998 and 2003 to be taken into account. These deaths are not just those which result from hostilities or atrocities. They may also have other causes, such as lack of medical care due to healthcare systems being plunged into chaos, for example. The assessments of the number of excess deaths are made using extremely sophisticated calculation models, based on projection curves and a range of data. At this stage, however, the focus will be on the results obtained, rather than the details of the methods and procedures employed by the studies in question.

2.63. Some epidemiological studies were even published while the conflict was still ongoing. For example, the International Rescue Committee, a British non-governmental organization active in the field of humanitarian aid, has published various documents, including one entitled *Mortality in Eastern Democratic Republic of Congo*. The latter mentions that as early as June 2000, a survey led to the conclusion that “1.7 million deaths occurred in excess of the number normally expected”<sup>152</sup>, with the figure of 2.5 million reached in March 2001: “To update its findings, the IRC conducted a second survey in March 2001. As a result, the IRC now estimates that 2.5 million excess deaths have occurred during the 32-months period beginning in August 1998 and ending in March 2001.”<sup>153</sup> With these figures to hand, it becomes easier to gauge the scale of the devastation which a conflict as deadly as that which afflicted the DRC between 1998 and 2001 can cause.

2.64. Most of the studies carried out after the end of the conflict have served to confirm these findings. The International Rescue Committee puts forward a total of 3.9 million deaths, making the war in the Congo the deadliest crisis since the Second World War:

“3.9 million people had died since 1998, arguably making DR Congo the world’s deadliest crisis since World War II. Less than 10 per cent of all deaths were

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<sup>146</sup>See paras. 2.24 and 2.38 above.

<sup>147</sup>See para. 2.54 above.

<sup>148</sup>See paras. 2.30, 2.38, 2.52 and 2.54 above.

<sup>149</sup>See para. 2.48 above.

<sup>150</sup>See paras. 2.50 and 2.51 above.

<sup>151</sup>Assessment of deaths in Beni, Butembo and Gemena, 1998-2003, Ann. 2.1.

<sup>152</sup>*Mortality in Eastern Democratic Republic of Congo, Results from Eleven Mortality Surveys*, Final Draft 2001, prepared by S. Roberts, IRC Health Unit, Charles Hale, Fethi Belyakdoui, Laura Cobey, Roselidah Ondeko, Michael Despines, IRC DRC Bukavu/Kisangani, John Keys, IRC Regional Director for Africa, p. 2.

<sup>153</sup>*Ibid.*



due to violence, with most attributed to easily preventable and treatable conditions such as malaria, diarrhea, pneumonia and malnutrition”<sup>154</sup>.

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2.65. These findings have been featured in leading scientific publications. In an article that appeared in 2006 in the prestigious journal *The Lancet*, which reiterated the figures previously mentioned, it is stated that the high number of deaths is an evident consequence of the conflict:

“19 500 households were visited. The national crude mortality rate of 2.1 deaths per 1000 per month (95% CI 1.6-2.6) was 40% higher than the sub-Saharan regional level (1.5), corresponding to 600 000 more deaths than would be expected during the recall period and 38 000 excess deaths per month. Total death toll from the conflict (1998-2004) was estimated to be 3.9 million. Mortality rate was higher in unstable eastern provinces, showing the effect of insecurity. Most deaths were from easily preventable and treatable illnesses rather than violence. *Regression analysis suggested that if the effects of violence were removed, all-cause mortality would fall to almost normal rates.*”<sup>155</sup>

The authors of the IRC report also published the results of their research in *Disaster Medicine and Public Health Preparedness*, a journal published by Cambridge University Press<sup>156</sup>.

2.66. From these assessments alone, it can be seen that the conflict as a whole caused almost four million victims, of whom more than 300,000 died as a result of violence. Most of the deaths arising from the conflict are due to causes other than massacres or atrocities. As the DRC has already mentioned, the advantage of this type of scientific approach is that it takes into account the entirety of the war’s damaging consequences, including, in particular, the disruption to the services of the Congolese State in the wake of the invasion of a substantial part of its territory.

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2.67. This estimate, the outcome of the IRC studies, is generally considered to be reliable by a number of observers. For example, in its portrayal of the second war in the DRC (1998-2003), *La documentation française* refers to “more than three million victims”<sup>157</sup>. Likewise, the organization Human Rights Watch considers that this was “one of the most deadly wars in the world”<sup>158</sup>. Another report, also from 2004, states that “[t]he International Rescue Committee

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<sup>154</sup>*Mortality in the Democratic Republic of Congo. An ongoing Crisis*, reported by Benjamin Coughlan (Burnet Institute, Melbourne, Australia), Pascal Ngoy (International Rescue Committee, Kinshasa, DRC), Flavien Mulumba (International Rescue Committee, Kinshasa, DRC), Colleen Hardy (International Rescue Committee, New York, USA), Valérie Nkamgang Bemo (International Rescue Committee, Abidjan, Ivory Coast), Tony Stewart (Burnet Institute, Melbourne, Australia), Jennifer Lewis (Burnet Institute, Melbourne, Australia), Richard Brennan (International Rescue Committee, New York, USA), p. ii. (available at <https://www.rescue.org/sites/default/files/document/661/2006-7congomortalitysurvey.pdf>); Ann 2.16.

<sup>155</sup>Benjamin Coughlan, MBBS; Dr. Richard J. Brennan, MBBS; Pascal Ngoy, MD; David Dofara, MD; Brad Otto, BA; Mark Clements, PhD; Tony Stewart, MBBS, “Mortality in the Democratic Republic of Congo: a nationwide survey”, *The Lancet*, Vol. 367, 7 Jan. 2006, p. 44; emphasis added.

<sup>156</sup>Benjamin Coughlan, Pascal Ngoy, Flavien Mulumba, Colleen Hardy, Valerie Nkamgang Bemo, Tony Stewart, Jennifer Lewis and Richard J. Brennan, “Update on Mortality in the Democratic Republic of Congo: Results from a Third Nationwide Survey”, *Disaster Medicine and Public Health Preparedness*, Vol. 3, Issue 2, June 2009, pp. 88-96.

<sup>157</sup><http://www.ladocumentationfrancaise.fr/dossiers/conflict-grands-lacs/sept-pays-guerre-congo.shtml>; Ann. 2.17.

<sup>158</sup>Human Rights Watch, *Democratic Republic of the Congo: Confronting Impunity*, Human Rights Watch Briefing Paper, Jan. 2004, available at <https://www.hrw.org/sites/default/files/reports/drc0104.pdf>; Ann. 2.18.

estimates that nearly four million Congolese have died since 1998 as a result of war in the Congo, the great majority in eastern DRC”<sup>159</sup>.

2.68. However, other observers have questioned the generally accepted figure of four million deaths. André Lambert and Louis Lohlé-Tart, two demographers working for the Association pour le Développement de la Recherche Appliquée en Sciences Sociales (ADRASS), a Belgian consultancy set up as a non-profit organization, are a case in point. In an article which appeared in 2008, these two authors use censuses, working on the basis of United Nations figures, for the 1984-2005 period<sup>160</sup>. Criticizing certain aspects of the methodology followed by the IRC, they conclude that 200,000 deaths were due to the conflict, thereby dividing the initial number roughly by 20. However, reservations have been expressed about this study, particularly in a report published by the Health and Nutrition Tracking Service (HNTS) in 2009<sup>161</sup>.

2.69. The main sources available thus present quite a wide variety of figures for deaths linked directly or indirectly to the war in the DRC, ranging from 200,000 (lowest estimate) to four million (highest estimate).

2.70. Given the caution which should be observed within judicial proceedings, the DRC considers it reasonable, in this context, to rely on a minimum estimate of 400,000 victims, that is, one tenth of the IRC figure which emerges from studies published in the most renowned scientific journals, including *The Lancet*.

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2.71. Of course, there is no question of the DRC claiming that Uganda is responsible for all the victims caused by the conflict. As stated at the outset, other parties bear responsibility for its outbreak. An apportionment of 45 per cent was therefore made in Chapter 1 of this Memorial<sup>162</sup>, taking account of the involvement of other States in initiating and continuing the invasion. The application of this formula to the number of 400,000 adopted here thus gives a figure of 180,000 deaths which could reasonably be deemed a consequence of the invasion of a substantial part of Congolese territory by Uganda. It should be noted that this figure covers all deaths caused by the Ugandan invasion, including those in Ituri and Kisangani.

## **B. Personal injury and bodily harm**

2.72. The reports from the national and international sources cited above document a multitude of injuries and instances of bodily harm, some of which were the result of acts of plunder or even torture. In practice, however, it is impossible to quantify such damage. Some documents refer to “several”<sup>163</sup> or “a high number”<sup>164</sup> of persons injured, with no further details. Others

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<sup>159</sup>Human Rights Watch, *Democratic Republic of the Congo: Civilians at Risk during Disarmament Operations*, Human Rights Watch Background Briefing, Dec. 2004, available at <https://www.hrw.org/legacy/backgrounder/africa/drc1204/drc122804.pdf>.

<sup>160</sup>André Lambert and Louis Lohlé-Tart, *La surmortalité au Congo (RDC) durant les troubles de 1998-2004: une estimation des décès en surnombre, scientifiquement fondée à partir des méthodes de la démographie*, available at <https://www.uclouvain.be/cps/ucl/doc/demo/documents/Lambert.pdf> (in French only); Ann. 2.19.

<sup>161</sup>*Re-examining mortality from the conflict in the Democratic Republic of Congo, 1998-2006*, available at [http://www.who.int/hac/techguidance/hnts/hnts\\_drc\\_re\\_examining\\_mortality\\_1998\\_2006.pdf](http://www.who.int/hac/techguidance/hnts/hnts_drc_re_examining_mortality_1998_2006.pdf).

<sup>162</sup>See para. 1.24 above.

<sup>163</sup>See para. 2.22 above.

<sup>164</sup>See para. 2.54 above.

describe acts of torture or ill-treatment, mentioning the victims by name<sup>165</sup>. However, no overall estimate can be made on that basis.

2.73. Some facts can, of course, be inferred from the work done by the Congolese mission of inquiry, of which there is a summary record in the form of the lists annexed to this chapter<sup>166</sup>. The cases included in the tables are merely examples, however.

2.74. Moreover, and in contrast to what has been presented above with regard to deaths, there are no scientific studies, as far as the DRC is aware, providing estimates of the total number of persons injured as a result of the second Congo war. There are some estimates for Ituri, and also for Kisangani; these will be used in the corresponding chapters<sup>167</sup>. Outside those regions, there is nothing which allows a specific number to be determined for North Kivu, Orientale and Equateur provinces.

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2.75. In these circumstances, the DRC, mindful of the need for seriousness and rigour which are the hallmarks of the judicial process, is obliged to proceed as follows. For the district of Ituri and the city of Kisangani, it will rely on the existing studies which provide reliable general estimates<sup>168</sup>. On the other hand, for all the other towns and villages located in the three provinces invaded by Uganda, it must confine itself to using the figures which emerge from the work of the Commission of Inquiry. The latter make it possible to determine with certainty 203 cases of injury and bodily harm (130 for Beni, 68 for Butembo and 5 for Gemena)<sup>169</sup>, leaving aside cases of rape, which will be dealt with under the next heading. This is an excessively low figure, and certainly does not cover all the injuries and bodily harm actually caused by Uganda in the regions concerned. At this stage, however, the DRC, for the sake of rigour and restraint, is obliged to limit itself to this number, although it may be that subsequent new findings will allow it, at a later stage, to overcome its current difficulties in providing evidence.

### C. Rape

2.76. As already noted, some sources mention that during an incident which took place in the vicinity of Beni, Ugandan soldiers “raped numerous girls”<sup>170</sup>. However, no precise number is given.

2.77. As described below, the work of the Congolese Commission of Inquiry provides a few examples. But no exhaustive nor even general assessment can be made here, any more so than for the other categories of injury.

2.78. The difficulty of accurately determining the number of persons who have suffered sexual violence during an armed conflict is widely acknowledged. One of the factors underlying this difficulty is the reluctance of the victims — or indeed the practical impossibility for them — to report the acts inflicted upon them, essentially for social and cultural reasons. This obstacle is

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<sup>165</sup>See para. 2.23 above.

<sup>166</sup>Assessment of injuries and other bodily harm in Beni, Butembo and Gemena, 1998-2003; Ann. 2.2.

<sup>167</sup>See Chaps. 3 and 4 below.

<sup>168</sup>See Chaps. 3 and 4 below for details.

<sup>169</sup>Assessment of injuries and other bodily harm in Beni, Butembo and Gemena, 1998-2003; Ann. 2.2.

<sup>170</sup>See para. 2.24, quoting the *Report of the Mapping Exercise, op. cit.*, p. 243, para. 443; Ann. 1.4.

particularly evident in the Congolese socio-cultural context. As explained in a report published by Amnesty International in October 2003,

69 “[i]n many African societies, there is a taboo about discussing rape in public . . . Sexual violence is rarely reported, and the victims bear the physical and psychological scars of the attack and its consequences, including a deep sense of shame and isolation. Most women from Ituri chose to remain silent about the experience and even their own families do not help them overcome the ordeal. As a result, many do not receive any medical attention and develop sexually transmissible diseases and other problems that will remain with them for the rest of their lives.”<sup>171</sup>

These findings refer to the situation in Ituri, which will be revisited in the following chapter. Clearly, though, they can be transposed to the DRC as a whole. If victims are frequently obliged to remain silent about the sexual violence they have endured, it is inevitable that ascertaining the number of such atrocities will be an exercise laden with difficulty.

2.79. This context should be borne in mind when examining the confirmed cases emerging from the records drawn up by the DRC’s inquiry team. The latter provide evidence of only 12 rapes (two cases reported for Beni<sup>172</sup>, ten for Butembo<sup>173</sup>), leaving aside the specific cases of Ituri and Kisangani. This figure is undoubtedly well below the actual number, for the reasons which have just been set forth. Given that it is common practice not to report such acts, it is reasonable to estimate that the actual number of rapes for which Uganda is responsible, in the regions examined in this chapter, is five times higher than the number declared, i.e., 60 cases.

#### **D. Population flight and displacement**

2.80. The documents mentioned above also show that many people were forced to flee in order to escape the impact of the war, and to seek refuge in the forest or the bush, with all the difficulties and damage this entailed, in terms of infectious diseases, or even bites and injuries inflicted by wild animals. However it is not possible to derive any exact figures from them.

70 2.81. It is indeed the case that examples have been provided by the Congolese Commission of Inquiry, and these can be found in the annexes to this chapter<sup>174</sup>. Once again, however, these are only individual cases.

2.82. While more comprehensive figures do exist for the district of Ituri<sup>175</sup>, the DRC is not aware of any overall assessments covering the three provinces concerned here.

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<sup>171</sup>Amnesty International, *Ituri: a need for protection, a thirst for justice*, 21 Oct. 2003, p. 16 (AI Index No. AFR62/032/2003); Ann. 2.20.

<sup>172</sup>Assessment of injuries and other bodily harm in Beni, Butembo and Gemena, 1998-2003, Nos. 46 and 108 (accessible via the software designed for this purpose, Ann. 1.3); Ann. 2.2.

<sup>173</sup>Assessment of injuries and other bodily harm in Beni, Butembo and Gemena, 1998-2003, Nos. 2 (2 cases), 6, 10, 11, 27 (2 cases), 31, 32 and 39 (accessible via the software designed for this purpose, Ann. 1.3); Ann. 2.2.

<sup>174</sup>Assessment of cases of flight into the forest in Beni, Butembo and Gemena, 1998-2003; Ann. 2.3.

<sup>175</sup>See Chap. 3 below.

2.83. For the same reasons as those mentioned in connection with instances of bodily harm other than rape, the DRC will confine itself at this stage to the confirmed cases in the records drawn up by its Commission of Inquiry, which allow the number of people displaced or forced to flee to be set at 538 (433 for Beni, 93 for Butembo and 12 for Gemena).

### E. Destruction and theft of property

2.84. Numerous cases of destruction of property have been mentioned in the sources cited above. Alongside statements which are not always precise (such as the report that Ugandan soldiers “set fire to and looted several houses”), some specific figures have been advanced: “150 houses”, “193 houses” set on fire<sup>176</sup>, two cars and a motorcycle<sup>177</sup>, a hold-up for a sum of 60,000 United States dollars<sup>178</sup>, etc. This is extremely piecemeal information, however, and does not enable general estimates to be made for the three provinces in question.

2.85. Once again, some examples are provided by the work of the Congolese Commission of Inquiry, and these can be found in the annexes to this chapter<sup>179</sup>. By way of illustration, the following table enables damage to the FAC’s military equipment to be identified, on the basis of Jean-Pierre Bemba’s writings:

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No.	Geographical area	Damage
1.	Pimu	— Two 82 mm mortars — Four 60 mm mortars — One 75 mm [gun] containing ammunition — Several rocket-launchers
2.	Mindembo	— One battle tank — One munitions truck, destroyed — Sundry equipment
3.	Ubangi	— Loss of two boats, incl. M.B. Lubue carrying 500 barrels of diesel — Trucks — Five jeeps — Heavy artillery — Light weapons — Hundreds of boxes of ammunition

2.86. While there are many figures available which enable an assessment to be made for Ituri or for the city of Kisangani<sup>180</sup>, the DRC is not aware of any source which would allow a wider-reaching assessment to be made.

<sup>176</sup>See para. 2.27 above.

<sup>177</sup>See para. 2.44 above.

<sup>178</sup>See para. 2.32 above.

<sup>179</sup>Assessment of loss of property in Beni, Butembo and Gemena, 1998-2003; Ann. 2.4.

<sup>180</sup>See Chaps. 3 and 4 below.

2.87. Consequently, and even though this means radically underestimating the extent of the damage caused by Uganda's invasion, the DRC is obliged at this stage to settle for the lowest estimate, as resulting from the above-mentioned annexes, still leaving aside Ituri and Kisangani. A review of these annexes leads to a figure of 1,092 cases of destruction of property (816 for Beni, 216 for Butembo, 43 for Maboya and Loya and 17 for Gemena).

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2.88. An initial overview of the consequences of the Ugandan invasion gives some idea of the scale of the ensuing damage, principally in terms of human lives lost but also in terms of the other types of injury mentioned. The DRC will now focus more specifically on the particularly tragic case of Ituri (Chapter 3), before describing that of Kisangani (Chapter 4).

**CHAPTER 3. THE INJURIES SUFFERED BY THE DEMOCRATIC REPUBLIC OF THE CONGO  
FOLLOWING THE OCCUPATION OF THE ITURI REGION BY UGANDA**

3.01. The situation which developed during the years of war in the Ituri region, in the east of the Democratic Republic of the Congo, was given particular attention by the Court in its Judgment of 19 December 2005. Indeed, it was the only portion of the DRC's territory which the Court considered to have been actually occupied, within the meaning of Article 42 of the Hague Regulations of 1907, by Uganda. The Court drew two specific conclusions from that observation. First, it found that

“by its failure, as an occupying Power, to take measures to respect and ensure respect for human rights and international humanitarian law in Ituri district, [the Republic of Uganda] violated its obligations under international human rights law and international humanitarian law”<sup>181</sup>.

Secondly, it established that

“by its failure to comply with its obligations as an occupying Power in Ituri district to prevent acts of looting, plundering and exploitation of Congolese natural resources, [the Republic of Uganda] violated obligations owed to the Democratic Republic of the Congo under international law”.

3.02. In keeping with the approach adopted in this Memorial, this chapter will deal only with the first of the claims upheld against Uganda by the Court in this context. The damage related to the wrongful exploitation of natural resources in this part of Congolese territory will be addressed in the chapter of the Memorial which is devoted to that specific issue<sup>182</sup>.

3.03. After describing how the occupation of the Ituri region by Uganda developed, and the devastating consequences of that State's failure to comply with its obligations as an occupying Power (Section 1), this chapter will outline the extent of the damage that ensued (Section 2). That damage will be quantified, and details provided of the practical arrangements for making the reparation sought by the DRC, in Chapter 7 of this Memorial<sup>183</sup>.

**Section 1. The facts: the occupation of Ituri by Uganda and its consequences**

3.04. The Ituri region lies in the east of the Democratic Republic of the Congo. When the Ugandan invasion began, it formed part of Orientale province and covered an area of around 65,000 square kilometres. The city of Bunia, which had around 100,000 inhabitants at that time, was its capital. In the absence of more precise figures from recent censuses, the overall population of Ituri was estimated to be between 3.3 and 5.5 million, and made up of 18 ethnic groups<sup>184</sup>. Relations between these different groups were generally harmonious, although there had previously

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<sup>181</sup>*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, I.C.J. Reports 2005, p. 280, para. 345.

<sup>182</sup>See Chap. 5 below.

<sup>183</sup>See Chap. 7 below.

<sup>184</sup>MONUC, *Special report on the events in Ituri*, op. cit., para. 12; Ann. 1.6.

been several localized outbreaks of violence between two of them, the Hema and the Lendu<sup>185</sup>. It is a fertile region, with abundant natural resources: diamonds, gold, coltan, oil, timber, etc.



Map No. 3.1.

**Ituri**

Legend:

- |                    |   |                    |
|--------------------|---|--------------------|
| Soudan             | = | Sudan              |
| Ouganda            | = | Uganda             |
| Province orientale | = | Orientele province |
| Nord-Kivu          | = | North Kivu         |

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3.05. Since Ituri borders Uganda, it was one of the first regions of the DRC to be invaded by UPDF troops, who crossed into it unopposed in mid-August 1998<sup>186</sup>. The Ugandan forces provided support to the rebels of the Congolese Rally for Democracy (RCD), the movement under whose administration the region was placed, along with the rest of Orientale province. By November 1998 the Ugandan army had established a base in Bunia<sup>187</sup>, and it subsequently intervened continuously in the rest of the region. When the RCD split into two rival factions, in 1999, it was the RCD-ML (Liberation Movement), backed by Uganda, which took control of Ituri<sup>188</sup>. Over time, as the political situation evolved on the ground, and as the Congolese rebel movements reconfigured, Uganda subsequently also gave its support to other groups in the region, including the Congo Liberation Movement (MLC) and the Union of Congolese Patriots (UPC)<sup>189</sup>.

<sup>185</sup>United Nations General Assembly, Fifty-fifth Session, *Report of the Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo*, document A/55/403, 20 Sep. 2000, para. 26; Ann. 3.1; 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 Sep. 2002, para. 25; Ann. 3.2.

<sup>186</sup>See Chap. 2 above.

<sup>187</sup>International Criminal Court, Trial Chamber I, *The Prosecutor v. Thomas Lubanga Dyilo, Judgment pursuant to Article 74 of the Statute*, document ICC-01/04-01/06, 14 Mar. 2012, para. 72.

<sup>188</sup>MONUC, *Special report on the events in Ituri, op. cit.*; Ann. 1.6.

<sup>189</sup>*Ibid.*, para. 27.



This game of alliances gathered pace during the final period of the occupation, as eloquently described in a report from MONUC in 2004:

“Uganda reconsidered its support to UPC because of close ties between UPC and Rwanda, around December 2002. To counter that alliance, Uganda supported several other Ituri armed groups. UPDF was involved in the creation of FIPI, a platform including PUSIC, FPDC and FNI/FRPI. However, that Front did not last long and de facto came to an end in February 2003 . . . In March 2003, FAPC was created with direct Ugandan support. In March 2003 UPDF commanders also supported FNI/FRPI, which assisted them in removing UPC from Bunia.”<sup>190</sup>

All the observers present in the region during the period of the conflict acknowledged the existence of this power struggle. This summary, in a report on Ituri which was published by Amnesty International in October 2003, speaks for itself:

“Today Uganda remains the main regional player in the Ituri conflict. Uganda shares a border with the DRC in Ituri and, from this point of view, appears to be a neighbour which is making and breaking ‘rebellions’ in Ituri to suit its interests. The succession of armed groups that have controlled Ituri since the beginning of the crisis shows their degree of dependence on Kampala. What is driving the conflict is not so much the internal interests of the Congolese factions, but more the ambitions and desires of Uganda.”<sup>191</sup>

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3.06. As well as providing support to that array of rebel movements, Uganda interfered in the Ituri region in a variety of ways throughout the period when it was under Ugandan occupation. Its influence was even evident in the management of public affairs and the structure of the administrative authorities, as demonstrated in particular by the fact that the most senior military officer in charge of the UPDF’s operations in Congolese territory, General Kazini, decided in June 1999 to separate the district of Ituri from Orientale province and to make it an independent province, to be known as the “province of Kibali-Ituri”. In its Judgment of 19 December 2005, the Court noted in this regard that “[v]arious sources of evidence attest to this fact, in particular a letter from General Kazini dated 18 June 1999, in which he appoints Ms Adèle Lotsove as ‘provisional Governor’ and gives suggestions with regard to questions of administration of the new province”<sup>192</sup>. Above all, however, the Ugandan armed forces very quickly became embroiled in local conflicts, which they dramatically exacerbated, plunging the entire region, and its population, into repeated cycles of extreme violence, with horrific human consequences.

3.07. Very soon after the start of the occupation of Ituri, the UPDF began to provide support — in exchange for financial “compensation” — to members of the Hema community in a land dispute with members of the Lendu community<sup>193</sup>. In its 2005 Judgment, the Court held on this subject that there was “persuasive evidence that the UPDF incited ethnic conflicts and took no action to prevent such conflicts in Ituri district”<sup>194</sup>. A report produced in 2010 by the United

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<sup>190</sup>*Ibid.*, para. 28.

<sup>191</sup>Amnesty International, *Ituri: a need for protection, a thirst for justice*, 21 Oct. 2003 (AI Index No. AFR 62/032/2003), p. 31; Ann. 2.20. Page 4 of the same report also states that “[t]he Ugandan government has always pursued an active ‘divide and rule’ policy in the region, supporting different groups at the same time” (*ibid.*).

<sup>192</sup>*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, *I.C.J. Reports 2005*, p. 230, para. 175.

<sup>193</sup>MONUC, *Special report on the events in Ituri, op. cit.*, para. 19; Ann. 1.6.

<sup>194</sup>*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.

Nations Office of the High Commissioner for Human Rights provides a detailed account of the origins of the conflict:

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“The Hema-Gegere farmers who, a few years previously, had acquired new concessions from the land registry in the Djugu region, took advantage of the new political situation to enforce their rights. As the Lendu from the Walendu Pitsi community, who held the customary rights to the land concerned, disputed the value of their title deeds, the Hema-Gegere farmers appealed to the courts and had the Walendu Pitsi expelled from the concessions they wanted. The latter refused to leave, however, and clashes broke out with the police officers who had come to remove them . . . In April 1999, the Hema-Gegere concession-holders paid UPDF and APC soldiers to attack the Lendu villages located in the disputed concessions.”<sup>195</sup>

That triggered the endless cycle of violence which was to tear Ituri apart for several years.

3.08. From spring 1999 onwards, the Ugandan army was involved in a considerable number of massacres, in the destruction of villages, and in various “punitive expeditions”, the tragic consequences of which are described below. The members of the Lendu community subsequently engaged in numerous acts of reprisal, which were all the more bloody for being carried out with modern weapons, mostly bought in Uganda with the revenues from the gold fields<sup>196</sup>. The two groups soon created armed militia for their own protection, and even more violent confrontations followed. In many of those situations, UPDF forces provided assistance indiscriminately to either one of the warring factions, and even on occasion to both at the same time.

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3.09. Given the scale of the violence, the Ugandan authorities subsequently attempted to restore calm in the region. They succeeded to a certain extent, with the conclusion at the beginning of 2001 of a protocol of agreement between the traditional chiefs in Ituri<sup>197</sup>. However, this respite was short-lived, and renewed fighting broke out between the rival groups, culminating in August 2002 in violent battles between UPDF forces and Congolese APC rebels for control of Bunia<sup>198</sup>. A peace agreement was concluded between the Congolese Government and Uganda in September 2002, which provided, *inter alia*, for the withdrawal of Ugandan troops from several towns, the creation of a Peacekeeping Commission in Ituri, and the setting-up of an Interim Administrative Authority for the region after the departure of the Ugandan soldiers. However, once again the agreement failed to bear the desired fruit and, “far from stabilising the region, the closer relationship between Kinshasa and Kampala prompted new patterns of alliances that made the situation even more volatile”<sup>199</sup>. Once again, confrontations between armed groups in the region ended in the deliberate massacre of civilians. It was not until May 2003 that the UPDF’s occupation of Ituri came to an end, although Uganda continued to give open support to various armed groups active in the region after that date<sup>200</sup>.

3.10. The assessment of the role played by Uganda in Ituri during its occupation of that region which is contained in the *Special report on the events in Ituri*, produced in 2004 by the

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<sup>195</sup>United Nations Office of the High Commissioner for Human Rights, *Report of the Mapping Exercise*, *op. cit.*, para. 365; Ann. 1.4.

<sup>196</sup>MONUC, *Special report on the events in Ituri*, *op. cit.*, para. 23; Ann. 1.6.

<sup>197</sup>United Nations Office of the High Commissioner for Human Rights, *Report of the Mapping Exercise*, *op. cit.*, para. 408; Ann. 1.4.

<sup>198</sup>*Ibid.*, paras. 412-413.

<sup>199</sup>*Ibid.*, para. 415.

<sup>200</sup>MONUC, *Special report on the events in Ituri*, *op. cit.*, para. 28; Ann. 1.6.

United Nations Organization Mission in the Democratic Republic of the Congo (MONUC), is particularly damning:

“Uganda claimed on several occasions to be in Ituri to defend ‘its legitimate security concerns’ and to be acting for reconciliation and the protection of civilians. However, although in some cases UPDF did intervene to halt fighting between opposing forces, its commanders were responsible for the creation of almost all of the armed groups, training their militias — sometimes even in Uganda — selling weapons and even lending their soldiers to rich Hema to massacre Lendu civilians and destroy villages in Walendu Tatsi in 1999. UPDF also carried out widespread bombing and destruction of hundreds of villages from 2000 to 2002 in the Lendu/Ngiti *collectivités* of Walendu Pitsi and Walendu Bindi. The same UPDF commanders also became businessmen who traded in the resources of Ituri.”<sup>201</sup>

The economic benefits derived by the Ugandan soldiers — and indeed Uganda itself — from this situation are also highlighted by the Trial Chamber of the International Criminal Court in the *Lubanga* case, which observes that the experts who appeared before it agreed that

“much of the violence in Ituri during the period from 1999 to 2003 was initially economically motivated, and that the conflict was due in significant part to the involvement of members of the Ugandan national army (the Ugandan People’s Defence Force or ‘UPDF’), who exploited social unrest for their own economic advantage”<sup>202</sup>.

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3.11. Base economic considerations were therefore partly responsible for the tens of thousands of victims of the bloody conflict which tore Ituri apart between 1999 and 2003. Far from maintaining public law and order, as its status as an occupying Power of that region required, Uganda set about exacerbating local conflicts until they reached apocalyptic proportions, including by regularly permitting the members of its armed forces to perpetrate horrendously violent attacks on innocent civilians.

3.12. Details will now be provided of the extent of the damage caused in this context and for which the Democratic Republic of the Congo is seeking reparation in these proceedings.

## **Section 2. The damage resulting from Uganda’s failure to comply with its obligations as an occupying Power in Ituri**

3.13. The damage resulting from Uganda’s failure to comply with its obligations as an occupying Power in Ituri is incalculable. The inter-ethnic tensions stirred up by Uganda throughout its presence in the region frequently culminated in large-scale massacres of civilians, and many civilian lives were lost as a result of the fighting between rival factions (A). Many survivors of such massacres suffered serious injury and mutilation, and were left permanently disabled (B). Numerous cases of rape have also been documented (C). In addition, several groups recruited and trained child soldiers, with the active support of Uganda (D). The massacres, and the general climate of insecurity which prevailed for those long years in Ituri, also led to the displacement of huge numbers of civilians, since those living in the affected areas fled their homes in fear of their lives (E). Finally, the conflict was characterized by the large-scale destruction of

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<sup>201</sup>*Ibid.*, para. 27.

<sup>202</sup>International Criminal Court, Trial Chamber I, *The Prosecutor v. Thomas Lubanga Dyilo, Judgment pursuant to Article 74 of the Statute*, document ICC-01/04-01/06, 14 Mar. 2012, para. 72.

property and public infrastructure, with many villages being razed to the ground (F), and by acts of systematic looting (G).

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3.14. For each of these categories, a non-exhaustive list of the specific circumstances in which the damage occurred will be provided. An assessment of the total damage caused in each category will then be presented. This tally of the damage resulting from the violations of international law for which Uganda has been pronounced responsible in Ituri has again been compiled using data from two types of sources: on the one hand, international reports, most of which have been produced by United Nations bodies; and on the other, records drawn up by the judicial authorities of the Democratic Republic of the Congo, on the basis of investigations and interviews with the inhabitants of the regions concerned. Indeed, the gravity of the events which took place in Ituri between 1999 and 2003 captured the attention of several United Nations bodies, which investigated them in detail. A case in point is MONUC, which in 2004 produced a *Special report on the events in Ituri*<sup>203</sup>. While that report relates more specifically to the period between January 2002 and January 2003, it also contains a great deal of information about events in the region as far back as 1999.

3.15. Similarly, entire sections are devoted to the specific situation of Ituri in the *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*, which was produced by the United Nations Office of the High Commissioner for Human Rights in August 2010<sup>204</sup>. These are reliable sources, which provide a sound basis on which to assess the damage caused in Ituri throughout the period when it was occupied by the Ugandan armed forces. The data extracted from them have been cross-referenced and supplemented with data from the above-mentioned records, so as to present an account of the damage that is as systematic as possible.

3.16. Where the reports put forward specific figures, those figures are used in this chapter for the purpose of quantifying the damage suffered by the people of Ituri. Where no such figures are included, the data in the records form the basis for the DRC's claim for the specific categories of damage concerned. In such cases, figures are generally extrapolated from the data in the records, which are not exhaustive.

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3.17. There is no doubt that there is a well-established causal link between all of these injuries and the violations of international law which the Court found Uganda to have committed in its Judgment of 2005. That link exists either because the damage concerned was directly caused by the acts of the UPDF forces present in that part of the Congo, or because it was the result of the resolutely passive attitude adopted by the Ugandan authorities, which failed to comply with their obligations as an occupying Power in the region.

#### **A. Loss of human life**

3.18. Deliberate attacks on civilians were unfortunately one of the defining characteristics of the Ituri conflict. Dozens of towns and villages were targeted by the conflict's protagonists, and their inhabitants systematically slaughtered, often by particularly cruel methods. Some of the belligerents have attempted to defend their actions, arguing that weapons had been distributed to

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<sup>203</sup>MONUC, *Special report on the events in Ituri*, *op. cit.*; Ann. 1.6.

<sup>204</sup>United Nations Office of the High Commissioner for Human Rights, *Report of the Mapping Exercise*, *op. cit.*; Ann. 1.4.

the civilians and that the latter should therefore be regarded as combatants<sup>205</sup>. However, the facts indicate on the contrary that in the vast majority of cases, the victims were slaughtered simply because they belonged to a particular ethnic group, which is consistent with the cycles of violence described in the first section of this chapter. Alongside deliberate attacks of this kind on local civilians, a number of situations have been documented in which those same civilians fell victim to the indiscriminate use of force by the warring factions, in the course of the military operations which they were carrying out in various parts of Ituri.

3.19. The list of attacks on the civilian population of Ituri, beginning in spring 1999, and the massacres committed on those occasions, is a grim and seemingly never-ending litany of names and dates. Here they are presented in chronological order, each event being represented by the relevant extract from one of the above-mentioned reports (or supplementary international sources):

- (a) “UPDF carried out its first attacks on the village of Loda, located between Fataki and Libi, in the night of 29 to 30 May 1999, burning it down and burning alive several elderly persons and women locked in their houses.”<sup>206</sup>
- (b) “Between June and December 1999, UPDF and APC soldiers killed an unknown number of Lendu civilians in villages in the Djugu region close to the concessions claimed by the Hema-Gegere farmers. Villages in the Dz’na Buba, Linga, Jiba, Dhendo, Blukwa Mbi, Laudjo, Laudedjo Gokpa, Nyalibati and Gbakulu *groupements* were particularly badly affected. Most of the victims were Lendu but Hema were also killed during the attacks. Numerous victims died when their village was set on fire or following heavy arms fire directed at their homes. Some victims were shot dead at point-blank range.”<sup>207</sup>
- (c) “Between June and December 1999, members of the Lendu militia killed several tens of Hema-Gegere in the village of Libi from the Walendu Pitsi community and in the village of Fataki from the Walendu Djatsi community.”<sup>208</sup>
- (d) “On 20 June 1999, members of the Hema militias and UPDF soldiers killed at least 25 people, including several civilians, during an attack on the village of Dhendro, in the Walendu Pitsi community, on the border with the Dhendro *groupement*.”<sup>209</sup>
- (e) “On 14 September 1999, members of the Lendu militias from the Walendu Pitsi community used edged weapons to kill several hundred Hema-Gegere, including a majority of civilians, during widespread attacks on locations in the Dhendro *groupement* in the Bahema-Nord community . . . The victims were buried in mass graves. According to several sources, the massacre took place in retaliation for an attack committed on 20 June by members of the Hema militias in the village of Dhendro.”<sup>210</sup>
- (f) “On 14 September 1999, during a night-time offensive on the village of Fataki, in the Walendu Djatsi community, members of the Hema militias and Hema soldiers from the APC killed

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<sup>205</sup>MONUC, *Special report on the events in Ituri, op. cit.*, para. 21; Ann. 1.6.

<sup>206</sup>*Ibid.*, para. 19.

<sup>207</sup>United Nations Office of the High Commissioner for Human Rights, *Report of the Mapping Exercise, op. cit.*, para. 366; Ann. 1.4.

<sup>208</sup>*Ibid.*

<sup>209</sup>*Ibid.*

<sup>210</sup>*Ibid.*

several tens of civilians with edged weapons, including at least 15 minors and several women. The assailants then buried the bodies themselves.”<sup>211</sup>

- (g) “In July 1999, members of the Lendu militias from the Buba group in the Walendu Pitsi community . . . killed over 100 Hema civilians in the fishing village of Musekere in the Bahema-Nord community. Having encircled the village at dawn and forced six APC soldiers there to flee, they massacred the population using machetes and other edged weapons.”<sup>212</sup>
- (h) “On 1 December 1999, members of the Lendu militias confronted elements of the UPDF and members of the Hema militias over control of the mining town of Bambou, in the Walendu Djatsi community in the Djugu region. The fighting . . . led to the deaths of over 200 members of the civilian population. Numerous victims were mutilated and the town looted. Most of the victims’ bodies were thrown into the River Chari.”<sup>213</sup>
- 82 (i) One hundred miners lost their lives when the Gorumbwa mine collapsed in late 1999, because of the decline in safety standards as a result of UPDF officers exerting pressure to extract the gold more quickly.<sup>214</sup>
- (j) “In January 2000, members of the Lendu militias from the Walendu Pitsi and Bahema-Nord communities attacked people living in the Blukwa *groupement*, killing several hundreds of Hema with edged weapons.”<sup>215</sup>
- (k) “On 26 April 2000, members of the Hema militias and UPDF troops attacked the Buba *groupement*, in the Walendu Pitsi community, causing around 10 deaths, the majority of whom were Lendu civilians.”<sup>216</sup>
- (l) “At the end of 2000, the conflict between the Hema and Lendu finally reached the Irumu region. The UPDF soldiers lent their support to the local Hema communities and violent incidents broke out on the ground . . . Between 9 and 18 January 2001, members of the Hema militias . . . killed around 60 people, including numerous Lendu and Ngiti civilians, in the village of Kotoni, in the Irumu region and the surrounding area.”<sup>217</sup>
- (m) “On 3 February 2001, members of the Hema militias and UPDF troops killed 105 people, including numerous Lendu civilians, in the villages in the Bulu *groupement* in the Ndo Okebo community in the Djugu region. The victims often came from the Walendu Pitsi community. They had taken refuge in the Bulu *groupement* following recent attacks on their village.”<sup>218</sup>
- (n) “On 19 January 2001, Hema militiamen and civilians . . . killed between 200 and 250 civilians from the Lendu, Ngiti, Nande and Bira ethnic groups in the Mudzipela neighbourhood in the town of Bunia. The victims, who included a large number of women and children, were killed with machetes, spears or studded batons. Most of them were subjected to mutilation. Some were decapitated and their heads carried through the town as trophies . . . Shortly before the

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<sup>211</sup>*Ibid.*

<sup>212</sup>*Ibid.*, para. 368.

<sup>213</sup>*Ibid.*, para. 369.

<sup>214</sup>Human Rights Watch, *The Curse of Gold. Democratic Republic of Congo*, 2005, p. 18, available at [https://www.hrw.org/sites/default/files/reports/drc0505\\_0.pdf](https://www.hrw.org/sites/default/files/reports/drc0505_0.pdf); Ann. 3.3.

<sup>215</sup>United Nations Office of the High Commissioner for Human Rights, *Report of the Mapping Exercise, op. cit.*, para. 370; Ann. 1.4.

<sup>216</sup>*Ibid.*

<sup>217</sup>*Ibid.*, para. 406.

<sup>218</sup>*Ibid.*, para. 405.

massacre, UPDF officers and senior members of the Hema community in Bunia had held a meeting and called on Hema civilians to attack the Lendu population.”<sup>219</sup>

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- (o) “In January 2002, UPDF troops and Hema militiamen opened fire on the population of the village of Kobu in the Walendu Djatsi community in the Djugu region, killing 35 Lendu civilians. As they entered the village, Ugandan soldiers killed four civilians in the marketplace, including one [mentally] disabled person. Almost all of the population fled and hid in the forest for nearly two months. On their return to the village, the villagers found 35 decomposed bodies, which they buried in various places. Those responsible for the massacre were trying to remove Lendu populations from the Kobu area, close to the Kilomoto gold mines.”<sup>220</sup>
- (p) “On 26 January 2002, members of the Hema militias killed around 100 Lendu in a forest a few kilometres from Datule, in the Bahema-Sud community in the Irumu region. The victims had been chased from the village of Datule the previous day by a UPC commander. They were killed with machetes, spears and studded batons. A young girl of 13 was the only person to survive the attack.”<sup>221</sup>
- (q) “From 9 February to 24 April 2002, UPDF based in Gety, together with Hema and Bira militia groups, carried out large-scale operations against the Lendu villages of the Boloma, Bukiringi, Zadhu, Baviba and Bamuko *groupements*, all located in the *collectivité* of Walendu Bindi, in the territory of Irumu. Mass killings continued for another two weeks after the visit on 4 April of the then Governor of Ituri, Jean-Pierre Lompondo Molondo, with Colonel Peter Karim, from UPDF, who was sent by Kampala to investigate abuses committed by UPDF soldiers. Both called upon UPDF to end the hostilities. A local non-governmental organization reported a total of 2,867 civilians killed . . . The most serious mass killings were the following: on 10 February 2002, attack on the localities of Tsarukaka, Nombe, Tsubina and Kagaba with 173 civilians killed; on 15 February 2002, attack and destruction of the localities of Kagaba, [R]udjoko, Biro, Kapalayi and Kinyamubaya with 120 civilians killed; on 21 February 2002, attack on Bukiringi with 220 civilians killed; on 14 March 2002, attack on the locality of Sadji/Kaguma [A] with 14[6] civilians killed; on 29 March 2002, massacre of the population of Gety by UPDF based there with 109 civilians killed.”<sup>222</sup>
- (r) “On 11 May 2002, the village of Walu, located in the *collectivité* of Babebebe in the territory of Irumu, was attacked by Hema militias from 5 a.m. to 1 p.m. The attackers . . . killed civilians who were not able to flee. Once the attack was over, the population came out of hiding to bury the bodies. One of the eyewitnesses, who was present at the burials, reported having counted 42 bodies, including that of the Chief of the village. The village was attacked a second time a few days later by the same militia, who killed four more civilians.”<sup>223</sup>
- (s) “In early June 2002, elements of the UPDF and Hema militiamen indiscriminately killed members of the Lendu militias and an unknown number of civilians in the Lendu villages in the

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<sup>219</sup>*Ibid.*, para. 407; see also, for a contemporary account of the acts, 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 Feb. 2001, para. 56, RDRC, Ann. 31; Ann. 3.4.

<sup>220</sup>United Nations Office of the High Commissioner for Human Rights, *Report of the Mapping Exercise*, *op. cit.*, para. 408; Ann. 1.4.

<sup>221</sup>*Ibid.*

<sup>222</sup>MONUC, *Special report on the events in Ituri*, *op. cit.*, para. 42 and fn. 21; Ann. 1.6.

<sup>223</sup>*Ibid.*, para. 97.

Walendu Pitsi community. By way of example, in June 2002, Hema militiamen and elements of the UPDF killed at least 27 people in Buba.”<sup>224</sup>

- 84 (t) “On 12 June 2002, the Lendu quarters of Mongbwalu were attacked by APC soldiers based there, together with Hema inhabitants of the town. APC had been bribed by rich Hema with the aim of emptying Mongbwalu of its Lendu population. The attack lasted from 3 a.m. to 7 a.m. The attackers killed an unknown number of Lendu civilians, threw them into the roadside ditches and set fire to Lendu homes . . . Towards the end of the attack, the Lendu combatants arrived from their encampment. They destroyed Hema homes and killed approximately 100 Hema civilians in an act of revenge.”<sup>225</sup>
- (u) “On 9 August 2002, elements of the APC and Lendu and Ngiti militiamen killed tens of civilians, mostly Hema, in the town of Komanda and the surrounding villages in the Basili-Basumu community, in the Irumu region. Guided by the Ngiti militiamen who had infiltrated the village and by local youths, elements of the APC and members of the militias moved from house to house, killing Hema civilians purely on the basis of their ethnic origin. Most of the victims were killed with edged weapons. Some were tied up and then killed with spears.”<sup>226</sup>
- (v) Following the attack on Bunia by UPDF and UPC forces in August 2002, “[s]everal mass graves have been discovered, including two near the governor’s residence and others near the prison and the hospital. According to MONUC, 110 people died in the violence in and around Bunia, but local sources estimated the dead as at least 150. The victims included both Hema and Lendu civilians many of whom had been targeted only on the basis of their ethnicity. Several mass graves were subsequently discovered including one with twenty-six bodies of mostly women and children, many with bullet wounds in their backs . . . The Ugandan army backed the UPC attack that deliberately killed large numbers of civilians. In addition, they failed in most cases to protect civilians who were being targeted for killing in and around the town, despite having large numbers of troops available less than a mile away.”<sup>227</sup>
- (w) “From 14 to 19 August 2002, elements of the UPC killed over 50 civilians from different ethnic groups during an attack on the village of Komanda. Most of the victims were shot or killed with edged weapons when they fled Komanda for Beni. Many of the victims had left Bunia a few days previously following the takeover of the town by the UPC and had taken refuge in Komanda. The aim of the UPC attack was to avenge the massacre committed in Komanda on 9 August.”<sup>228</sup>
- 85 (x) “On 28 August 2002, Hema-Gegere militiamen associated with the UPC killed [with edged weapons] several tens of ‘non-native’ inhabitants in the gold-producing town of Mabanga in the Mambisa community, in the Djugu region. The victims were killed either with machetes or with studded batons. Sixteen of them were clubbed to death with planks of wood.”<sup>229</sup>

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<sup>224</sup>United Nations Office of the High Commissioner for Human Rights, *Report of the Mapping Exercise, op. cit.*, para. 409; Ann. 1.4.

<sup>225</sup>MONUC, *Special report on the events in Ituri, op. cit.*, para. 100; Ann. 1.6.

<sup>226</sup>United Nations Office of the High Commissioner for Human Rights, *Report of the Mapping Exercise, op. cit.*, para. 413; Ann. 1.4.

<sup>227</sup>Human Rights Watch, *Ituri: “Covered in Blood”. Ethnically Targeted Violence in Northeastern DR Congo*, Vol. 15, No. 11(A), July 2003, pp. 20-21, available at <https://www.hrw.org/reports/2003/ituri0703/>; Ann. 3.5. See also MONUC, *Special report on the events in Ituri, op. cit.*, para. 49; Ann. 1.6.

<sup>228</sup>United Nations Office of the High Commissioner for Human Rights, *Report of the Mapping Exercise, op. cit.*, para. 413; Ann. 1.4.

<sup>229</sup>*Ibid.*



Although “UPDF had a military camp in Mabanga; the Ugandan army did not intervene to stop the killing of civilians but gave refuge to those who were able to reach the camp.”<sup>230</sup>

- (y) “On 31 August 2002, elements of the UPC supported by Bira militiamen killed at least 14 civilians, including women and children, in several villages in Songolo in the Walendu Bindi community, in the Irumu region . . . Several victims were mutilated and killed in an extremely cruel fashion. At least three women were impaled.”<sup>231</sup>
- (z) “On 11 October 2002, Lendu combatants from Bambu and Mabanga attacked Nizi . . . According to a local non-governmental organization, a total of 320 bodies were buried. The persons who buried them were able to identify 69 of them.”<sup>232</sup>
- (aa) “In 2002 and 2003, the [Lendu] *groupement* [of Bedu-Ezekele] experienced a total of 11 attacks with 445 civilian victims of killing, according to a Lendu teacher who took notes of each event. The most serious attacks occurred on 15 and 16 October 2002, when Hema militias, together with UPDF from Bogoro, attacked Zumbe and stayed there for 48 hours. From Zumbe, the attackers burned all the surrounding villages, killed around 125 civilians and planted several anti-personnel mines.”<sup>233</sup>
- (bb) “On 20 October 2002, elements of the UPC from Bunia and Bogoro killed at least 10 Lendu civilians during attacks on several villages, including Nombe, Medhu, Pinga, Kagaba, Singo and Songolo in the Walendu Bindi community, in the Irumu region. A Bira woman married to a Lendu civilian was also killed.”<sup>234</sup>
- (cc) “Between 12 and 29 October 2002, elements of the ALC and RCD-N taking part in the ‘Clean the blackboard’ operation [ . . . ] killed at least 173 Nande and Pygmy civilians in Mambasa and in the villages along the main road between Mambasa and Beni, particularly in Teturi, Mwemba and Byakato, in the Mambasa region. The soldiers also carried out acts of cannibalism, mutilated an unknown number of civilians, raped a large number of women and children and committed widespread pillaging. The victims were killed purely on the basis of their ethnic origin”<sup>235</sup>.
- 86 (dd) “On 24 October 2002, elements of the UPC killed several dozen Lendu in the Walendu Bindi community, particularly in the villages of Nombe, Kagaba, Lakabo, Lokpa, Medhu, Songolo, Pinga, Androzo and Singo. Most of the victims were killed with edged weapons.”<sup>236</sup>
- (ee) “On 5 November 2002, elements of the FRPI killed at least 14 civilians, including two women, in the village of Saliboko in the Mobala community, in the Irumu region . . . Most of the victims were Bira. They were attacked at night in their houses. First they were tied up and then killed with machetes.”<sup>237</sup>

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<sup>230</sup>MONUC, *Special report on the events in Ituri, op. cit.*, para. 45; Ann. 1.6.

<sup>231</sup>United Nations Office of the High Commissioner for Human Rights, *Report of the Mapping Exercise, op. cit.*, para. 413; Ann. 1.4.

<sup>232</sup>MONUC, *Special report on the events in Ituri, op. cit.*, para. 103; Ann. 1.6.

<sup>233</sup>*Ibid.*, para. 63; see also United Nations Office of the High Commissioner for Human Rights, *Report of the Mapping Exercise, op. cit.*, para. 414; Ann. 1.4.

<sup>234</sup>United Nations Office of the High Commissioner for Human Rights, *Report of the Mapping Exercise, op. cit.*, para. 414; Ann. 1.4.

<sup>235</sup>*Ibid.*, para. 416; see also MONUC, *Special report on the events in Ituri, op. cit.*, para. 109; Ann. 1.6.

<sup>236</sup>United Nations Office of the High Commissioner for Human Rights, *Report of the Mapping Exercise, op. cit.*, para. 414; Ann. 1.4.

<sup>237</sup>*Ibid.*

- (ff) “On 20 November 2002, UPC and MLC jointly attacked Mongbwalu, using heavy mortars and other explosive devices. The fighting lasted for two days and resulted in the killing of around 200 civilians”<sup>238</sup>.
- (gg) “On 24 February 2003, Bogoro was attacked by Lendu and Ngiti militias at 5.30 a.m. . . . According to the testimony of 100 survivors, around 260 persons were killed and another 70 are missing. Among the victims, 173 were under the age of 18.”<sup>239</sup>
- (hh) “On 4 March 2003, early in the morning, the Lendu and Ngiti attack on UPC military positions in Mandro lasted for no more than a few hours. The armed groups succeeded in overrunning Mandro and attacked civilians, killing some 168 persons according to the testimonies received by MONUC in Mandro and Bunia.”<sup>240</sup>
- (ii) “On 6 March 2003, reportedly responding to an attack by UPC on their forces based in Ndele, UPDF drove UPC out of Bunia and took control of the town with the assistance of Lendu armed groups. On 6 and 7 March 2003, during and after fighting between UPC and UPDF in Bunia, several civilians were killed, houses and shops were looted and civilians were wounded by gunshots. According to the inhabitants of Bunia, fighting between UPC and UPDF began around 6 a.m. and lasted until the end of the same day. Stray bullets reportedly killed several civilians; others had their houses shelled. There were also selected killings of Hema civilians who were known to have financed UPC”<sup>241</sup>.
- (jj) “On March 10, 2003 the Ugandan and Lendu forces attacked Kilo, a town just south of Mongbwalu, with the Lendu arriving several hours before the Ugandans. The Lendu combatants met little resistance from the UPC and began killing civilians who they presumed to be of Nyali ethnicity, accusing them of having helped the Hema. According to local sources, they killed at least one hundred, many of them women and children . . . Residents walking on the road near the town of Kilo nearly a month later still reported the smell of corpses rotting in the forest.”<sup>242</sup>
- (kk) “On 3 April 2003, . . . Drodro parish (located in Duma village) and the surrounding villages of Dhassa (Largu), Nyali, Dzathi, Kiza, Ngazba, Jissa, Kpatiz, Koli, Lera, Ndjala and Kpaluma were attacked between 5.45 a.m. and 8 a.m. by Lendu militias . . . A team composed of personnel of MONUC and personnel of the Office of the United Nations High Commissioner for Human Rights travelled to the affected areas, and received testimonies of survivors, eyewitnesses, family members and church and administrative authorities, who reported the killing of 408 civilians [and] the serious injury of 80 others, 48 of them still in the local hospital at the time of the investigation”<sup>243</sup>.

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3.20. Obviously it is crucial to bear in mind that, although this list is long, it is by no means exhaustive, since it only includes those events which were documented — often in very difficult conditions — by the United Nations bodies which were able to carry out investigations on the ground. In any event, the names of the towns and villages affected, the macabre death toll and the

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<sup>238</sup>MONUC, *Special report on the events in Ituri, op. cit.*, para. 102; Ann. 1.6.

<sup>239</sup>*Ibid.*, para. 65; the *Second special report of the Secretary-General on MONUC* reports 330 deaths (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, para. 9; Ann. 3.6).

<sup>240</sup>MONUC, *Special report on the events in Ituri, op. cit.*, para. 72; Ann. 1.6.

<sup>241</sup>*Ibid.*, para. 73.

<sup>242</sup>Human Rights Watch, *The Curse of Gold, op. cit.*, p. 37; Ann. 3.3.

<sup>243</sup>MONUC, *Special report on the events in Ituri, op. cit.*, para. 75; Ann. 1.6; see also United Nations Security Council, *Second special report of the Secretary-General on MONUC, op. cit.*, para. 9; Ann. 3.6.

sequence of dates give some idea of the scale of the indescribable suffering inflicted on the civilian population of Ituri throughout the region's occupation by the Ugandan armed forces. The list shows that there is sadly nothing journalistic or sensationalist about the title chosen by Human Rights Watch for one of its reports on the human consequences of the war in the Congo — *Ituri: Covered in Blood*<sup>244</sup>.

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3.21. It also explains, despite the lack of definite figures, why the overall death toll in Ituri that was established by the international institutions very quickly ran into the thousands, and then the tens of thousands. For example, in March 2000, the IRIN information network reported that a United Nations assessment mission of October 1999 had put the number of deaths at between 5,000 and 7,000 people after the first year of occupation<sup>245</sup>. In his report of September 2000, the Special Rapporteur on the situation of human rights in the DRC put at 8,000 the number of people killed in the violent confrontations which were tearing Ituri apart at that time<sup>246</sup>. Those estimates were subsequently to rise dramatically. Thus, following the surge of violence in the region during summer 2002, the United Nations Secretary-General noted in his *Special report on MONUC* that “[t]he total number of killings in Ituri in recent weeks is impossible to ascertain”<sup>247</sup>. However, immediately afterwards he added that

“[i]t is widely accepted that in Bunia itself there have been hundreds, but as the violence has increased and spread to villages as far as 90 kilometres from Bunia, figures provided by non-governmental organizations and other sources have suggested that *thousands may have died in August alone*, with tens of thousands displaced, although it has not been possible to confirm these figures independently”<sup>248</sup>.

Given the multitude of attacks either targeting civilians or of which civilians suffered the direct consequences, which are listed above for August 2002 alone, that assessment is not at all unrealistic. In fact, the list contains no fewer than five incidents for that month, in each of which between 14 and over 300 individuals were killed<sup>249</sup>.

3.22. It is therefore not surprising that the most recent overall estimate available, the one provided by the United Nations Secretary-General in his *Second special report on MONUC* of May 2003, puts the total number of people killed during the years of Ituri's occupation at 60,000: “[s]ince the first major onslaught of violence in June 1999, the death toll has been estimated at more than 60,000”<sup>250</sup>. This appalling death toll also reflects the massive deterioration in the region's medical facilities and the problems experienced by aid organizations, which were further consequences of the unrest which flared up throughout the region during that period. The same report of the United Nations Secretary-General provides the clearest picture of the catastrophic healthcare situation in Ituri in spring 2003:

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<sup>244</sup>Human Rights Watch, *Ituri: “Covered in Blood”*. *Ethnically Targeted Violence in Northeastern DR Congo*, *op. cit.*; Ann. 3.5.

<sup>245</sup>IRIN, *Special Report on the Ituri clashes — [part one]*, Nairobi, 3 Mar. 2000, available at <http://www.irinnews.org/report/12699/drc-irin-special-report-ituri-clashes-part-one>; Ann. 3.7.

<sup>246</sup>United Nations General Assembly, Fifty-fifth Session, *Report of the Special Rapporteur on the situation of human rights in the DRC*, *op. cit.*, RDRC, Ann. 81; Ann. 3.1.

<sup>247</sup>United Nations Security Council, *Special report of the Secretary-General on MONUC*, *op. cit.*; Ann. 3.2.

<sup>248</sup>*Ibid.*, emphasis added.

<sup>249</sup>See para. 3.18 above.

<sup>250</sup>United Nations Security Council, *Second special report of the Secretary-General on MONUC*, *op. cit.*, para. 10, emphasis added; Ann. 3.6.

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“Of the estimated 400 health centres, 212 have been closed, and not a single surgeon is present . . . Moreover, the prevailing atmosphere of insecurity has obstructed the humanitarian community’s access to sizeable areas of the region, effectively denying the provision of aid to the most vulnerable populations.”<sup>251</sup>

Clearly, such a situation could only significantly increase the human cost of the conflict.

3.23. The Democratic Republic of the Congo will therefore take the figure of 60,000 killed as a basis for this part of its claim in the present proceedings. Given that it is impossible to obtain precise figures for each of the acts of violence experienced by the region during those grim years, that figure is a reasonable estimate, which has been established by impartial and independent international actors on the basis of information gathered over time on the ground. The Democratic Republic of the Congo estimates that two thirds of that number (i.e., 40,000 people) died as a result of deliberate violence against civilians, the remaining third (20,000 people) being inhabitants of Ituri who lost their lives in other circumstances related to the conflicts which ravaged that region between 1998 and 2003. This estimate is fully corroborated by a systematic analysis of the main occasions on which armed force was used indiscriminately against the civilian population of Ituri. The consequences of this breakdown for calculating the amount of compensation due in those different cases will be presented in Chapter 7 of this Memorial<sup>252</sup>.

## **B. Injury and mutilation**

3.24. As well as recording the tens of thousands of people who were killed during the multiple attacks which targeted or affected civilians living in Ituri, the reports of the international organizations state that a very large number of individuals were injured as a result of those acts. In many cases, the victims suffered serious and life-changing injuries or mutilation<sup>253</sup>.

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3.25. Here too, data will be provided in relation to specific incidents, before an estimate is given of the total number of people who suffered serious injuries during the confrontations. It is reported, for example, that 30 civilians were injured as a result of the fighting initiated by the UPDF to retake control of Bunia in March 2003<sup>254</sup>, that 80 civilians were seriously injured in the attack on Drodro parish and the surrounding villages on 3 April 2003<sup>255</sup>, and that a large number of the local population were seriously injured or mutilated during the many attacks on civilians which are listed above<sup>256</sup>.

3.26. Moreover, it is established that during the period concerned, a number of civilians were the victims in Ituri of acts of torture or inhumane treatment which engage Uganda’s international responsibility. In its Judgment of December 2005, the Court stated in very general terms that it considered that it had “credible evidence sufficient to conclude that the UPDF troops committed

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<sup>251</sup>*Ibid.*

<sup>252</sup>See Chap. 7 below.

<sup>253</sup>See, on this subject, for the initial stages of the war, IRIN, *Special Report on the Ituri clashes — [part one]*, *op. cit.*; Ann. 3.7. For the subsequent periods see, for example, the serious mutilation suffered by the survivors of the attacks on Zumbe on 15 and 16 October 2002, or committed in the village of Saliboko on 5 November 2002 (United Nations Office of the High Commissioner for Human Rights, *Report of the Mapping Exercise, op. cit.*, para. 414; Ann. 1.4).

<sup>254</sup>MONUC, *Special report on the events in Ituri, op. cit.*, para. 74; Ann. 1.6.

<sup>255</sup>*Ibid.*, para. 75.

<sup>256</sup>See para. 3.19 above.

acts of killing, torture and other forms of inhumane treatment of the civilian population”<sup>257</sup>. A considerable number of those acts were committed in the Ituri region, as attested in particular by the *Mapping Report* of the United Nations Office of the High Commissioner for Human Rights:

“In the town of Beni, UPDF soldiers instituted a reign of terror for several years with complete impunity. They summarily executed civilians, tortured and arbitrarily detained an unknown number of people, several of them in muddy holes two or three metres deep.”<sup>258</sup>

The same techniques were employed by UPDF soldiers and their allies in other locations, including Buta:

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“From 2001 to January 2003, elements of the ALC/UPDF . . . tortured and killed an unknown number of civilians in the town of Buta. Most of the victims were held in muddy holes in conditions likely to cause death through disease or exhaustion. After a human rights activist had been tortured and held in one of the muddy holes by the soldiers, MONUC and United Nations organisations sent out an investigative mission and had these prisons shut down.”<sup>259</sup>

Acts of torture were also reported to have been committed in the Walendu Bindi *collectivité* (Irumu region) by UPDF soldiers and Hema militiamen, between February and April 2002<sup>260</sup>, and during the attack on Mongbwalu by a coalition of Congolese rebel groups supported by Uganda, in November 2002<sup>261</sup>. For the individuals who were subjected to such treatment, it clearly constitutes an additional source of serious injury.

3.27. Once again, it is very difficult to establish a precise and detailed record of the total number of people who were injured as a result of the attacks on the civilian population of Ituri between 1999 and 2003. This is partly because those who had been injured often preferred to remain hidden in the bush or forest, rather than seeking treatment in the hospitals or clinics in the urban centres or villages, where they feared that their lives would be in immediate danger. As stated in a report published in March 2000 by IRIN on the Ituri clashes, “[o]ne international humanitarian organisation warns that Lendu victims may not be brought into town and are more likely, particularly with bullet wounds, to remain in the bush”<sup>262</sup>. It is clear that such people could never have been listed as injured. Moreover, in numerous places, the medical facilities were themselves destroyed in the attacks, and with them all written records of hospital admissions and treatment, thus eliminating all primary sources for ascertaining how many people were injured in the areas concerned<sup>263</sup>. It will be recalled in this context that in May 2003, the United Nations Secretary-General wrote that “[o]f the estimated 400 health centres [in the region], 212 have been closed”<sup>264</sup>.

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<sup>257</sup>*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, I.C.J. Reports 2005, p. 241, para. 211.*

<sup>258</sup>United Nations Office of the High Commissioner for Human Rights, *Report of the Mapping Exercise, op. cit.*, para. 444; Ann. 1.4.

<sup>259</sup>*Ibid.*, para. 402.

<sup>260</sup>*Ibid.*, para. 408.

<sup>261</sup>*Ibid.*, para. 417.

<sup>262</sup>IRIN, *Special Report on the Ituri clashes — [part one], op. cit.*; Ann. 3.7.

<sup>263</sup>See para. 3.21 above.

<sup>264</sup>United Nations Security Council, *Second special report of the Secretary-General on MONUC, op. cit.*, para. 10; Ann. 3.6.

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3.28. In such circumstances it comes as no surprise that, in his *Second special report on MONUC*, the Secretary-General gives an estimate of the number of deaths caused by the conflict, but confines himself to stating that “countless others have been left maimed or severely mutilated”<sup>265</sup>. In the absence of more precise data on this point, the Democratic Republic of the Congo estimates that the number of people who suffered serious injury as a result of Uganda’s failure to comply with its obligations as an occupying Power in Ituri between 1998 and 2003 was 30,000. That is half the number of people who lost their lives in the region during the same period<sup>266</sup>. The ratio of deaths to injuries chosen by the DRC in this particular context is much lower than that seen in other recent conflicts<sup>267</sup>. This conservative method of calculation is justified by the specific characteristics of the conflicts in Ituri during the period concerned.

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3.29. Indeed, it is clear from the various reports mentioned above that the region’s medical facilities were in a particularly parlous state at that time, and that many of the victims of the attacks on civilians were forced to abandon their homes and seek refuge in the forests. This had the inevitable consequence that a significant proportion of those injured or mutilated during the attacks were unable to obtain the treatment they needed, and died as a result of their often severe injuries. They must therefore be regarded as having already been counted amongst those who lost their lives during that period, and will thus not be included in the tally of those injured. It is for these reasons that the figure of 30,000 injured or mutilated will be taken as a basis for the reparation claim submitted by the DRC for this category of damage in the present proceedings. In the circumstances, it would appear logical to break that number down in the same way as for the loss of human life<sup>268</sup>. In this instance, the DRC therefore estimates 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) being inhabitants of Ituri who were injured or mutilated in other circumstances related to the conflicts which ravaged that region between 1998 and 2003. The consequences of this breakdown for calculating the compensation due in those different cases will be presented in Chapter 7<sup>269</sup>.

### C. Rape

3.30. During the conflict which devastated Ituri, as in so many other armed conflicts, the massacres of civilians and other acts of oppression committed against them were frequently accompanied by systematic rape. Thus, the international reports document

(a) the rape of at least 50 women during the attack on Zumbe, on 15 and 16 October 2002<sup>270</sup>;

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<sup>265</sup>*Ibid.*

<sup>266</sup>See para. 3.21 above.

<sup>267</sup>Most of the data available relates to military victims. By way of example, 83 French soldiers lost their lives in Afghanistan between 2001 and 2012, while 700 were injured, a ratio of one to more than eight (“Afghanistan: Inspection du théâtre par le chef d’état-major des armées”, press release by the French Ministry of Defence, 11 May 2012, available at <http://www.defense.gouv.fr/operations/actualites/afghanistan-inspection-du-theatre-par-le-chef-d-etat-major-des-armees> (in French only)). The ratio was around one to three for soldiers in the United States army who served in Vietnam (Congressional Research Service, *American War and Military Operations Casualties: Lists and Statistics*, 2 Jan. 2015, p. 3, available at <http://www.fas.org/sgp/crs/natsec/RL32492.pdf>).

<sup>268</sup>See para. 3.23 above.

<sup>269</sup>See Chap. 7 below.

<sup>270</sup>United Nations Office of the High Commissioner for Human Rights, *Report of the Mapping Exercise*, *op. cit.*, para. 414; Ann. 1.4.

(b) the rape of “a large number of women and children” in Mambasa between 12 and 29 October 2002<sup>271</sup>; in connection with the same events, MONUC’s special report on Ituri mentions “systematic rape” and the fact that “[t]he number of rape cases — mainly young girls or women between 12 and 25 years old — [on this occasion] rose to an alarming level”<sup>272</sup>.

3.31. The difficulty of establishing precisely how many people were subjected to sexual violence has already been pointed out above<sup>273</sup>, where reference was made to the socio-cultural considerations deterring a large number of victims of such violence from formally reporting it. It is clear that those factors played the same role in Ituri as they did in the other regions of the DRC, which were dealt with in the previous chapter.

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3.32. Congolese investigators were only able to identify 342 cases of rape during the process of recording the damage resulting from the occupation of Ituri by Uganda<sup>274</sup>: 122 cases of ordinary rape and 220 cases of aggravated rape. There is no doubt that this figure falls well below the actual one, for the reasons which have just been reiterated. Given, on the one hand, the common practice of not reporting such acts and, on the other, the widespread use of rape as a weapon of war against the civilian population in Ituri, the Democratic Republic of the Congo estimates that the actual number of rapes for which Uganda is responsible, because of its failure to comply with its obligations as an occupying Power in that region between 1998 and 2003, is five times higher than the number reported, in other words 1,710. That figure will therefore be taken as a basis for the reparation claim submitted by the DRC for this category of damage in the present proceedings. It will be broken down in line with the individual records, giving a projection of 610 cases of ordinary rape and 1,100 cases of aggravated rape. The consequences of this breakdown for calculating the compensation due in those different cases will be explained in Chapter 7<sup>275</sup>.

#### **D. The recruitment, training and deployment of child soldiers**

3.33. The recruitment, training and deployment of child soldiers by several of the protagonists in the Ituri conflicts is well documented. The same is true, more specifically, of Uganda’s involvement in those practices. In this context it should be recalled that, in its Judgment of 19 December 2005, the Court found “that there is convincing evidence of the training in UPDF training camps of child soldiers and of the UPDF’s failure to prevent the recruitment of child soldiers in areas under its control”<sup>276</sup>. Once again, therefore, it is by virtue both of its own actions and of its failure to comply with its obligations as an occupying Power in Ituri that Uganda is held responsible for these acts by the Court.

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3.34. It should be recalled that these practices went well beyond the mere act — already dreadful enough in itself — of catapulting children into the horrors of war. In fact, in the particular case of Ituri, they were subjected to inhuman and degrading treatment, in part to increase their level of aggression and remove their inhibitions, thereby making them more inclined to commit atrocities and acts of extreme violence. The *Mapping Report*, produced by the United Nations Office of the

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<sup>271</sup>*Ibid.*, para. 416.

<sup>272</sup>MONUC, *Special report on the events in Ituri, op. cit.*, para. 108; Ann. 1.6.

<sup>273</sup>See para. 2.78 above.

<sup>274</sup>This figure was established using the software created by the DRC for the purposes of the present proceedings; Ann. 1.3.

<sup>275</sup>See Chap. 7 below.

<sup>276</sup>*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, I.C.J. Reports 2005*, p. 240, para. 210.

High Commissioner for Human Rights, thus notes that during their military training, the thousands of children recruited by the UPC “were often tortured, subjected to cruel, inhuman or degrading acts and raped”<sup>277</sup>. The extent of the long-term psychological, as much as physical, damage caused by such practices can readily be imagined.

3.35. Several international sources provide a more precise idea of the number of children who found themselves caught up in the machinery of war in this way. For example, in his *Sixth report on MONUC*, dated February 2001, the United Nations Secretary-General states that

“a considerable number of Congolese children were taken from the Bunia, Beni and Butembo region, apparently for military training in Uganda . . . As the present report was being finalized, information was received that 600 children would be transferred to the custody of humanitarian organizations next week.”<sup>278</sup>

Similar figures were mentioned before Trial Chamber I, with a few additional details, during the *Lubanga* case. The Chamber thus notes that

“[s]ome of those who witnessed this transfer of about 700 youths to Uganda told P-0116 [a witness in the trial] they had been taken on Ugandan cargo planes, and it appeared that the accused was in contact with the Ugandan military authorities who gave him the necessary military support”<sup>279</sup>.

96 More generally, the *Mapping Report* indicates for its part that “all the armed groups in Ituri (UPC, FNI, FRPI, FAPC and PUSIC) [. . .] recruited thousands of children along ethnic lines”<sup>280</sup>. It extends this finding to other rebel groups, stating that

“[t]he MLC’s army, the ALC, with the backing of the Ugandan Army, the UPDF, allegedly also recruited children, primarily in Mbandaka, Équateur Province. In 2001, the MLC admitted to having 1,800 CAAFAG within its ranks. The child soldiers were involved in ALC offensives during which serious violations of human rights and international humanitarian law were committed.”<sup>281</sup>

3.36. Although it is also very difficult to ascertain the exact scale of the child soldier phenomenon during the conflict in Ituri, the data referred to above would appear to provide a

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<sup>277</sup>United Nations Office of the High Commissioner for Human Rights, *Report of the Mapping Exercise*, *op. cit.*, para. 429; Ann. 1.4.

<sup>278</sup>United Nations Security Council, *Sixth report of the Secretary-General on MONUC*, *op. cit.*, para. 66; Ann. 3.4; the first sentence of this extract refers to para. 75 of the Secretary-General’s previous report on MONUC, dated December 2000. The figure given later in the *Mapping Report* is at first sight lower, since it states that “at least 163 of these children were sent to Uganda to undergo military training at a UPDF camp in Kyankwanzi before finally being repatriated to Ituri by UNICEF in February 2001” (United Nations Office of the High Commissioner for Human Rights, *Report of the Mapping Exercise*, *op. cit.*, para. 429; Ann. 1.4). This is not in fact a contradiction, since the Secretary-General’s report was produced *before* the children were repatriated (and therefore merely indicates what had been planned), whereas the *Mapping Report*, which was produced several years *after* these events, states what actually happened in February 2001 (only 163 children were repatriated, rather than the 600 initially planned).

<sup>279</sup>International Criminal Court, Trial Chamber I, *The Prosecutor v. Thomas Lubanga Dyilo*, *Judgment pursuant to Article 74 of the Statute*, document ICC-01/04-01/06, 14 Mar. 2012, para. 1033.

<sup>280</sup>United Nations Office of the High Commissioner for Human Rights, *Report of the Mapping Exercise*, *op. cit.*, para. 429; Ann. 1.4.

<sup>281</sup>*Ibid.*, para. 697. The term CAAFAG — “Children Associated to Armed Forces and Groups — is used to describe every person aged 18 years or younger who currently is or in the past has been recruited or used in armed forces or groups. This includes children, both boys and girls, used as combatants, transporters, cooks, messengers, spies or exploited for sexual purposes” (Bureau pour le Volontariat au Service de l’Enfance et de la Santé in the Democratic Republic of the Congo (DRC); available at <http://www.bves-rdc.org/CentresEn.htm>).



reasonable basis for such an assessment. Based on that evidence, the Democratic Republic of the Congo estimates that the number of child soldiers recruited and trained by the various protagonists in the conflict in Ituri between 2000 and 2003 was 2,500. That figure will therefore be taken as a basis for its reparation claim for this category of damage in the present proceedings.

### E. Population flight and displacement

3.37. The scale and extreme violence of the attacks on the civilian population in Ituri, during the period when that region was occupied by Uganda, often impelled the inhabitants of the places which were either targeted or the scene of fighting between the various protagonists in the conflict to take flight, and abandon their home, their possessions, and their livestock or business, often for lengthy periods. The statement made during his trial before Trial Chamber I by one of the former protagonists in the conflict, Germain Katanga, probably conveys the reality of the situation most effectively.

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The accused noted in this context

“that the DRC had its own brand of warfare: ‘war is not waged the way it is in Europe. In Europe people take cover in their homes. In our part of the world, it’s the opposite. If you stay at home, your home will be set on fire and then . . . you’ll burn inside it.’”<sup>282</sup>

The general climate of insecurity created by the use of such methods explains not only why so many people fled and were displaced, but also why they stayed away for so long, in the wake of the violence in Ituri between 1998 and 2003. Indeed, the attempts made by certain local authorities to encourage people to return to their villages frequently ended in failure, as is plain from a report produced by IRIN back in early 2000:

“As a ‘test of sentiment’, according to RCD-ML leader Ernest Wamba dia Wamba, the authorities are encouraging people to return to their abandoned and destroyed villages. But many of the displaced fear to return to villages where there is inadequate security and no structure has been put in place for returnees.”<sup>283</sup>

Far from subsequently being reversed, this trend in fact worsened as the acts of violence and revenge proliferated, and as the climate of impunity enjoyed by their perpetrators became more pervasive, in the face of continued inaction by the occupying Ugandan authorities.

3.38. Once again, the international reports give a very good idea of the frequency with which civilians were forced to flee their towns or villages during the conflict. The number of people affected by each event clearly demonstrates the scale of the phenomenon. For example,

(a) the large-scale operations carried out by the Ugandan forces, together with Hema and Bira militia groups, against the Lendu villages of the Boloma, Bukiringi, Zadhu, Baviba and Bamuko *groupements* in the *collectivité* of Walendu Bindi, between 9 February and 24 April 2002, caused the displacement of no fewer than 40,000 civilians<sup>284</sup>;

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<sup>282</sup>International Criminal Court, Trial Chamber II, *The Prosecutor v. Germain Katanga, Judgment pursuant to Article 74 of the Statute*, document ICC-01/04-01/07, 7 Mar. 2014, para. 518.

<sup>283</sup>IRIN, *Special Report on the Ituri clashes — [part one]*, *op. cit.*; Ann. 3.7.

<sup>284</sup>MONUC, *Special report on the events in Ituri*, *op. cit.*, para. 42; Ann. 1.6.

- (b) following the attack on Mabanga by Lendu militia groups in August 2002, “[s]ome 2,000 civilians, who sought refuge in the Ugandan camp, were escorted to Bunia the day after the event”<sup>285</sup>;
- 98 (c) according to the humanitarian agencies present on the ground, the fighting which took place in Bunia at the beginning of August 2002 displaced 10,000 *families*<sup>286</sup>;
- (d) the attack on the lakeside *groupement* of Bandikado in the *collectivité* of Behema-Sud, in the Irumu region, on 13 September 2002 “caused several thousand people to be displaced for several years”<sup>287</sup>;
- (e) during operation *Chikana Namukono*, which was carried out by the UPC in February 2003, “[a]round 60,000 civilians were forced to flee to the relative safety of the surrounding bush, and the number of those who died of hunger and sickness remains unknown”<sup>288</sup>.

3.39. It is crucial to realize that many of those displaced nevertheless failed to find safety in flight. In fact, several cases have been reported in which displaced persons themselves were targeted, either directly or indirectly, by one or other of the protagonists in the conflict. For example, the *Mapping Report* explains that

“[o]n 26 April 2001, armed men killed six members of the ICRC during an attack on a humanitarian convoy in the area around Fataki in the Walendu Djatsi community, in the Djugu region. Local sources indicate that the attack is thought to have been perpetrated by Ugandan soldiers and Hema militiamen. The attack was supposedly aimed at ending the presence of humanitarian personnel in areas where the displaced Lendu had taken refuge. During the period under consideration, numerous sources indicate that Hema militias and armed groups severely hampered the work of humanitarian organisations in areas populated principally by Lendu.”<sup>289</sup>

In other cases too, the refuge found by the displaced persons proved to be very precarious. The same report thus describes how

“[o]n 28 January 2002, Hema militiamen killed and mutilated around 50 Lendu civilians in Kasenyi in the Irumu region. Having been informed of the massacre that had taken place on 26 January, the victims had fled the village of Datule on 27 January in the hope of reaching the Lendu villages in the Walendu Bindi community. They were hiding behind a police station when they were surprised and killed.”<sup>290</sup>

- 99 Events such as these certainly speak volumes for the insecurity and extreme anxiety faced by the people of Ituri, even after fleeing the places where they had initially been exposed to the fighting.

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<sup>285</sup>*Ibid.*, para. 45.

<sup>286</sup>*Ibid.*, para. 49; emphasis added.

<sup>287</sup>United Nations Office of the High Commissioner for Human Rights, *Report of the Mapping Exercise*, *op. cit.*, para. 413; Ann. 1.4.

<sup>288</sup>MONUC, *Special report on the events in Ituri*, *op. cit.*, para. 70; Ann. 1.6.

<sup>289</sup>United Nations Office of the High Commissioner for Human Rights, *Report of the Mapping Exercise*, *op. cit.*, para. 408; Ann. 1.4.

<sup>290</sup>*Ibid.*

3.40. In the light of the few specific situations described above, it is hardly surprising that the international reports' assessments of the number of individuals displaced in Ituri throughout its occupation by the Ugandan army quickly run into the tens of thousands, and then the hundreds of thousands of people. In September 2000, for example, the Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo records the displacement of 50,000 people in Ituri<sup>291</sup>. These figures subsequently increased exponentially. In September 2002, in his *Special report on MONUC*, the United Nations Secretary-General refers to "500,000 people . . . newly displaced, with 60,000 displaced in Bunia alone"<sup>292</sup>. Finally, in March 2003, the Secretary-General states that

"[t]he humanitarian impact of the armed conflict for the 4.6 million inhabitants of Ituri has been catastrophic. According to the Office for the Coordination of Humanitarian Affairs, between 500,000 and 600,000 internally displaced persons — many of whom remain in hiding and cannot be accounted for — in addition to nearly 100,000 refugees from Uganda and the Sudan, are dispersed throughout the area."<sup>293</sup>

3.41. These various figures, from impartial and well-informed sources on the ground, would appear to provide a reasonable basis on which to assess how many people were forced to flee their town or village as a consequence of Uganda's failure to comply with its obligations as an occupying Power in Ituri between 1998 and 2003. Based on that evidence, the Democratic Republic of the Congo estimates that the number of people who were faced with such a situation during the period concerned was 600,000. That figure will therefore be taken as a basis for its reparation claim for this category of damage in the present proceedings.

## 100 F. Destruction of property and infrastructure

3.42. In addition to inflicting massive human damage, it is clear that the fighting which ravaged Ituri throughout the region's occupation by Ugandan forces caused very large-scale material damage. Thus, numerous sources attest to the destruction on a massive scale of both private property and a range of public infrastructure. For example, the national and international reports describe the following acts of destruction:

- (a) "UPDF carried out its first attacks on the village of Loda, located between Fataki and Libi, in the night of 29 to 30 May 1999, burning it down . . . Later, the villages of Lubea, Buba, Giba, Linga, Ladejo, Petro and Arr were reportedly all destroyed by UPDF forces under the command of Captain Kyakabale, who was reportedly paid by Lobo Tasoro, and several Hema *cessionnaires*. UPDF, together with Hema militias, continued their punitive actions, burning down villages of first the *collectivité* of Walendu of Pitsi, then of Walendu Djatsi, from 1999 to the end of 2001."<sup>294</sup>
- (b) It is also reported, in relation to the first wave of violence, in spring 1999, that "[t]he deadliest outbreaks are in Jiba and Blukwa, where entire villages have apparently disappeared: inhabitants massacred or forced to flee, huts burnt down, houses destroyed, livestock decimated, etc. In addition, several schools, administrative buildings and production facilities

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<sup>291</sup>United Nations General Assembly, Fifty-fifth Session, *Report of the Special Rapporteur on the situation of human rights in the DRC*, *op. cit.*, para. 26, RDRC, Ann. 81; Ann. 3.1.

<sup>292</sup>United Nations Security Council, *Special report of the Secretary-General on MONUC*, *op. cit.*, para. 25; Ann. 3.2.

<sup>293</sup>United Nations Security Council, *Second special report of the Secretary-General on MONUC*, *op. cit.*, para. 10; Ann. 3.6.

<sup>294</sup>MONUC, *Special report on the events in Ituri*, *op. cit.*, para. 19; Ann. 1.6.

have been destroyed. Around Blukwa, the villages of Nibi, Tsuki and Koo have been razed to the ground (approximately 1,200 families).<sup>295</sup>

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- (c) “Bedu-Ezekele, a Lendu *groupement*, located in the *collectivité* of Walendu Tatsi, was attacked several times from January 2001 to March 2003 . . . its 24 localities were destroyed.”<sup>296</sup>
  - (d) “In 2002, important Hema South families were reportedly involved in financing the involvement of UPDF in attacking the *collectivité* of Walendu Bindi . . . Hundreds of localities were destroyed by UPDF and the Hema South militias.”<sup>297</sup>
  - (e) Between February and April 2002, following attacks by the UPDF together with Hema and Bira militia groups on numerous Lendu villages in the *collectivité* of Walendu Bindi, “[a] local non-governmental organization reported . . . that 77 localities were completely destroyed, together with all social infrastructures”<sup>298</sup>.
  - (f) “On 11 May 2002, the village of Walu, located in the *collectivité* of Babelbe in the territory of Irumu, was attacked by Hema militias . . . The attackers completely burned social infrastructures, including two schools and three health centres.”<sup>299</sup>
  - (g) The residence of the Governor of Ituri was severely damaged during the attack on Bunia by UPDF and UPC forces in August 2002<sup>300</sup>.
  - (h) On 31 August 2002, elements of the UPC supported by Bira militiamen set fire to over 1,000 houses in several villages in Songolo, in the Irumu region<sup>301</sup>.
  - (i) On 11 October 2002, elements of the FNI attacked the mining town of Nizi in the *collectivité* of Mambisa; “[d]uring these attacks, the militiamen . . . set fire to numerous buildings, including the community offices, schools and a hospital”<sup>302</sup>.
  - (j) From Zumbe, which was attacked on 15 and 16 October 2002 by Hema militia groups accompanied by Ugandan soldiers, “the attackers burned all the surrounding villages”<sup>303</sup>; on that occasion “more than 500 buildings, including health centres and schools”, were destroyed<sup>304</sup>.

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<sup>295</sup>Groupe Justice et Libération, “La guerre des alliés en R.D.C. et le droit à l’autodétermination du peuple congolais”, 31 Aug. 1999, available at <http://www.congonline.com/Forum1/Forum04/RapJus01.htm> (in French only) and in Jean-Pierre Badidike (ed.), *Guerre et droits de l’homme en République démocratique du Congo*, Paris/Kisangani, L’Harmattan, 2009; Ann. 3.8. [Translation by the Registry.]

<sup>296</sup>MONUC, *Special report on the events in Ituri*, *op. cit.*, para. 62; Ann. 1.6.

<sup>297</sup>*Ibid.*, para. 21.

<sup>298</sup>*Ibid.*, para. 42.

<sup>299</sup>*Ibid.*, para. 97.

<sup>300</sup>Human Rights Watch, *Ituri: “Covered in Blood”. Ethnically Targeted Violence in Northeastern DR Congo*, *op. cit.*; Ann. 3.5.

<sup>301</sup>United Nations Office of the High Commissioner for Human Rights, *Report of the Mapping Exercise*, *op. cit.*, para. 413; Ann. 1.4.

<sup>302</sup>*Ibid.*

<sup>303</sup>MONUC, *Special report on the events in Ituri*, *op. cit.*, para. 63; Ann. 1.6.

<sup>304</sup>United Nations Office of the High Commissioner for Human Rights, *Report of the Mapping Exercise*, *op. cit.*, para. 414; Ann. 1.4.

- (k) On 24 October 2002, elements of the UPC attacked several villages in the *collectivité* of Walendu Bindu; “at least 351 houses, including schools and health centres” were burnt down on that occasion<sup>305</sup>.
- (l) “On 20 November 2002, UPC and MLC jointly attacked Mongbwalu, using heavy mortars and other explosive devices. The fighting lasted for two days and resulted in . . . the destruction of infrastructures.”<sup>306</sup>
- (m) “On 6 March 2003, elements of the UPC and UPDF/FNI/FRPI fought each other with heavy weapons in Bunia . . . Elements of the UPDF/FNI/FRPI also looted and destroyed numerous buildings, private homes and premises used by local and international NGOs.”<sup>307</sup>
- 102** (n) According to local non-governmental organizations, 15 houses were completely destroyed during the events of 12 March 2003 in Bunia<sup>308</sup>.
- (o) “MONUC human rights investigators who travelled to Bogoro on 26 March 2003 saw that most of the buildings and houses on the main road had been destroyed or burned.”<sup>309</sup>
- (p) “MONUC human rights investigators were able to visit Lipri, Bambu and Kobu on 3 April 2003. The team saw several villages on the way that were burned . . . Operation *Chikana Namukono* resulted in . . . the complete destruction of 26 localities.”<sup>310</sup>
- (q) On 3 April 2003, the attack on Drodro parish and the surrounding villages of Dhassa (Largu), Nyali, Dzathi, Kiza, Ngazba, Jissa, Kpatiz, Koli, Lera, Ndjala and Kpaluma culminated in the destruction of 150 houses and shops<sup>311</sup>.

3.43. The massive scale and mainly systematic nature of the acts of destruction of dwellings in the villages attacked by the various protagonists in the Ituri conflicts cannot fail to shock. However, this is easily explained if the general context in which these events occurred is considered, since in most cases their objective was to attack people of a particular ethnic group, and thus drive them out of the territory coveted by the assailants. Completely destroying entire villages was clearly a very effective way of achieving that objective.

3.44. This list might be impressive, but once again it is by no means exhaustive, either in terms of the various events during which such acts of destruction were carried out, or in terms of the types of property destroyed. As far as the latter is concerned, it is in fact vital to note that the authors of the reports from which the above-mentioned information is sourced tended only to take account of private property (dwellings) and public infrastructure (such as schools, clinics and hospitals). Yet those categories of property are very far from being the only ones whose destruction had a lasting impact on the lives of the people of Ituri. As IRIN reports, in more general terms, as early as 2000, following the explosion of violence in the region, “[v]illages have been razed to the ground, homes burnt, crops and land abandoned, and vital possessions including

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<sup>305</sup>*Ibid.*

<sup>306</sup>MONUC, *Special report on the events in Ituri, op. cit.*, para. 102; Ann. 1.6.

<sup>307</sup>United Nations Office of the High Commissioner for Human Rights, *Report of the Mapping Exercise, op. cit.*, para. 421; Ann. 1.4.

<sup>308</sup>MONUC, *Special report on the events in Ituri, op. cit.*, para. 74; Ann. 1.6.

<sup>309</sup>*Ibid.*, para. 66.

<sup>310</sup>*Ibid.*, para. 70.

<sup>311</sup>*Ibid.*, para. 75.

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seeds, agricultural tools and clothes destroyed”<sup>312</sup>. In other words, the inhabitants of the very many locations attacked by the different protagonists in the conflict were not only brutally dispossessed of their houses, but also of a wide range of other property that was essential to their survival. Indeed, the records established by the DRC authorities on the basis of surveys of the people of Ituri reflect the diverse nature of the damage suffered in the category under consideration here<sup>313</sup>.

3.45. It is obviously difficult to account for all the public and private property that was destroyed by the various protagonists in the conflict which tore Ituri apart during the period when that region was occupied by the Ugandan army. Nevertheless, a combination of the evidence from the international reports — the source of the information reproduced above — and the records established by the DRC makes it possible to produce the following assessment:

(a) In his *Second special report on MONUC*, dated May 2003, the United Nations Secretary-General records the destruction of 200 schools in the region<sup>314</sup>.

(b) The same source indicates that “[o]f the estimated 400 health centres, 212 have been closed . . .”<sup>315</sup>. There is no evidence, however, that all such closures were due to acts of destruction, since they might equally be explained by a shortage of qualified staff, for example. Nevertheless, it is undeniable that the acts of destruction carried out by the various protagonists in the conflicts which tore Ituri apart between 1998 and 2003 also affected the region’s medical facilities. Based on the data available, the Democratic Republic of the Congo considers it reasonable to assume that 50 clinics and hospitals were destroyed as a consequence of Uganda’s failure to comply with its obligations as an occupying Power in Ituri between 1998 and 2003.

(c) According to the investigations conducted by the DRC in the region, the number of dwellings destroyed as a consequence of Uganda’s failure to comply with its obligations as an occupying Power in Ituri between 1998 and 2003 was 8,693<sup>316</sup>. This figure clearly encompasses a wide range of very different constructions, and those differences will be taken into account with a view to providing a financial assessment of the damage suffered that is as realistic as possible<sup>317</sup>. Most of the dwellings destroyed in Ituri were in rural areas, and only a minority in urban areas where constructions are more valuable. With that in mind, the DRC considers it reasonable to break the figure down into the following categories of destroyed dwellings:

— light dwellings: 80% of the total, or 6,954;

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— intermediate dwellings: 15% of the total, or 1,304;

— luxury dwellings: 5% of the total, or 435.

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<sup>312</sup>IRIN, *Special Report on the Ituri clashes — [part one]*, *op. cit.*; Ann. 3.7.

<sup>313</sup>Result of using the software created by the DRC for the present proceedings (by entering “Ituri” and “Destruction of property”); Ann. 1.3.

<sup>314</sup>This figure is given by the United Nations Secretary-General in his *Second special report on MONUC*, *op. cit.*, para. 10; Ann. 3.6.

<sup>315</sup>*Ibid.*

<sup>316</sup>Result of using the software created by the DRC for the present proceedings (by entering “Ituri” and “Destruction of property”); Ann. 1.3.

<sup>317</sup>See Chap. 7 below.

The consequences of this breakdown for calculating the amount of compensation due in these different cases will be presented in Chapter 7 of this Memorial<sup>318</sup>.

- (d) Finally, the records established by the DRC's investigators also contain evidence of the destruction of administrative buildings (offices, civil servants' accommodation, prisons, etc.). They document 12 specific cases of such buildings being destroyed, in all likelihood merely a fraction of the damage of that kind which was actually suffered. The DRC therefore considers it reasonable to assume that 50 administrative buildings were destroyed in the Ituri region between 1998 and 2003.

3.46. These figures will form the basis for the reparation claim submitted by the Democratic Republic of the Congo for this category of damage in the present proceedings.

## G. Looting

3.47. In many cases, the destruction of public and private property was accompanied by widespread looting. For the soldiers and militiamen involved in the attacks or fighting in question, this was an easy way of supplementing their meagre wages, which were moreover often paid erratically. The failure of their superiors to impose any sanctions, and the fact that the occupying Power showed no inclination to maintain order in the Ituri region, obviously only served to make such acts more frequent and more widespread, considerably increasing the vulnerability of the civilian population. The international reports include the following acts of looting:

- (a) when UPDF and UPC forces attacked Bunia in August 2002, a witness reports that he saw Ugandan soldiers and Hema militiamen looting houses near the Governor's residence; many other houses in the town were also looted<sup>319</sup>;
- (b) numerous acts of looting were committed by elements of the FRPI and APC at the time of the attack on Nyakunde and the surrounding villages in the *collectivité* of Andisoma between 5 and 15 September 2002<sup>320</sup>;
- (c) the same happened on 13 September 2002, when elements of the FRPI attacked the *groupement* of Bandikado<sup>321</sup>;
- (d) and on 11 October 2002, when FNI militiamen attacked the mining town of Nizi<sup>322</sup>;
- (e) it is reported that large amounts of property were looted and 1,500 head of cattle stolen when UPC militiamen attacked Zombe on 15 and 16 October 2002<sup>323</sup>;
- (f) similar acts are reported in connection with the UPC's attack on the villages of Nombe, Medhu, Pinga, Kagaba, Singo and Songolo, in the *collectivité* of Walendu Bindi, on 20 October 2002<sup>324</sup>;

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<sup>318</sup>See Chap. 7 below.

<sup>319</sup>Human Rights Watch, *Ituri: "Covered in Blood". Ethnically Targeted Violence in Northeastern DR Congo*, *op. cit.*, pp. 20-21; Ann. 3.5; the same acts are reported in MONUC, *Special report on the events in Ituri*, *op. cit.*, para. 49; Ann. 1.6.

<sup>320</sup>United Nations Office of the High Commissioner for Human Rights, *Report of the Mapping Exercise*, *op. cit.*, para. 413; Ann. 1.4.

<sup>321</sup>*Ibid.*

<sup>322</sup>*Ibid.*

<sup>323</sup>*Ibid.*, para. 414.

<sup>324</sup>*Ibid.*

- (g) and in connection with the same rebel movement's attack on the villages of Nombe, Kagaba, Lakabo, Lokpa, Medhu, Songolo, Pinga, Androzo and Singo on 24 October 2002 (theft of 1,450 head of cattle)<sup>325</sup>;
- (h) the village of Saliboko was looted by elements of the FRPI on 5 November 2002<sup>326</sup>;
- (i) "widespread pillaging" was committed by ALC and RCD-N rebels taking part in the "Clean the blackboard" operation in Mambasa and in the villages along the main road between Mambasa and Beni<sup>327</sup>;
- (j) "[o]n 6 and 7 March 2003, during and after fighting between UPC and UPDF in Bunia, . . . houses and shops were looted"<sup>328</sup>;
- (k) still in Bunia, "[l]ocal non-governmental organizations carried out investigations into the events on 12 March 2003 and compiled a list . . . 60 [houses] including offices of the non-governmental organizations Coopi, Aciar, J-plus, Hellenique and Cemif were completely looted. Eyewitnesses accused UPDF of being directly involved in the looting"<sup>329</sup>.

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3.48. In this instance, the data from international sources can be supplemented by data on looting from the records established by the DRC. A detailed list of the different categories of looted property (livestock, vehicles, goods, etc.), which has been established on the basis of those records, is annexed to this chapter. That list will form the basis for the reparation claim submitted by the Democratic Republic of the Congo for this category of damage in the present proceedings.

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3.49. The extent of the damage resulting from Uganda's failure to comply with its obligations as an occupying Power in Ituri between 1998 and 2003 is thus established. That damage can be summarized as follows:

- (a) 60,000 persons killed, 40,000 of whom in the context of deliberate attacks on civilians, and 20,000 in other circumstances;
- (b) 30,000 persons injured or mutilated, 20,000 of whom in the context of deliberate attacks on civilians, and 10,000 in other circumstances;
- (c) 1,710 cases of rape;
- (d) 2,500 persons recruited, trained and deployed as child soldiers;
- (e) 600,000 persons displaced or forced to flee their homes;
- (f) the destruction of

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<sup>325</sup>*Ibid.*

<sup>326</sup>*Ibid.*

<sup>327</sup>*Ibid.*, para. 416.

<sup>328</sup>MONUC, *Special report on the events in Ituri, op. cit.*, para. 73; Ann. 1.6.

<sup>329</sup>*Ibid.*, para. 74.



- 8,693 dwellings;
  - 200 schools;
  - 50 medical facilities;
  - 50 administrative buildings or complexes;
- (g) numerous acts of looting.

3.50. As previously stated, the reparation claimed by the Democratic Republic of the Congo will be quantified on the basis of this information, and the practical arrangements for making that reparation explained, in Chapter 7 of this Memorial, which is devoted exclusively to those matters.

**CHAPTER 4. THE INJURIES SUFFERED BY THE DEMOCRATIC REPUBLIC OF THE CONGO FOLLOWING THE HOSTILITIES INVOLVING UGANDA IN THE CITY OF KISANGANI**



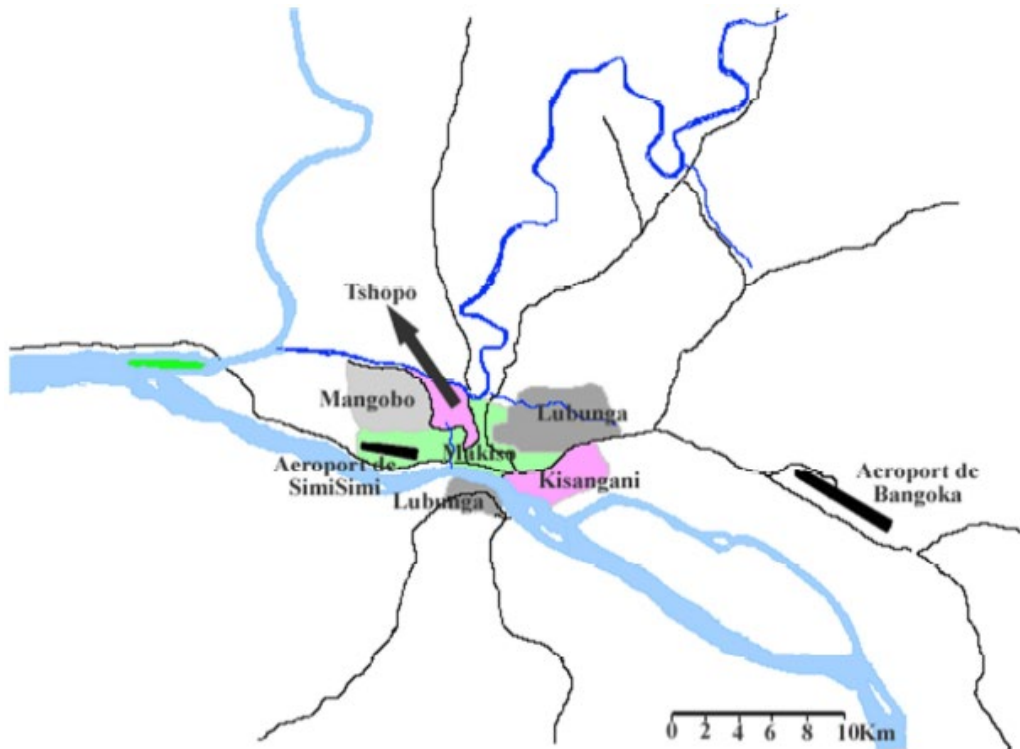
**Map No. 4.1.**

**Orientale province and the city of Kisangani**

Legend:

- |                    |   |                    |
|--------------------|---|--------------------|
| Soudan             | = | Sudan              |
| Ouganda            | = | Uganda             |
| Province orientale | = | Orientale province |
| Nord-Kivu          | = | North Kivu         |

4.01. At the time of the events under consideration in this case, Kisangani, the third largest city in the DRC, was the capital of Orientale province, the most extensive and most highly populated of the country's provinces. The city of Kisangani had around 700,000 inhabitants, of diverse cultural origins. It had two airports, one of them international (Bangboka) and the other a military base (Simi-Simi), as well as a river port at the start of the waterway to Kinshasa. The city of Kisangani consisted of six communes: Makiso, Tshopo, Mangobo, Lubunga, Kisangani and Kabondo.



Map No. 4.2.

**The communes of the city of Kisangani**

Legend:

- Aeroport de SimiSimi = SimiSimi Airport
- Aeroport de Bangoka = Bangoka Airport

4.02. Today, Kisangani is one of history’s martyr cities. From 1999 to 2000, it was the scene of three major confrontations between Ugandan and Rwandan troops, which left a substantial portion of the city in ruins and had a devastating impact on the civilian population. The final confrontation, known as the “six-day war”, led the Security Council to adopt resolution 1304 (2000) on 16 June 2000. In it, the Security Council condemned

“unreserved[ly] . . . the fighting between Ugandan and Rwandan forces in Kisangani in violation of the sovereignty and territorial integrity of the Democratic Republic of the Congo, and demand[ed] that these forces and those allied to them desist from further fighting”<sup>330</sup>.

4.03. These violent clashes compelled the Democratic Republic of the Congo to submit to the Court a request for the indication of provisional measures under Article 41 of the Statute of the Court, stating that

“[s]ince 5 June last, the resumption of fighting between the armed troops of the Republic of Uganda and another foreign army has caused substantial damage to the Democratic Republic of the Congo and to its population

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<sup>330</sup>United Nations, Security Council resolution 1304 (2000), document S/RES/1304, 16 June 2000, para. 2.

[d]espite promises and declarations of principle, the Republic of Uganda has pursued its policy of aggression, brutal armed attacks and acts of oppression and looting

.....

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[t]his is, moreover, the third Kisangani war, coming after those of August 1999 and May 2000 and having been instigated by the Republic of Uganda”<sup>331</sup>.

On that occasion, the Court did not rule on the specific case of Kisangani, since Uganda had stated that its troops had withdrawn from the city<sup>332</sup>.

4.04. However, in its Judgment of 19 December 2005, the Court referred in the following terms to the damage suffered by the city of Kisangani at the hands of Uganda, and to the consequent obligation to make reparation:

“The evidence has shown that the UPDF traversed vast areas of the DRC, violating the sovereignty of that country. It engaged in military operations in a multitude of locations, including . . . Kisangani . . . These were grave violations of Article 2, paragraph 4, of the Charter.

.....

The Court further finds that there is sufficient evidence of a reliable quality to support the DRC’s allegation that the UPDF failed to protect the civilian population and to distinguish between combatants and non-combatants in the course of fighting against other troops, especially the FAR. According to the report of the inter-agency assessment mission to Kisangani (established pursuant to paragraph 14 of Security Council resolution 1304 (2000) (doc. S/2000/1153 of 4 December 2000, paras. 15-16)), the armed conflict between Ugandan and Rwandan forces in Kisangani led to ‘fighting spreading into residential areas and indiscriminate shelling occurring for 6 days . . . Over 760 civilians were killed, and an estimated 1,700 wounded. More than 4,000 houses were partially damaged, destroyed or made uninhabitable. Sixty-nine schools were shelled, and other public buildings were badly damaged. Medical facilities and the cathedral were also damaged during the shelling, and 65,000 residents were forced to flee the fighting and seek refuge in nearby forests.’<sup>333</sup>

4.05. In its Judgment, the Court also highlighted the fact that, in order to determine the magnitude of the reparation owed by Uganda, it was necessary to take into account the support which the latter had provided to the rebel movements having operated on the territory of the DRC<sup>334</sup>. A brief history of the genesis and development of those movements in the region of Kisangani is therefore required.

4.06. In the night of 28 July 1998, President Laurent-Désiré Kabila announced that he had decided to request the forces of his two former allies (Uganda and Rwanda) to leave the territory of

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<sup>331</sup>*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Provisional Measures, Order of 1 July 2000, I.C.J. Reports 2000*, p. 114, para. 10.

<sup>332</sup>*Ibid.*, p. 120, para. 24.

<sup>333</sup>*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, I.C.J. Reports 2005*, paras. 153 and 208.

<sup>334</sup>*Ibid.*, p. 280, para. 345.

110 the DRC<sup>335</sup>. On 2 August 1998, however, troops in the tenth brigade of the Congolese Armed Forces (FAC), stationed in Goma, mutinied against President Kabila's régime<sup>336</sup> and announced their intention to overthrow him<sup>337</sup>. In their bid to do so, they benefited from "the support of Rwanda [and] Uganda"<sup>338</sup>.

4.07. On 12 August 1998, in conjunction with the rebels, a structure for political and military action was set up in Goma, and named the Congolese Rally for Democracy (RCD). On 17 August, the press announced the creation of the movement, chaired by Professor Wamba dia Wamba<sup>339</sup>. While the latter initially had the support of both the Rwandan Armed Forces (FAR) and the Ugandan armed forces<sup>340</sup>, he seems to have been a favourite of President Yoweri Museveni from the outset, as recounted in an in-depth study on the rebel movements published by Human Rights Watch:

"With a mind to preserving their stakes in the future of the DRC, the two allies initially battled over the political control of the RCD. While Rwanda appeared more focused on pursuing an outright military victory, the Ugandan government of President Yoweri Museveni initially sought to foster the emergence of political and military organizations modeled on its own 'movement system' and 'people's army'. It offered top RCD leaders, including Wamba, and carefully selected young Congolese intellectuals combined military and ideological training aimed at attaining that objective."<sup>341</sup>

111 4.08. When the Lusaka agreements were being negotiated, in February 1999, two factions claimed to represent the RCD: one led by Wamba dia Wamba, the other by Emile Ilunga<sup>342</sup>. In March 1999, Mr. Wamba dia Wamba, then still the chairman of a unified RCD, decided to move away from Goma and set up his headquarters in Kisangani. The break-up of the various RCD factions was sealed on 16 May in Goma, at the General Assembly of the RCD's members, when the founder members removed Ernest Wamba dia Wamba from the office of chairman of the movement. On 21 May, Wamba returned to Kisangani on board a Ugandan army plane to set up the so-called "progressive" wing of the rebellion there<sup>343</sup>. It was known as RCD-Kisangani to

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<sup>335</sup>United Nations Office of the High Commissioner for Human Rights, *Report of the Mapping Exercise*, *op. cit.*, para. 324; Ann. 1.4.

<sup>336</sup>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 Sep. 1998, in Jean-Pierre Badidike (ed.), *Guerre et droits de l'homme en République démocratique du Congo*, Paris/Kisangani, L'Harmattan, 2009; Ann. 4.10a; and United Nations Office of the High Commissioner for Human Rights, *Report of the Mapping Exercise*, *op. cit.*, para. 319; Ann. 1.4.

<sup>337</sup>Communiqué of 2 August 1998 in Lotus Group, *Report of the Kisangani Lotus Group*, 15 Oct. 1998, Appendix 3, MDRC, Ann. 88; Ann. 4.11.

<sup>338</sup>United Nations General Assembly, Fifty-fourth Session, *Report of the Special Rapporteur on the situation of human rights in the DRC pursuant to General Assembly resolution 53/160 and Commission on Human Rights resolution 1999/56*, document A/54/361, 17 Sep. 1999, para. 13, MDRC, Ann. 41; Ann. 4.12.

<sup>339</sup>IRIN, *Chronology of current crisis as of 30 September 1998*, RDRC, Ann. 108; Ann. 4.14.

<sup>340</sup>Lotus Group, *Report of the Kisangani Lotus Group*, 15 Oct. 1998, para. I.2.1, MDRC, Ann. 88; Ann. 4.15.

<sup>341</sup>Human Rights Watch, *Uganda in Eastern DRC: Fueling Political and Ethnic Strife*, Vol. 13, No. 2 (A), Mar. 2001, p. 10, available at <https://www.hrw.org/report/2001/03/01/uganda-eastern-drc/fueling-political-and-ethnic-strife>; Ann. 4.13.

<sup>342</sup>Organization of African Unity, Council of Ministers, Seventieth Ordinary Session, *Report of the Secretary-General on the situation in the DRC*, 6-10 July 1999, para. 11, MDRC, Ann. 49; Ann. 4.16.

<sup>343</sup>Groupe Justice et Libération, "La guerre des alliés en R.D.C. et le droit à l'autodétermination du peuple congolais", 31 Aug. 1999, available at <http://www.congonline.com/Forum1/Forum04/RapJus01.htm> (in French only) and in Badidike (ed.), *op. cit.*; Ann. 4.10c.

differentiate it from RCD-Goma. This rivalry between the two proxies would precipitate the military confrontation between their sponsors for control of Kisangani<sup>344</sup>.

4.09. Following the victory of the Rwandan forces over the Ugandan forces in August 1999 in Kisangani, Wamba dia Wamba transferred his offices to a presidential guesthouse in Kampala. There, in September 1999, he established the Congolese Rally for Democracy-Liberation Movement (RCD-ML), the successor to RCD-Kisangani<sup>345</sup>. While he was in Kampala, his two deputies took effective control on the ground and engaged in a parallel recruitment process for the Armée Populaire Congolaise (APC), the military wing of the RCD-ML. The Ugandan army provided the instructors who trained and armed the recruits in camps at Beni and Bunia. The situation is summed up in a Human Rights Watch report:

“The Ugandan army’s sector commanders in fact exercised ultimate authority over all military and security matters in each district. Some RCD-ML units and cadres operated directly under their command.”<sup>346</sup>

4.10. The same report observes that, ultimately, the RCD-ML was torn apart by power struggles and internal squabbling:

“[I]n the year 2000 . . . [t]he three top officials of the RCD-ML, Wamba dia Wamba, on one side, and his two deputies Mbusa Nyamwisi and Tibasima Ateenyi developed parallel political and administrative structures in Bunia, the RCD-ML’s capital, and in the town of Beni.

.....

Wamba’s two deputies attempted at least three times to overthrow him in 2000, although he was nominally president of the movement. Uganda, which backs the rebel faction, ultimately intervened. At each upheaval, the three contenders and their top aides were summoned to Kampala for ‘consultations’.”<sup>347</sup>

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4.11. All of the aforementioned events confirm that RCD-Kisangani, like the Congo Liberation Movement (MLC)<sup>348</sup>, was under Ugandan control and benefited from Ugandan support. Moreover, as the Court has recalled, Uganda has acknowledged the existence of those links:

“As for the support for irregular forces operating in the DRC, Uganda states that it has never denied providing political and military assistance to the MLC and the RCD. However, Uganda asserts that it did not participate in the formation of the MLC and the RCD.”<sup>349</sup>

4.12. It follows that point (1) of the operative part of the Judgment of 19 December 2005, in which the Court finds “that the Republic of Uganda, . . . by actively extending military, logistic,

<sup>344</sup>See Section 2 of this chapter, below.

<sup>345</sup>Human Rights Watch, *Uganda in Eastern DRC: Fueling Political and Ethnic Strife*, *op. cit.*, p. 11; Ann. 4.13.

<sup>346</sup>*Ibid.*, p. 12.

<sup>347</sup>*Ibid.*, p. 10.

<sup>348</sup>On this subject, see Chap. 2 above.

<sup>349</sup>*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, *I.C.J. Reports 2005*, para. 41.

economic and financial support to irregular forces having operated on the territory of the DRC, violated the principle of non-use of force in international relations and the principle of non-intervention<sup>350</sup>, applies to the support which that State provided to the RCD in all its various guises.

4.13. Consequently, in line with the DRC's general statement regarding the damage caused by the irregular forces supported by Uganda, in breach of international law<sup>351</sup>, full reparation will be sought for the damage inflicted on the DRC by the RCD, since that damage is the logical consequence of Uganda's unlawful support: the damage could not have been caused without it.

4.14. A further consequence of applying the rules on causality to reparation for the events which took place in Kisangani concerns the damage caused *both by Uganda's wrongful conduct and by that of other States or groups not supported by Uganda*. In principle, as indicated above<sup>352</sup>, the reparation claim for that damage will be adjusted to take account of the different contributing factors in each circumstance. Nevertheless, since the hostilities in which Uganda was engaged in Kisangani, against the Rwandan army and movements supported by Rwanda, would not by definition have taken place had Uganda not entered Congolese territory in breach of international law, Uganda must make reparation for all the damage caused by those confrontations. Full compensation will therefore be claimed for them.

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4.15. In the present chapter, the DRC will set out in chronological order the various categories of damage caused in Kisangani as a consequence of Uganda's failure to comply with its international obligations between 1998 and 2000. First, the damage ensuing from incidents which took place between August 1998 and the end of May 1999 will be considered (Section 1). Next, the DRC will establish the extent of the damage that resulted from the clashes of August 1999 (Section 2), May 2000 (Section 3) and June of that same year (Section 4). A specific section (Section 5) will be devoted to the damage which occurred after those events. Finally, a summary of the damage suffered will be presented (Section 6).

4.16. In keeping with its approach in the other chapters of this Memorial, the DRC relies on various different sources in order to present its claim. First, the damage — be it loss of human life, bodily harm, damage to private property, or damage caused to public administrations or religious organizations<sup>353</sup> — is identified as precisely as possible on the basis of documents produced, mainly during or in the immediate aftermath of the fighting, by international or local observers. Second, and by way of illustration rather than to present a comprehensive picture, the DRC draws on the results of the work of the expert commissions set up for the purposes of the present proceedings<sup>354</sup>.

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<sup>350</sup>*Ibid.*, para. 345.

<sup>351</sup>See Chap. 1, para. 1.24, above.

<sup>352</sup>*Ibid.*

<sup>353</sup>Loss of human life in Kisangani, Ann. 4.1; Persons injured in Kisangani, Ann. 4.2; Damage to property in Kisangani, Ann. 4.3; Public administrations and religious organizations in Kisangani, Ann. 4.4.

<sup>354</sup>Work of the DRC's Expert Commission set up to identify the victims and assess the damage they suffered as a result of Uganda's unlawful armed activities, Ann. 4.5; List of the victims of the various Kisangani wars (14-17 August 1999, 5 May 2000 and 5-10 June 2000), Ann. 4.6; Digitized lists for Kisangani, Ann. 4.7; Individual records from the six-day war, Ann. 4.8; Individual records of victims established by the Fonds de solidarité des victimes de guerre de la Province orientale à Kisangani (a non-profit-making association), Ann. 4.9.

4.17. In Chapter 7 of this Memorial, details will be provided of the amount of compensation corresponding to the total damage suffered, together with the practical arrangements for making the reparation required by the DRC<sup>355</sup>.

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### Section 1. The damage resulting from incidents which took place between August 1998 and the end of May 1999

4.18. Trouble broke out in Kisangani at the very beginning of August 1998. According to the *Mapping Report*, “[f]ollowing intense fighting, the FAC were forced to leave Kisangani and on 23 August, the town passed into the hands of the ANC/APR/UPDF troops”<sup>356</sup>. On 29 August, the RCD’s political delegation arrived in Kisangani<sup>357</sup>. Although the city of Kisangani was only “taken” by the Ugandan army on 1 September<sup>358</sup>, that act was the culmination of fighting triggered several days earlier by elements of the UPDF and RCD<sup>359</sup>.

4.19. Following the clashes which marked the taking of the city by rebel forces, for which “Rwanda and Uganda have openly acknowledged their support”<sup>360</sup>, insecurity reigned in Kisangani until the end of May 1999. The city was in utter chaos as a result of the unspoken rivalry between Rwanda and Uganda for its control, and crawling with both the soldiers of those foreign forces and the militiamen of the RCD<sup>361</sup>. This led to acts of violence and looting, punctuated by frequent military skirmishes. Various types of damage resulted from those events.

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#### A. Loss of human life

4.20. The number of lives claimed by the clashes can be ascertained from lists compiled at the time by independent observers. For example, in a report of 15 October 1998, the Kisangani Lotus Group, a local NGO, noted ten fatalities<sup>362</sup>, to which must be added those who lost their lives on 10 January 1999 in a raid by government air forces on military targets in Kisangani. During that raid, stray shots from the RCD’s anti-aircraft defences killed ten people, according to the Groupe Justice et Libération report of 23 May 1999<sup>363</sup>, and 12 according to a similar list in a report by

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<sup>355</sup>See Chap. 7 below.

<sup>356</sup>United Nations Office of the High Commissioner for Human Rights, *Report of the Mapping Exercise, op. cit.*, para. 324; Ann. 1.4; IRIN, *Chronology of current crisis as of 30 September 1998*, RDRC, Ann. 108; Ann. 4.14; Lotus Group, *Report of the Kisangani Lotus Group*, 15 Oct. 1998, Appendix 2, MDRC, Ann. 88; Ann. 4.15.

<sup>357</sup>Lotus Group, *Report of the Kisangani Lotus Group*, 15 Oct. 1998, Appendix 2, MDRC, Ann. 88; Ann. 4.15.

<sup>358</sup>*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, I.C.J. Reports 2005, p. 207, para. 81.

<sup>359</sup>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 Sep. 1998, in Badidike (ed.), *op. cit.*; Ann. 4.10a. Groupe Justice et Libération reports that, “[t]his armed movement seems to have three components: *Ugandan, Rwandan and Congolese*” [Translation by the Registry].

<sup>360</sup>United Nations General Assembly, Fifty-fourth Session, *Report of the Special Rapporteur on the situation of human rights in the DRC op. cit.*, para. 13, MDRC, Ann. 41; Ann. 4.12.

<sup>361</sup>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*, Oct. 1999, pp. 52-56, MDRC, Ann. 91; Ann. 4.17.

<sup>362</sup>Lotus Group, *Report of the Kisangani Lotus Group*, 15 Oct. 1998, MDRC, Ann. 88; Ann. 4.15.

<sup>363</sup>Groupe Justice et Libération, “La guerre des alliés à Kisangani et le droit international humanitaire”, 12 May 1999, in Badidike (ed.), *op. cit.*; Ann. 4.10b.



the NGO COJESKI dated October 1999<sup>364</sup>. That gives a total of 32 names, minus six which are on both lists, meaning that 26 people were killed during this period; their names are listed in the relevant annex<sup>365</sup>.

## **B. Persons injured**

4.21. Only one person is recorded to have been injured in the events of the night of 26 to 27 August 1998. In contrast, shells from the RCD's anti-aircraft defences landed in the commune of Tshopo in January 1999, injuring 26 people, according to the Groupe Justice et Libération report, and 14 according to the COJESKI report. A careful reading of those lists reveals that four names appear on both and must be deducted, giving a figure of 36 (40-4)<sup>366</sup>. In total, then, 37 people were injured during this period.

## **116 C. Damage to property**

4.22. As far as damage to private property is concerned, the report of the Kisangani Lotus Group<sup>367</sup> and COJESKI's six-monthly report<sup>368</sup> record around ten cases of theft, usually accompanied by assault. In addition, during the air raid of 10 January 1999, a dozen houses were destroyed by shells, along with their furnishings<sup>369</sup>. That therefore gives a total of 22 cases of damage to private property during this period.

4.23. In addition, thanks to independent sources it is possible to establish that a dozen public companies were either looted or bombed during these events<sup>370</sup>.

4.24. In total therefore, as a consequence of these initial clashes alone, 26 people were killed, 36 were injured, and there were 22 cases of damage to private property and 12 to public property. Further damage was subsequently caused during the fighting in Kisangani of August 1999.

### **Section 2. The damage resulting from the clashes of August 1999**

4.25. A lull in the fighting seemed to prevail during the negotiation, and then the signature, of the Lusaka Ceasefire Agreement of 10 July 1999. Nevertheless, hopes that it would prove successful were short-lived. According to information supplied by the Lotus Group<sup>371</sup>, open

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<sup>364</sup>COJESKI, *Events in the occupied provinces of the DRC, op. cit.*, p. 58, MDRC, Ann. 91; Ann. 4.17.

<sup>365</sup>Loss of human life in Kisangani; Ann. 4.1.

<sup>366</sup>Persons injured in Kisangani; Ann. 4.2.

<sup>367</sup>Lotus Group, *Report of the Kisangani Lotus Group*, 15 Oct. 1998, MDRC, Ann. 88; Ann. 4.15.

<sup>368</sup>COJESKI, *Events in the occupied provinces of the DRC, op. cit.*, p. 59, MDRC, Ann. 91; Ann. 4.17.

<sup>369</sup>Damage to property in Kisangani; Ann. 4.3.

<sup>370</sup>Lotus Group, *Report of the Kisangani Lotus Group*, 15 Oct. 1998, MDRC, Ann. 88; Ann. 4.15. See also Ann. 4.4 for details of public property and companies which suffered damage in Kisangani.

<sup>371</sup>Lotus Group, *The Consequences of Rivalries within the Rebel Alliances and Factions in North-Eastern Congo. The Kisangani War*, Sep. 1999; Ann. 4.18.

clashes between the Rwandan and Ugandan armed forces occurred for the first time in Kisangani in mid-August<sup>372</sup>.

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4.26. As several reports from local and international NGOs recount<sup>373</sup>, the fighting of August 1999 in Kisangani was particularly destructive, with both sides using artillery, mortars and automatic weapons. In addition to civilian deaths and injuries, and the death of many soldiers in combat, the fighting resulted in serious damage to the power station, the hydroelectric dam, the cathedral, and at least one of the city's hospitals. Many dwellings, including those occupied by MONUC military observers, were destroyed or seriously damaged. Electricity and water supplies were cut off. Here too, therefore, several types of damage can be identified for which reparation is owed.

#### A. Loss of human life

4.27. The reported numbers of victims of the fighting vary. Some local NGOs report that 31 people were killed and four went missing on the battlefield. Their names are listed in the annex<sup>374</sup>. However, it is important to bear in mind that these records are far from exhaustive. For example, the Lotus Group notes that 650 soldiers and around 100 civilians were killed. Its report of September 1999 points out that,

“[u]nder such circumstances, determining the precise death toll is fraught with practical difficulties. Humanitarian sources tell us that 63 civilians died. However, that figure is disputable, since the bodies of some of the ‘civilian’ casualties were in military uniform. Moreover, other bodies had been removed before the specialized agencies were able to complete their work. In contrast, other sources put forward a provisional civilian death toll of at least 100.”<sup>375</sup>

Moreover, the NGO COJESKI estimates that this confrontation claimed the lives of 175 people; it does not distinguish between soldiers and civilians<sup>376</sup>. Only the *Mapping Report* puts forward a lower figure, suggesting that just 30 people were killed.

4.28. In the light of these accounts, the DRC considers it reasonable to assume that 100 civilians were killed during these violent clashes.

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#### B. Persons injured

4.29. Similarly, although some NGOs report that 11 soldiers and 22 civilians were injured on the battlefield (and that there were five cases of rape)<sup>377</sup>, it seems reasonable to assume that a total

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<sup>372</sup>Groupe Justice et Libération, “La guerre des alliés en R.D.C. et le droit à l’autodétermination du peuple congolais”, 31 Aug. 1999, in Badidike (ed.), *op. cit.*; Ann. 4.10c.

<sup>373</sup>Lotus Group, *The Consequences of Rivalries within the Rebel Alliances and Factions in North-Eastern Congo*, *op. cit.*; Ann. 4.18; Groupe Justice et Libération, “La guerre des alliés en R.D.C. et le droit à l’autodétermination du peuple congolais”, 31 Aug. 1999, in Badidike (ed.), *op. cit.*; Ann. 4.10c; Human Rights Watch, *Uganda in Eastern DRC: Fueling Political and Ethnic Strife*, *op. cit.*; Ann. 4.13; United Nations Office of the High Commissioner for Human Rights, *Report of the Mapping Exercise*, *op. cit.*; Ann. 1.4.

<sup>374</sup>Loss of human life in Kisangani; Ann. 4.1.

<sup>375</sup>Lotus Group, *The Consequences of Rivalries within the Rebel Alliances and Factions in North-Eastern Congo*, *op. cit.*; Ann. 4.18. [Translation by the Registry.]

<sup>376</sup>COJESKI, *Events in the occupied provinces of the DRC*, *op. cit.*, p. 60, MDRC, Ann. 91; Ann. 4.17.

<sup>377</sup>Additional information can be found in Ann. 4.2, Persons injured in Kisangani.

of 100 civilians were injured as a result of these events. That, after all, is the figure put forward in the Lotus Group and Groupe Justice et Libération reports, as well as in the *Mapping Report*<sup>378</sup>.

### C. Damage to property

4.30. Many examples of damage to private property can be found in the relevant annex<sup>379</sup>. That damage falls into two categories. The first, and by far the most significant, comprises buildings which were totally or partially destroyed by acts of war. The second covers looting of movable property. There are at least 100 cases in the first category, and at least 25 in the second. In addition, 23 companies suffered damage of various kinds during the clashes of August 1999.

4.31. Public establishments and religious buildings were also damaged, and details of the following examples are provided in the relevant annex<sup>380</sup>:

- public establishments: the Central Bank of Congo, the offices of the Société des Chemins de Fer des Uélé, the offices of the Caisse d'Épargne du Congo, the large post office, the Société nationale d'électricité (SNEL) building, the SNEL power station (next to the dam on the River Tshopo), the general hospital and the faculty of medicine, university clinics, etc.
- religious establishments: the dome of the central mosque, the archbishop's palace, the provincial house of the Priests of the Sacred Heart, Kisangani church, the office of the superintendent of religious missions, the parish of St Martha, etc.

4.32. Overall, still on the basis of the above-mentioned annexes and solely in the period under consideration, 100 civilians were killed and 100 injured, 100 houses were destroyed, 1,000 homes were made uninhabitable, and there were 25 cases of looting of private property, and 24 cases of damage to public property or religious buildings. Nevertheless these figures only represent a fraction of the damage to Kisangani, since further clashes took place in May 2000.

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### Section 3. The damage resulting from the clashes of May 2000

4.33. Widespread fighting broke out again in Kisangani on 5 May 2000, claiming the lives of many Congolese civilians<sup>381</sup>. The Ugandan and Rwandan troops were each occupying part of the city and confronted each other. The hostilities began on 5 May at around 4 a.m. and concluded late that evening, when a ceasefire was negotiated between the warring factions, with both sides maintaining their positions. Though brief, the fighting was nonetheless fierce. This time, 60 and 80 mm mortars and rockets — particularly destructive weapons — were fired right in the city centre. The number of casualties, and the extent of the material damage recorded during that day of fighting, attest to the intensity of the clashes between the two armies.

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<sup>378</sup>Groupe Justice et Libération, "La guerre des alliés en R.D.C. et le droit à l'autodétermination du peuple congolais", 31 Aug. 1999, in Badidike (ed.), *op. cit.*; Ann. 4.10c; Lotus Group, *The Consequences of Rivalries within the Rebel Alliances and Factions in North-Eastern Congo*, *op. cit.*; Ann. 4.18; United Nations Office of the High Commissioner for Human Rights, *Report of the Mapping Exercise*, *op. cit.*, para. 361; Ann. 1.4.

<sup>379</sup>Damage to property in Kisangani; Ann. 4.3.

<sup>380</sup>Public administrations and religious organizations in Kisangani; Ann. 4.4.

<sup>381</sup>Lotus Group, *Conflict between Uganda and Rwanda in Kisangani*, Kisangani, May 2000, MDRC, Ann. 93; Ann. 4.19.

### A. Loss of human life

4.34. According to the Lotus Group report, 22 civilians were killed, whereas the Groupe Justice et Libération puts the figure at 28<sup>382</sup>. The two lists are not fully congruent, since eight names appear only in the second list. Thus a total of 30 people were killed; their names are listed in the annex<sup>383</sup>.

## 120 B. Persons injured

4.35. The Lotus Group report identifies 80 people who were wounded, while the report of the Groupe Justice et Libération counts 32<sup>384</sup>. Given that some duplication is likely, the number of victims can be assumed to be 100.

### C. Damage to property

4.36. According to the information annexed hereto<sup>385</sup>, 33 houses and other buildings were damaged or looted, and 13 businesses suffered damage of various kinds as a consequence of the clashes. These figures are only the tip of the iceberg, given that hundreds of houses were destroyed, and homes were found to have been completely stripped of their furnishings when their occupants returned to them after fleeing the city during the fighting<sup>386</sup>.

4.37. Based on all of the foregoing, the DRC assesses the consequences of the fighting in Kisangani on 5 May 2000 as follows: 30 killed, 100 injured, 100 houses destroyed or damaged, 1,000 homes made uninhabitable, and 13 businesses affected.

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### Section 4. The damage resulting from the “six-day war” from 5 to 11 June 2000

4.38. Several sources attest to the intensity of the fighting between the Ugandan and Rwandan armies in Kisangani between 5 and 11 June 2000<sup>387</sup>. In its *Rapport sur la guerre de six jours à Kisangani*, the Lotus Group describes the beginning of the operations as follows, very clearly attributing responsibility to Uganda:

“It was around 9.45 a.m. when the Ugandans stationed on the right bank of the River Tshopo began pounding the city with heavy weapons. At the same time, their troops crossed the Tshopo bridge to take up positions right in the centre of Tshopo

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<sup>382</sup>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, in Badidike (ed.), *op. cit.*; Ann. 4.10d.

<sup>383</sup>Loss of human life in Kisangani; Ann. 4.1.

<sup>384</sup>Persons injured in Kisangani; Ann. 4.2.

<sup>385</sup>Damage to property in Kisangani; Ann. 4.3.

<sup>386</sup>*Ibid.*

<sup>387</sup>Lotus Group, *Rapport sur la guerre de six jours à Kisangani*, July 2000, available at [http://blog.lotusrdc.org/public/Rapport\\_Guerre\\_6\\_jours\\_2000.pdf](http://blog.lotusrdc.org/public/Rapport_Guerre_6_jours_2000.pdf) (in French only); Ann. 4.20; MONUC, *Historic record of Kisangani cease-fire operation*, 19 June 2000, RDRC, Ann. 84; Ann. 4.21.

commune and in Immotshopo, one of the residential districts in Makiso commune, where a strong Rwandan military presence was in evidence.”<sup>388</sup>

The fighting between the two States on Congolese territory was to last six days and, as the Secretary-General would observe in one of his reports, to prove “particularly destructive”<sup>389</sup>. As might have been expected, almost a week of intensive and uninterrupted use of heavy weapons in the heart of a city of 700,000 inhabitants caused enormous damage.

4.39. These dreadful events did not fail to arouse unanimous international condemnation. As the DRC has already noted, on 16 June the Security Council adopted a resolution in which,

“*Expressing* in particular its outrage at renewed fighting between Ugandan and Rwandan forces in Kisangani, Democratic Republic of the Congo, which began on 5 June 2000, and at the failure of Uganda and Rwanda to comply with their commitment to cease hostilities and withdraw from Kisangani made in their joint statements of 8 May 2000 and of 15 May 2000 (S/2000/445), and *deploring* the loss of civilian lives, the threat to the civilian population and the damage to property inflicted by the forces of Uganda and Rwanda on the Congolese population,

.....

[it] Reiterates its unreserved condemnation of the fighting between Ugandan and Rwandan forces in Kisangani in violation of the sovereignty and territorial integrity of the Democratic Republic of the Congo, and *demand*s that these forces and those allied to them desist from further fighting”<sup>390</sup>.

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Seised of the DRC’s request for the indication of provisional measures as a result of this resumption of fighting, the Court allowed the request and issued an Order on 1 July 2000, indicating that

“[b]oth Parties must, forthwith, take all measures necessary to comply with all of their obligations under international law, in particular . . . with United Nations Security Council resolution 1304 (2000) of 16 June 2000”<sup>391</sup>.

Fortunately, and following these condemnations and injunctions, this disastrous episode in the Congo war came to an end. The Ugandan forces finally withdrew from the city, albeit leaving a scene of devastation in their wake.

4.40. Indeed, the scale of the damage caused during that episode captured the attention of the Security Council itself, which in its above-mentioned resolution 1304 (2000) expressed

“the view that the Governments of Uganda and Rwanda should make reparations for the loss of life and the property damage they have inflicted on the civilian population

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<sup>388</sup>Lotus Group, *Rapport sur la guerre de six jours à Kisangani, op. cit.*; Ann. 4.20. [Translation by the Registry.]

<sup>389</sup>United Nations Security Council, *Third report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo*, document S/2000/566, 12 June 2000, para. 15, MDRC, Ann. 26; Ann. 4.22.

<sup>390</sup>United Nations, Security Council resolution 1304 (2000), document S/RES/1304, 16 June 2000, preamble and para. 2.

<sup>391</sup>*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, *Provisional Measures, Order of 1 July 2000, I.C.J. Reports 2000*, para. 47, point (2).

in Kisangani, and [requested] the Secretary-General to submit an assessment of the damage as a basis for such reparations”<sup>392</sup>.

An “inter-agency mission” was therefore formed and despatched to the city to assess the damage caused as precisely as possible. It is that work in particular which will form the basis for the DRC’s own assessment of the injuries suffered as a consequence of the fighting.

#### A. Loss of human life

4.41. Thanks to various international reports, it is possible to ascertain the scale of the loss of human life caused by the violent clashes in Kisangani in June 2000. For example,

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- the *Third report of the Secretary-General on MONUC*, dated 12 June 2000, puts the number of civilians killed during the fighting at 150: “[p]ersistent outbreaks of heavy fighting in the city of Kisangani, Orientale Province, have caused an estimated 150 civilian deaths”<sup>393</sup>;
  - the Special Rapporteur on the situation of human rights in the DRC, Roberto Garretón, considers for his part that, “[i]n addition to casualties among the soldiers, about 1,000 Congolese civilians died” in the renewed outbreak of violence<sup>394</sup>;
  - the inter-agency assessment mission formed at the request of the United Nations Security Council to assess the damage caused by this war states that “[l]osses among the civilian population were high . . . Over 760 civilians were killed”<sup>395</sup>.

4.42. Other figures can be gleaned from non-exhaustive estimates made by local NGOs. After carrying out an on-the-spot assessment, the Lotus Group suggested that the death toll could be 279<sup>396</sup>, but was only able to record 67 names given the circumstances at the time. The Groupe Justice et Libération<sup>397</sup> counted 86 deaths in Tshopo and 78 in Mangobo<sup>398</sup>. However, those numbers only represent a fraction of the actual totals, given the conditions under which the initial damage resulting from the fighting of June 2000 was recorded.

4.43. In the light of this information, the DRC considers it reasonable to use the data from the investigations of the United Nations inter-agency mission, which travelled to Kisangani shortly after the fighting. It will therefore be assumed that 760 civilians were killed during the period in question.

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<sup>392</sup>United Nations, Security Council resolution 1304 (2000), document S/RES/1304, 16 June 2000, para. 14.

<sup>393</sup>United Nations Security Council, *Third report of the Secretary-General on MONUC*, *op. cit.*, para. 13, MDRC, Ann. 26; Ann. 4.22.

<sup>394</sup>United Nations Commission on Human Rights, Fifty-seventh 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 2000/15*, document E/CN.4/2001/40, 1 Feb. 2001, p. 15; Ann. 4.23.

<sup>395</sup>United Nations Security Council, *Report of the inter-agency assessment mission to Kisangani (pursuant to Security Council resolution 1304 (2000), paragraph 14)*, document S/2000/1153, 4 Dec. 2000; Ann. 4.24.

<sup>396</sup>Lotus Group, *Rapport sur la guerre de six jours à Kisangani*, *op. cit.*; Ann. 4.20.

<sup>397</sup>Groupe Justice et Libération, “La guerre des Alliés à Kisangani (du 5 mai au 10 juin 2000) et le droit à la paix”, Appendix 1B, “Deaths in the battle from 5 to 10 June 2000, provisional list”, in Badidike (ed.), *op. cit.*; Ann. 4.10d.

<sup>398</sup>See Ann. 4.1, Loss of human life in Kisangani.

## B. Persons injured

4.44. Here too, it is possible to rely on various reliable international sources, which mention:

- in the case of the *Third report of the Secretary-General on MONUC*, “more than 1,000 casualties”<sup>399</sup>;
- in the case of the Special Rapporteur, Roberto Garretón, “thousands [of] wounded”<sup>400</sup>;
- 124 — in the case of the United Nations inter-agency mission, “an estimated 1,700 wounded”<sup>401</sup>.

4.45. These data seem to be corroborated by the local sources: for example, the Lotus Group reported 1,065 wounded<sup>402</sup>, and the Groupe Justice et Libération more than 3,000<sup>403</sup>.

4.46. For the same reasons as those put forward in relation to the number of people killed, the DRC will use the figure of 1,700, which was established in the report of the United Nations inter-agency mission.

## C. Persons who sought refuge in the forest

4.47. Full light was shed on this phenomenon, which clearly affected the city during each confrontation, by the United Nations inter-agency mission. In relation to the events of June 2000, it reported that, “[t]he fighting forced some 65,000 residents to flee Kisangani and seek refuge in the nearby forests. Around 3,000 internally displaced people were housed in a camp at Katele.”<sup>404</sup> The DRC will therefore assume that the total number of people who sought refuge or were internally displaced was 68,000, and will take that figure as a basis for its reparation claim in this category of damage.

## D. Damage to property

4.48. As regards damage to property, the report of the inter-agency assessment mission contains the following table, which relates specifically to damage to housing<sup>405</sup>:

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<sup>399</sup>United Nations Security Council, *Third report of the Secretary-General on MONUC*, *op. cit.*, para. 13, MDRC, Ann. 26; Ann. 4.22.

<sup>400</sup>United Nations Commission on Human Rights, Fifty-seventh Session, *Report on the situation of human rights in the Democratic Republic of the Congo*, *op. cit.*, p. 15; Ann. 4.23.

<sup>401</sup>United Nations Security Council, *Report of the inter-agency assessment mission*, *op. cit.*; Ann. 4.24.

<sup>402</sup>Lotus Group, *Rapport sur la guerre de six jours à Kisangani*, *op. cit.*; Ann. 4.20.

<sup>403</sup>Groupe Justice et Libération, “La guerre des Alliés à Kisangani (du 5 mai au 10 juin 2000) et le droit à la paix”, Appendix 1D, in Badidike (ed.), *op. cit.*; Ann. 4.10d. See Ann. 4.2, Persons injured in Kisangani.

<sup>404</sup>United Nations Security Council, *Report of the inter-agency assessment mission*, *op. cit.* para. 57; Ann. 4.24.

<sup>405</sup>*Ibid.*

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**Table 1**  
**Damage to housing during the war of 5-11 June 2000**

<i>Commune</i>	<i>Scale of damage</i>			<i>Total</i>
	<i>Destroyed</i>	<i>Heavy damage</i>	<i>Light damage</i>	
Lubunga	34	11	24	69
Kisangani	2	0	0	2
Kabondo	1	0	16	17
Mangobo	30	100	195	325
Makiso	59	642	370	1,071
Tshopo	292	618	1,689	2,599
<i>Total</i>	<i>418</i>	<i>1,371</i>	<i>2,294</i>	<i>4,083</i>

These figures will form the basis of the DRC's claim for this category of damage.

4.49. As well as housing being destroyed, this phase of the war, like the previous ones, saw numerous acts of looting and destruction of movable property. This aspect of the war damage could only be assessed once the commissions created in the aftermath of the conflict had identified the damage suffered by private individuals. The DRC will therefore base its reparation claim for this category of damage on the data collected by the Congolese investigators<sup>406</sup>.

4.50. In addition, like previous wars, this third war caused significant damage to businesses in Kisangani. As the inter-agency assessment mission writes,

“[t]rading, the city's main economic activity, was paralysed; furthermore the increase in imported goods and difficulties in obtaining raw materials and equipment have meant that many of the city's industries have either shut down or greatly reduced their workforce. Sotexki, a textile factory whose staff has fallen from 2,500 to just 130, is a typical example of this.”<sup>407</sup>

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Annex 4.3, “Damage to property in Kisangani”, contains a list of the compensation claims submitted by around ten businesses for the damage they suffered as a result of the fighting of June 2000 in Kisangani. That information will form the basis for the DRC's claim for this category of damage.

4.51. As far as damage to public property is concerned, the report of the United Nations inter-agency mission also makes it possible to assess the damage inflicted on the city's schools during the war of June 2000, which particularly captured the attention of the mission's members<sup>408</sup>.

<sup>406</sup>See Chap. 7 below.

<sup>407</sup>United Nations Security Council, *Report of the inter-agency assessment mission, op. cit.*, para. 48; Ann. 4.24.

<sup>408</sup>*Ibid.*, para. 57.



**Table 2**  
**Damage to schools during the war of 5-11 June 2000**

Commune	No. of students	Scale of damage			Total
		Destroyed	Heavy damage	Light damage	
Lubunga	3,829	0	0	7	7
Kisangani	758	1	1	1	3
Kabondo	4,387	0	3	7	10
Mangobo	5,103	5	4	3	12
Makiso	16,518	2	24	2	28
Tshopo	10,052	1	8	0	9
<i>Total</i>	<i>40,647</i>	<i>9</i>	<i>40</i>	<i>20</i>	<i>69</i>

Tables prepared from information supplied by United Nations country team and non-governmental organizations.

These figures will form the basis for the DRC's claim for this category of damage [a section of the French text has been omitted here, since it explains an error in Table 2 that does not exist in the English version of the table]. However, schools were not the only public establishments to have suffered significant damage during these events.

4.52. As regards hospitals and health centres, the Lotus Group reports that the following buildings were damaged:

- Kisangani general hospital;
- Simama centre;
- 127 — Boyoma medical home;
- Kumbakisaka health centre;
- Alabul health centre<sup>409</sup>.

4.53. As for places of worship, the Lotus Group's report mentions that damage was caused to:

- the Cathedral of Our Lady of the Most Holy Rosary, on the avenue de l'Église;
- the Catholic parish of Christ the King in Mangobo;
- the Community of Free Pentecostal Churches in Africa (CELPA), Mangobo parish;
- the Assembly of Christians "Pepele" church, in Tshopo commune;
- the Catholic parish of St Joseph the Carpenter, in Tshopo commune;
- the Kimbanguist church in Saïo quarter, Makiso commune;
- the church of the Baptist Community of the River Congo, in Wagenya quarter, Mangobo commune;

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<sup>409</sup>See Ann. 4.4.

— the church of the Baptist Community of the River Congo, in Bombula quarter, Mangobo commune.

Details of the public property affected can be found in Annex 4.4, “Public administrations and religious organizations in Kisangani”. The DRC will take the data therein as a basis for its claim for this category of damage.

4.54. In total, across the various categories of damage, this particularly deadly episode left 760 civilians dead and 1,700 injured, while 68,000 people were forced to flee their homes. In addition, 4,083 dwellings, around ten businesses, 69 schools, five hospitals or health centres, and eight places of worship were damaged. However, the assessment of the damage caused by this fighting does not stop there. First, the extent of the damage often only became apparent once the victims or their beneficiaries had lodged their complaints with the commissions of inquiry set up by the DRC. Second, reference must be made to certain injuries which occurred once the hostilities had ceased, caused in particular by the mines used by the protagonists and the explosives which they left behind.

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### **Section 5. The damage caused by mines laid during the six-day war and explosives abandoned after the fighting**

4.55. Amongst the damage caused after the fighting itself, it is important to mention the destruction inflicted by the laying of anti-tank and anti-personnel mines, to which reference is made by the Special Rapporteur on the situation of human rights in the DRC:

“Extremely serious incidents occurred during the Ugandan-Rwandan fighting in Kisangani; in addition, combatants from both sides have placed anti-tank and anti-personnel mines around that city and these will wreak enormous devastation among the civilian population in the future.”<sup>410</sup>

4.56. Abandoned military supplies such as boxes of cartridges and explosives did indeed cause civilian casualties after the end of the hostilities. For example, the Lotus Group reports that,

“[t]he day after the end of the hostilities (11 June 2000), three children, Paul Bobe (aged 7), Kolia Bobe (male, aged 9) and Dorcas Bobe (female, aged 2), who lived at 7, 18th avenue, Tshopo commune, died when a grenade they were playing with exploded.

Mr. Sylvain Ntewe, a farm labourer, who lived on the 3rd avenue transversale in Kabondo commune, was on his way to the fields when he fell on an anti-personnel mine near the Grand Séminaire. He was taken to Kabondo general hospital (“la Référence”), and died on Monday 12 June 2000 (one day after the incident) due to blood loss.”<sup>411</sup>

4.57. The DRC will therefore claim that four lives were lost as a result of mines being laid during the war in Kisangani and explosives being abandoned by the belligerents.

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<sup>410</sup>United Nations Commission on Human Rights, Fifty-seventh Session, *Report on the situation of human rights in the Democratic Republic of the Congo*, *op. cit.*, p. 36, para. 149; Ann. 4.23.

<sup>411</sup>Lotus Group, *Rapport sur la guerre de six jours à Kisangani*, *op. cit.* p. 34; Ann. 4.20. [Translation by the Registry.]

## Section 6. Summary of the damage suffered

129 4.58. The body of documentation recording the facts, produced by local NGOs and international organizations at the time of the events or in their immediate aftermath, has made it possible to identify several categories of damage: first, damage caused to persons (loss of human life, bodily harm and enforced flight into the forest); second, material damage caused to the property of private individuals, natural and legal persons; and finally, damage to public administrations and religious organizations.

4.59. Nevertheless, in order to produce a summary of the damage suffered, as mentioned above<sup>412</sup>, it is also necessary to take into account the results of the work of the expert commissions set up for the purposes of these proceedings. Extensive documentation has been compiled, based on the forms completed by the victims, which is presented in the form of lists or records. While it does not provide a comprehensive picture, it draws together information about the victims and examples of the various types of damage that they suffered.

4.60. The earliest of these lists is the result of the work of the DRC's Expert Commission set up to identify the victims and assess the damage they suffered as a result of Uganda's unlawful armed activities. The outcome of its work was published in November/December 2008 in the form of a set of booklets for each region. These are the booklets for Kisangani:

- (a) *Persons killed* — the list comprises a total of 922 names, predominantly from the year 2000<sup>413</sup>.
- (b) *Injuries, bodily harm, rape, etc.* — the list comprises 527 names and includes 13 cases of rape and five of torture<sup>414</sup>.
- (c) *Loss of property* — the list comprises 1,807 records<sup>415</sup>.
- (d) *Flight into the forest* — the list comprises 451 records<sup>416</sup>.
- (e) *Businesses and private establishments* — the list comprises nine records<sup>417</sup>.
- (f) *Non-profit-making associations and other entities* — the list comprises nine records<sup>418</sup>.
- (g) *the Congolese State* — the list comprises two records (it is incomplete)<sup>419</sup>.

130 4.61. The second list is entitled “List of the victims of the various Kisangani wars (14-17 August 1999, 5 May 2000 and 5-10 June 2000)”<sup>420</sup>. Despite its title, the list includes very few victims from 1999 and, of course, none from 1998. It contains 91 pages and is divided into three series:

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<sup>412</sup>See para. 4.16 above.

<sup>413</sup>See Ann. 4.5a.

<sup>414</sup>See Ann. 4.5b.

<sup>415</sup>See Ann. 4.5c.

<sup>416</sup>See Ann. 4.5d.

<sup>417</sup>See Ann. 4.5e.

<sup>418</sup>See Ann. 4.5f.

<sup>419</sup>See Ann. 4.5g (*sic*) [Annex not included].

<sup>420</sup>See Ann. 4.6.

- series A: injured (total: 493);
- series B: deceased (total: 701);
- series C: loss of property (total: 1,352).

4.62. A third file, comprising more than 10,000 handwritten records of victims from across the entire territory of the DRC, together with various files provided by the victims associations, has been digitized. A software application enables victims' individual records to be consulted. It is possible to extract the data for particular geographic areas and types of damage and, within each category of damage, victims' data can be displayed in alphabetical order<sup>421</sup>. These lists have the advantage of also including a financial assessment of the damage. The data relating to Kisangani have been extracted from this file and are reproduced in the following annexes:

- Annex 4.7a (those killed: 600 names);
- Annex 4.7b (those injured or wounded: 684 names);
- Annex 4.7c (flight into the forest: 550 names);
- Annex 4.7d (loss of property: 2,698 names).

4.63. Data have been manually extracted from the individual records of the victims of the "six-day war" of June 2000 in Kisangani, and summary tables produced, which are in turn broken down by type of damage. However, these tables only include the data from a selection of the completed forms. They can be found in the following annexes:

- Annex 4.8a (loss of human life: 89 examples);
- Annex 4.8b (bodily harm: 99 examples);
- Annex 4.8c (material damage: 419 examples);
- Annex 4.8d (flight into the forest: 203 examples).

On the basis of these two sources of information, it is possible to produce a summary of the damage suffered.

4.64. The following table provides an overview of the damage caused to persons. The data therein are taken from the various sections of this chapter, in which justification is provided for these figures.

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<sup>421</sup>See Ann. 1.3.

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<i>Phases of the conflict</i>	<i>Deaths</i>	<i>Injuries</i>
May 1999	26	37
August 1999	100	100
May 2000	30	100
June 2000	760	1,700
Post-conflict period	4	
<i>Total</i>	<i>920</i>	<i>1,937</i>

As far as the number of fatalities is concerned, the above-mentioned lists included the names of 922,701 and 600 people respectively, mainly from the year 2000. The names on the different lists do not fully coincide, which means that the total number of deaths is very likely to be in excess of 920. That figure would therefore appear to be fully justified, and will be used by the DRC as a basis for its reparation claim for this category of damage in the present proceedings.

4.65. As regards the number of people injured, the above-mentioned lists included the names of 527,493 and 684 people respectively, mainly from the year 2000. The names on the different lists do not fully coincide, and their authors most probably included only the most serious casualties, who were still suffering the after-effects of their injuries at the time when the lists were drawn up (2008 or 2013). Consequently, the total of 1,937 people injured, which is given in the summary table above, appears to be justified<sup>422</sup>. That figure will therefore be used by the DRC as a basis for its reparation claim for this category of damage in the present proceedings.

4.66. As for the people who sought refuge or were internally displaced as a result of the fighting, the figure of 68,000, established by the United Nations inter-agency mission, will be used by the DRC as a basis for its reparation claim for this category of damage in the present proceedings.

4.67. Where material damage is concerned, a distinction should be drawn between damage caused to the property of natural persons and damage which affected private legal entities. The damage incurred by public legal entities will be dealt with separately.

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4.68. The material damage caused to private individuals falls into several different categories. The first is housing which was either destroyed or damaged by the fighting. The following figures have been noted for each confrontation: 100 in August 1999, 100 in May 2000 and 4,083 in June 2000 which, rounded up, gives a total of 4,300 damaged dwellings. That is the figure which will be used by the DRC as a basis for its reparation claim for this category of damage in the present proceedings.

4.69. Next comes the property of private individuals which was either looted or destroyed along with their homes. The number of such incidents, which will be used by the DRC as a basis for its reparation claim for this category of damage, is equivalent to the number of dwellings destroyed or damaged during the different phases in the hostilities, i.e., a total of 4,300.

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<sup>422</sup>See para. 4.64 above.

4.70. Finally, there is the damage suffered by private companies. Twenty-three cases were recorded for the 1999 war, 13 for May 2000, and around ten for June 2000. A number of those companies subsequently reported the extent of the damage that they had suffered and the amount that they were claiming in compensation. The damage suffered by one of Kisangani's most important companies, SOTEXKI (Société textile de Kisangani) is the subject of a separate dossier<sup>423</sup>. Since the nature and scale of this damage varies, it is not possible to provide an overall figure here. The DRC will claim reparation based on the data for each of the companies concerned<sup>424</sup>.

4.71. In addition, many public administrations and places of worship were damaged. This category includes public administrations and state-owned companies, schools, medical facilities and places of worship.

4.72. During the period covered by this chapter, some 25 public administrations incurred damage in Kisangani. To date, three of them have submitted claims, which are the subject of specific dossiers:

- the Central Bank of Congo<sup>425</sup>;
- the Société nationale d'électricité (SNEL)<sup>426</sup>;
- the Régie des voies aériennes<sup>427</sup>.

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4.73. With regard to schools, it was noted above that according to the report of the inter-agency assessment mission, which was despatched to Kisangani pursuant to Security Council resolution 1304, paragraph 14, 69 schools suffered damage during the war of June 2000<sup>428</sup>. That figure will be used by the DRC as a basis for its reparation claim for this category of damage in the present proceedings. Annex 4.4 provides several examples from NGO reports and individual claim forms.

4.74. Medical facilities suffered damage throughout the war years as a result of the fighting, in which neither the city centre nor the city's hospitals were spared. A list of 13 hospitals can be found in Annex 4.4 (Public administrations and religious organizations in Kisangani). That figure will be used by the DRC as a basis for its reparation claim for this category of damage in the present proceedings.

4.75. Places of worship were not spared either. Individual and collective claims have been filed by the Archdiocese of Kisangani<sup>429</sup>, which manages various institutions that were damaged during the fighting that is the subject of the present chapter. The institutions concerned are listed in

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<sup>423</sup>See Ann. 4.25.

<sup>424</sup>See Chap. 7 below.

<sup>425</sup>See Ann. 4.7c (*sic*).

<sup>426</sup>See Ann. 4.26.

<sup>427</sup>See Ann. 4.27.

<sup>428</sup>United Nations Security Council, *Report of the inter-agency assessment mission, op. cit.*; Ann. 4.24.

<sup>429</sup>Dossier based on estimate of 26 July 2000, reproduced in Ann. 4.28.

Annex 4.28. Reparation claims were also submitted by other religious associations<sup>430</sup>. Annex 4.4 contains a further list of an additional 12 places of worship which were destroyed or damaged by acts of war in Kisangani.

4.76. There is wide variation in the cases of damage in the final categories which have just been examined, and it is impossible to amalgamate them into one overall category, as was done above for the damage caused to individuals and their homes. Each case will be the subject of a separate reparation claim, and the DRC therefore refers readers to the final chapter of this Memorial where, as far as possible, the compensation corresponding to each of these specific cases of damage will be quantified<sup>431</sup>.

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<sup>430</sup>Communauté des Nations du Christ en Afrique (Makiso), ECC/21st; Ann. 4.9 (*sic*).

<sup>431</sup>See Chap. 7 below.

CHAPTER 5. THE PREJUDICE CAUSED TO THE DRC'S  
NATURAL RESOURCES BY UGANDA

5.01. This chapter is devoted to the injuries that Uganda caused to the DRC's natural resources — namely, minerals (gold, diamonds and coltan) on the one hand, and national parks and Congolese fauna on the other. Before we set out, for each resource in turn, the damage that was suffered by the DRC, it is helpful to return briefly to the relevant passages of the Court's Judgment of 19 December 2005 and the main factual sources in this regard.

5.02. In point (4) of the operative part of its Judgment of 19 December 2005, the Court found that Uganda was responsible both for the acts of looting, plundering and exploitation of Congolese natural resources committed by the Ugandan army and for its failure to comply with its obligations, as an occupying Power in Ituri, to prevent acts of looting, plundering and exploitation:

“the Republic of Uganda, by acts of looting, plundering and exploitation of Congolese natural resources committed by members of the Ugandan armed forces in the territory of the Democratic Republic of the Congo and by its failure to comply with its obligations as an occupying Power in Ituri district to prevent acts of looting, plundering and exploitation of Congolese natural resources, violated obligations owed to the Democratic Republic of the Congo under international law”<sup>432</sup>.

5.03. As regards the first of those issues, the Court considered, in particular, in the relevant passages of its Judgment, that it was “not necessary for the Court to make findings of fact with regard to each individual incident alleged” in reaching its decision on that matter<sup>433</sup>. Relying in particular on the work of Uganda's Judicial Commission of Inquiry into Allegations into Illegal Exploitation of Natural Resources and Other Forms of Wealth in the Democratic Republic of Congo (hereinafter “the Porter Commission”), which was established by Uganda in order to investigate allegations of looting, plundering and illegal exploitation<sup>434</sup>, the Court considered that it had:

“ample credible and persuasive evidence to conclude that officers and soldiers of the UPDF, including the most high-ranking officers, were involved in the looting, plundering and exploitation of the DRC's natural resources and that the military authorities did not take any measures to put an end to these acts . . .”<sup>435</sup>.

5.04. The Court went on to analyse the international obligations in question, considering that the acts and omissions of members of the UPDF engaged Uganda's responsibility under *jus in bello* in particular, whether Uganda was an occupying Power in particular regions or not:

“the acts and omissions of members of Uganda's military forces in the DRC engage Uganda's international responsibility in all circumstances, whether it was an occupying Power in particular regions or not. Thus, whenever members of the UPDF were involved in the looting, plundering and exploitation of natural resources in the territory of the DRC, they acted in violation of the *jus in bello*, which prohibits the commission of such acts by a foreign army in the territory where it is present. The

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<sup>432</sup>*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, I.C.J. Reports 2005*, pp. 280-281, para. 345.

<sup>433</sup>*Ibid.*, p. 249, para. 237.

<sup>434</sup>See para. 5.05 below.

<sup>435</sup>*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, I.C.J. Reports 2005*, p. 251, para. 242.



Court notes in this regard that both Article 47 of the Hague Regulations of 1907 and Article 33 of the Fourth Geneva Convention of 1949 prohibit pillage.

The Court further observes that both the DRC and Uganda are parties to the African Charter on Human and Peoples' Rights of 27 June 1981, which in paragraph 2 of Article 21, states that '[i]n case of spoliation the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation' . . .

The Court finds that there is sufficient evidence to support the DRC's claim that Uganda violated its duty of vigilance by not taking adequate measures to ensure that its military forces did not engage in the looting, plundering and exploitation of the DRC's natural resources."<sup>436</sup>

5.05. As regards the second issue referred to by the Court — that of Uganda's specific responsibilities as an occupying Power in Ituri — it has been established that the Respondent violated its duty of vigilance in respect of the illegal activities carried out by both the UPDF and private persons:

“the fact that Uganda was the occupying Power in Ituri district (see paragraph 178 above) extends Uganda's obligation to take appropriate measures to prevent the looting, plundering and exploitation of natural resources in the occupied territory to cover private persons in this district and not only members of Ugandan military forces. It is apparent from various findings of the Porter Commission that rather than preventing the illegal traffic in natural resources, including diamonds, high-ranking members of the UPDF facilitated such activities by commercial entities . . .

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Thus the Court finds that it has been proven that Uganda has not complied with its obligations as an occupying Power in Ituri district. The Court would add that Uganda's argument that any exploitation of natural resources in the DRC was carried out for the benefit of the local population, as permitted under humanitarian law, is not supported by any reliable evidence."<sup>437</sup>

The DRC touched on this particular responsibility earlier in this Memorial in the chapter devoted specifically to the situation in Ituri<sup>438</sup>.

5.06. The DRC has also pointed out above that Uganda is under an obligation to make reparation for any injury caused by the violation of the principle of non-use of force and the principle of non-intervention that was established in point (1) of the operative part of the Judgment of 19 December 2005<sup>439</sup>. That obligation also applies in respect of the injury demonstrated in this chapter, including the damage caused to Congolese fauna and national parks. As we shall see, some of that damage was certainly caused by poaching — *inter alia*, for the purpose of acquiring ivory — which must constitute “looting and plundering” and “exploitation” within the meaning of point (4) of the operative part of the 2005 Judgment. However, it was also caused by other acts, such as the destruction of animals' natural habitats. Even if those acts are not considered to constitute “looting and plundering” or “exploitation”, the fact remains that they were caused by

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<sup>436</sup>*Ibid.*, paras. 245-246.

<sup>437</sup>*Ibid.*, paras. 248-249.

<sup>438</sup>See Chap. 3 above.

<sup>439</sup>*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, *I.C.J. Reports 2005*, p. 280, para. 345, point (1). See also Chaps. 3 and 1 above.

Uganda's invasion of Congolese territory, in violation of the principle of non-use of force and the principle of non-intervention.

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5.07. Factual information and assessments of damage will be based not only on expert reports and studies produced on the ground by the Congolese authorities and experts commissioned by those authorities, but also on various international sources providing particularly rigorous assessments. Most of those sources were identified at the start of this Memorial<sup>440</sup>. Particular attention will be paid to the work of the United Nations Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo (hereinafter "the United Nations Panel of Experts")<sup>441</sup>, and to the report of the aforementioned Porter Commission<sup>442</sup>.

5.08. It should be noted that the United Nations Panel of Experts was established by the Secretary-General of the United Nations following a request by the Security Council in the form of a statement by its President on 2 June 2000<sup>443</sup>. The Panel of Experts was tasked with: collecting information on all illegal exploitation of natural resources and other forms of wealth of the DRC; researching and analysing the links between such exploitation and the continuation of the conflict in the DRC; and reverting to the Council with recommendations. The Panel of Experts provided an initial report on 12 April 2001<sup>444</sup>. The Panel's mandate was then extended. The Panel was asked to submit an addendum to its report including, among other things: updates to relevant data; analysis of further information; information on the activities of countries and actors for which reliable information was not yet available; and a response to the comments and reactions of the States and actors cited in the first report<sup>445</sup>. The addendum to the first report was provided on 13 November 2001<sup>446</sup>. Then, following a further extension of its mandate, the Panel of Experts submitted an interim report to the Security Council on 22 May 2002<sup>447</sup>. The Secretary-General sent the final report to the President of the Security Council on 15 October 2002<sup>448</sup>.

5.09. It was in response to the work of the United Nations Panel of Experts that Uganda established the Porter Commission. The first report by the Panel of Experts concluded that the Ugandan Government had been involved in the illegal exploitation of Congolese natural resources and pointed out that the Security Council had called on the various governments cited in the report

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<sup>440</sup>See para. 1.36 above.

<sup>441</sup>United Nations Security Council, *Report of the Panel of Experts on the Illegal Exploitation of Natural Resources*, *op. cit.*; Ann. 1.7; United Nations Security Council, *Addendum to the report of the Panel of Experts on the Illegal Exploitation of Natural Resources*, *op. cit.*; Ann. 1.8; United Nations Security Council, *Interim report of the Panel of Experts on the Illegal Exploitation of Natural Resources*, *op. cit.*; Ann. 1.9; United Nations Security Council, *Final report of the Panel of Experts on the Illegal Exploitation of Natural Resources*; Ann. 1.10.

<sup>442</sup>Porter Commission, *Final Report*, *op. cit.*; Ann. 1.11.

<sup>443</sup>United Nations Security Council, *Statement by the President of the Security Council on "The situation concerning the Democratic Republic of the Congo"*, document S/PRST/2000/20, 2 June 2000; Ann. 5.1.

<sup>444</sup>United Nations Security Council, *Report of the Panel of Experts on the Illegal Exploitation of Natural Resources*, *op. cit.*; Ann. 1.7.

<sup>445</sup>United Nations Security Council, *Statement by the President of the Security Council on "The situation concerning the Democratic Republic of the Congo"*, document S/PRST/2001/13, 3 May 2001; Ann. 5.2.

<sup>446</sup>United Nations Security Council, *Addendum to the report of the Panel of Experts on the Illegal Exploitation of Natural Resources*, *op. cit.*, Ann. 1.8.

<sup>447</sup>United Nations Security Council, *Interim report of the Panel of Experts on the Illegal Exploitation of Natural Resources*, *op. cit.*; Ann. 1.9.

<sup>448</sup>United Nations Security Council, *Final report of the Panel of Experts on the Illegal Exploitation of Natural Resources*, *op. cit.*; Ann. 1.10.

**138** to carry out their own investigations into the allegations contained therein. Consequently, the President of Uganda set up a judicial commission of inquiry through his Minister for Foreign Affairs, which was chaired by David Porter, a British judge at the Ugandan High Court. The Commission was tasked mainly with investigating the allegations made by the United Nations Panel of Experts concerning (i) the illegal exploitation of natural resources and other forms of wealth of the DRC (minerals, coffee, timber, livestock, fauna, ivory, silver, etc.) and (ii) the involvement of the Ugandan Government, the President of the Republic of Uganda and his family, and high-ranking members of the UPDF in that illegal exploitation.

5.10. The Commission spent almost a year and a half analysing and responding to the Panel of Experts' report of 12 April 2001 and its addendum of 13 November 2001. It presented its final report in November 2002<sup>449</sup>.

5.11. The Court's Judgment of 19 December 2005 contained a number of references to the Porter Commission's report. The Court indicated at the outset that a high degree of credibility was to be attributed to the report, particularly as it was based on the examination of persons directly involved by judges skilled in the judicial establishment of facts. According to the Court:

“evidence obtained by examination of persons directly involved, and who were subsequently cross-examined by judges skilled in examination and experienced in assessing large amounts of factual information, some of it of a technical nature, merits special attention. The Court thus will give appropriate consideration to the Report of the Porter Commission, which gathered evidence in this manner. The Court further notes that, since its publication, there has been no challenge to the credibility of this Report, which has been accepted by both Parties.”<sup>450</sup>

On the subject of the interaction between the work of the Panel of Experts and that of the Porter Commission, the Court stated:

“both the Porter Commission Report, as well as the United Nations Panel reports, to the extent that they have later proved to be probative, furnish sufficient and convincing evidence for it to determine whether or not Uganda engaged in acts of looting, plundering and illegal exploitation of the DRC's natural resources . . .”<sup>451</sup>.

**139** 5.12. Thus there is a solid basis for the DRC's presentation of the injury suffered in relation to the exploitation of minerals, such as gold, diamonds and coltan (Section 1), the prejudice caused to Congolese fauna, in particular various endangered species and national parks classified as UNESCO World Heritage Sites (Section 2), and that caused to Congolese flora, notably through deforestation (Section 3).

### **Section 1. Looting, plundering and illegal exploitation of minerals**

5.13. This section shows the role that certain members of the Ugandan armed forces played in the massive exploitation of minerals — more specifically, gold (A), diamonds (B) and coltan (C) — and the injury that resulted therefrom.

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<sup>449</sup>Porter Commission, *Final Report*, *op. cit.*; Ann. 1.11.

<sup>450</sup>*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, *I.C.J. Reports 2005*, p. 201, para. 61.

<sup>451</sup>*Ibid.*, p. 249, para. 237.

## A. Looting, plundering and illegal exploitation of gold

5.14. In order to establish the injury caused by Uganda in relation to the looting, plundering and illegal exploitation of the DRC's gold, this subsection will begin by showing the extent and diversity of the acts attributable to Uganda in this regard (i). It will then demonstrate that Uganda's gold exports increased exponentially during the war, despite the fact that Uganda produces hardly any of that mineral itself (ii). On that basis, we shall establish the scale of the injury linked to the illegal exploitation of gold, as well as the amount of compensation owed by Uganda on account of the acts committed (iii).

### (i) Uganda's role in the looting, plundering and exploitation of gold

5.15. There was a particular rush for gold by members of the Ugandan armed forces in the eastern part of the DRC, where the majority of the Congolese gold-mining areas are located — more specifically, in what was then Orientale province, which included the districts of Ituri and Haut-Uélé. Such actions were also seen in the district of Bas-Uélé — more specifically, Bondo territory. The map below shows the main gold-mining areas in the east of the country.

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Map No. 5.1.

#### Gold resources in the east of the DRC

Legend:

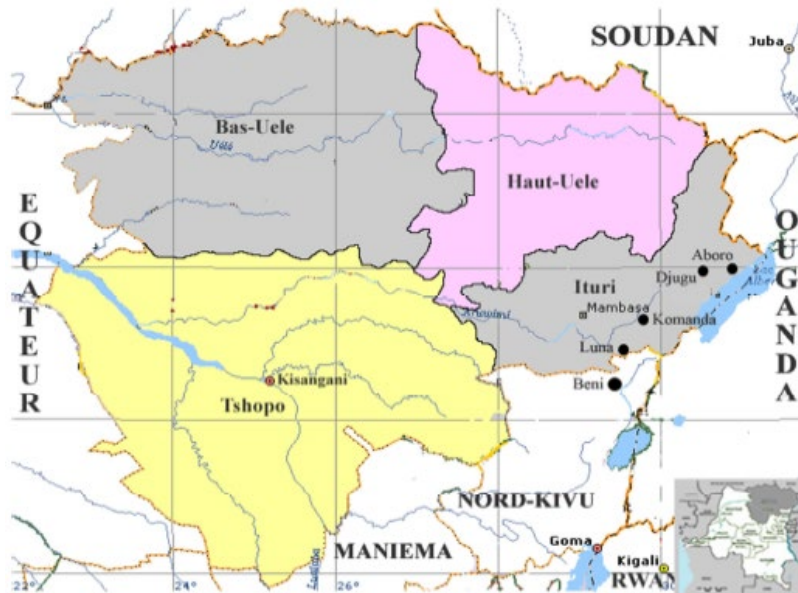
Soudan	=	Sudan
Ouganda	=	Uganda
Province orientale	=	Orientale province
Nord-Kivu	=	North Kivu

5.16. The analysis below looks first at the wrongful exploitation of gold resources in Ituri district, where Uganda was an occupying Power (a); then at the involvement of members of the UPDF in the looting, plundering and exploitation of gold in Haut-Uélé district, specifically the Watsa gold mines (b); and finally at the involvement of members of the UPDF in the looting, plundering and exploitation of gold in Bondo territory, in co-operation with Jean-Pierre Bemba's troops (c). This account will show the extent of Uganda's involvement in the looting, plundering and exploitation of gold resources in geographical terms, in terms of the quantity of resources involved, and in terms of the diversity of the practices employed for the purposes of such looting, plundering and exploitation.

**(a) Looting, plundering and exploitation of gold in Ituri**

5.17. Until 2015, Ituri was a district of Orientale province. It comprised five administrative territories: Aru, Djugu, Irumu, Mahagi and Mambasa. The injuries caused by members of the Ugandan armed forces in respect of the exploitation of gold in Ituri district primarily concerned the administrative territory of Djugu.

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Map No. 5.2.

The districts of Orientale province at the time of the events in question

Legend:

- Soudan = Sudan
- Nord-Kivu = North Kivu



Map No. 5.3.

Detailed map of Ituri district at the time of the events in question

Legend:

- |           |   |            |
|-----------|---|------------|
| Nord-Kivu | = | North Kivu |
| Ouganda   | = | Uganda     |

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5.18. In 2002 and 2003, murderous attacks were repeatedly carried out in the village of Kobu, notably by Ugandan troops, with a view to taking control of gold resources. They primarily involved forcing away members of the population who were likely to oppose such endeavours. The *Mapping Report*, which contains various testimonies, states that “[i]n January 2002, UPDF troops and Hema militia apparently opened fire on the inhabitants of Kobu village (Walendu Djatsi *collectivité*, in Djugu territory) in order to force the people away from the gold mines. During this incident, 35 Lendu civilians were killed.”<sup>452</sup>

5.19. In August 2002, bloody attacks were carried out in the gold-mining town of Mabanga, notably by militia linked to the Union of Congolese Patriots (UPC), who were supported by Uganda, as the DRC showed earlier<sup>453</sup>. Each of those attacks was a further attempt to take control of the gold and appropriate the minerals. The *Mapping Report* indicates the following on the basis of various interviews:

“The gold mining town of Mabanga, in the local *collectivité* of Mambisa, Djugu territory, was also the scene of bloody clashes. In August 2002, Hema Gegere militia linked to the UPC allegedly killed several dozen ‘non-native’ inhabitants with machetes and nail-covered sticks. They were suspected of helping the Lendu militia, *who were seeking to control the region’s mines* and had previously committed massacres.”<sup>454</sup>

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<sup>452</sup>United Nations Office of the High Commissioner for Human Rights, *Report of the Mapping Exercise, op. cit.*, para. 756; emphasis added; Ann. 1.4.

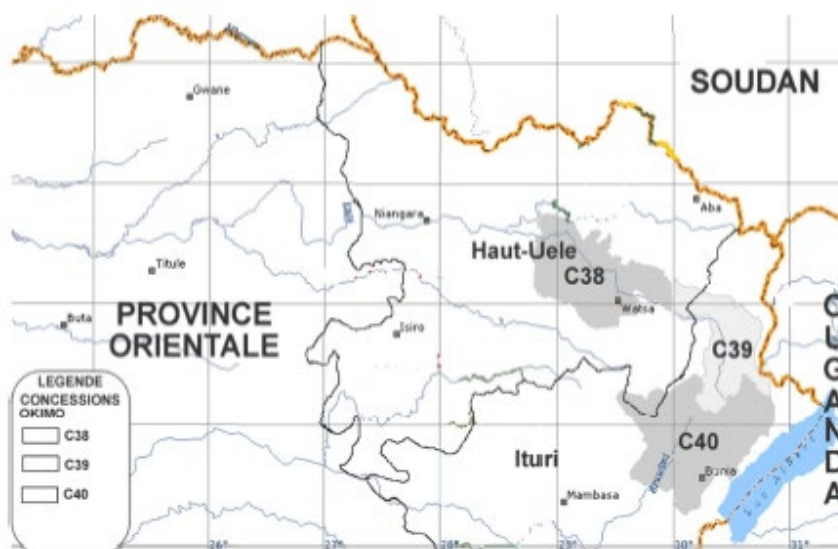
<sup>453</sup>See Chap. 3 above, para. 3.05.

<sup>454</sup>United Nations Office of the High Commissioner for Human Rights, *Report of the Mapping Exercise, op. cit.*, para. 755; emphasis added; Ann. 1.4.

5.20. The town of Mongbwalu changed hands several times in 2002 and 2003, with Hema and Lendu armed groups belonging respectively to the UPC and the Nationalist and Integrationist Front (FNI) battling for control<sup>455</sup>. According to the *Mapping Report*, the involvement of these armed groups was largely dictated by economic interests and the lure of the gold mines<sup>456</sup>. In its 2004 report, MONUC described Mongbwalu as “a town to conquer for its natural resources”<sup>457</sup>. Both the UPC and the FNI used forced labour in gold mines in 2002 and 2003<sup>458</sup>.

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5.21. Finally, illegal exploitation of gold was recorded at the Adidi gold mine, which forms part of the Kilo-Moto gold-mining area. The Kilo mines are situated in Ituri, while the Moto mines are in the district of Haut-Uélé. Mining activities in that region were mainly carried out by the Société des Mines d’Or de Kilo-Moto (SOKIMO), formerly OKIMO, which mined gold in three concessions: Concession No. 38 in the district of Haut-Uélé (sites in Watsa, Durba mines, Gorumbwa mine, etc.); Concession No. 39, straddling the districts of Haut-Uélé and Ituri; and Concession No. 40 in the district of Ituri (site in Mongbwalu, Adidi mines, etc.). The location of the mines is shown in the map below, as well as in the maps from the DRC’s mining register which are annexed to this Memorial<sup>459</sup>.



Map No. 5.4.

Concessions Nos. 38, 39 and 40 in the Kilo-Moto gold-mining area

Legend:

Soudan	=	Sudan
Ouganda	=	Uganda
Province orientale	=	Orientale province
Legende	=	Legend
Concessions Okimo	=	Okimo concessions

<sup>455</sup>*Ibid.*, para. 753.

<sup>456</sup>*Ibid.*, para. 754.

<sup>457</sup>MONUC, *Special report on the events in Ituri, op. cit.*, para. 98; Ann. 1.6.

<sup>458</sup>United Nations Office of the High Commissioner for Human Rights, *Report of the Mapping Exercise, op. cit.*, para. 761; Ann. 1.4.

<sup>459</sup>Maps of OKIMO concessions from DRC mining register; Ann. 5.3.



5.22. The concession situated in Ituri — more specifically, the Adidi mine — faced numerous problems linked to the Ugandan invasion. A report by Human Rights Watch indicates that the rebel armed forces immediately established an effective system of taxation:

“Upon taking control of Mongbwalu on March 13, 2003, the FNI militia leaders, like the UPC previously, moved immediately to begin profiting from gold mining. Artisanal miners resumed digging, but had to pay FNI combatants fees to enter the mines, \$1 per person at some mines. Based on entrance records kept by FNI security guards at one mine and seen by Human Rights Watch researchers, the FNI made \$2,000 per month in entrance fees at this one mine alone.”<sup>460</sup>

**144** The capture of the concession by those rebel forces led to the destruction of various infrastructure, and of the Adidi mine itself. As Human Rights Watch further states:

“This has been a highly contested concession and is assumed to hold significant gold reserves. It is home to the industrial mine of Adidi (now defunct), and the former Belgian mines of Makala and Sincere. There was a Belgian-built processing factory and a laboratory both of which were destroyed during the fighting in Mongbwalu between November 2002 and July 2003. This concession was granted by the DRC government to AngloGold Ashanti (formerly Ashanti Goldfields) in 1998. The five-year war in DRC fractured OKIMO with armed groups attempting to control each sector independently. In 2003 three separate individuals appointed by different armed groups claimed to hold the position of General Director at OKIMO.”<sup>461</sup>

5.23. OKIMO reported at the time that a Ugandan brigade commander had met the company’s management in March 2000 in order to listen to its complaints concerning the actions of the Ugandan army on the company’s sites. While the commander recognized the seriousness of the situation, he said that he was not in a position to put a stop to it<sup>462</sup>.

**(b) *The Ugandan army’s exploitation of the Watsa gold mines***

5.24. The district of Haut-Uélé, which until 2015 was situated in Orientale province, is an area with particularly large amounts of gold. Ugandan soldiers were personally involved in mining in this district — more specifically, in Watsa territory. Uganda’s responsibility for the mining of gold in Watsa is clear from various perspectives: first of all, from the presence of the Ugandan army in Watsa territory (1); second, from the involvement of members of the Ugandan army and the most senior military officials in the exploitation of gold reserves in that area (2); and finally, from the involvement of members of the Ugandan army in the collection of “taxes” levied on the — often forced — exploitation of mines by Congolese civilians (3).

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<sup>460</sup>Human Rights Watch, *The Curse of Gold*, *op. cit.*, p. 51; Ann. 3.3.

<sup>461</sup>*Ibid.*, p. 59.

<sup>462</sup>Message No. 40/27/2000 of 17 March 2000 concerning the UPDF/ISIRO brigade commander’s visit to Doko; Ann. 5.4.



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(1) Uganda's presence in Watsa territory

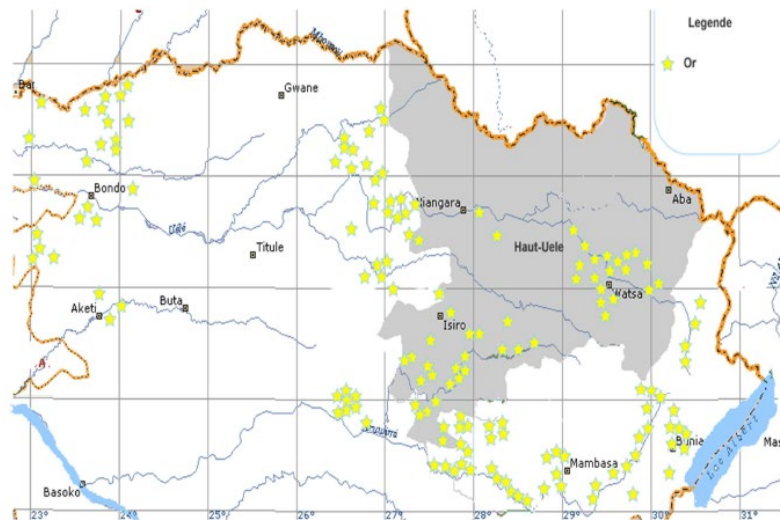
5.25. In its Judgment of 19 December 2005, the Court noted that the Ugandan army had taken Watsa in August 1998<sup>463</sup>. The maps below show the location of the town and the gold resources.



Map No. 5.5.

Watsa

- Legend:
- Soudan = Sudan
  - Ouganda = Uganda
  - Province orientale = Orientale province
  - Nord-Kivu = North Kivu



Map No. 5.6.

Gold resources in Watsa

<sup>463</sup>Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, I.C.J. Reports 2005, pp. 207 and 214, paras. 79 and 110.

5.26. The presence of Ugandan armed forces in Watsa territory was also highlighted by a Human Rights Watch report, which noted that three major gold mines were situated in that area:

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“In August 1998, shortly after the start of the second Congolese war, *Ugandan troops occupied gold-rich areas of Haut Uélé*, including the town of Durba, (Watsa Territory, Haut Uélé District, Orientale Province), *site of three important gold mines: Gorumbwa, Durba and Agbarabo.*”<sup>464</sup>

5.27. The Porter Commission’s report notes that Ugandan soldiers present in Watsa were in conflict with Congolese civilians in relation to mining and had been tasked with guarding mines there:

“As late as the 15th of February 2000 General Kazini was receiving reports from Professor Wamba that *UPDF soldiers in Watsa were in conflict with civilians in relation to mining*, and on 23rd February 2000, he sent a message in which he said that he had seen three messages concerning uncoordinated deployments. He pointed out that no soldier of the UPDF was supposed to guard mines, although Major Kagezi had deployed soldiers to Durba. He directed that all soldiers must be withdrawn to Isiro . . .”<sup>465</sup>.

In its 2005 Judgment, the Court also made reference to this passage from the Commission’s report in substantiating its decision<sup>466</sup>.

## (2) Uganda’s involvement in the exploitation of gold in Watsa

5.28. Members of the Ugandan army demanded that gold be extracted from the pillars of the galleries in the Gorumbwa mines using dynamite, which resulted in the galleries collapsing and caused the deaths of a large number of Congolese civilians<sup>467</sup>. Confirmation of this can be found in the report sent by OKIMO to the so-called “Governor of Kibali-Ituri province” on 4 September 1999:

“following intensive unco-ordinated work by artisanal miners and soldiers in the Gorumbwa mine, that mine collapsed on Friday 3 September 1999 from the surface down . . . Surface water is currently entering the subterranean area via the quarry . . . The ground is visibly deformed at the surface and is continuing to move. In other words, the subsidence is increasing.”<sup>468</sup>

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This was also confirmed by the Human Rights Watch report:

“Even the rock pillars that supported the roof in the mine were blasted to extract any ore that might be inside them . . . [Local civilians] sought an end to the mining and warned again that Gorumbwa mine might collapse if the practice of blasting the supporting pillars continued. According to OKIMO officials, no action was taken by Ugandan commanders. In late 1999 the Gorumbwa mine collapsed killing a reported

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<sup>464</sup>Human Rights Watch, *The Curse of Gold*, *op. cit.*, p. 15; emphasis added; Ann. 3.3.

<sup>465</sup>Porter Commission, *Final Report*, *op. cit.* p. 20; emphasis added; Ann. 1.11.

<sup>466</sup>*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, *I.C.J. Reports 2005*, p. 251, para. 242.

<sup>467</sup>United Nations Security Council, *Report of the Panel of Experts on the Illegal Exploitation of Natural Resources*, *op. cit.*, para. 57; Ann. 1.7.

<sup>468</sup>Report sent by OKIMO to the Governor of Kibali-Ituri province, 4 Sep. 1999; Ann. 5.5. [Translation by the Registry.]

one hundred miners trapped inside and flooding the area. According to one local engineer: ‘The Ugandan army were responsible for the destruction of Gorumbwa mine. They started to mine the pillars. It was disorderly and very widespread. People were killed when the mine eventually collapsed.’<sup>469</sup>

5.29. On 19 March 2001, the head of operations at the Moto site reported that he had been arrested by Ugandan soldiers. Officials who had sought to chase illegal artisanal miners out of the Durba mine had been pursued by soldiers<sup>470</sup>. On 23 May 2001, OKIMO’s management again reported that illegal artisanal miners, overseen by Ugandan soldiers and the RCD-ML co-ordinator, were occupying the Durba mine and company infrastructure<sup>471</sup>.

5.30. The local Ugandan commanders did not respond to the situations reported to them<sup>472</sup>. Indeed, Human Rights Watch reports:

“Lt Okumu left the Durba area in early 1999 but other Ugandan commanders continued with similar practices and took no actions to stop the illegal mining. In June 1999 OKIMO officials reported again on the situation and asked Commander Sula based in Isiro to intervene. He ignored the request and soon after the Durba-based Ugandan officer Freddy Ziwa arrested one of the OKIMO officials. According to an internal OKIMO memorandum, Commander Sula met with local miners and Ugandan soldiers on July 12, 1999 in Durba and ordered them to organize more extensive mining in the OKIMO concession.”<sup>473</sup>

5.31. In the same vein, the Porter Commission reported that Uganda’s Colonel Mugenyi had ordered Major Sonko to investigate *himself* the accusations levelled against him and Lieutenant Okumu regarding the mining activities that they had carried out in the DRC, turning that process into a mere formality and even implicitly endorsing the conduct in question:

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“There is also an incident where an allegation was made against a Senior Army Officer and a Junior Army officer. The Local UPDF Commander asked the Senior Army Officer to investigate himself and the Junior Officer and report to him. The case in point relates to the *instructions given by Col. Mugenyi to Major Sonko to investigate the allegation made against himself and Lt. Okumu in respect of mining*. Further it appears that all an officer has to do is deny an incident for the investigation to be dropped.”<sup>474</sup>

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<sup>469</sup>Human Rights Watch, *The Curse of Gold*, *op. cit.*, pp. 17-18; Ann. 3.3.

<sup>470</sup>Handwritten letter dated 19 March 2001 from the head of operations at Moto to the Commissioner for Haut-Uélé district, in particular pp. 2 and 3; Ann. 5.6.

<sup>471</sup>Letter No. DG/SDG/135/2001 of 23 May 2001; Ann. 5.7.

<sup>472</sup>United Nations Security Council, *Report of the Panel of Experts on the Illegal Exploitation of Natural Resources*, *op. cit.*, para. 57; Ann. 1.7.

<sup>473</sup>Human Rights Watch, *The Curse of Gold*, *op. cit.*, pp. 17-18; Ann. 3.3.

<sup>474</sup>Porter Commission, *Final Report*, *op. cit.*, p. 107; emphasis added; Ann. 1.11.

5.32. Finally, Ugandan soldiers requisitioned gold from OKIMO and appropriated other property belonging to the company<sup>475</sup>, exploiting the company and its gold resources in a manner that was both systematic and anarchic at the same time:

“On several occasions OKIMO officials protested to Ugandan army commanders about the illegal mining, the theft of fuel and explosives from their stock, and the possible damage to the mines through the explosions.”<sup>476</sup>

**(3) The involvement of the Ugandan army in the collection of “taxes” levied on the exploitation of gold in Watsa**

5.33. Moreover, various sources indicate that certain Ugandan commanders and certain soldiers guarding entry points to mining sectors in the mining district of Kilo-Moto allowed — or even obliged — the local population to carry out gold extraction activities, with a tax being levied on the gold that was removed. The United Nations Panel of Experts reports that each miner was required to leave one gram of gold at the mine’s entry/exit point every day. Given the number of people working in the mine each day — [2],000 people, working six days a week — roughly 2 kg of gold was handed over to the person managing the network every day<sup>477</sup>. This is confirmed by the Human Rights Watch report, which is based on testimonies collected on the ground:

“Local sources said that Ugandan Lieutenant David Okumu gave the initial order to start mining in Gorumbwa. According to a report prepared by OKIMO officials that provides further details, Ugandan soldiers took over mine security, chasing away OKIMO guards and the local police in order to benefit from the gold mining. Local miners went to work in the mines, even though they were required to pay an entrance fee to Ugandan soldiers or to give them a portion of their ore when leaving. Witnesses reported that Ugandan soldiers beat local miners who refused to work under these conditions or who failed to deliver the expected amount of gold. To speed extraction of the ore, Ugandan soldiers directed miners to use explosives taken from OKIMO stocks.”<sup>478</sup>

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5.34. The Porter Commission confirms the role played by the Ugandan army in this area. It states that, despite certain inconsistencies in the information gathered, it is a fact that documents signed by Ugandan officials ordered certain soldiers to *put a stop* to their behaviour in respect of the mines, which shows beyond any doubt that wrongful acts were perpetrated in relation to the extraction of gold and that the military authorities were aware of it:

“It was already known that there had been problems in the Watsa area before Lt Okumu went there, which had reached Senior Levels. These problems no doubt prompted the phraseology of the orders he received. Lt Okumu’s orders on arrival from Lt Col Mugenyi (409 B/ Co) who was based in Isiro Exhibit FM/07/102 (inter alia) read:

*No soldier should interfere with the authorities of the gold mining area without consulting (B/ Co) into.*

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<sup>475</sup>United Nations Office of the High Commissioner for Human Rights, *Report of the Mapping Exercise*, *op. cit.*, para. 747; Ann. 1.4.

<sup>476</sup>Human Rights Watch, *The Curse of Gold. Democratic Republic of Congo*, 2005, p. 17; Ann. 3.3.

<sup>477</sup>United Nations Security Council, *Report of the Panel of Experts on the Illegal Exploitation of Natural Resources*, *op. cit.*, para. 59; Ann. 1.7.

<sup>478</sup>Human Rights Watch, *The Curse of Gold*, *op. cit.* pp. 16-17; Ann. 3.3.

*No Loitering of Soldiers in the centres and on the area of gold mining (must be halted)*

These orders were signed by Lt Col Mugenyi, and countersigned by Lt Okumu. This Commission took Lt Col Mugenyi to task at length about these orders: it suggested that the way in which they were phrased clearly indicated that soldiers had been interfering with the authorities of the gold mining area, and that soldiers had been loitering in the centres and in the area of gold mining: the orders specifically said that this behaviour must be halted. Such allegations went a long way to support the allegations in the original Panel Report. Lt Col Mugenyi was not prepared to accept that this was the case.”<sup>479</sup>

5.35. The Porter Commission concluded that the role played by the Ugandan army in this area was clear:

“Particularly this Commission is unable to reject the allegation by the original Panel (for this is the purpose of the cover-up) that UPDF soldiers were posted at mines to take contributions of gold from miners to allow them to mine. The evidence of Major General Kazini, General Jeje Odong and Lt. Col. Noble Mayombo clearly shows that the incident did happen and that the culprits were Lt. David Okumu and the soldiers under his command.”<sup>480</sup>

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**(c) Uganda’s involvement in the exploitation of gold in Bondo**

5.36. The Judgment of 19 December 2005 indicates that Bondo, which is situated in the district of Bas-Uélé, was taken by the Ugandan army in April 1999<sup>481</sup>.

5.37. The work of the United Nations Panel of Experts reveals that Congolese civilians were recruited in Bondo in order to extract gold from the mines on behalf of members of the Ugandan army and Jean-Pierre Bemba, the supreme leader of the Congo Liberation Movement (MLC), which was actively supported by Uganda in violation of international law:

“In the Bondo locality within Equateur Province, young men from 12 to 18 years were recruited by Jean-Pierre Bemba. The Ugandan allies trained the recruits and shared with them the idea that the Ugandan army was an ‘army of development’ that aimed at improving ordinary people’s living conditions. After the one-hour morning physical training session, *they were sent to gold mines to dig on behalf of the Ugandans and Mr. Bemba.*”<sup>482</sup>

5.38. The Porter Commission took the view that it was not clear that child labour had been used. It pointed out in this regard that Mr. Bemba denied these allegations, asserting that recruits had to be at least 17 years old, which was apparently confirmed by Ugandan officers<sup>483</sup>. However,

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<sup>479</sup>Porter Commission, *Final Report, op. cit.*, p. 65; emphasis added; Ann. 1.11.

<sup>480</sup>*Ibid.*, p. 69.

<sup>481</sup>*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, I.C.J. Reports 2005*, p. 208, para. 86.

<sup>482</sup>United Nations Security Council, *Report of the Panel of Experts on the Illegal Exploitation of Natural Resources, op. cit.*, para. 58; emphasis added; Ann. 1.7.

<sup>483</sup>Porter Commission, *Final Report, op. cit.*, p. 71; Ann. 1.11.

that denial by Ugandan officers regarding the use of child labour provides confirmation of the essential point — namely, that Ugandan forces were indeed present on the ground and collaborated with Jean-Pierre Bemba in the exploitation of gold.

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5.39. While the facts set out above are not, in isolation, sufficient to quantify the injury suffered by the DRC, they do establish the extent of Uganda's role in the looting, plundering and wrongful exploitation of gold in the DRC:

- 151** — in *geographical* terms, the acts attributable to Uganda span Ituri, Haut-Uélé district (more specifically, Watsa) and Bas-Uélé district (more specifically, Bondo territory);
- in terms of the *amount of mineral resources involved*, the acts attributable to Uganda relate to the looting, plundering and exploitation of very large sources of deposits, such as the Adidi and Watsa mines;
- in terms of the *range of practices employed*, in addition to Uganda's failure to comply with its obligations as an occupying Power in Ituri, the acts attributable to Uganda include the direct involvement of UPDF members in the looting, plundering and exploitation of mines, the use of forced labour and the collection of taxes in kind levied on the production of gold.

**(ii) The exporting of gold by Uganda**

5.40. It should also be noted that, as the United Nations Panel of Experts found<sup>484</sup>, Uganda's gold exports increased exponentially during the war, despite the country producing only a very limited amount of gold (a). The fact that gold exports from the DRC to Uganda were not controlled during the war (b), and that Uganda's main commercial operators have indicated that they acquired gold from the DRC during the period in question (c), confirms that this increase was due to the illegal exploitation of Congolese gold resources.

**(a) The increase in Ugandan gold exports during the war**

- 152** 5.41. First of all, the data provided to the United Nations Panel of Experts by the Ugandan Ministry of Energy and Mineral Development show that the volume of Ugandan gold exports systematically exceeded the country's gold production. Thus, the Panel of Experts indicates that Uganda produced 0.0082 tonnes of gold in 1998, but exported 5.03 tonnes. In 1999, 0.0047 tonnes of gold were produced, and 11.45 tonnes were exported. In 2000, 0.0044 tonnes were produced, and 10.83 tonnes were exported<sup>485</sup>. The full set of data can be found in the table below<sup>486</sup>:

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<sup>484</sup>United Nations Security Council, *Report of the Panel of Experts on the Illegal Exploitation of Natural Resources, op. cit.*, para. 97; Ann. 1.7.

<sup>485</sup>*Ibid.*, para. 96.

<sup>486</sup>*Ibid.*, p. 20.

Table 1

Uganda: mineral exports and production, 1994-2000

Year	Gold	Tin	Coltan	Cobalt
<i>A. Mineral exports (tons)</i>				
1994	0.22			
1995	3.09			
1996	5.07	3.55		
1997	6.82	4.43	2.57	
1998	5.03		18.57	
1999	11.45		69.5	67.48
2000	10.83			275.98
<i>B. Mineral productions (tons)</i>				
1994	0.0016	3.704	0.435	
1995	0.0015	4.289	1.824	
1996	0.003	0.38		
1997	0.0064	1.81		
1998	0.0082	1.102		
1999	0.0047			76.74
2000	0.0044			287.51

Source: Uganda, Ministry of Energy and Mineral Development. 2000 data are from January to October.

5.42. The annual reports of Uganda's Ministry of Energy and Mineral Development show that the same was true of the period from 2001 to 2003, which was not analysed by the Panel of Experts. In 2001, according to those reports, Uganda produced 0.000142 tonnes of gold itself and exported 6.09 tonnes. In 2002, Uganda produced 0.002565 tonnes of gold itself and exported 7.589 tonnes<sup>487</sup>. In 2003, Uganda produced 0.040 tonnes of gold itself and exported 4.16 tonnes<sup>488</sup>.

5.43. Thus, the aforementioned sources indicate that Uganda produced a total of 0.06 tonnes of gold itself between 1998 and 2003, and exported 45.149 tonnes.

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5.44. The Porter Commission, which noted that figures varied from source to source, confirmed that there was a discrepancy between Uganda's gold production and gold exports during the war:

“This Commission's observation of the practice and procedure of, at least, artisanal gold production was that it would be very difficult, if not impossible to control gold imports from across the border, or to produce production statistics of any kind. Therefore, even if the Uganda Government ought to have noticed that *production figures did not match export figures*, there was very little that could be done about it.”<sup>489</sup>

5.45. Furthermore, while the figures collated by the Porter Commission do not tally with those of the Panel of Experts (which are, moreover, incorrectly presented in the Porter Commission's table), it is useful to compare them with the figures — also cited by the Porter Commission — in the Comtrade database maintained by the Statistics Division of the Department

<sup>487</sup>Ugandan Ministry of Energy and Mineral Development, *Annual Report 2002*, p. 40, Table 5 (production in 2001 and 2002) and Table 6 (exports in 2001 and 2002); Ann. 5.8.

<sup>488</sup>Ugandan Ministry of Energy and Mineral Development, *Annual Report 2003*, p. 35, Table 5 (production) and Table 6 (exports); Ann. 5.9.

<sup>489</sup>Porter Commission, *Final Report, op. cit.*, p. 111; emphasis added; Ann. 1.11.

of Economic and Social Affairs at the United Nations. The Comtrade figures cited by the Porter Commission are generally higher than those of the Panel of Experts. According to Comtrade, Uganda exported 3 tonnes of gold in 1998 (less than the 5.03 tonnes indicated by the Panel of Experts), but that figure then rises to 21 tonnes in 1999 (compared with 11.45 tonnes according to the Panel of Experts) and 43 tonnes in 2000 (compared with 10.83 tonnes according to the Panel of Experts), before falling to zero in 2001 (a year for which the Panel of Experts does not provide figures). The Porter Commission's report does not provide figures for 2002 or 2003. The full set of data can be found in the table below<sup>490</sup>:

**Table 1: Comparative figures for Gold from various sources**

GOLD	1995	1996	1997	1998	1999	2000	2001
INFORMATION FROM							
URA EXPORTS Mshs	24,296	22,233	18,972	12,988	22,497		
URA TRANSIT from Congo Value Mshs	0	0	0	0		13	53
BOU Mshs	2,539	6,409	8,059	1,860	3,836	3,184	
COMTRADE UGANDA - EXPORTS (\$000)	27,375	24,506	18,737	16,015	35,812	43,284	0
COMTRADE PARTNERS- IMPORTS (\$000)	4,286	28,161	20,744	2,234	4,235	14,405	
COMTRADE UGANDA - EXPORTS Tonnes	2	2	1	3	21	43	0
COMTRADE PARTNERS- IMPORTS Tonnes	2	3	8	0	0	0	0
URA TRANSIT from Congo Grams ??	0	0	0	0		1,780	7,030
PANEL (Tons)	3	5	7	5	11	11	

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**(b) *The smuggling of gold between the DRC and Uganda during the war***

5.46. This increase in gold exports by Uganda during the war should be seen in the light not only of the information above showing the involvement of the Ugandan army in the exploitation of gold in the DRC, but also of the absence of border controls between the DRC and Uganda.

5.47. Human Rights Watch noted that there were no effective controls on the border between the DRC and Uganda during the war:

“Import statistics fail to show the real scale of the gold trade. Officially, gold brought into Uganda should be declared upon entry as an import if expected to stay in the country, or as a transit good if intended for another final destination. But official Ugandan import statistics show a tiny amount of gold imported to the country and show no statistics for transit goods. The unofficial trade in gold is likely facilitated by the lax enforcement of regulations at the Uganda-Congo border posts. According to a study conducted in 2004 by the Ugandan Bureau of Statistics (UBOS), over 50 percent

<sup>490</sup>*Ibid.*, pp. 111-112.



of all imports and exports went unrecorded at six border posts. In cases where people wanted to hide precious minerals, the study estimated the entry of such goods went completely unrecorded.”<sup>491</sup>

5.48. This practice was made possible by the fact that the Ugandan commercial companies which subsequently purchased that gold were not obliged to enquire as to its origin:

“Most of this gold is exported illegally from Congo: traders have no export permits or exchange documents, are not authorized trading houses, do not keep accounts at the Central Bank of Congo and do not pay relevant taxes and duties as required under Congolese law. [ . . . ] The gold is ‘legalized’ in Uganda. Traders in Kampala do not require their Congolese clients to present documents authorizing the export of gold, operating on an ‘ask no questions’ basis. They treat the gold as if it were a transit good, filling out customs forms and other documents required to make its export legal from Uganda and acceptable in the unregulated global market.”<sup>492</sup>

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5.49. Admittedly, as the Porter Commission noted, there is probably significant smuggling of artisanal gold, which is difficult to detect, regardless of the inefficiency of the Ugandan customs authorities and the porous border<sup>493</sup>. In fact, that probably explains the difference between Uganda’s production and exports of gold *prior to* the war. Those difficulties cannot, though, explain the considerable increase in Uganda’s gold exports during the war.

**(c) Confirmation by Ugandan commercial operators**

5.50. Finally, it has also been established that the gold which was exported by Uganda during the war did indeed come from the DRC.

5.51. Interviews conducted by Human Rights Watch with Ugandan traders show that the majority of the gold which they exported came from the DRC. The two largest gold-exporting companies in Kampala, Uganda Commercial Impex Ltd and Machanga Ltd, which control around 70 per cent of Uganda’s export trade, told researchers from Human Rights Watch that their gold came from the Congo (more specifically, Ituri)<sup>494</sup>.

5.52. That is not disputed by the Porter Commission. After noting the existence of massive smuggling of artisanal gold<sup>495</sup>, the Porter Commission indicates that the Ugandan town of Arua, situated on the border with the district of Ituri, played a central role in smuggling operations:

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<sup>491</sup>Human Rights Watch, *The Curse of Gold*, *op. cit.*, pp. 107-108; Ann. 3.3.

<sup>492</sup>*Ibid.*, pp. 105-106.

<sup>493</sup>Porter Commission, *Final Report*, *op. cit.*, p. 109; Ann. 1.11.

<sup>494</sup>Human Rights Watch, *The Curse of Gold*, *op. cit.*, p. 109; Ann. 3.3.

<sup>495</sup>Porter Commission, *Final Report*, *op. cit.*, pp. 110-111; Ann. 1.11.

“For the same reason, it might be impractical to require source figures, because gold smuggled through the border would be unlikely to be declared as sourced from outside Uganda, so that it was not dutiable. This Commission was told that the sources were all within Uganda: but looking at some of the names involved, and bearing in mind the fact that the client was from Arua, this was unlikely.”<sup>496</sup>

## 156 (iii) Assessment of injury

5.53. As demonstrated above, the injuries caused to the DRC in respect of the illegal exploitation of its gold resources fall into four categories: exploitation of resources in Ituri; exploitation and spoliation by certain members of the Ugandan army in Watsa (mines operated by OKIMO); destruction and flooding of the Gorumbwa and Adidi mines; and exploitation and levying of taxes on — often forced — exploitation by civilians in Bondo, in co-operation with troops allied to Jean-Pierre Bemba.

5.54. Because of the circumstances in which that exploitation was carried out, there is no direct proof of the quantity of gold that was extracted. As demonstrated below, however, it is possible to determine the injury suffered by the DRC on the basis of Uganda’s gold exports during the war. Since Uganda produces hardly any gold of its own, most of the gold that was exported by Uganda will have been the result of illegal exploitation in the DRC during that period.

5.55. As shown above, there are various sources available, and they report the following figures:

- According to the statistics that the Ugandan Ministry of Energy and Mineral Development supplied to the Panel of Experts and the annual reports published by that ministry, Uganda exported 45.149 tonnes of gold between 1998 and 2003, having produced 0.0[0]6 tonnes itself. Thus, 45.143 tonnes of exports could not be explained by Uganda’s own production figures.
- According to the Comtrade statistics cited by the Porter Commission, Uganda exported 3 tonnes of gold in 1998, 21 tonnes in 1999, 43 tonnes in 2000 and zero tonnes in 2001 — i.e., a total of 67 tonnes in the period from 1998 to 2000. The Porter Commission did not cite any figures for 2002 or 2003.

## 157 5.56. The price of gold was historically low throughout the period in question, as the table below shows<sup>497</sup>:

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<sup>496</sup>*Ibid.*, p. 111.

<sup>497</sup>Source: <http://www.macrotrends.net/1333/historical-gold-prices-100-year-chart>.

<i>Date</i>	<i>US\$ per ounce</i>	<i>US\$ per kg (1 ounce = 0.0283495 kg)</i>
January 1998	424.18	14,962.52
January 1999	414.24	14,611.90
January 2000	399.47	14,090.90
January 2001	359.47	12,679.94
April 2001 (trough)	349.04	12,312.03
January 2002	376.94	13,296.18
January 2003	465.70	16,427.10
January 2004	529.65	18,682.87
January 2005	527.07	18,591.86
January 2006	657.63	23,197.23
January 2007	739.10	26,071.00
July 2011	1,694.18	59,760.49

5.57. In the context of the spoliation economy that the DRC suffered, Congolese gold resources were obviously exploited and sold as a matter of urgency, with no regard for market conditions. Had they been exploited and sold legally, on the other hand, operations could have been delayed until the market had recovered. Consequently, one should not look solely at the prices that applied during the war — that is to say, between 1998 and mid-2003. Thus, the injury suffered by the DRC should, at the very least, be assessed on the basis of the average price of gold during the period from 1998 to 2004, which was US\$14,964.49 per kilogram<sup>498</sup>.

5.58. On the basis of that average price, the total value of the aforementioned exports is as follows:

- 158** — on the basis of the quantities indicated by the Ugandan Ministry of Energy and Mineral Development, the 45.143 tonnes of Ugandan gold exports for the period between 1998 and 2003 that could not be explained by the country's own production activities had a commercial value of 45,143 x US\$14,964.49, which equals US\$675,541,972 (six hundred and seventy-five million, five hundred and forty-one thousand, nine hundred and seventy-two United States dollars);
- on the basis of the Comtrade statistics cited by the Porter Commission, the 67 tonnes of gold that were exported by Uganda between 1998 and 2000 had a commercial value of 67,000 x US\$14,964.49, which equals **US\$1,002,620,830** (one thousand and two million, six hundred and twenty thousand, eight hundred and thirty United States dollars).

5.59. Given that it is based on export figures produced by the Ugandan Government, it is indisputable that the first of these sums represents, as set forth above, the minimum amount that Uganda owes on account of the looting, plundering and exploitation of the DRC's gold. The second sum, which is based on the Comtrade statistics cited by the Porter Commission, does not cover the entire duration of the war, and as such therefore does not allow us to assess the total injury suffered by the DRC.

5.60. On that basis, the DRC claims, at this stage of the proceedings and without prejudice to any increase in the course of the proceedings, compensation equal to the first of the figures above — namely, US\$675,541,972 (six hundred and seventy-five million, five hundred and forty-one thousand, nine hundred and seventy-two United States dollars).

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<sup>498</sup> Average calculated by adding together 14,962.52, 14,611.90, 14,090.90, 12,679.94, 13,296.18, 16,427.10 and 18,682.87 and dividing the total by 7.

5.61. It is up to Uganda to provide the DRC and the Court with Comtrade export statistics (based on the same criteria as the figures cited by the Porter Commission) for the years 2001, 2002, 2003 and 2004. The DRC reserves the right to supplement its claim in the light of those new statistics.

## **159 B. Looting, plundering and illegal exploitation of diamonds**

5.62. This section will show the extent of the role played by Uganda's armed forces in the exploitation of diamonds in Congolese territory (i) and the exponential increase in Ugandan diamond exports during the war (ii), before establishing the amount of compensation owed by Uganda in this regard (iii).

### **(i) Uganda's role in the exploitation of diamonds**

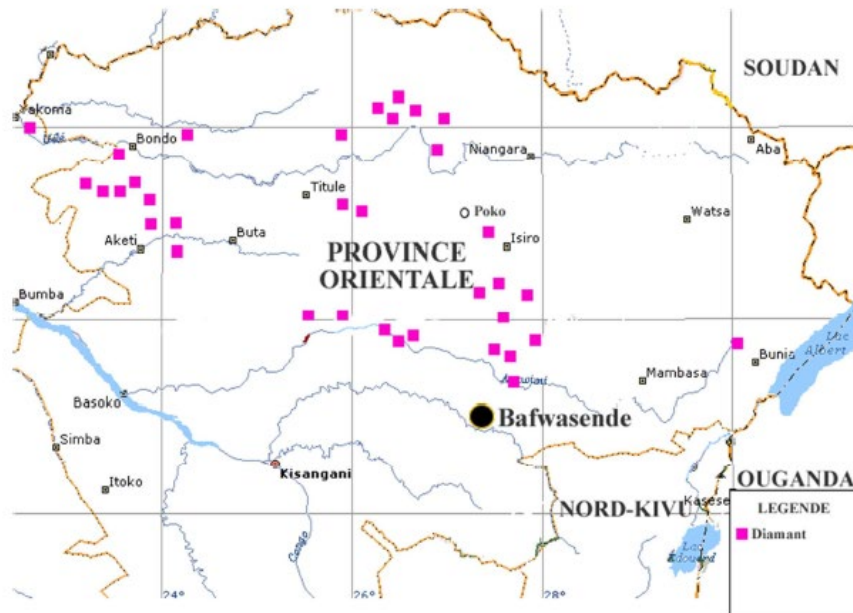
5.62(*sic*). The extent of Uganda's role in the illegal exploitation and exporting of the DRC's diamond resources is clear from various perspectives: *first*, from Uganda's occupation of the DRC's diamond-mining areas (a); *second*, from the involvement of certain members of the Ugandan army in the provision of security services to companies exploiting diamonds and the collection of "taxes" by rebel groups allied to Uganda (b); *third*, from the involvement of the most senior military officials in the exploitation of the DRC's diamond reserves (c); and *fourth*, from the role that Ugandan military transport played in the exporting of diamonds (d).

#### **(a) Uganda's control of diamond-mining areas**

5.63. First of all, the fact that the Ugandan army had control of the diamond-mining areas in the east of the DRC throughout the war is not in dispute. The Porter Commission notes the following in this regard: "In his evidence Col. Mayombo stated that most of the diamond areas of the Democratic Republic of Congo were in the North or in the areas of Bafwasende which were already controlled by UPDF."<sup>499</sup> The map below shows the location of the diamond-mining areas relative to Bafwasende:

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<sup>499</sup>Porter Commission, *Final Report, op. cit.*, p. 140; Ann. 1.11.



Map No. 5.8.

**The diamond-mining areas in the east of the DRC**

Legend:

- |                    |   |                    |
|--------------------|---|--------------------|
| Soudan             | = | Sudan              |
| Province orientale | = | Orientale province |
| Ouganda            | = | Uganda             |
| Nord-Kivu          | = | North Kivu         |
| Legende            | = | Legend             |
| Diamant            | = | Diamonds           |

5.64. Similarly, the United Nations’ *Mapping Report* notes: “The Rwandan and Ugandan armies and the RCD-Goma obtained significant revenue from trading diamonds in and around Kisangani.”<sup>500</sup>

**(b) *The involvement of Ugandan agents in the provision of “security” services to companies exploiting diamonds and the collection of “taxes”***

5.65. Second, certain members of the Ugandan army — specifically, General Kazini — were heavily involved in the collection of taxes by rebel movements, notably the MLC, and the provision of “security” services to companies exploiting diamonds.

5.66. The Porter Commission notes in this regard that the Ugandan authorities, and General Kazini in particular, received payments in return for ensuring the security of the “company Victoria”, allowing that firm, which also paid “taxes” to the MLC, to exploit diamonds in the DRC:

“However, the Commission has received documentary evidence implicating General Kazini in other local administrative matters. In one case he *instructed UPDF Commanders in Isiro, Bunia, Beni, Bumba, Bongo and Buta to allow one company, La Societe Victoria, to do business in coffee, diamonds, gold uninterrupted in areas under their control* as it had been cleared of taxation by the President of MLC,

<sup>500</sup>United Nations Office of the High Commissioner for Human Rights, *Report of the Mapping Exercise, op. cit.*, para. 748; Ann. 1.4.

Jean Pierre Bemba. He concluded by saying that: *'Anything to do with payment to you in form of security funding, it will be done through OSH-Tac HQS', i.e. his office.*

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In another letter addressed to the Governor of Kisangani, the Major General attached a copy of communication from the chairman of MLC and his own comments and stated that VICTORIA had officially cleared taxes with MLC authorities and *asked the Governor 'to leave VICTORIA do his business and he will continue to pay taxes to MLC to back up the effort in the armed struggle'.*

While General Kazini and other UPDF officer denied collecting or receiving any money from Congolese for their services, the General's first letter above leaves little doubt that some of the UPDF Senior Officers expected money from Congolese for security purposes. His evidence makes clear that he also expected it, and that the Commanders would keep the money for themselves, rather than accounting to him for it.<sup>501</sup>

In its 2005 Judgment, the Court made reference to this passage from the Commission's report in substantiating its decision<sup>502</sup>.

5.67. Later on in its report, the Porter Commission sets out in detail the documentary analysis and witness testimony that led it to this conclusion. In so doing, it confirms that the exploitation of diamonds was carried out with the endorsement and under the direct control of members of the Ugandan army:

*"The first document was a receipt for payment of ad valorem tax in advance to MLC of \$100,000 each from Siporia Diamonds and Victoria Diamonds. The payer on behalf of Victoria Diamonds was Abbas Kazal, a connection which helps to confirm this Commission's above finding.*

*The receipt was attached to a note on MLC notepaper signed by Mr. Bemba addressed to all civil and military authorities, dated 26th June 1999 which states that La Societe Victoria was authorised to proceed with purchases of gold, coffee and diamonds in Isiro Bunia Bondo Buta Kisangani and Beni, and that all the local taxes would be paid to MLC.*

The note was an interesting document in itself, confirming that Mr. Bemba initially lied to this Commission, and confirming what appears to have been a universal practice of pre-payment of taxes.

*But also endorsed on the note were the comments of General Kazini addressed to the Commanders in all of the mentioned towns, except Kisangani, also dated 26th June 1999. From other writings of General Kazini this commission had no doubt that it was in his handwriting: and there is quite a large sample in this case. It was therefore astonishing to hear General Kazini deny flatly that he wrote it. It was not until it was pointed out that in another document with which this Commission will deal below, the comments were referred to, and that it would be a simple matter to call handwriting expert evidence that he admitted that he was indeed the author. This was not a mistake: having watched General Kazini giving evidence, this Commission is fully satisfied that it was a deliberate lie by Uganda's Acting Army Commander,*

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<sup>501</sup>Porter Commission, *Final Report, op. cit.*, p. 89; emphasis added; Ann. 1.11.

<sup>502</sup>*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, I.C.J. Reports 2005, pp. 251 and 253, paras. 242 and 248.*

displaying an arrogance and contempt of civil authority similar to that which has been displayed by other witnesses in the UPDF.

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General Kazini's comments were actually instructions to his Commanders, pointing out that La Societe Victoria had been granted permission to do business in coffee, gold and diamonds in their areas, that taxes were to be paid to MLC, and that the Commanders should 'let Victoria to do its business uninterrupted by anybody'. This makes one wonder what the Commanders would have done if they had not received this instruction.

In his last paragraph General Kazini instructed the commanders that anything to do with payment to them in the form of security funding, it should be done through OSH TAC HQS, that is, through himself. Throughout these proceedings, every UPDF witness, including General Kazini, has denied that any such funding was taking place, but it clearly was. Senior Officers have again been lying to this Commission.

All of the above documents were copied in a letter from General Kazini on UPDF notepaper addressed to the Governor Kisangani, datelined July 1999. The letter referred to Mr. Bemba's letter and General Kazini's comments endorsed on the same document. He informed the Governor that Victoria had officially cleared taxes with MLC authorities and MLC was a recognised organisation by all Congolese and allies. He asked the Governor to 'leave Victoria to his business and he will continue to pay taxes to MLC to back up the effort in the armed struggle'.<sup>503</sup>

In its 2005 Judgment, the Court also made reference to this passage from the Commission's report in substantiating its decision<sup>504</sup>.

**(c) *The direct involvement of Ugandan agents in the looting, plundering and wrongful exploitation of diamonds in the DRC***

5.68. Moreover, as the DRC has already pointed out, General Kazini was directly involved in the operations of a commercial company called Victoria, which was active in the diamond sector, among others. The Porter Commission notes:

"Though General Kazini has denied on numerous occasions that he has any connection with Khalil and that he only knew him casually, from the special favours he gave to La Societe Victoria and the lies he told about his dealings with the Company, one cannot resist the conclusion that he has some interest in the Company, though this Commission has no conclusive evidence to prove it."<sup>505</sup>

The Porter Commission finds confirmation of General Kazini's involvement in the role that he played in Adèle Lotsove's appointment as "Governor" of Ituri<sup>506</sup>. The Commission notes that when General Kazini wrote to the existing Governor of Kisangani on this subject, he copied Victoria, as if informing the company that he had obeyed its instructions:

"General Kazini therefore was involved in secretly appointing, or conspiring in the appointment of Adele Lotsove to take administrative control of the mineral

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<sup>503</sup>Porter Commission, *Final Report, op. cit.*, pp. 119-120; emphasis added; Ann. 1.11.

<sup>504</sup>*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, I.C.J. Reports 2005*, pp. 251 and 253, paras. 242 and 248.

<sup>505</sup>Porter Commission, *Final Report, op. cit.*, p. 82; Ann. 1.11.

<sup>506</sup>*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, I.C.J. Reports 2005*, p. 230, para. 175.

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producing areas. This can only have been because she was a sympathetic administrator. In appointing her, General Kazini was acting against the existing Governor who clearly was not sympathetic, as is revealed by the phraseology of the last paragraph of General Kazini's letter to him: 'Let me hope that I have been clearly understood' . . .

It is also revealing that, amongst others, he copied his letter to Victoria, as though reporting that he had obeyed his instructions, and done what he had been asked to do by Victoria.

*These conclusions put General Kazini at the beginning of a chain as an active supporter in the Democratic Republic of Congo of Victoria, an organisation engaged in smuggling diamonds through Uganda: and it is difficult to believe that he was not profiting for himself from the operation.*"<sup>507</sup>

The Commission goes on to say:

"Certainly the evidence against General Kazini shows intimidation on behalf of Victoria: and his correspondence implies that without his assistance, a company trying to work in the Democratic Republic of Congo would run into all sorts of problems with the UPDF, whose Commanders were warned off Victoria by General Kazini. This evidence also shows that an attempt was being made to control the various administrations, including those who had no alliance with Uganda, and this Commission therefore agrees with the reconstituted Panel that a façade in the case of Victoria was being used."<sup>508</sup>

In its 2005 Judgment, the Court likewise made reference to several of these passages from the Commission's report in substantiating its decision<sup>509</sup>.

5.69. The Porter Commission also reports that, following a warning by President Museveni regarding this issue, General Kazini responded as follows on 20 December 1998: "What is happening is that some Ugandans could be in business partnership with some commanders but no officers or men are directly involved in trade in Congo."<sup>510</sup> The Commission goes on to note: "The speed at which General Kazini replied shows that he was aware of all these problems, would take no real action until the matter became public, and had not previously himself made His Excellency the President aware of them."<sup>511</sup>

5.70. In its Judgment of 19 December 2005, the Court also made reference to the above-mentioned passages from the Porter Commission's report concerning General Kazini's intervention:

"the written message sent by General Kazini in response to the radio message broadcast by the Ugandan President in December 1998 demonstrated that the General was aware of problems of conduct of some UPDF officers, that he did not take any

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<sup>507</sup>Porter Commission, *Final Report, op. cit.*, pp. 121-122; emphasis added; see also pp. 173, 177 and 202; Ann. 1.11.

<sup>508</sup>*Ibid.*, p. 177; emphasis added.

<sup>509</sup>*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, I.C.J. Reports 2005*, pp. 251 and 253, paras. 242 and 248.

<sup>510</sup>Porter Commission, *Final Report, op. cit.*, p. 16; Ann. 1.11.

<sup>511</sup>*Ibid.*, p. 17.



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‘real action until the matter became public’ and that he did not inform the President. The Commission further states that it follows from General Kazini’s message that he, in point of fact, admitted that the allegation that ‘some top officers in the UPDF were planning from the beginning to do business in Congo was generally true’; ‘that Commanders in business partnership with Ugandans were trading in the DRC, about which General Kazini took no action’; and that Ugandan ‘military aircraft were carrying Congolese businessmen into Entebbe, and carrying items which they bought in Kampala back to the Congo’. The Commission noted that, while certain orders directed against the use of military aircraft by businessmen were made by General Kazini, that practice nonetheless continued. The Commission also referred to a radio message of General Kazini in which he said that ‘officers in the Colonel Peter Kerim sector, Bunia and based at Kisangani Airport were engaging in business contrary to the presidential radio message’. The Commission further stated that General Kazini was aware that officers and men of the UPDF were involved in gold mining and trade, smuggling and looting of civilians.”<sup>512</sup>

The Court added:

“The Commission noted that General Kazini’s radio messages in response to the reports about misconduct of the UPDF did not intend, in point of fact, to control this misconduct. It stated as follows:

‘There is no doubt that his purpose in producing these messages was to try to show that he was taking action in respect of these problems . . . There appears to have been little or no action taken as a result of these messages . . . [A]ll this correspondence was intended by General Kazini to cover himself, rather than to prompt action. There also appears to be little or no follow up to the orders given.’”<sup>513</sup>

Looking more specifically at the links between General Kazini and Victoria, the Court noted the following:

“The Commission found that General Kazini was ‘an active supporter in the Democratic Republic of the Congo of Victoria, an organization engaged in smuggling diamonds through Uganda: and it is difficult to believe that he was not profiting for himself from the operation’. The Commission explained that the company referred to as ‘Victoria’ in its Report dealt ‘in diamonds, gold and coffee which it purchased from Isiro, Bunia, Bumba, Bondo, Buta and Kisangani’ and that it paid taxes to the MLC.”<sup>514</sup>

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**(d) *The role of the Ugandan army in the transporting of natural resources from the DRC to Uganda***

5.71. Finally, the Ugandan army played a crucial role in the transporting of contraband between the DRC and Uganda. The Porter Commission notes in this regard that Ugandan military aircraft transported around 4,000 non-UPDF members out of the DRC over a period of just under three years:

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<sup>512</sup>*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, I.C.J. Reports 2005, pp. 249-250, para. 238.

<sup>513</sup>*Ibid.*, p. 250, para. 239.

<sup>514</sup>*Ibid.*, para. 240.

“In numbers, the evidence revealed that Immigration checked in nearly 4000 travellers from the Congo on Military airplanes over a period of just under 3 years. No doubt those travellers had either come from Uganda and were returning, or were coming from the Congo and planning to return. Only sometimes were these travellers recorded on outgoing military flights. There is no UPDF record of incoming flights.”<sup>515</sup>

5.72. The Porter Commission then seeks to determine whether these were civilian or military flights, observing that some of them (which, according to the Commission, could only have been used to transport natural resources) were military flights, and that the use of Kampala’s military air base for commercial purposes had been concealed:

“So far as this Commission can tell, *whilst military transport of goods from the Congo, which cannot have been anything else than natural resources, has been proved to have been taking place*, by far the largest number of flights were private, carrying merchandise to and from the Congo . . .

Evidence before this Commission clearly shows that *trade through the Military Air Base was being hidden*, and that those involved were perfectly prepared to lie to this Commission to cover it up.”<sup>516</sup>

5.73. Once again, certain extremely senior Ugandan military officials were involved in these operations — including General Salim Saleh, through his airline companies Air Alexander International Ltd. and Take Air Ltd.<sup>517</sup>, and General Kazini. The Porter Commission notes that General Kazini was one of the people who gave clearance instructions to the liaison officers at the military air base:

“Perhaps also an answer to the question posed above, as to how Lebanese were being allowed to fly on Military Aircraft to and from the Democratic Republic of Congo, in breach of the President’s Instructions, is beginning to appear. General Kazini according to the evidence, was one of those who gave clearance instructions to the Liaison Officers at the Military Air base.”<sup>518</sup>

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In its 2005 Judgment, the Court also made reference to this passage from the Commission’s report in substantiating its decision<sup>519</sup>.

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<sup>515</sup>Porter Commission, *Final Report, op. cit.*, pp. 32-33; Ann. 1.11.

<sup>516</sup>*Ibid.*, p. 38; emphasis added.

<sup>517</sup>*Ibid.*, pp. 80-81.

<sup>518</sup>*Ibid.*, p. 122.

<sup>519</sup>*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, I.C.J. Reports 2005*, pp. 251 and 253, paras. 242 and 248.

5.74. Once again, the facts established above show the extent of Uganda’s involvement in the looting, plundering and exploitation of diamonds in the DRC from various perspectives:

- first, in *geographical* terms: Uganda controlled the main diamond-mining areas in the east of the DRC during the war;
- second, in terms of the *range of practices* employed for the purposes of looting, plundering and exploiting diamonds: those practices included involvement in and support for the spoliation activities of commercial companies (Victoria), the levying of taxes, and considerable assistance with transport to Uganda.

**(ii) Uganda’s diamond exports**

5.75. The exponential increase that was seen in Ugandan diamond exports as of 1998, despite Uganda not producing diamonds, provides further confirmation of Uganda’s role in the illegal exploitation and exporting of the DRC’s diamond resources, as well as allowing us to quantify the injury suffered by the DRC.

5.76. According to a report by a British all-party parliamentary group, based largely on statistics from the Diamond High Council<sup>520</sup>, Uganda did not export any diamonds between 1994 and 1996. In 1997, its exports were worth US\$198,302. Exports then increased dramatically: US\$1,440,000 in 1998; US\$1,813,500 in 1999; US\$1,263,385 in 2000; and US\$2,539,000 in 2001 — i.e., a total of US\$7,055,885 between 1998 and 2001. These figures can be seen in the right-hand column of the table below<sup>521</sup>:

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Year	Gold exports (tons)	Gold production (tons)	Coltan exports (tons)	Coltan production (tons)	Niobium exports (US\$)	Diamond exports (US\$)
1994	0.22	0.0016	-	0.435	-	-
1995	3.09	0.0015	-	1.824	-	-
1996	5.07	0.0030	-	-	-	-
1997	6.82	0.0064	2.57	-	\$ 13'000	\$ 198'302
1998	5.03	0.0082	18.57	-	\$580'000	\$1'440'000
1999	11.45	0.0047	69.50	-	\$782'000	\$1'813'500
2000	10.83	0.0044	-	-	-	\$1'263'385
2001						\$2'539'000

5.77. The fact that Uganda does not produce diamonds itself, or does so in negligible quantities, is not disputed, so its exports cannot be explained by local production in Uganda. The Porter Commission confirms that Ugandan diamond production is practically non-existent:

“It is quite clear from URA, BOU and Uganda Bureau of Statistics data to COMTRADE that there is no record whatever of diamond production in Uganda. There is a slight possibility of some artisanal surface diamond collection, but nothing has been officially declared.”<sup>522</sup>

<sup>520</sup>All Party Parliamentary Group on the Great Lakes Region and Genocide Prevention, *Cursed by Riches: Who Benefits from Resource Exploitation in the Democratic Republic of the Congo?*, Nov. 2002, p. 18; Ann. 5.10.

<sup>521</sup>*Ibid.*

<sup>522</sup>Porter Commission, *Final Report, op. cit.*, p. 113; Ann. 1.11.

5.78. The Porter Commission also cites the case of a man named Khalil, who admitted to obtaining diamonds in the DRC in April 2000, transporting them by plane to the military air base in Kampala and then having them transported to Entebbe International Airport, where they were sold in a clandestine manner for US\$550,000. The Porter Commission notes that, according to the declaration that was made to the Belgian authorities by the courier involved in this smuggling operation, the diamonds originated in Uganda. In reality, the Commission notes, the diamonds came from the DRC:

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“For example this Commission has traced a Police case in Uganda where one Khalil, who is mentioned in the original Panel Report, *admitted to obtaining diamonds in the Democratic Republic of Congo in April 2000, flying them in to the Military Air Base*<sup>523</sup>, and ultimately sending a packet of them through associates to the International Airport<sup>524</sup>, where the diamonds were exchanged (in the Gents toilet at the airport) for \$550,000 in cash with a courier from Belgium who caught the next flight back. This was hardly an honest exchange, particularly as there is no record of import, export or transit through Uganda. The reason the matter was reported to the Police in Uganda was because on the way back to Kampala, the car was stopped by armed men and the money stolen. The case is dealt with more particularly at Paragraph 21.3 below. *The point is that the source of information in Belgium that the diamonds originally came from Uganda (which they did not) was the courier who had been involved in this shady deal. Had the original Panel known all this, perhaps they would not have been so hasty as to lay the blame at Uganda’s door: and to establish the source of the information upon which they relied was only a telephone call away, for that is how this Commission established this information. There is no doubt that diamonds are being smuggled, and falsely declared as sourced in Uganda. Bearing in mind that a fortune can be carried in a pocket, it is difficult to see what Uganda as a State can do about this. Partner Countries must be aware that Uganda is not a diamond producing country, and yet are prepared to publish figures which deny that fact. The original Panel acknowledge the difficulty, and make recommendations in respect of it, which the Uganda Government, in its response, accepts.*”<sup>525</sup>

5.79. Contrary to what the Porter Commission seems to believe, the fact that this Khalil falsely declared to the Belgian authorities that his diamonds had been mined in Uganda does not in any way excuse Uganda. It clearly shows that private individuals are able to deceive the Belgian authorities as to the true origin of diamonds imported into Belgium, but that is not the point. The important thing here is that this event reported by the Porter Commission confirms that private individuals were using UPDF military transport to channel diamonds stolen from the DRC to Uganda.

5.80. Thus, Ugandan involvement in the looting, plundering and exploitation of diamonds went hand in hand with an exponential increase in Ugandan diamond exports, which could not have stemmed from Ugandan production. Indeed, the Porter Commission admits that this had its origins in the DRC.

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<sup>523</sup>Uganda’s military air base: *ibid.*, pp. 29 *et seq.*

<sup>524</sup>Entebbe International Airport: *ibid.*, p. 39.

<sup>525</sup>*Ibid.*, pp. 113-114; emphasis added.

### **(iii) Assessment of injury**

5.81. On the basis of the foregoing, the DRC estimates, at this stage of the proceedings, that the injury it suffered in the period from 1998 to 2001 totalled US\$7,055,885 (seven million, fifty-five thousand, eight hundred and eighty-five United States dollars) — i.e., the total value of Ugandan diamond exports during the period in question.

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5.82. That amount needs to be supplemented with a figure for Ugandan diamond exports in 2002 and 2003. To that end, the DRC has asked the Diamond High Council (now the Antwerp World Diamond Centre) to provide equivalent statistics for those years, in line with those that it provided to the United Nations for the period from 1998 to 2001. At the time of filing of this Memorial, the DRC was still waiting for those statistics.

### **C. Looting, plundering and wrongful exploitation of coltan**

5.83. Coltan (columbite-tantalite) is a combination of two minerals: columbite and tantalite. Coltan is used for a range of purposes, including the manufacturing of various electronic devices. It is therefore of strategic importance.

5.84. This section will demonstrate the role that Ugandan armed forces played in the extraction and exploitation of coltan in the DRC (i), before establishing the amount of compensation that Uganda owes the DRC in this regard (ii).

#### **(i) Uganda's role in the exploitation of coltan**

5.85. The fact that coltan-rich Congolese territory, including the Mambasa and Bafwasende mines<sup>526</sup>, was under the control of the Ugandan army is not in dispute<sup>527</sup>.

5.86. In its final report, the United Nations Panel of Experts noted that the Ugandan army was also involved in the exploitation of the DRC's coltan in Orientale province:

“A number of coltan operations, especially under the supervision of UPDF Colonels Muzora and Burundi, have been coordinated under the front company Trinity Investment, where UPDF Major General Kazini is the principal figure. Armed groups frequently identified with militias under the command of UPDF officers manage sites in remote locations where diggers pay a daily fee to exploit an area.”<sup>528</sup>

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5.87. The Panel of Experts then presented a case study, which was based on an interview with a woman named Valentina Piskunova and a document in the Panel's possession:

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<sup>526</sup>All Party Parliamentary Group on the Great Lakes Region and Genocide Prevention, *Visit to Democratic Republic of Congo 2nd - 6th August 2001*; Ann. 5.11.

<sup>527</sup>As regards Bafwasende, see *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, I.C.J. Reports 2005, p. 208, para. 84, and Porter Commission, *Final Report*, op. cit., p. 140; Ann. 1.11. As regards Mambasa, see United Nations Office of the High Commissioner for Human Rights, *Report of the Mapping Exercise*, op. cit., para. 416; Ann. 1.4, and MONUC, *Special report on the events in Ituri*, op. cit., para. 109; Ann. 1.6.

<sup>528</sup>United Nations Security Council, *Final report of the Panel of Experts on the Illegal Exploitation of Natural Resources*, op. cit., para. 108; Ann. 1.10.

“During March 2002, Panel members met with Valentina Piskunova who, together with her husband Anatoly Piskunov, represents and operates the company LA CONMET from its base in Kampala . . . the company continued to buy coltan from its office at Butembo in the Democratic Republic of the Congo . . .

Ms. Piskunova went on to tell the Panel that the company’s coltan was transported by road across the border between the Democratic Republic of the Congo and Uganda at Kasindi to Entebbe International Airport, where it was then transported by Boeing 707, via Sharjah, United Arab Emirates, at a cost of \$140,000 per flight, to Ulba, Kazakhstan, for processing.

In addition to the profit made on the sales of coltan, LA CONMET also experienced savings by being granted ‘full exoneration’ for ‘all activities involving exploitation for the territory of Beni-Lubero’ (Democratic Republic of the Congo), including freedom from paying fiscal and customs duties. The document granting the exonerations is in the possession of the Panel. It was signed at Kampala by Mbusa Myamwisi, then Commissioner General for RCD-Kisangani, on 5 January 2000, identifying [Ugandan general] Salim Saleh as the owner of LA CONMET and designating his representatives as ‘the Russian group LA CONMET’.”<sup>529</sup>

5.88. The conclusions of the Panel of Experts are therefore not affected by the analysis carried out by the Porter Commission, which accepts that “there undoubtedly was coltan from the Congo transiting through Uganda”<sup>530</sup>.

5.89. The *Mapping Report* produced by the United Nations Office of the High Commissioner for Human Rights also details retaliatory measures carried out by the UPDF in revenge for an attack on one of their coltan convoys on the road to Butembo:

“In North Kivu, in revenge for an attack on their convoy of Mayi-Mayi coltan on the road between Mangurejipa, an important mining area, and Butembo, Ugandan soldiers from the UPDF allegedly killed 36 inhabitants of the village nearest to the place of ambush.”<sup>531</sup>

These facts are confirmed by a Congolese NGO, which reported at the time of the events in question that a “consignment of at least 5,000 kg of coltan” had been recovered by Ugandan soldiers in that area<sup>532</sup>. This clearly shows that, in addition to the transporting of this mineral to Uganda, UPDF members themselves were directly involved in the theft and trafficking of coltan in Congolese territory.

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<sup>529</sup>*Ibid.*, paras. 109-111.

<sup>530</sup>Porter Commission, *Final Report, op. cit.*, p. 110; Ann. 1.11.

<sup>531</sup>United Nations Office of the High Commissioner for Human Rights, *Report of the Mapping Exercise, op.cit.*, para. 743; Ann. 1.4; footnote 1342 refers to Human Rights Watch, *Uganda in Eastern DRC: Fueling Political and Ethnic Strife*, Mar. 2001, p. 44.

<sup>532</sup>Report entitled *The Société Civile Grand Nord’s view on Uganda’s military interventions in the Democratic Republic of the Congo*, produced by the Beni-Butembo Civil Society Co-ordination Office in North Kivu, 25 June 2001, p. 2; RDRC, Ann. 95; Ann. 2.7.

**(ii) Assessment of injury**

5.90. As regards the value of the coltan that was illegally exported from the DRC as a result of Uganda's failure to comply with its international obligations, the United Nations Panel of Experts cited statistics showing that Uganda, which does not produce coltan, exported several million United States dollars' worth of it during the war<sup>533</sup>. The graphics presented by the Panel of Experts<sup>534</sup> have been reproduced below:

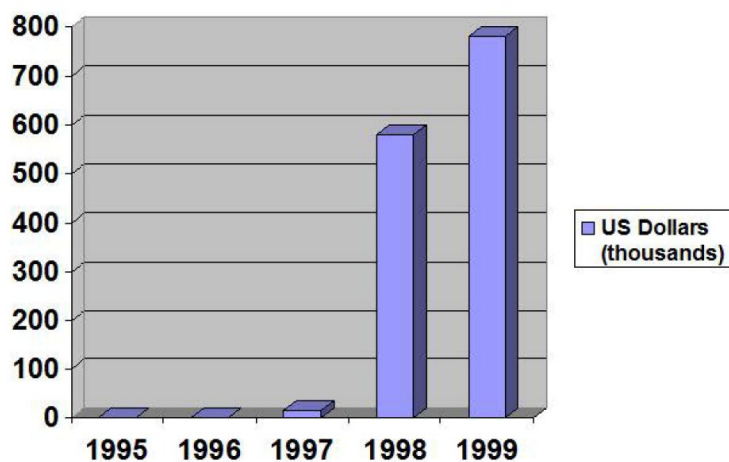
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**Table 3**  
**Uganda: niobium exports, 1995-1999**  
(thousands of United States dollars)

<i>Year</i>	<i>Niobium</i>
1995	0
1996	0
1997	13
1998	580
1999	782

*Source: World Trade Organization (aggregated data).*

**Figure 3. Uganda: niobium exports by volume, 1995-1999**



5.91. According to the report by the British all-party parliamentary group, which is based, *inter alia*, on statistics provided by the Ugandan Government, Uganda exported a total of 90.64 tonnes (i.e., 90,640 kilograms) of coltan between 1998 and 2000<sup>535</sup>. Ms Piskunova stated that LA CONMET bought coltan at a price of US\$10 per kilogram and sold it on at a price of US\$17 per kilogram<sup>536</sup>. Thus, the 90,640 kilograms reported by the Ugandan Government have a

<sup>533</sup>United Nations Security Council, *Report of the Panel of Experts on the Illegal Exploitation of Natural Resources*, *op. cit.*, pp. 23-24; Ann. 1.7.

<sup>534</sup>*Ibid.*

<sup>535</sup>All Party Parliamentary Group on the Great Lakes Region and Genocide Prevention, *Cursed by Riches*, *op. cit.*, p. 18.

<sup>536</sup>Porter Commission, *Final Report*, *op. cit.*, p. 182; Ann. 1.11.

value of US\$1,540,880 (US\$17 x 90,640). That same report also indicates that exports of niobium — one of the minerals extracted from coltan — had a total value of US\$1,375,000 in the period from 1998 to 2000. Consequently, exports of coltan and niobium between 1998 and 2000 had a combined total value of US\$2,915,880.

5.92. On the basis of the foregoing, the injury suffered by the DRC in this regard is considered to stand at a minimum of US\$2,915,880 (two million, nine hundred and fifteen thousand, eight hundred and eighty United States dollars).

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## Section 2. Prejudice caused to Congolese fauna

5.93. Several of the national parks in the east of the DRC are on UNESCO's World Heritage List and home to numerous animal species that are threatened with extinction. Uganda's invasion of the DRC inflicted considerable damage on that natural wealth as a result of a variety of different factors: the killing of animals by soldiers for food and other purposes; the destruction of animals' habitats as a result of military operations; the fact that Congolese civilian populations fled into the forests, resulting in them exploiting those resources for subsistence purposes; and finally, the elimination of all administrative control over the parks and protection of animal species.

5.94. After providing a general overview of the parks and the species that they are home to (A), the DRC will provide details of Uganda's harmful acts in relation to each of those parks (B *et seq.*), before assessing the resulting injury (G).

### A. The DRC's national parks: world heritage and endangered species

5.95. The DRC has five sites included on the World Heritage List under Articles 2, 3 and 11 (2) of the Convention Concerning the Protection of the World Cultural and Natural Heritage, which was adopted by the General Conference of UNESCO on 16 November 1972<sup>537</sup> and to which both the DRC and Uganda were parties at the time of the events in question<sup>538</sup>. These are Virunga National Park, Kahuzi-Biega National Park, Garamba National Park, Salonga National Park and the Okapi Wildlife Reserve<sup>539</sup>.

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More specifically, each of these parks features on the List of World Heritage in Danger<sup>540</sup>, following a decision by the World Heritage Committee in accordance with Article 11 (4) of the Convention. Looking only at the parks that are the subject of claims by the DRC against Uganda, Virunga Park was added to that list in 1994, Garamba Park in 1996, and the Okapi Wildlife Reserve in 1997<sup>541</sup>. Thus, all three were on the List of World Heritage in Danger prior to Uganda's invasion of the DRC.

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<sup>537</sup><http://whc.unesco.org/archive/convention-en.pdf>.

<sup>538</sup>The DRC ratified the Convention on 23 September 1974, and Uganda acceded to it on 20 November 1987: <http://whc.unesco.org/en/statesparties>.

<sup>539</sup><http://whc.unesco.org/en/list>; see also United Nations Security Council, *Interim report of the Panel of Experts on the Illegal Exploitation of Natural Resources*, *op. cit.*, para. 51; Ann. 1.9.

<sup>540</sup><http://whc.unesco.org/en/danger>.

<sup>541</sup>*Ibid.*



5.96. The DRC also has other national parks which are not on UNESCO's World Heritage List but are nevertheless of exceptional value. Maiko National Park, for example, is situated to the west of Virunga Park in the provinces of Orientale and North Kivu.

5.97. These parks are home to several animal species that are threatened with extinction, as recognized by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) of 3 March 1973, to which both the DRC and Uganda were parties at the time of the events in question<sup>542</sup>.

5.98. Appendix I to CITES lists the species that are under the greatest threat of extinction pursuant to Article II (1) of the Convention. Numerous species living in the DRC's national parks appear in Appendix I, including the following<sup>543</sup>:

- elephants, in particular *Loxodonta africana* (except the populations of South Africa, Botswana, Namibia and Zimbabwe, which appear in Appendix II);
- gorillas (*Gorilla beringei* and *Gorilla gorilla*);
- chimpanzees (*Pan spp.*);
- rhinoceroses (*Rhinocerotidae spp.*), with the exception of the white rhinoceroses (*Ceratotherium simum simum*) of South Africa and Swaziland, which appear in Appendix II.

**175** Uganda's wrongful acts caused the killing of thousands of these animals and resulted in their habitats suffering serious damage.

5.99. The prejudice that Uganda caused to national parks and Congolese fauna is analysed below for the four parks that were most affected by Uganda's actions — Virunga Park, Garamba Park, the Okapi Wildlife Reserve and Maiko National Park, looking at each park in turn.

5.100. The above-mentioned Kahuzi-Biega Park is not the subject of a claim by the DRC against Uganda. It is situated to the west of the border with Rwanda, near Lake Kivu, and the damage that it suffered during the war was not caused by Uganda.

5.101. The losses experienced by the various animal species have been assessed by the Congolese Institute for Nature Conservation (ICCN), the public body in the DRC that is responsible for managing national parks. Where possible, those data are compared with data from UNESCO.

## **B. Virunga National Park**

5.102. Virunga National Park is 300 km long and 150 km wide (covering almost 800,000 hectares). It features an exceptional variety of biological environments, such as Lake Kivu, the Virunga volcano chain and Lake Edward. It boasts a wide range of biotopes (volcanoes, savannahs, rainforests, lakes and permanent glaciers) and a very wide range of animals

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<sup>542</sup>The DRC acceded to it on 20 July 1976, and Uganda acceded to it on 18 July 1991: [www.cites.org/eng/disc/parties/chronolo.php](http://www.cites.org/eng/disc/parties/chronolo.php).

<sup>543</sup><https://cites.org/eng/app/appendices.php>.

(fish, aquatic birds, hippopotamuses, elephants, gorillas, buffalo, lions, antelope, warthogs, hyenas, etc.)<sup>544</sup>.

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5.103. Virunga Park is situated in North Kivu province. Most of it borders Uganda, with the southernmost part bordering Rwanda. The park accounts for around one third of the border between the DRC and Uganda. Lake Albert to the north of the park makes up another large section of that border. Hence, the park represents about half of the entire land border between the two countries. Consequently, the UPDF was practically obliged to pass through the park when entering the DRC.



Map No. 5.9.

Virunga National Park

Legend:

- |                          |   |                       |
|--------------------------|---|-----------------------|
| Province orientale       | = | Orientale province    |
| Ouganda                  | = | Uganda                |
| Parc National de Virunga | = | National Park Virunga |
| Nord-Kivu                | = | North Kivu            |

5.104. In its interim report of 2002, the Panel of Experts noted that the war and the passage of various armed forces had had a disastrous impact on the DRC's national parks, including Virunga Park:

“The combination of the exploitation activities and ongoing conflict has effectively eliminated State administrative control over the parks and led to the militarization of many of them, for example, the Virunga, Kahuzi-Biega and Okapi reserves. These parks are strategically located along the eastern border, and are regularly used as crossing points by military forces to gain access to the interior of the eastern region. The increased presence of foreign military, local rebel forces and armed groups, some of which occupy areas within the parks on a semi-permanent basis, has resulted in the development of highly organized and systematic exploitation activities at levels never before seen. These activities include poaching for ivory, game meat and rare species, logging, and mining for coltan, gold and diamonds.

<sup>544</sup>See, for example, [www.virunga.org](http://www.virunga.org).

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Exploitation activities reportedly involve a wide range of Congolese operators and armed groups. They are mostly carried out under the control of foreign military, however, often with their logistical support and under their protection. Much of the production or bounty is transported first to neighbouring countries, to be exported to third countries. Poaching activities and the massive military presence have given rise to arms trafficking within some parks. The reserves are also occasionally the sites of violent clashes between some of the armed parties. Armed conflict has exacted its toll in human lives in the parks. Over 50 park guards and other staff employed by the Congolese Institute for Nature Conservation have been killed since 1996.”<sup>545</sup>

5.105. The *Mapping Report* also highlighted the attraction of Virunga Park for foreign armed forces and rebels:

“It would be wrong, however, to assume that the warring parties competed only for coltan and other raw materials. *The Virunga* (North Kivu) and *Kahuzi-Biega* (South Kivu) *national parks were a particular magnet for rebel and military forces* because of the wildlife found there, and the ivory that could be obtained from poaching elephants.”<sup>546</sup>

5.106. In March 2003, a scientific team comprising staff from the ICCN, the Zoological Society of London and the International Rhino Foundation counted various species of animal in the *northern sector* of the park<sup>547</sup>. After describing the methodology used and the results of the counts, their report revealed a devastating finding: there were 21 elephants, 52 buffalo, 533 western kob, 42 waterbucks, 73 warthogs, 21 bushbucks, 104 baboons, 84 mongooses and 21 crocodiles remaining in the northern sector of the park<sup>548</sup>. As for hippopotamuses, a key species in the park<sup>549</sup>, 81 animals were counted, resulting in an estimate of 101 animals living in that area<sup>550</sup>.

5.107. The ICCN estimated that the following numbers of animals had been lost in Virunga Park — and more specifically, its northern sector — during the war: 20,000 antelope, 1,229 elephants, 107 hippopotamuses, 67 warthogs, 96 baboons, 77 mongooses, 72 crocodiles, 9,048 buffalo, 160 western kob, 39 waterbucks and 19 bushbucks<sup>551</sup>.

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5.108. These estimates can be compared with figures published by UNESCO<sup>552</sup>, which are based on parameters that differ from those of the ICCN in various respects. UNESCO seeks to determine the evolution of the number of animals, rather than the number of animals killed as such. In addition, it only counts protected animal species whose preservation is under severe threat, so

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<sup>545</sup>United Nations Security Council, *Interim report of the Panel of Experts on the Illegal Exploitation of Natural Resources*, *op. cit.*, para. 52; emphasis added; Ann. 1.9.

<sup>546</sup>United Nations Office of the High Commissioner for Human Rights, *Report of the Mapping Exercise*, *op. cit.*, para. 745; emphasis added; Ann. 1.4.

<sup>547</sup>A. K. Kes Hillman Smith, Emmanuel de Merode, Fraser Smith, Amube Ndey, Norbert Mushenzi and Guy Mboma, *Virunga National Park — North — March 2003 aerial counts*; Ann. 5.12.

<sup>548</sup>*Ibid.*, notably Table 1.

<sup>549</sup>*Ibid.*, introduction, p. 3.

<sup>550</sup>*Ibid.*, Table 2.

<sup>551</sup>DRC national consultant, *Evaluation of the damage caused to Congolese fauna by Uganda between 1998 and 2003*, Sep. 2016; Ann. 5.13.

<sup>552</sup>UNESCO, *Promoting and Preserving Congolese Heritage: Linking biological and cultural diversity*, proceedings of the conference and workshops, 13-17 Sep. 2004, p. 113; Ann. 5.14.

does not take account, for example, of the decimation of warthogs, baboons, etc. UNESCO provides figures for “before 1996”, “during the war” and “after 2000” (which generally means 2003), so the figures do not cover exactly the same period. Moreover, UNESCO’s statistics do not always cover the entire park: the statistics on elephants relate only to the central sector of the park, while the figures on hippopotamuses relate to the northern and southern plains. On that basis, UNESCO presents the following figures:

Virunga National Park				
Species	Before 1996	During the war	After 2000	Observations
Gorilla ( <i>G.berengei berengei</i> )	324	359	384 (oct 2003)	Small gorillas poaching, bamboo harvesting...
Elephant Central Sector	470	486	265	Poaching for meat and ivory
Hippopotamus	29 000 (Southern and Northern Plains)		1 309 (2003)	Poaching for meat and trade
Buffalo	9 700 (1981)		2 240 (nov 2003)	Poaching for meat and trade

5.109. With regard to elephants, UNESCO’s belief that 221 animals were lost (the difference between its estimates of 486 “during the war” and 265 “after 2000”) in just the central sector of the park is compatible with the assessment of the ICCN, which believes that 1,229 elephants were lost across the park as a whole between 1998 and 2003.

5.110. For hippopotamuses, UNESCO’s belief that 27,000 animals were lost (the difference between its estimates “before 1996” and “after 2000”) far exceeds the ICCN’s figure of 107 lost animals in the period between 1998 and 2003.

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5.111. In terms of buffalo, UNESCO points to a loss of 7,460 animals over a longer period of time (the difference between estimates of 9,700 in 1981 and 2,240 in November 2003). The buffalo population may have increased in this period before falling during the war, as indicated by the evolution of the numbers of gorillas and elephants, for which figures “during the war” are available. UNESCO’s figures are therefore compatible with those of the ICCN, which indicates that 9,048 buffalo were lost between 1998 and 2003.

5.112. The ICCN’s figures are thus fully justified and bear witness to the dramatic losses suffered between 1998 and 2003.

### C. Garamba National Park

5.113. Garamba National Park is situated close to the Sudanese border in what was at the time Haut-Uélé district. It covers 492,000 hectares. The park is composed of vast grassy and wooded savannahs. It is home, in particular, to rare animals such as the white rhinoceros, the giraffe and the Lord Derby eland<sup>553</sup>.

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<sup>553</sup>See, for example, <http://whc.unesco.org/en/list/136>.



Map No. 5.10.

**Garamba National Park**

Legend:

- Soudan = Sudan
- Ouganda = Uganda
- Province orientale = Orientale province
- Nord-Kivu = North Kivu

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5.114. On the basis of accounts and statistics from regional conservation organizations, the United Nations Panel of Experts noted the presence of Ugandan military forces in Garamba National Park and highlighted the colossal damage that was done to fauna and flora in that area:

“Wildlife has also suffered a great deal from the conflict. Numerous accounts and statistics from regional conservation organizations show that, *in the area controlled by the Ugandan troops and Sudanese rebels, nearly 4,000 out of 12,000 elephants were killed in the Garamba Park in north-eastern Democratic Republic of the Congo between 1995 and 1999 . . .*”<sup>554</sup>

5.115. The United Nations Panel of Experts provides very specific details of the trafficking of elephant tusks by high-ranking members of the Ugandan army in the area around Garamba Park:

“The Panel has indications that, in most cases, poaching of elephants in violation of international law (Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)) was well organized. Either soldiers hunted directly with the consent of the commander or they provided equipment and protection to local villagers to execute the task with the objective of collecting elephant tusks.

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<sup>554</sup>United Nations Security Council, *Report of the Panel of Experts on the Illegal Exploitation of Natural Resources, op. cit.*, para. 61; emphasis added; Ann. 1.7.

*For example, in August 2000, UPDF Colonel Mugeni and a crew of his soldiers were discovered with 800 kg of elephant tusks in their car near Garamba Park.*<sup>555</sup>

5.116. The Porter Commission confirms that a detachment of the Ugandan army was stationed in Durba, near the park. It notes that the detachment was not specifically in charge of the park<sup>556</sup>. However, it also notes that Uganda's Colonel Mugenyi stated that the park was under his jurisdiction and that his colleague Colonel Sonko Lutaya testified that Colonel Mugenyi frequently passed through the park on the way to Isiro. The Porter Commission considered Colonel Mugenyi to be unreliable on the subject of the smuggling of elephant tusks:

“Lt. Col. Mugenyi denied the incident though he stated further that the area of Garambwa National Park was under his jurisdiction during Operation Safe Haven and the District Administrator of the area did inform him of various problems, with SPLA, poaching and other problems in the Park. Lt. Col. Mugenyi said during investigations which were started after the original Panel Report:

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‘I told them (Chieftaincy of Military Intelligence) that I do not know anything as regards those 800 kilograms of elephant tusks because I have never operated in those areas not even passed through those areas.’

*Lt. Col. Sonko Lutaya testified that Lt. Col. Mugenyi passed through the Garambwa National Park regularly on his way to Isiro. Although this Commission has problems with Lt Col Sonko's evidence in other respects, the route he describes makes sense, and his evidence is probably true.*

*This shows that Lt. Col. Mugenyi was not being truthful and one wonders what he was hiding. This Commission was unable to visit the area or find out which crew Lt Col Mugenyi may have been with. However, since the army was in the area they should have been able to carry out an exhaustive investigation. The matter should be investigated more thoroughly by the responsible organs. Too long has passed now for meaningful further investigations to be made.*<sup>557</sup>

5.117. According to assessments by the ICCN, 5,000 antelope, 5,000 elephants, 92 giraffes, 21 white rhinoceroses, 3,905 warthogs, 17 Lichtenstein's hartebeests, 808 waterbucks and 135 bushbucks were lost<sup>558</sup>.

5.118. Aerial counts carried out between 1998 and 2003 by an international team<sup>559</sup> reported declines in the numbers of giraffes (down 82), warthogs (down 3,976), hartebeests (down 461), waterbucks (down 961) and kob (down 270)<sup>560</sup>.

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<sup>555</sup>United Nations Security Council, *Report of the Panel of Experts on the Illegal Exploitation of Natural Resources, op. cit.*, para. 62; emphasis added.

<sup>556</sup>Porter Commission, *Final Report, op. cit.*, p. 72; Ann. 1.11.

<sup>557</sup>*Ibid.*; emphasis added.

<sup>558</sup>DRC national consultant, *Evaluation of the damage caused to Congolese fauna, op.cit.*; Ann. 5.13.

<sup>559</sup>Kes Hillman Smith, Fraser Smith, Amube Ndey, Mbayma Atalia, Jean Mafuko, Paulin Tshikaya, Giningayo Panziama and John Watkin, *Garamba National Park and reserves — general aerial counts 1998, 2000, 2002 & 2003 and evaluation of the effects of the civil wars on the ecosystem*, pp. 3-4; Ann. 5.15. The figures cited in this report relate only to the park and do not cover the hunting reserves.

<sup>560</sup>*Ibid.*, p. 5, Table 2.

5.119. These counts also reported increases in the elephant, buffalo and hippopotamus populations<sup>561</sup>, as well as stability in the number of rhinoceroses<sup>562</sup>. However, these figures show the difference between the evolution of the total number of animals and the number of animal deaths. The fact that the total number of animals has remained stable, rather than increasing, may be attributable to a large number of deaths. On the subject of rhinoceroses, the report indicated the following:

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“Rhino numbers increased exponentially before the wars, doubling in eight years . . . However according to the rate of reproduction and the previously demonstrated rate of increase, the population should be over 60 individuals now, double current numbers. We cannot be complacent about relative stability and must do all possible to improve protection . . . to avoid loss of this, the most endangered large mammal sub-species.”<sup>563</sup>

The significance of the evolution of the total number of animals is shown in greater detail below, on the basis of UNESCO statistics.

5.120. UNESCO gives the following statistics<sup>564</sup>:

Garamba National Park				
Species	Before the war (1996)	During the war	After the war	Observations
Rhinoceros	29	26 (1998) 30 (2002)	14-20 (Jul. 2004)	50% of animals poached for horns
Girafe	178	144 (1998) 118 (2000)	62	Trophy poaching
Elephant	11 175	5 878 (1998) 5 983 (2000)	6 848	Armed poaching (meat/ivory)
Buffalo	25 242	7 772 (1998) 13 281 (2002)	14 480	Decrease in rhino, elephant and girafe poaching
Hippopotamus	3601	786 (1998)	3 036	Decrease in rhino, elephant and girafe poaching

5.121. With regard to rhinoceroses, the UNESCO statistics do, admittedly, point to a lower number of animals killed than the ICCN figures. It should be noted, however, that UNESCO’s estimates of the number of rhinoceroses after the war — “between 14 and 20” — are uncertain. Moreover, as has already been pointed out, the evolution of the total number does not indicate the number of animals killed. If no animals had been killed, the population would have increased strongly.

5.122. For giraffes, the figure of 92 killed animals indicated by the ICCN is supported by UNESCO’s table, which puts the number of giraffes lost between 1996 and the post-war period at 116.

5.123. In respect of elephants, UNESCO cites figures of 5,878 in 1998 and 5,983 in 2000. However, this increase in absolute terms masks significant losses. An elephant population is, on

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<sup>561</sup>Kes Hillman Smith, Fraser Smith, Amube Ndey, Mbayma Atalia, Jean Mafuko, Paulin Tshikaya, Giningayo Panziama and John Watkin, *Garamba National Park and reserves — general aerial counts 1998, 2000, 2002 & 2003 and evaluation of the effects of the civil wars on the ecosystem*, p. 5, Table 2. The figures cited in this report relate only to the park and do not cover the hunting reserves.

<sup>562</sup>*Ibid.*, p. 7.

<sup>563</sup>*Ibid.*, p. 13.

<sup>564</sup>UNESCO, *Promoting and Preserving Congolese Heritage*, *op.cit.*, p. 113; Ann. 5.14.



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average, 50 per cent male and 50 per cent female, and a female will give birth to an average of one baby per year<sup>565</sup>. The increase from 5,878 to 5,983 therefore conceals an enormous loss. The same is true of the increase from 5,878 animals in 1998 to 6,848 animals after the war. Indeed, it is for this reason that UNESCO's table contains a reference to "armed poaching (meat/ivory)".

This analysis is supported by the evolution of the hippopotamus and buffalo populations, which grew strongly between 1998 and 2003.

5.124. The above analysis thus fully confirms the validity of the figures presented by the ICCN and, consequently, the enormous losses suffered in Garamba Park between 1998 and 2003.

#### D. Okapi Wildlife Reserve

5.125. The Okapi Wildlife Reserve contains an exceptionally diverse range of flora and is home to endangered species of primates and birds, as well as around 5,000 of the 30,000 okapis living in the wild<sup>566</sup>.

5.126. The reserve occupies around one fifth of Ituri Forest in the north-east of the DRC, between Virunga Park and Garamba Park. As the map below shows, the reserve is mainly situated in Ituri, so most of it was under Ugandan occupation during the war.



Map No. 5.11.

#### Okapi Wildlife Reserve

Legend:

- |                    |   |                  |
|--------------------|---|------------------|
| Soudan             | = | Sudan            |
| Ouganda            | = | Uganda           |
| Province orientale | = | Oriente province |
| Reserve Okapi      | = | Okapi reserve    |
| Nord-Kivu          | = | North Kivu       |

<sup>565</sup>See the statistics in para. 5.139 below.

<sup>566</sup><http://whc.unesco.org/en/list/718>.



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5.127. In its first report, the United Nations Panel of Experts stressed the grave and chaotic situation in the Congolese national parks, including the Okapi Wildlife Reserve:

“The situation in other parks and reserves is equally grave, including Kahuzi-Biega Park, the Okapi Reserve and Virunga Park. The number of okapis, gorillas and elephants has dwindled to small populations.”<sup>567</sup>

The Panel of Experts went on to highlight the militarization of the reserve and its strategic position in terms of the ongoing conflict:

*“The combination of the exploitation activities and ongoing conflict has effectively eliminated State administrative control over the parks and led to the militarization of many of them, for example, the Virunga, Kahuzi-Biega and Okapi reserves. These parks are strategically located along the eastern border, and are regularly used as crossing points by military forces to gain access to the interior of the eastern region. The increased presence of foreign military, local rebel forces and armed groups, some of which occupy areas within the parks on a semi-permanent basis, has resulted in the development of highly organized and systematic exploitation activities at levels never before seen.”*<sup>568</sup>

5.128. In its report entitled “World Heritage in the Congo Basin”, UNESCO describes the situation in the Okapi Wildlife Reserve (looking specifically at the town of Epulu, which is situated in the middle of the reserve) and highlights the causal link between the presence of the Ugandan army and the damage done to fauna:

*“During the civil war Epulu was the front line between the warring parties. The breakdown in law and order during the 90’s provided the opportunity for thousands of itinerant miners, as well as elements from the Ugandan army, to enter the forests of eastern DRC to extract timber and mine for gold, diamonds and coltan. Temporary mining camps composed of miners, their families, hunters, itinerant traders and other hangers-on appeared all over the forest. The effects on wildlife were devastating as the mining camps became centres for the commercial bushmeat and ivory trades.”*<sup>569</sup>

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5.129. According to the ICCN’s assessment, 1,000 antelope, 2,000 elephants, 1,000 okapis and 2,000 chimpanzees were killed in the course of the war<sup>570</sup>.

5.130. These figures are not directly comparable with those of UNESCO<sup>571</sup>, since UNESCO’s inventory was still ongoing at the time of its conference in 2004. The table below contains figures for “before 1996” and “during the war” (i.e., up to 2000, given the heading of the third column). It shows that the elephant population suffered a loss of between 950 and 2,200 animals over that period, while the chimpanzee population suffered a loss of between 1,500 and 2,000 animals.

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<sup>567</sup>United Nations Security Council, *Report of the Panel of Experts on the Illegal Exploitation of Natural Resources*, op. cit., para. 61; Ann. 1.7.

<sup>568</sup>United Nations Security Council, *Interim report of the Panel of Experts on the Illegal Exploitation of Natural Resources*, op. cit., para. 52; emphasis added; Ann. 1.9.

<sup>569</sup>UNESCO, *World Heritage in the Congo Basin*, 2010; emphasis added; Ann. 5.16.

<sup>570</sup>DRC national consultant, *Evaluation of the damage caused to Congolese fauna*, op. cit.; Ann. 5.13.

<sup>571</sup>UNESCO, *Promoting and Preserving Congolese Heritage*, op. cit., p. 113; Ann. 5.14.

Okapis Faunal Reserve			
Species	Before 1996	During the war	After 2000
Okapi	3 900-6 350	3 900-6 350	Ongoing inventory
Elephant	4 750-6 000	3 800	Ongoing inventory
Chimpanzee	7 500-12 000	6 000-10 000	Ongoing inventory

5.131. Again, when interpreting these figures, it must be borne in mind that the lack of an increase in the number of animals often masks unnatural losses. On average, females make up 50 per cent of the okapi population, and each female produces an average of four babies every five years. A stable number of okapis in the period to 2000 is not, therefore, inconsistent with the loss of 1,000 animals reported by the ICCN for the period from 1998 to 2003.

### E. Maiko National Park

5.132. Maiko National Park, which covers 600,000 hectares, is situated in what were at the time Orientale and North Kivu provinces. It was created with the aim of protecting okapis, mountain gorillas and Congo peafowl, in addition to preserving an area of rainforest<sup>572</sup>.

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**Legend:**

- Soudan = Sudan
- Ouganda = Uganda
- Province orientale = Orientale province
- Parc National de la Maiko = Maiko National Park
- Nord-Kivu = North Kivu

5.133. On 21 August 1998, rebel RCD—ML brigades, supported by the APR and the UPDF, launched a ground operation along the Lubutu road, which borders the park. Following that operation, Ugandan troops arrived in Kisangani on 21 and 22 August 1998<sup>573</sup>.

5.134. The ICCN’s counts suggest that an estimated 1,000 antelope and 2,000 elephants were killed<sup>574</sup>. UNESCO does not provide statistics for Maiko Park.

<sup>572</sup><http://www.congonline.com/Tourisme/lesparcs.htm>.

<sup>573</sup>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 Sep. 1998, in Badidike (ed.), *op. cit.*; Ann. 4.10a.

## F. Total numbers of animals and their offspring

5.135. Animal deaths during the war had a direct impact on their respective populations. They also had an indirect impact, since the animals that were killed did not then give birth to young.

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In other words, while the subsections above have shown that a stable population can be the result of killings combined with *actual* births, account should also be taken of the *lost* births caused by killed animals' inability to produce offspring.

5.136. The DRC has taken account of those unborn offspring by adding to the animals killed the number of animals to which they would have given birth in the five years of war. This approach is doubly conservative. First, it takes no account of any animals that might have been born *after* the war. And second, for certain species of animal, the first unborn generation could potentially have given birth to a second generation in the space of those five years of war.

5.137. The DRC will begin, therefore, by recalling the total number of animals in each species that were killed in the various national parks in the course of the war, before then determining the number of offspring in the *next generation* that remained unborn as a result.

5.138. On the basis of the data provided by the ICCN, the total numbers of animals killed in the various national parks covered here are as follows<sup>575</sup>:

**Table No. 1**

<i>Species/Park</i>	<i>GARAMBA</i>	<i>VIRUNGA</i>	<i>MAIKO</i>	<i>WILDLIFE RESERVE</i>	<i>Total</i>
ANTELOPE	5,000	20,000	1,000	1,000	<b>27,000</b>
ELEPHANTS	5,000	1,229	2,000	2,000	<b>10,229</b>
HIPPOPOTAMUSES	0	107	0	0	<b>107</b>
BUFFALO	0	9,048	0	0	<b>9,048</b>
GIRAFFES	92	0	0	0	<b>92</b>
OKAPIS	0	0	0	1,000	<b>1,000</b>
RHINOCEROSES	21	0	0	0	<b>21</b>
WARTHOGS	3,905	67	0	0	<b>3,972</b>
BABOONS	0	96	0	0	<b>96</b>
MONGOOSES	0	77	0	0	<b>77</b>
CROCODILES	0	72	0	0	<b>72</b>
LICHTENSTEIN'S HARTEBEESTS	17	0	0	0	<b>17</b>
WESTERN KOB	0	160	0	0	<b>160</b>
WATERBUCKS	808	39	0	0	<b>847</b>
BUSHBUCKS	135	19	0	0	<b>154</b>
CHIMPANZEES	0	0	0	2,000	<b>2,000</b>

5.139. The numbers of males and females in an animal population vary from species to species. The report annexed to this Memorial<sup>576</sup> establishes the sex ratio for each species — i.e., the percentages of males and females in each species' population. It also establishes the rate of

<sup>574</sup>DRC national consultant, *Evaluation of the damage caused to Congolese fauna, op. cit.*; Ann. 5.13.

<sup>575</sup>*Ibid.*

<sup>576</sup>DRC national consultant, *Evaluation of the damage caused to Congolese fauna, op. cit.*; Ann. 5.13.

**188** reproduction — i.e., the number of young born per year per female. This information, which is accompanied in the report by the relevant scientific references, is as follows:

**Table No. 2.**  
**Sex ratios and rates of reproduction of various species**

No.	Species	Sex ratio (%)		Rate of reproduction
		Female	Male	
1	Elephant	50	50	1 baby per year
2	Hippopotamus	50	50	1 baby per year
3	Antelope	69.5	30.5	2 babies per year
4	Western kob	62.9	37.1	3 babies per year
5	Bushbuck	58	42	2 babies per year
6	Waterbuck	69.5	30.5	1 baby per year
7	Lichtenstein's hartebeest	60	40	1 baby per year
8	Gorilla	60	40	2 babies in 5 years
9	Buffalo	54.3	45.7	1 baby per year
10	Giraffe	50	50	4 babies in 5 years
11	Rhinoceros	50	50	2 babies in 5 years
12	Crocodile	50	50	50 babies per year
13	Warthog	63.3	36.7	16 babies per year
14	Baboon	50	50	2 babies in 5 years
15	Mongoose	40	60	12 babies per year
16	Chimpanzee	60	40	2 babies in 5 years
17	Okapi	50	50	4 babies in 5 years

5.140. The sex ratio allows us to estimate the number of animals of each sex that were lost during the war in each of the national parks in question:

**Table No. 3.**  
**Numbers of males and females per species per park**

Species/Park	GARAMBA		VIRUNGA		MAIKO		WILDLIFE RESERVE		Total	
	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male
ANTELOPE	3,475	1,525	13,900	6,100	695	305	695	305	<b>18,765</b>	<b>8,235</b>
ELEPHANTS	2,500	2,500	615	614	1,000	1,000	1,000	1,000	<b>5,115</b>	<b>5,114</b>
HIPPOPOTAMUSES	0	0	54	53					<b>54</b>	<b>53</b>
BUFFALO			4,913	4,135					<b>4,913</b>	<b>4,135</b>
GIRAFFES	46	46							<b>46</b>	<b>46</b>
OKAPIS							500	500	<b>500</b>	<b>500</b>
RHINOCEROSSES	11	10							<b>11</b>	<b>10</b>
WARTHOGS	2,472	1,433	42	25					<b>2,514</b>	<b>1,458</b>
BABOONS			48	48					<b>48</b>	<b>48</b>
MONGOOSES			31	46					<b>31</b>	<b>46</b>
CROCODILES			36	36					<b>36</b>	<b>36</b>
LICHTENSTEIN'S HARTEBEESTS	10	7							<b>10</b>	<b>7</b>
WESTERN KOB			101	59					<b>101</b>	<b>59</b>
WATERBUCKS	562	246	27	12					<b>589</b>	<b>258</b>
BUSHBUCKS	78	57	11	8					<b>89</b>	<b>65</b>
CHIMPANZEES							1,200	800	<b>1,200</b>	<b>800</b>

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5.141. Turning now to the rates of reproduction for the various species, the figures above allow us to determine the number of young in each species that would have been born in the next generation had those adult females and males not been killed.

Table No. 4. Total numbers of animals, including offspring, per park

Species/Park	GARAMBA			VIRUNGA			MAIKO			WILDLIFE RESERVE			Total			
	Female	Male	Young	Female	Male	Young	Female	Male	Young	Female	Male	Young	Female	Male	Young	Total
ANTELOPE	3,475	1,525	34,750	13,900	6,100	139,000	695	305	6,950	695	305	6,950	18,765	8,235	187,650	214,650
ELEPHANTS	2,500	2,500	12,500	615	614	3,075	1,000	1,000	5,000	1,000	1,000	5,000	5,115	5,114	25,575	35,804
HIPPOPOTAMUSES	0	0	0	54	53	270	0	0	0	0	0	0	54	53	270	377
BUFFALO	0	0	0	4,913	4,135	24,565	0	0	0	0	0	0	4,913	4,135	24,565	33,613
GIRAFFES	46	46	184	0	0	0	0	0	0	0	0	0	46	46	184	276
OKAPIS	0	0	0	0	0	0	0	0	0	500	500	2,000	500	500	2,000	3,000
RHINOCEROSES	11	10	22	0	0	0	0	0	0	0	0	0	11	10	22	43
WARTHOGS	2,472	1,433	197,760	42	25	3,360	0	0	0	0	0	0	2,514	1,458	201,120	205,092
BABOONS	0	0	0	48	48	96	0	0	0	0	0	0	48	48	96	192
MONGOOSEES	0	0	0	31	46	1,860	0	0	0	0	0	0	31	46	1,860	1,937
CROCODILES	0	0	0	36	36	9,000	0	0	0	0	0	0	36	36	9,000	9,072
LICHTENSTEIN'S HARTEBEESTS	10	7	100	0	0	0	0	0	0	0	0	0	10	7	100	117
WESTERN KOB	0	0	0	101	59	1,515	0	0	0	0	0	0	101	59	1,515	1,675
WATERBUCKS	562	246	2,810	27	12	135	0	0	0	0	0	0	589	258	2,945	3,792
BUSHBUCKS	78	57	780	11	8	110	0	0	0	0	0	0	89	65	890	1,044
CHIMPANZEES	0	0	0	0	0	0	0	0	0	1,200	800	6,000	1,200	800	6,000	8,000

## G. Assessment of injury

5.142. When assessing the injury suffered by the DRC in this regard, it should be noted first of all that this decimation of fauna took place in the DRC's national parks. No animal — whether an endangered species or not — may be hunted in these parks, which are not hunting reserves.

5.143. This is not, therefore, a question of measuring the impact that the animal losses detailed above had on the consumption and sale of animal products. It is a question of measuring the prejudice caused to the national parks and their fauna and the damage done to biodiversity, as well as to tourism and its development.

5.144. Before providing more details regarding the calculation method for the compensation that it is seeking, the DRC will first show the impact that the decimation of Congolese fauna — more specifically, endangered species — has had on the development of ecotourism in the DRC.

### (i) Injury with regard to the development of ecotourism

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5.145. One possible method of assessment would be to assess the economic value of the various animal species in terms of the revenue they are able to generate in relation to tourism — more specifically, ecotourism. This would mean assessing the injury suffered by the DRC in terms of the economic value of an animal living in its natural habitat, rather than the price of a dead animal.

5.146. This approach is particularly relevant for animals that are threatened with extinction. Trade in such animals is largely precluded by CITES<sup>577</sup>, and at the same time they generate the largest revenues in terms of ecotourism.

5.147. For example, according to a study carried out by the David Sheldrick Wildlife Trust in South Africa, Kenya, Tanzania and Zambia, an elephant brings in almost €18,000 per year in ecotourism<sup>578</sup>. With an average lifespan of 70 years, each elephant brings in €1.6 million (around US\$1,788,234) in the course of its life.

5.148. Admittedly, ecotourism in the DRC is not currently — and was not before the war — as well developed as it is in, say, South Africa. However, the damage done to endangered species in the DRC will have repercussions for future generations. At the same time, ecotourism is experiencing very significant growth, which will strengthen further in the decades to come. Following the United Nations General Assembly's adoption of resolution 53/200 proclaiming 2002 the International Year of Ecotourism, various studies have confirmed the economic importance of this sector. For example, a joint study by UNEP and the World Tourism Organization entitled *Tourism — Investing in energy and resource efficiency* observes the following:

“Tourist choices are increasingly influenced by sustainability considerations . . . Choice experiments conducted in Uganda conclude that biodiversity attributes increase the willingness to visit tourism attractions, independently of other factors . . . ecotourism, nature, heritage, cultural and ‘soft

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<sup>577</sup>See, *inter alia*, Art. II (1) of the Convention.

<sup>578</sup>David Sheldrick Wildlife Trust, *Dead or Alive? Valuing an Elephant*, n.d.; Ann. 5.17.

adventure' tourism, as well as sub-sectors such as rural and community tourism are taking the lead in tourism markets and are predicted to grow most rapidly over the next two decades. It is estimated that global spending on ecotourism is increasing at a higher rate than the industry-wide average growth . . .

There is empirical evidence that tourists seeking environmental and culturally differentiated destinations are willing to pay more for this experience.”<sup>579</sup>

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5.149. A study entitled *Towards Measuring the Economic Value of Wildlife Watching Tourism in Africa* conducted by the World Tourism Organization in 2015 fully supports the above. While noting that the ecotourism sector remains underdeveloped in the DRC<sup>580</sup>, the study observes that ecotourism, which generates an average of US\$488 of expenditure per day per person<sup>581</sup>, is experiencing very considerable growth: “The global market size of wildlife tourism has been estimated at 12 million trips annually and is growing at a rate of about 10% a year.”<sup>582</sup>

5.150. In the light of this information, the economic value of the elephants killed between 1998 and 2003 should therefore be assessed in terms of the contribution that they would have made to the Congolese economy in decades to come, rather than on the basis of the size of the DRC's ecotourism sector before or during the war.

5.151. In Virunga Park alone, a total of 1,250 elephants were killed or remained unborn. If, given that another State also invaded and damaged the park, Uganda is considered responsible for 50 per cent of those losses, Uganda's wrongful acts caused the loss of 625 elephants. At a rate of US\$1,788,000 per animal, the injury in relation to this one specific aspect — looking only at elephants — would stand at US\$1,117,500,000.

Similar assessments would need to be carried out for the gorilla population in Virunga Park and the okapi population in the Okapi Wildlife Reserve, which are even more exceptional.

5.152. While it notes the significance of this approach in terms of assessing the order of magnitude of the injury suffered, the DRC will use an alternative calculation method, as set out below, based on the value attributed to each animal killed.

#### **(ii) The commercial value of the various species**

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5.153. The calculation method employed below is based on the prices applied in the — often unlawful — markets where the aforementioned wild animal species are traded.

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<sup>579</sup>UNEP and UNWTO, *Tourism — Investing in energy and resource efficiency*, 2011, p. 420; Ann. 5.18.

<sup>580</sup>UNWTO, *Towards Measuring the Economic Value of Wildlife Watching Tourism in Africa*, 2015, p. 25: “Countries with a limited number of visitors in protected areas: between 1,000 and 90,000 visitors per year. It is estimated that they have receipts between US\$20,000 and 700,000 per year. (Burkina Faso, Chad, Cote d'Ivoire, Democratic Republic of Congo, Ghana, Niger)”; Ann. 5.19.

<sup>581</sup>*Ibid.*, p. 3 and, in more detail, pp. 26-27.

<sup>582</sup>*Ibid.*, p. 6: “a typical wildlife watching tour involves on average a group of six people, lasts 10 days, has an average daily price per person of US\$433 and captures an additional US\$55 in out-of-pocket expenses per person, per day. The findings also indicated the differences between standard and luxury segments with the greatest variation being in both average daily price per person per day (US\$753 for a luxury package and US\$243 for a standard package) and in out-of-pocket expenditures (US\$59 for a traveller on a luxury package and US\$44 per person per day on a standard package).”



5.154. The use of this criterion for assessment does not mean that the DRC intends to claim compensation for a commercial injury assessed on the basis of the prices applied in those markets. As indicated above, several of the species in question are threatened with extinction, such that trade in those animals is precluded by CITES. And even in the case of species that are not threatened with extinction, trade is precluded where those animals live in the DRC's national parks. This is not, therefore, about claiming a commercial value *as such*, but about using that value in order to assess the ecological and economic injury suffered by the DRC.

5.155. The expert report annexed to this Memorial has used various sources to determine such prices for each of the animal species covered by this claim:

- Where species are threatened with extinction and trade is strictly prohibited by CITES, reference is made to the prices applied in unlawful markets, as detailed, for example, for certain animal species, in a report produced for the United States Congress, which is annexed to the expert report<sup>583</sup>. Those prices have, where appropriate, been extrapolated to other animals in the same family.
- Some species can be purchased live in certain countries, such as South Africa, or traded in other forms in international markets. The prices applied in such markets, as published on the internet by companies such as Wildlife Auctions<sup>584</sup>, Wildlife Trading<sup>585</sup> and Kirkwood Game Auction<sup>586</sup>, have been used, e.g., for antelope.
- 193 — Other species may be hunted. In this case, the price used is that of a hunt, including the trophy, as indicated for example on the website of the South African company African Sky Hunting<sup>587</sup>.

5.156. Where different prices apply for the males and females of a given species, an average has been used. For offspring that have remained unborn on account of deaths in the existing population, a price equivalent to half of the adult price has generally been used for the assessment. Exceptionally, a different price has been used for certain young. This is the case for crocodiles, which give birth to a large number of young each year, resulting in the use of a price for their young which is less than half the adult price.

5.157. Moreover, the assessments for the various species also take account of the fact that the protection status of the species in question may vary from one country to another. Thus, rhinoceroses (*Rhinocerotidae*) are *generally* listed in Appendix I to CITES. Only the *southern* white rhinoceros (*Ceratotherium simum simum*) populations of South Africa and Swaziland appear in Appendix II, for the exclusive purpose of allowing international trade in live animals to appropriate and acceptable destinations, and in hunting trophies<sup>588</sup>. Consequently, the DRC's rhinoceroses, including the *northern* white rhinoceroses found in Garamba Park, appear in Appendix I to the Convention; they are under serious threat of extinction, and trade in them is strictly precluded. Similarly, South Africa's elephant populations appear in Appendix II to CITES,

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<sup>583</sup>Liana Sun Wyler and Pervaze A. Sheikh, *International Illegal Trade in Wildlife: Threats and U.S. Policy*, CRS report for Congress, Congressional Research Service, 3 Mar. 2008, particularly p. 7; annexed to the expert report *Evaluation of the damage caused to Congolese fauna by Uganda between 1998 and 2003*; Ann. 5.13.

<sup>584</sup>[www.wildlifeauctions.co.za](http://www.wildlifeauctions.co.za).

<sup>585</sup>[www.wildlifetrading.co.za](http://www.wildlifetrading.co.za).

<sup>586</sup>[www.kirkwoodgameauction.co.za](http://www.kirkwoodgameauction.co.za).

<sup>587</sup>[www.africanskyhunting.co.za](http://www.africanskyhunting.co.za).

<sup>588</sup><https://cites.org/eng/app/appendices.php>.

while the DRC's elephant populations appear in Appendix I. These differences in status must be taken into account in the assessment.

5.158. In general, horns have not been assessed separately. Exceptions have been made for rhinoceros horns, which are ground into powder and sold in unlawful markets on account of their supposed medicinal properties, and elephant tusks, the ivory in which is likewise sold for very high prices. The prices used in this regard are those applied in unlawful markets, as detailed, for example, in the above-mentioned report produced for the United States Congress<sup>589</sup>.

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5.159. The components and outcomes of these assessments are essentially as follows:

1. For antelopes, the assessment is based on live animal prices for two types of antelope — namely, the sable antelope and the impala — as published on the websites of the above-mentioned South African companies. An average of US\$2,488 has been used for adults. The same approach has been followed for bushbucks (US\$1,028), Lichtenstein's hartebeests (US\$9,494) and western kob (US\$8,344). For waterbucks, the price of a live animal has been combined with the price of a hunt in South Africa (US\$2,451).
2. For chimpanzees, the price applied is that of an orang-utan in unlawful markets, as cited in the above-mentioned report prepared for the United States Congress — namely, US\$50,000. These species belong to the same family and are both in Appendix I to CITES.
3. For elephants, the assessment reflects the price of a hunt in South Africa, as indicated by the South African company African Sky Hunting. It also takes account of the fact that South Africa's elephant population is in Appendix I to CITES — whereas the DRC's is in Appendix II — and therefore more endangered. A price of US\$50,000 has been used.
4. For hippopotamuses, which are in Appendix II to CITES, the price applied is the average price for a public sale in South Africa — namely, US\$5,198.
5. For warthogs, the international market prices indicated on the internet relate to hand-reared babies and average US\$5,055. Since it is difficult to compare tame and wild animals, the average price of US\$5,055 has been used for both adults and babies. In other words, the price of an adult has not been calculated by doubling the price of a baby.
6. For baboons, the price applied is the international market price indicated on the internet (US\$2,000). The same price has been used for mongooses, for which no other information could be found.

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7. For crocodiles, the assessment is based on the price of a Chinese alligator in unlawful markets, as cited in the report for the United States Congress (US\$15,000), with both the DRC's crocodiles and the Chinese alligator appearing in Appendix I to CITES. In this case, the price of offspring is US\$3,750 per animal.
8. As regards giraffes, the population in the DRC — more specifically, Garamba Park — belongs to an exceptional subspecies which is severely endangered. The above-mentioned census report states: "This giraffe population is the only one extant in DRC and probably the only representative of the sub-species (*Giraffa Camelopardalis congoensis*). It is classified as endangered by the IUCN red list categories (IUCN/SCC 1995). The northern white rhinos and

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<sup>589</sup>Liana Sun Wyler and Pervaze A. Sheikh, *International Illegal Trade in Wildlife*, op. cit., particularly p. 7; annexed to the expert report *Evaluation of the damage caused to Congolese fauna by Uganda between 1998 and 2003*; Ann. 5.13.

the giraffes were the main reason for the creation of the park in 1938 and for its world heritage status in 1981.”<sup>590</sup> Consequently, while prices for ordinary giraffes range between US\$1,300 and US\$80,000, the value used here is that of a severely endangered primate — namely, US\$50,000.

9. The same value — US\$50,000 — has also been used for okapis, which belong to the same family as the giraffe and are only found in the DRC.
10. For rhinoceroses, the assessment took account of the prices of live animals sold in South Africa, which averaged US\$28,000. That price was then revised in the light of the differing protection statuses of different rhinoceros populations; given the CITES listings explained in para. 5.157 above, those animals sold in South Africa were necessarily in Appendix II to the Convention and subject to regular trade. Their value was necessarily lower than that of the DRC’s rhinoceroses, which are listed in Appendix I to the Convention and are very severely endangered. For the DRC’s rhinoceroses, therefore, the price has been set at US\$50,000.

5.160. The results of the application of these prices to the various national parks are set out below.

**(iii) Virunga National Park**

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5.161. The losses in Virunga National Park during the Ugandan invasion are summarized in Table No. 3 above<sup>591</sup>.

Combining the column listing those losses with the values for each species indicated above, and in the expert report<sup>592</sup>, results in the following assessment of the damage done to the animal species in this park:

<i>Antelope (Virunga National Park)</i>			
I. Numbers	Antelope		
Females (69.5% of total)			13,900
Males (30.5% of total)			6,100
Total			20,000
Reproduction (2 baby antelope per year per female)			139,000
II. Value	Number	Unit price	Total price
Females (69.5% of total)	13,900	US\$2,488.00	US\$34,583,200.00
Males (30.5% of total)	6,100	US\$2,488.00	US\$15,176,800.00
Reproduction (2 baby antelope per year per female)	139,000	US\$1,244.00	US\$172,916,000.00
<i>Overall total</i>			<i>US\$222,676,000.00</i>

<sup>590</sup>Kes Hillman Smith et al., *Garamba National Park and reserves, op. cit.*, pp. 13-14; Ann. 5.15.

<sup>591</sup>See para. 5.140 above.

<sup>592</sup>See para. 5.159 above and, as regards offspring, DRC national consultant, *Evaluation of the damage caused to Congolese fauna, op. cit.*; Ann. 5.13.

<i>Elephants (Virunga National Park)</i>			
I. Estimated figures	Elephants		
	Females (50% of total)		
Males (50% of total)			614
Total			1,228
Reproduction (1 baby elephant per year per female)			3,070
II. Value	Number	Unit price	Total price
Females (50% of total)	614	US\$50,000.00	US\$30,700,000.00
Males (50% of total)	614	US\$50,000.00	US\$30,700,000.00
Reproduction (1 baby elephant per year per female)	3,075	US\$25,000.00	US\$76,875,000.00
III. Quantity and value of ivory	Kg	Price/kg	[Total price]
Ivory (no. of elephants x 50 kg/tusk x 2 (pair of tusks))	122,800	US\$650.00	US\$79,820,000.00
<i>Overall total</i>			<i>US\$218,095,000.00</i>

<i>Hippopotamuses (Virunga National Park)</i>			
I. Numbers	Hippopotamuses		
	Females (50% of total)		
Males (50% of total)			53
Total			107
Reproduction (1 baby hippopotamus per year per female)			270
II. Value	Number	Unit price	Total price
Females (50% of total)	54	US\$3,775.00	US\$203,850.00
Males (50% of total)	53	US\$3,775.00	US\$200,075.00
Reproduction (1 baby hippopotamus per year per female)	270	US\$1,887.50	US\$509,625.00
<i>Overall total</i>			<i>US\$913,550.00</i>

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<i>Buffalo (Virunga National Park)</i>			
I. Estimated figures	Buffalo		
	Females (54.3% of total)		
Males (45.7% of total)			4,135
Total			9,048
Reproduction (1 baby buffalo per year per female)			24,565
II. Estimated cost of animals lost	Number	Unit price	Total price
Females (54.3% of total)	4,913	US\$25,000.00	US\$122,825,000.00
Males (45.7% of total)	4,135	US\$25,000.00	US\$103,375,000.00
Reproduction (1 baby buffalo per year per female)	24,565	US\$12,500.00	US\$307,062,500.00
<i>Overall total</i>			<i>US\$533,262,500.00</i>

<i>Warthogs (Virunga National Park)</i>			
I. Numbers	Warthogs		
	Females (63.3% of total)		
Males (36.7% of total)			25
Total			67
Reproduction (16 baby warthogs per year per female)			3,360
II. Value	Number	Unit price	Total price
Females (63.3% of total)	42	US\$5,500.00	US\$231,000.00
Males (36.7% of total)	25	US\$5,500.00	US\$137,500.00
Reproduction (16 baby warthogs per year per female)	3,360	US\$5,500.00	US\$18,480,000.00
<i>Overall total</i>			<i>US\$18,848,500.00</i>

<i>Baboons (Virunga National Park)</i>			
I. Numbers	Baboons		
	Females (50% of total)		
Males (50% of total)			48
Total			96
Reproduction (2 baby baboons per female in 5 years)			96
II. Value	Number	Unit price	Total price
Females (50% of total)	48	US\$2,000.00	US\$96,000.00
Males (50% of total)	48	US\$2,000.00	US\$96,000.00
Reproduction (2 baby baboons per female in 5 years)	96	US\$1,000.00	US\$96,000.00
<i>Overall total</i>			<i>US\$288,000.00</i>

<i>Mongoose (Virunga National Park)</i>			
I. Numbers	Mongoose		
	Females (40% of total)		
Males (60% of total)			46
Total			77
Reproduction (12 baby mongooses per year per female)			1,860
II. Value	Number	Unit price	Total price
Females (40% of total)	31	US\$2,000.00	US\$62,000.00
Males (60% of total)	46	US\$2,000.00	US\$92,000.00
Reproduction (12 baby mongooses per year per female)	1,860	US\$1,000.00	US\$1,860,000.00
<i>Overall total</i>			<i>US\$2,014,000.00</i>

<i>Crocodiles (Virunga National Park)</i>			
I. Numbers	Crocodiles		
	Females (50% of total)		
Males (50% of total)			36
Total			72
Reproduction (50 baby crocodiles per year per female)			9,000
II. Value	Number	Unit price	Total price
Females (50% of total)	36	US\$15,000.00	US\$540,000.00
Males (50% of total)	36	US\$15,000.00	US\$540,000.00
Reproduction (50 baby crocodiles per year per female)	9,000	US\$3,750.00	US\$33,750,000.00
<i>Overall total</i>			<i>US\$34,830,000.00</i>

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<i>Western kob (Virunga National Park)</i>			
I. Numbers		Kob	
Females (62.9% of total)			101
Males (37.1% of total)			59
Total			160
Reproduction (3 baby kob per year per female)			1,515
II. Value			
	Number	Unit price	Total price
Females (62.9% of total)	101	US\$8,344.00	US\$842,744.00
Males (37.1% of total)	59	US\$8,344.00	US\$492,296.00
Reproduction (3 baby kob per year per female)	1,515	US\$4,172.00	US\$6,320,580.00
<i>Overall total</i>			<i>US\$7,655,620.00</i>

<i>Waterbucks (Virunga National Park)</i>			
I. Numbers		Waterbucks	
Females (69.5% of total)			27
Males (30.5% of total)			12
Total			39
Reproduction (1 baby waterbuck per year per female)			135
II. Value			
	Number	Unit price	Total price
Females (69.5% of total)	27	US\$2,451.00	US\$66,177.00
Males (30.5% of total)	12	US\$2,451.00	US\$29,412.00
Reproduction (1 baby waterbuck per year per female)	135	US\$1,225.50	US\$165,442.50
<i>Overall total</i>			<i>US\$261,031.50</i>

<i>Bushbucks (Virunga National Park)</i>			
I. Numbers		Bushbucks	
Females (58% of total)			11
Males (42% of total)			8
Total			19
Reproduction (2 baby bushbucks per year per female)			110
II. Value of animals			
	Number	Unit price	Total price
Females (58% of total)	11	US\$1,028.00	US\$11,308.00
Males (42% of total)	8	US\$1,028.00	US\$8,224.00
Reproduction (2 baby bushbucks per year per female)	110	US\$514.00	US\$56,540.00
<i>Overall total</i>			<i>US\$76,072.00</i>

5.162. Thus, the injury in respect of Virunga Park totals US\$1,038,920,273.

5.163. In establishing these data, the ICCN concentrated on the northern sector of the park, which bore the brunt of Uganda's internationally wrongful acts. This can be seen, for example, from the fact that mountain gorillas, which live mainly in the south of the park, where Rwanda played the dominant role, are not included.

5.164. Nevertheless, in order to ensure that its claim is entirely fair and reasonable, the DRC has carried out a further adjustment in order to take account of any losses that may not have been associated with Uganda's wrongful acts.

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5.165. On the basis of the information above, the injury caused by Uganda's wrongful acts in Virunga Park is estimated to account for (at least) 80 per cent of the aforementioned amount — i.e., US\$1,038,920,273 x 80 per cent, which equals US\$831,136,218 (eight hundred and thirty-one million, one hundred and thirty-six thousand, two hundred and eighteen United States dollars).

**(iv) Garamba National Park**

5.166. The total animal losses experienced in Garamba National Park during the Ugandan invasion are summarized in Table No. 3 above<sup>593</sup>.

Combining the column listing those losses with the values for each species indicated above, and in the expert report<sup>594</sup>, results in the following assessment of the damage done to the animal species in this park:

<i>Antelope (Garamba National Park)</i>			
I. Numbers	Antelope		
	Females (69.5% of total)		
Males (30.5% of total)			1,525
Total			5,000
Reproduction (2 baby antelope per year per female)			34,750
II. Value of animals	Number	Unit price	Total price
Females (69.5% of total)	3,475	US\$2,488.00	US\$8,645,800.00
Males (30.5% of total)	1,525	US\$2,488.00	US\$3,794,200.00
Reproduction (2 baby antelope per year per female)	34,750	US\$1,244.00	US\$43,229,000.00
<i>Overall total</i>			<i>US\$55,669,000.00</i>

<i>Elephants (Garamba National Park)</i>			
I. Numbers	Elephants		
	Females (50% of total)		
Males (50% of total)			2,500
Total			5,000
Reproduction (1 baby elephant per year per female)			12,500
II. Value of animals	Number	Unit price	Total price
Females (50% of total)	2,500	US\$50,000.00	US\$125,000,000.00
Males (50% of total)	2,500	US\$50,000.00	US\$125,000,000.00
Reproduction (1 baby elephant per year per female)	12,500	US\$25,000.00	US\$312,500,000.00
III. Quantity and value of ivory	[Kg]	Price/kg	[Total price]
Ivory (no. of elephants x 50 kg/tusk x 2 (pair of tusks))	500,000	US\$650.00	US\$325,000,000.00
<i>Overall total</i>			<i>US\$887,500,000.00</i>

<sup>593</sup>See para. 5.140 above.

<sup>594</sup>See para. 5.159 above and, as regards young, DRC national consultant, *Evaluation of the damage caused to Congolese fauna, op. cit.*; Ann. 5.13.

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<i>Giraffes (Garamba National Park)</i>			
I. Numbers	Giraffes		
			Animals lost
Females (50% of total)			46
Males (50% of total)			46
Total			92
Reproduction (4 baby giraffes per female in 5 years)			184
II. Value of animals	Number	Unit price	Total price
Females (50% of total)	46	US\$50,000.00	US\$2,300,000.00
Males (50% of total)	46	US\$50,000.00	US\$2,300,000.00
Reproduction (4 baby giraffes per female in 5 years)	184	US\$25,000.00	US\$4,600,000.00
<i>Overall total</i>			<i>US\$9,200,000.00</i>

<i>Rhinoceroses (Garamba National Park)</i>			
I. Numbers	Rhinoceroses		
Females (50% of total)			11
Males (50% of total)			10
Total			21
Reproduction (2 baby rhinos per year per female)			22
II. Value of animals	Number	Unit price	Total price
Females (50% of total)	11	US\$50,000.00	US\$550,000.00
Males (50% of total)	10	US\$50,000.00	US\$500,000.00
Reproduction (2 baby rhinos per year per female)	22	US\$25,000.00	US\$550,000.00
III. Quantity and value of horns		Unit price	Total price
Rhino horns (1 full-size, 1 half-size per rhino)	[31.5]	US\$25,000.00	US\$787,500.00
=			
<i>Overall total</i>			<i>US\$2,387,500.00</i>

<i>Warthogs (Garamba National Park)</i>			
I. Numbers	Warthogs		
Females (63.3% of total)			2,472
Males (36.7% of total)			1,433
Total			3,905
Reproduction (16 baby warthogs per year per female)			197,760
II. Value of animals	Number	Unit price	Total price
Females (60% of total)	2,472	US\$5,500.00	US\$13,596,000.00
Males (40% of total)	1,433	US\$5,500.00	US\$7,881,500.00
Reproduction (16 baby warthogs per year per female)	197,760	US\$5,500.00	US\$1,087,680,000.00
<i>Overall total</i>			<i>US\$1,109,157,500.00</i>



<i>Lichtenstein's hartebeests (Garamba National Park)</i>			
I. Numbers	Lichtenstein's hartebeests		
	Females (60% of total)		
Males (40% of total)			7
Total			17
Reproduction (2 baby Lichtenstein's hartebeests per year per female)			100
II. Value of animals	Number	Unit price	Total price
Females (60% of total)	10	US\$9,494.00	US\$94,940.00
Males (40% of total)	7	US\$9,494.00	US\$66,458.00
Reproduction (2 baby Lichtenstein's hartebeests per year per female)	100	US\$4,747.00	US\$474,700.00
<i>Overall total</i>			<i>US\$636,098.00</i>

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<i>Waterbucks (Garamba National Park)</i>			
I. Numbers	Waterbucks		
	Females (69.5% of total)		
Males (30.5% of total)			246
Total			808
Reproduction (1 baby waterbuck per year per female)			2,810
II. Value of animals	Number	Unit price	Total price
Females (69.5% of total)	562	US\$2,451.00	US\$1,377,462.00
Males (30.5% of total)	246	US\$2,451.00	US\$602,946.00
Reproduction (1 baby waterbuck per year per female)	2,810	US\$1,225.50	US\$3,443,655.00
<i>Overall total</i>			<i>US\$5,424,063.00</i>

<i>Bushbucks (Garamba National Park)</i>			
I. Numbers	Bushbucks		
	Females (58% of total)		
Males (42% of total)			57
Total			135
Reproduction (2 baby bushbucks per year per female)			780
II. Value of animals	Number	Unit price	Total price
Females (58% of total)	78	US\$1,028.00	US\$80,184.00
Males (42% of total)	57	US\$1,028.00	US\$58,596.00
Reproduction (2 baby bushbucks per year per female)	780	US\$514.00	US\$400,920.00
<i>Overall total</i>			<i>US\$539,700.00</i>

The total from animal losses in Garamba Park thus stands at US\$2,070,513,861.

5.167. Not all of this injury was caused by Uganda's wrongful acts. In particular, Sudanese rebels were operating in certain parts of the park and caused damage in those areas. It is therefore reasonable and fair to consider that 50 per cent of that total injury was caused by Uganda's wrongful acts — i.e., US\$2,070,513,861 divided by 2, which equals US\$1,035,256,930 (one thousand and thirty-five million, two hundred and fifty-six thousand, nine hundred and thirty United States dollars).

**(v) Okapi Wildlife Reserve**

5.168. The total numbers of animals lost in the Okapi Wildlife Reserve during the Ugandan invasion are summarized above<sup>595</sup>.

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Combining the column in that table which lists the losses experienced in the reserve with the values for each species indicated above, and in the expert report<sup>596</sup>, results in the following assessment of the injury suffered by the DRC:

<i>Antelope (Okapi Wildlife Reserve)</i>			
I. Numbers	Antelope		
Females (69.5% of total)			695
Males (30.5% of total)			305
Total			1,000
Reproduction (2 baby antelope per year per female)			6,950
II. Value of animals	Number	Unit price	Total price
Females (69.5% of total)	695	US\$2,488.00	US\$1,729,160.00
Males (30.5% of total)	305	US\$2,488.00	US\$758,840.00
Reproduction (2 baby antelope per year per female)	6,950	US\$1,244.00	US\$8,645,800.00
<i>Overall total</i>			<i>US\$11,133,800.00</i>

<i>Elephants (Okapi Wildlife Reserve)</i>			
I. Numbers	Elephants		
Females (50% of total)			1,000
Males (50% of total)			1,000
Total			2,000
Reproduction (1 baby elephant per year per female)			5,000
II. Value of animals	Number	Unit price	Total price
Females (50% of total)	1,000	US\$50,000.00	US\$50,000,000.00
Males (50% of total)	1,000	US\$50,000.00	US\$50,000,000.00
Reproduction (1 baby elephant per year per female)	5,000	US\$25,000.00	US\$125,000,000.00
III. Quantity and value of ivory	Kg	Price/kg	[Total price]
Ivory (no. of elephants x 50 kg/tusk x 2 (pair of tusks))	200,000	US\$650.00	US\$130,000,000.00
<i>Overall total</i>			<i>US\$355,000,000.00</i>
<i>Quantity of ivory exported Beni-Butembo</i>			
<i>Bunia (18%)</i>	<i>36,000</i>	<i>US\$650.00</i>	<i>US\$23,400,000.00</i>
<i>Isiro (3%)</i>	<i>6,000</i>	<i>US\$650.00</i>	<i>US\$3,900,000.00</i>
<i>Aiiwara (5%)</i>	<i>10,000</i>	<i>US\$650.00</i>	<i>US\$6,500,000.00</i>

<sup>595</sup>See para. 5.140 above.

<sup>596</sup>See para. 5.159 above and, as regards young, DRC national consultant, *Evaluation of the damage caused to Congolese fauna*, *op. cit.*; Ann. 5.13.

<i>Okapis (Okapi Wildlife Reserve)</i>			
I. Numbers	Okapis		
	Females (50% of total)		
Males (50% of total)			500
Total			1,000
Reproduction (4 baby okapis per female in 5 years)			2,000
II. Value of animals	Number	Unit price	Total price
Females (50% of total)	500	US\$50,000.00	US\$25,000,000.00
Males (50% of total)	500	US\$50,000.00	US\$25,000,000.00
Reproduction (4 baby okapis per female in 5 years)	2,000	US\$25,000.00	US\$50,000,000.00
<i>Overall total</i>			<i>US\$100,000,000.00</i>

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<i>Chimpanzees (Okapi Wildlife Reserve)</i>			
I. Numbers	Chimpanzees		
	Females (60% of total)		
Males (40% of total)			800
Total			2,000
Reproduction (1 baby chimpanzee per year per female)			6,000
II. Value of animals	Number	Unit price	Total price
Females (60% of total)	[1,200]	US\$50,000.00	US\$60,000,000.00
Males (40% of total)	800	US\$50,000.00	US\$40,000,000.00
Reproduction (1 baby chimpanzee per year per female)	6,000	US\$25,000.00	US\$150,000,000.00
<i>Overall total</i>			<i>US\$250,000,000.00</i>

Thus, the total injury in respect of all animal species in the Okapi Wildlife Reserve stands at US\$716,133,800.

5.169. Most of the Okapi Wildlife Reserve is situated in Ituri, so Uganda was responsible for most of the surface area of the park as an occupying Power, without that responsibility being shared with any third country. Uganda is therefore responsible for 90 per cent of the aforementioned injury — i.e., US\$716,133,800 x 90%, which equals US\$644,520,420 (six hundred and forty-four million, five hundred and twenty thousand, four hundred and twenty United States dollars).

#### (vi) Maiko National Park

5.170. The total losses in Maiko National Park during the Ugandan invasion are summarized in Table No. 3 above<sup>597</sup>. Combining the column listing the animal losses in the park with the values for each species indicated above, and in the expert report<sup>598</sup>, results in the following assessment of the injury suffered by the DRC in respect of this park:

<sup>597</sup>See para. 5.140 above.

<sup>598</sup>See para. 5.159 above and, as regards young, DRC national consultant, *Evaluation of the damage caused to Congolese fauna, op. cit.*; Ann. 5.13.

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<i>Antelope (Maiko National Park)</i>			
		Antelope	
I. Numbers			
Females (69.5% of total)			695
Males (30.5% of total)			305
Total			1,000
Reproduction (2 baby antelope per year per female)			6,950
II. Value of animals	Number	Unit price	Total price
Females (69.5% of total)	695	US\$2,488.00	US\$1,729,160.00
Males (30.5% of total)	305	US\$2,488.00	US\$758,840.00
Reproduction (2 baby antelope per year per female)	6,950	US\$1,244.00	US\$8,645,800.00
<i>Overall total</i>			<i>US\$11,133,800.00</i>

<i>Elephants (Maiko National Park)</i>			
		Elephants	
I. Numbers			
Females (50% of total)			1,000
Males (50% of total)			1,000
Total			2,000
Reproduction (1 baby elephant per year per female)			5,000
II. Value of animals	Number	Unit price	Total price
Females (50% of total)	1,000	US\$50,000.00	US\$50,000,000.00
Males (50% of total)	1,000	US\$50,000.00	US\$50,000,000.00
Reproduction (1 baby elephant per year per female)	5,000	US\$25,000.00	US\$125,000,000.00
III. Quantity and value of ivory	Kg	Price/kg	[Total price]
Ivory (no. of elephants x 50 kg/tusk x 2 (pair of tusks))	200,000	US\$650.00	US\$130,000,000.00
<i>Overall total</i>			<i>US\$355,000,000.00</i>

The total from animal losses in Maiko National Park thus stands at US\$366,133,800.

5.171. Here too, it should be borne in mind that some of this total injury was not caused by Uganda, being due, *inter alia*, to the wrongful acts of Rwanda. Uganda's wrongful acts are estimated to account for 50 per cent of the injury — i.e., US\$366,133,800 divided by 2, which equals US\$183,066,900 (one hundred and eighty-three million, sixty-six thousand, nine hundred United States dollars).

**(vii) Total amount**

5.172. On the basis of the calculation method set out above, the total injury attributable to Uganda in respect of all the damage caused to fauna in the DRC's national parks is therefore US\$2,692,980,468 (two thousand six hundred and ninety-two million, nine hundred and eighty thousand, four hundred and sixty-eight United States dollars).

**Section 3. Looting, plundering and wrongful exploitation of Congolese flora**

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5.173. The invasion and occupation of vast areas of Congolese territory by Ugandan armed forces also damaged the DRC's flora, particularly through deforestation.

This section will show the role that Uganda played in the deforestation of areas of the DRC's territory (A), before assessing the resulting injury (B).

## A. Uganda's role in deforestation

5.174. The United Nations Panel of Experts noted on the basis of a series of satellite images that Orientale province had suffered major deforestation between 1998 and 2000, especially in the forests around Djugu, Mambassa, Beni, Komanda, Luna, Mont Moyo and Aboro<sup>599</sup>.

5.175. The Panel of Experts noted that timber was being harvested in areas where the Ugandan army was operating and transported exclusively to Uganda:

“Timber harvested in this region, which is occupied by the Ugandan army and RCD-ML, has exclusively transited or remained in Uganda. Our own investigation in Kampala has shown that mahogany originating in the Democratic Republic of the Congo is largely available in Kampala, at a lower price than Ugandan mahogany. This difference in price is simply due to the lower cost of acquisition of timber. Timber harvested in the Democratic Republic of the Congo by Uganda pays very little tax or none at all. In addition, customs fees are generally not paid when soldiers escort those trucks or when orders are received from some local commanders or General Kazini. Timber from the Democratic Republic of the Congo is then exported to Kenya and Uganda, and to other continents. The Panel gathered from the Kenyan port authorities that vast quantities of timber are exported to Asia, Europe and North America.”<sup>600</sup>

The Panel of Experts collected supporting evidence in relation to this issue:

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“On the basis of eyewitness accounts, satellite images, key actors' acknowledgements and the Panel's own investigation, there is sufficient evidence to prove that timber extraction is directly related to the Ugandan presence in Orientale Province. This has reached alarming proportions and Ugandans (civilians, soldiers and companies) are extensively involved in these activities. In May 2000, RCD-ML attributed a concession of 100,000 hectares to DARA-Forest. Since September 1998, overall DARA-Forest has been exporting approximately 48,000 m<sup>3</sup> of timber per year.”<sup>601</sup>

5.176. In the addendum to its report, the Panel of Experts did, admittedly, amend its analysis, noting that it seemed that the Government of the DRC was continuing to recognize the companies operating in rebel-held areas:

“In fact, civil servants appointed by the Government are still performing such duties as customs control and tax collection in rebel-held areas. However, the taxes are not received by the Government in Kinshasa but are diverted for the use of the rebels and Uganda and Rwanda. This is acknowledged by the Government of the Democratic Republic of the Congo, which, offered in September 2001 to pay the 37-month arrears and salaries of those civil servants. Furthermore, the Government in Kinshasa appears to have recognized the activities of the commercial entities in the rebel-held areas. One of the many examples is the German-owned company Somikivu, which operates in the eastern Democratic Republic of the Congo, but continues to pay taxes to the rebels and maintains an office in Kinshasa. When asked

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<sup>599</sup>United Nations Security Council, *Report of the Panel of Experts on the Illegal Exploitation of Natural Resources, op. cit.*, para. 47; Ann. 1.7.

<sup>600</sup>United Nations Security Council, *Report of the Panel of Experts on the Illegal Exploitation of Natural Resources, op. cit.*, para. 48.

<sup>601</sup>*Ibid.*, para. 54.

about the legal status of the commercial entities operating in the rebel-held and occupied territories, the Congolese Minister of Justice informed the Panel during a meeting in September 2001 that none of the concessions had been revoked thus far, and that an evaluation on a case-by-case basis would be conducted when the Government regained control of the areas in which they are operating.

To further demonstrate this, the Panel has taken a closer look at the legal status of DARA Forest, a Thai-owned company operating in North Kivu Province. DARA Forest is a Congolese-registered logging company owned by five shareholders. Royal Star Holdings is the main shareholder, and is partly owned by the managing director of DARA Forest, John Kotiram. Besides Mr. Kotiram, there are three Congolese shareholders. In March 1998, DARA Forest registered as a Congolese company in Kinshasa, after which work was begun on building a sawmill in Mangina in North Kivu Province. In June 1998, DARA Forest was granted a 35,000-hectare logging concession from the North Kivu Provincial Authority, which grants these concessions following registration with the central Government. DARA Forest also acquired an exploitation licence from the same authority to buy and export from local loggers. Its exports, which were to the United States and China, started early in 1999, months after the beginning of the war.

DARA Forest, which the Panel has found to have complied with all the regulations in effect, currently pays its taxes at the same bank as it did before the area came under rebel control. It also deals with the same customs officials as it did before the rebels took control of the area when it exports its products and imports production equipment. The Panel of Experts has also learned that a bimonthly check is conducted by the local Congolese authorities in North Kivu to ensure that DARA Forest is complying with the terms of licences granted to it. Furthermore, DARA Forest was granted on 12 September 2001 a certificate of registration from the Ministry of Justice in Kinshasa. This would appear to be a clear sign of recognition of the company and acceptance of its work in the rebel-held areas by the Democratic Republic of the Congo.”<sup>602</sup>

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5.177. Nevertheless, this extremely complex situation pointed to by the Panel of Experts is not relevant to this claim for reparation. First of all, no authority in the DRC could legally authorize DARA Forest to operate in areas occupied by rebels, pay taxes to the rebels, and export smuggled Congolese timber to Uganda. Moreover, it would have been surprising to say the least if DARA Forest had availed itself, vis-à-vis the Ugandan authorities, of authorization granted by the DRC.

5.178. The Porter Commission, for its part, disputed many of the assertions that the Panel of Experts had made in its initial report, including the claim that the Ugandan authorities were involved in the company DARA Forest<sup>603</sup>. Nevertheless, the Commission’s detailed analysis does indicate various aspects for which Uganda was responsible.

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<sup>602</sup>United Nations Security Council, *Addendum to the report of the Panel of Experts on the Illegal Exploitation of Natural Resources*, *op. cit.*, paras. 71-73; Ann. 1.8. It should be noted that there remains a contradiction between the findings of this addendum and the conclusions of the Porter Commission. In response to the initial findings of the Panel of Experts, according to which “[i]n March 1998, DARA-Forest applied for a licence to carry out logging activities in the Democratic Republic of the Congo, but was denied a forest concession by the Kinshasa authorities”, the Porter Commission states: “Mr. John Supit Kotiram, the managing Director of Dara Forêt, denied before this Commission that he had ever made any application to Kinshasa authorities. This Commission has no evidence of any such application.” Porter Commission, *Final Report*, *op. cit.*, pp. 54 *et seq.*; Ann. 1.11.

<sup>603</sup>Porter Commission, *Final Report*, *op. cit.*, pp. 54-64; Ann. 1.11.

5.179. The Porter Commission notes that Mr. Kotiram admitted having purchased timber from the Congolese in order to export it to Uganda:

“The evidence of Mr. Kotiram was that the company was buying individual trees from Congolese, with the assistance of Local Chiefs in the Congo. He was then shipping them in transit through Uganda (with the exception of a trial run of two containers which he imported to Uganda and in respect of which he has produced the relevant customs documents) to foreign destinations.”<sup>604</sup>

The fact, as subsequently noted by the Commission, that Mr. Kotiram states that he himself never chopped any trees down does not, therefore, alter the finding that DARA Forest exported Congolese timber to Uganda.

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5.180. The Panel of Experts’ assertion that DARA obtained a concession from RCD-ML in 2000 (“The same year, DARA engaged in industrial production with the construction of a sawmill in Mangina. By 2000, it had obtained its own concession from RCD-ML.”) is confirmed by the Porter Commission (“So far as this Commission can ascertain, this is correct.”)<sup>605</sup>.

5.181. As regards the logging in the areas around Djugu, Mambassa, Beni, Komanda, Luna, Mont Moyo and Aboro, the Porter Commission challenged the assertion that the Ugandan Government was directly involved in those activities, but confirmed that Congolese timber was being smuggled into Uganda:

“There is no evidence before this Commission that Uganda as a country or as a Government harvests timber in the Democratic Republic of Congo. This Commission doubts that the allegation in the Report is correct. Timber does come across the border as an import, and there is no doubt that timber is also smuggled through the porous borders. Congo timber is cheaper in the market because it is usually cut by chain saws, which are not allowed in Uganda. Such documentation as this Commission has seen indicates that *timber cut in the Democratic Republic of Congo is dutiable there on export, and that such duties are levied by the rebel authorities and paid. This Commission toured the Kampala Timber Market at the Ndeeba area. The Commission found that timber from Congo is available in the market.*”<sup>606</sup>

It went on to state:

“This Commission has had evidence that there are Ugandans who go over to the Congo and buy trees by negotiating with individual Congolese permit holders or Chiefs, and import the timber once cut to Uganda, which helps to account for the presence of Congolese hardwood in the Uganda market.”<sup>607</sup>

5.182. Finally, the Porter Commission also confirmed the role of the Ugandan army, as well as the figures cited by the Panel of Experts. The Panel of Experts had claimed the following:

“The logging rate was alarming around Butembo, Beni, Boga and Mambassa. The RCD-ML administration acknowledged its lack of control over the rate of

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<sup>604</sup>*Ibid.*, p. 54.

<sup>605</sup>Porter Commission, *Final Report*, *op. cit.*, p. 54.

<sup>606</sup>*Ibid.*, p. 55.

<sup>607</sup>*Ibid.*, p. 56.

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extraction, the collection of taxes on logging activities and the customs fees at the exit points. *On the basis of eyewitness accounts, satellite images, key actors' acknowledgements and the Panel's own investigation, there is sufficient evidence to prove that timber extraction is directly related to the Ugandan presence in Orientale Province. This has reached alarming proportions and Ugandans (civilians, soldiers and companies) are extensively involved in these activities.*"<sup>608</sup>

The Porter Commission responded to that assertion in the following terms: "*UPDF presence in Orientale Province provided the security and access to overseas markets denied to the Congolese for so long. One would therefore expect to see increased activity in the area, not only by Dara Forêt but by other companies as well.*"<sup>609</sup> The Panel of Experts had also cited the following figures: "In May 2000, RCD-ML attributed a concession of 100,000 hectares to DARA-Forest. Since September 1998, overall DARA-Forest has been exporting approximately 48,000 m<sup>3</sup> of timber per year."<sup>610</sup> The Porter Commission's report endorsed those figures:

"So far as Dara Forêt is concerned, while *Mr. Kotiram agrees the figures quoted*, he tells this Commission that in his concession he has not cut even a single tree, and he has given this Commission good and sufficient reason for this. The source of his timber has been from individuals, in accordance with a long standing practice outlined to this Commission by another witness."<sup>611</sup>

5.183. It follows from the above that there was intensive illegal exploitation of the forest resources in Ituri while the latter was under Ugandan occupation.

## 210 B. Assessment of injury

5.184. The injury suffered by the DRC comprises several elements: the commercial value of the timber and the various taxes that should have been paid on it, but also the damage done to biodiversity and the habitats of animal species.

5.185. The scale of the commercial injury is illustrated by the commercial value of the 48,000 m<sup>3</sup> of timber that DARA Forest exported annually as from September 1998.

5.186. The database of the International Tropical Timber Organization (ITTO) allows us to determine the average export price, by exporting country and per year, for different types of timber. Between 1998 and 2003, the average export prices for tropical sawn timber from the DRC were as follows:

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<sup>608</sup>Quoted by the Porter Commission, *Final Report, op. cit.*, p. 61; emphasis added.

<sup>609</sup>*Ibid.*, p. 61; emphasis added.

<sup>610</sup>Quoted by the Porter Commission, *Final Report, op. cit.*, p. 61.

<sup>611</sup>*Ibid.*, pp. 61-62; emphasis added.



Country	Product	Flow	Unit	Year	Value
Congo, Dem. Rep.	<u>Sawnwood</u> (NC.T.)	Export Unit Value	\$/m3	2001	436.00
Congo, Dem. Rep.	<u>Sawnwood</u> (NC.T.)	Export Unit Value	\$/m3	2000	370.91
Congo, Dem. Rep.	<u>Sawnwood</u> (NC.T.)	Export Unit Value	\$/m3	1999	479.37
Congo, Dem. Rep.	<u>Sawnwood</u> (NC.T.)	Export Unit Value	\$/m3	1998	470.91

Source: [http://www.ito.int/annual\\_review\\_output/?mode=searchdata](http://www.ito.int/annual_review_output/?mode=searchdata)

Legend:

NC.T. = non-coniferous tropical

The average price for this period is therefore US\$436.00 + US\$370.91 + US\$479.37 + US\$470.91, divided by 4, which equals US\$439.2975 (rounded up to US\$439.30 below).

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5.187. Bearing in mind that DARA Forest’s wrongful exports spanned a period of four and a half years, with an annual volume of 48,000 m<sup>3</sup>, those exports have a total commercial value of 48,000 x 4.5 x US\$439.30, which equals US\$94,888,800 (ninety-four million, eight hundred and eighty-eight thousand, eight hundred United States dollars).

5.188. Looking beyond this particular case, the DRC wishes to highlight the fact that a scientific study has shown that the massive deforestation in the east of the country is most pronounced in those areas where the Ugandan armed forces were operating<sup>612</sup>. This suggests that the losses caused by Uganda’s wrongful acts total hundreds of thousands of hectares and thousands of millions of dollars. The DRC reserves the right to supplement its claim in this regard in the course of the proceedings.

5.189. On the basis of the foregoing, the DRC is requesting, at this stage of the proceedings, compensation totalling US\$100,000,000 (one hundred million United States dollars).

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<sup>612</sup>See Ann. 5.20.

5.190. In conclusion, the DRC is seeking, at this stage of the proceedings and without prejudice to supplementary claims of the type indicated above, the following compensation for the injuries caused to its natural wealth by Uganda:

- For the exploitation of gold: US\$675,541,972
- For the exploitation of diamonds: US\$7,055,885
- For the exploitation of coltan: US\$2,915,880
- For prejudice caused to fauna: US\$2,692,980,468
- For deforestation: US\$100,000,000

The total compensation claimed by the DRC for this category of damage is therefore US\$3,478,494,205 (three thousand four hundred and seventy-eight million, four hundred and ninety-four thousand, two hundred and five United States dollars).

CHAPTER 6. THE MACROECONOMIC INJURY CAUSED  
TO THE DRC BY UGANDA

6.01. In addition to the specific harm described in previous chapters, Uganda's invasion of the DRC also caused more general injury. The war had macroeconomic consequences which can be seen in the trends in economic growth and, more specifically, gross domestic product (GDP) during the war and in subsequent years. In the following section, the DRC will show that that macroeconomic injury constitutes a loss of revenue for which Uganda must pay compensation (1), and will describe in general terms the scale of this form of injury (2), before going on to explain the model used (3), how it was applied in the present case (4) and how the results were interpreted (5). The final stage will then be to calculate the amount owed by Uganda (6).

**Section 1. A *lucrum cessans* for which Uganda must pay compensation**

6.02. The effects of armed aggression are not confined to the battlefield. The use of large-scale force, such as that inflicted on the DRC between 1998 and 2003 by Uganda, also causes a considerable slowdown or even halt in economic activity, as well as destroying the economic fabric. During a war of aggression, many of the production units on which a State's economy and growth rely are brought to a standstill. Where the aggressor sets about looting and destroying production units, and where the population — an important factor of production — are forced to leave their homes, it is obvious that a State's economy will face extremely serious upheaval.

6.03. The resulting macroeconomic injury constitutes a loss of revenue for which compensation must be paid. The Articles of the International Law Commission on the Responsibility of States for Internationally Wrongful Acts, which codify a practice on this issue that is accepted as law, provide in Article 31 (1) that “[t]he responsible State is under an obligation to make *full* reparation for the injury caused by the internationally wrongful act”<sup>613</sup>. Full reparation requires not just restoration of the situation as it was before the wrongful act occurred, but also restoration of the situation that would have existed had the wrongful act not taken place. As the PCIJ stated in the *Factory at Chorzów* case:

“The essential principle contained in the actual notion of an illegal act — a principle which seems to be established by international practice and in particular by the decisions of arbitral tribunals — is that reparation must, as far as possible, *wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed* [ . . . ]”<sup>614</sup>.

The Articles on the Responsibility of States similarly provide that the compensation “shall cover any financially assessable damage including loss of profits insofar as it is established”<sup>615</sup>.

6.04. It was in accordance with that principle that, in its Judgment of 19 June 2012 in the case concerning *Ahmadou Sadio Diallo (Compensation)*, the Court observed that, in general, a

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<sup>613</sup>*YILC*, 2001, Vol. II and Annex to resolution 56/83 adopted by the United Nations General Assembly on 12 Dec. 2001; emphasis added.

<sup>614</sup>*Factory at Chorzów, Merits, Judgment No. 13, 1928, P.C.I.J., Series A, No. 17*, p. 47, and, above, Chap. 1 of this Memorial, para. 1.01; emphasis added.

<sup>615</sup>Art. 36.2; *YILC*, 2001, *op. cit.*, and Chap. 1 of this Memorial, para. 1.10.

claim for income lost as a result of unlawful detention is cognizable as a component of compensation<sup>616</sup>.

6.05. The macroeconomic injury caused to the DRC by Uganda's invasion thus constitutes a loss of revenue requiring compensation from Uganda.

## Section 2. The impact of armed conflict on economic growth

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6.06. War not only destroys infrastructure, but also has a very significant impact on growth in gross domestic product (GDP), production in all sectors of the national economy, the current account balance (because of changes in the balance of trade, and outflows linked to payments for imported weapons and military equipment), the level of tourism and services, debt, currency reserves, public finances and gross investment. Not only does existing infrastructure no longer work properly, but other infrastructure is also destroyed or looted.

6.07. War thus affects the growth trajectory of a country's gross domestic product (GDP), which measures the wealth created by national and foreign economic operators in a given national territory. It disrupts economic activity both in areas affected by military operations and also in those not affected, since economic operators in the latter are nevertheless involved in the war effort, and their market is necessarily smaller in size.

6.08. In peacetime, a country's businesses are free to distribute their products throughout the territory, according to the outlets they have available. Without war, energy saving and economies of scale can develop, while outlets can be explored and exploited between firms, thus encouraging trade between and within sectors. People, goods and services move freely, and money circulates, in the form of financial flows, throughout the national territory and the country's economy. When these microeconomic variables are aggregated into macroeconomic factors, they produce the country's economic growth.

6.09. War, on the other hand, disrupts the entire life of the country, which becomes completely unattractive and uncompetitive; it frightens off existing and potential investors, deters tourists and reduces final household competition, which is a significant component in a country's wealth formation. Furthermore, war results in increased imports of consumer goods and therefore currency shortages. This leads to or exacerbates the trade deficit because, by contrast with the growth in imports, exports decline heavily because of weak production.

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6.10. The economics literature, in exploring the damage resulting from armed conflict, currently focuses on the impact of war on economic growth and its effect on the organization of production activities and in terms of the increase in poverty. A study by the World Bank has thus shown that, in countries where there is civil war, the growth rate is, on average, 2.2 per cent weaker than in peacetime, and the incidence of poverty 30 per cent greater<sup>617</sup>.

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<sup>616</sup>Ahmadou Sadio Diallo (*Republic of Guinea v. Democratic Republic of the Congo*), *Compensation, Judgment*, *I.C.J. Reports 2012 (I)*, pp. 339-340, para. 40.

<sup>617</sup>Paul Collier and Anke Hoeffler, *Aid, Policy and Peace: Reducing the Risks of Civil Conflict*, 2002, World Bank, Washington DC, pp. 2-4; Ann. 6.1.

### Section 3. The analytical model used

6.11. It was on the basis of the literature mentioned above that the specialists appointed by the DRC estimated the macroeconomic damage caused by the 1998-2003 war. The DRC called on a team of economists from Kinshasa University, whose study is annexed to this Memorial<sup>618</sup>. The study applied a tried and tested econometric model used in many international assessments, particularly on the impact of war on the global economy.

6.12. The following section will demonstrate that this model is appropriate for the situation experienced by the Congolese economy, because its statistical data and its analysis of the impact of the conflict can be validated; it will then be explained how the model was applied in order to evaluate the amount of compensation demanded by the DRC.

6.13. The econometric analysis used to determine the scale of the macroeconomic harm caused by the Ugandan army's occupation of the DRC was based on the model by P. Collier and A. Hoeffler<sup>619</sup>. These two World Bank economists specialize in modelling the impact of war on the performance of the economies affected, using time-series.

6.14. This model is a nonlinear endogenous growth model. It uses gross domestic product (GDP) as a dependent variable, and, as explanatory variables, other macroeconomic aggregates such as population (POP), exports (Export), imports (Import) and foreign direct investment (FDI), and includes a special variable (WAR) measuring the effects of war. This then allows the effects of war on gross domestic product to be determined.

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6.15. Endogenous development is understood as a development model which, in order to be successful, has to be based on the realities within a country, but without eliminating the international dimension. The aim with endogenous development is to achieve a comprehensive approach, incorporating economic expansion, cultural development, respect for the country's historical identity, the assimilation of local technologies, the involvement of the population and the satisfaction of various essential needs as a priority. It aims to meet all kinds of fundamental needs relating to living standards, medical services, education, culture, communication and politics.

6.16. Collier and Hoeffler's model has the advantage, unlike other models focusing on countries' endogenous development, that it determines how the growth of gross domestic product (GDP) is affected by changes in variables other than war: population, exports, imports and foreign direct investment. It can thus determine how a country's economic growth is specifically affected by war.

6.17. The data on these variables were obtained from the database at Sherbrooke University in Canada, which is used in many international studies. The database is impartial and regularly updated, covers every country in the world, and was itself developed from the World Bank database. Called "Perspectives Monde"<sup>620</sup>, this teaching resource shows the main global trends since 1945.

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<sup>618</sup>Ann. 6.2.

<sup>619</sup>See the references in Ann. 6.2.

<sup>620</sup><http://perspective.usherbrooke.ca>.

#### Section 4. Analyses

6.18. First of all, the study on which the DRC's claim is based analysed the characteristics of the descriptive statistics for the different variables. The aim was to determine the general trend of the different variables studied. The figures obtained show that:

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- the DRC's average annual GDP was US\$12.8 thousand million between 1960 and 2008, having reached a peak of US\$19 thousand million in 1987. It was narrowly dispersed around the average;
  - the average annual Congolese population (POP) was 36 million; it was narrowly dispersed around this average during the period under consideration;
  - exports of goods and services (EXPORT) represented an annual average of US\$1.39 thousand million; they were very narrowly dispersed around this average during the period under consideration;
  - imports of goods and services (IMPORT) represented an annual average of US\$1.32 thousand million and were very widely dispersed around the average during the period under consideration;
  - foreign direct investment (INVEST) represented an annual average of US\$144 million and was very widely dispersed around the average.

6.19. A correlation analysis was then conducted in order to identify the binding force or degree of association between the variables in question, using a correlation matrix provided by a computer program for analysing statistical and econometric data.

6.20. In economics, where two phenomena develop in parallel with each other, they are said to be correlated. Although a correlation may show that armed conflict has some influence on the pace of economic development or decline, it does not establish or prove the causality between that impact and the conflict itself. This is why, in addition to the correlation analysis, an actual econometric study was conducted, in order to evaluate the impact on the Congolese economy of the war of aggression waged by Uganda. The loss of revenue sustained by the Congolese economy could then be calculated.

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- 6.21. The table below shows a negative correlation between production (GDP), population (POP), foreign direct investment (FDI) and the 1998-2003 Ugandan war (WAR) and vice versa. It also identifies a positive correlation between GDP and net exports. The table shows each of the variables in columns and lines. It thus shows the same results twice, in the two triangles above and below the diagonal line of 1's where the same variables meet. By way of illustration, where the first column (GDP) and the second line (POP) intersect, the figure -0.41030 shows a negative correlation between those two variables. In the next line down, the figure [-0.0034], in other words three in a thousand, shows the probability of that correlation.

**Table 6.1.**

**Correlation matrix with significance level**

	<i>GDP</i>	<i>Population</i>	<i>Exports</i>	<i>Imports</i>	<i>Investment</i>	<i>War</i>
<b>GDP</b>	1	-0.41030	0.00080	0.00510	-0.19150	-0.54900
<b>Prob. [. ]</b>		<b>[-0.0034]</b>	<b>[0.9955]</b>	<b>[0.9721]</b>	<b>[0.2429]</b>	<b>[0.0000]</b>
<b>Population</b>	-0.41030	1	0.77250	0.74180	0.53070	0.45080
<b>Prob. [. ]</b>	<b>[-0.0034]</b>		<b>[0.0000]</b>	<b>[0.0000]</b>	<b>[0.0050]</b>	<b>[0.0012]</b>
<b>Exports</b>	0.00080	0.77250	1	0.96980	0.69090	0.18130
<b>Prob. [. ]</b>	<b>[0.9955]</b>	<b>[0.0000]</b>		<b>[0.0000]</b>	<b>[0.0000]</b>	<b>[0.2124]</b>
<b>Imports</b>	0.00510	0.74180	0.96980	1	0.73950	0.11190
<b>Prob. [. ]</b>	<b>[0.9721]</b>	<b>[0.0000]</b>	<b>[0.0000]</b>		<b>[0.0000]</b>	<b>[0.4438]</b>
<b>Investment</b>	-0.19150	0.53070	0.69090	0.73950	1	-0.0180
<b>Prob. [. ]</b>	<b>[0.2429]</b>	<b>[0.0050]</b>	<b>[0.0000]</b>	<b>[0.0000]</b>		<b>[0.9132]</b>
<b>War</b>	-0.54900	0.45080	0.18130	0.11190	-0.0180	1
<b>Prob. [. ]</b>	<b>[0.0000]</b>	<b>[0.0012]</b>	<b>[0.2124]</b>	<b>[0.4438]</b>	<b>[0.9132]</b>	

This analysis of the six variables used clearly shows that there is a negative correlation between production (GDP), population (POP), foreign direct investment (FDI) and the 1998-2003 Ugandan war (WAR) and vice versa.

6.22. A model *estimation* was then produced using two statistical methods (the ordinary least squares (OLS) method and the generalized method of moments (GMM)), which enabled the coefficients of the model to be calculated in the form of elasticities in order to measure the sensitivity of economic growth to variation in one of the model's exogenous variables. The results are shown in the table below. The OLS method again shows that war has a negative effect on GDP.

**Table 6.2.**

**Impact of the war on the DRC's economic growth**

Explanatory variable	Gross domestic product (Ln GDP)			
	OLS method		Generalized method of moments	
	Coefficient	t-stat	Coefficient	t-stat
Constant	118.9006	3.42**	35.188228	15.02***
Population (Ln POP)	-5.763812	-2.74**	-1.322793	-6.43***
Exports (Ln Export)			0.70795135	2.41**
Imports (Ln Import)			-0.1770564	-0.88
Investment (Ln FDI)			1.05e – 10	1.90*
Ugandan war (WAR)	-0.0753868	-1.81*	-----	Var. instrument
Time (Trend)	0.1567149	2.57**		
	R <sup>2</sup> =0.5155	F(1; 44)=4.03	R <sup>2</sup> =0.2841	Wald, chi(2)=48
N=48	DW-stat=1.61	SCR=0.13 426		Root MSE = 0.18
Key: ***, **, * = degree of significance at threshold of 1 per cent, 5 per cent and 10 per cent, respectively				
OLS: Ordinary least squares method				
Source: Calculated using the Eviews 9.0 program				

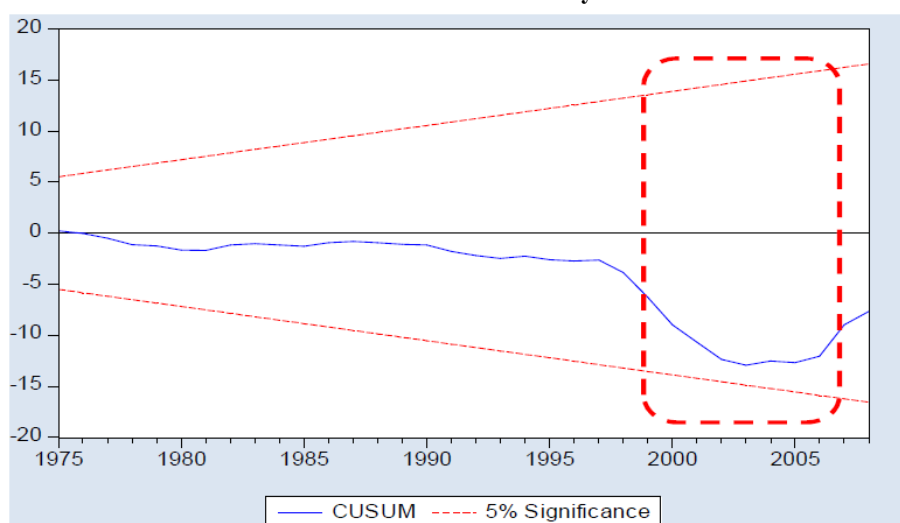
6.23. The model was then *validated* using two methods. The first consisted in validating the linear relationship resulting from Table 1, by comparing it with the parameters of a *theoretical* linear relationship through hypothesis testing — the hypothesis here being that the war had a

negative influence on GDP. The second consisted in obtaining a small number of *statistics* providing an overall view of the relationship between the explanatory variable (or independent variable) and the explained variable (or dependent variable).

6.24. These operations, analyses and tests demonstrate that the model is valid and support the conclusion that the war which affected the DRC between 1998 and 2003 had a negative influence on its GDP growth: the POP, WAR and Time variables broadly account for the negative impact on the GDP dependent variable. The graph below illustrates the annual change in GDP between 1975 and 2008. It shows that from 1998 to 2003 the GDP of the Democratic Republic of the Congo underwent unprecedented falls, which coincided precisely with the period of the war waged by the Ugandan army.

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**Graph 6.1.**  
**CUSUM structural stability test**



Source: Calculated using the Eviews 9.0 program

### **Section 5. Interpretation of the results of the analyses: calculation of macroeconomic harm**

6.25. The results of the analyses were then interpreted in order to calculate the macroeconomic harm caused by the war. The following procedure was used, the results of which are shown in the table below.

1. Using the Collier and Hoeffler model, the steps described above enabled the *estimated GDP* to be calculated, in other words, the GDP reflecting the effect of the war (second column in the table below).
2. From that estimated GDP, the annual GDP growth rate was calculated (third column in the table below). In particular, the table shows *negative growth* in 1999 and 2000.
3. The third operation was to evaluate constant GDP at 1998 prices, in other words to eliminate inflation (fourth column). This reflects the GDP which the DRC would have had if the war had not taken place. For example, in 1999, GDP was US\$4,711,254,228.13 (first column), whereas it should have been US\$6,412,404,422.



- 221** 4. The difference between constant GDP (fourth column) and GDP at 1998 prices (second column) gives the deficit, in other words the loss of revenue suffered by the DRC as a result of the war (fifth column).
5. These deficits were capitalized at a discount rate of 5 per cent (sixth column).

**Table 6.3.**

**Calculation of macroeconomic harm suffered by the DRC  
as a result of the 1998-2003 war**

<i>Year</i>	<i>Estimated GDP</i>	<i>Estimated GDP growth rate</i>	<i>Constant GDP (1998 prices) at 3.13 per cent</i>	<i>Deficit</i>	<i>Capitalization at 5 per cent</i>
1998	6,217,787,667.74	0.020846057	6,217,787,668		
1999	4,711,254,228.13	-0.24229413	6,412,404,422	1,701,150,193.60	1786207703
2000	4,305,805,218.67	-0.086060	6,613,112,680	2307307461	2543806476
2001	4,691,836,872.61	0.089654	6,820,103,107	2128266234	2463734200
2002	5,547,704,080.91	0.182416	7,033,572,334	1485868253	1806082149
2003	5,673,204,712.25	0.022622	7,253,723,148	1580518436	2017186539
2004	6,570,002,171.76	0.158076	7,480,764,683	910762511.1	
2005	7,103,546,476.39	0.081209	7,714,912,617	611366141.1	
2006	8,543,358,205.97	0.202689	7,956,389,382	-586968823.6	
2007	9,378,915,735.00	0.097802	8,205,424,370	-1173491305	
2008	10,365,615,877.22	0.105204	8,462,254,153	-1903361724	
				10,725,239,231.13	10,617,017,066.98

Source: Calculated on the basis of data from the econometric estimation

6.26. It is thus clear from the calculations that the macroeconomic harm between 1999 and 2003 amounted to US\$10,617,017.066.

6.27. However, the effects of armed conflict are not time-specific. They persist long after the events which caused them have faded away. They are what are known as the “hysteresis effects of armed conflict”, which include, for example, post-traumatic stress and psychological disorders, permanent physical injuries, bullet and shell impacts, displaced persons, refugees and rape victims, children forcibly recruited as soldiers, etc.

6.28. In fact, the study shows that the effects of the war lasted until 2005. There was a cumulative increase in the loss of revenue of US\$1,220,508,870.80 in 2004, and of US\$860,253,555.49 in 2005. This brings the total loss of revenue to US\$12,697,779,493.27, as can be seen from the table below.

**Table 6.4.**

**Data from the corrected study**

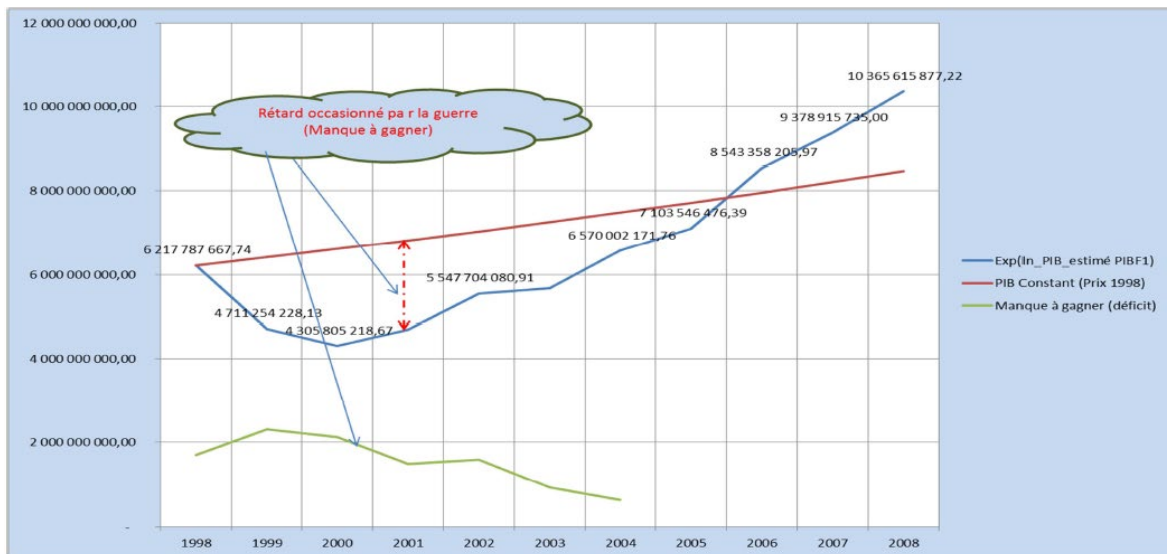
<i>Data from the corrected study</i>		<i>GDP growth rate</i>	<i>Constant GDP (1998 prices)</i>	<i>Inflation</i>	<i>Capitalization at</i>
	<i>Exp(ln_GDP estimated GDPFI)</i>		<i>at 3.13 per cent</i>	<i>deficit</i>	<i>5 per cent</i>
1998	6,217,787,667.74	0.0208	6,217,787,668		
1999	4,711,254,228.13	-0.2423	6,412,404,422	1,701,150,193.60,	1,786,207,703.28
2000	4,305,805,218.67	-0.0861	6,613,112,680	2,307,307,461.47	2,543,806,476.27
2001	4,691,836,872.61	0.0897	6,820,103,107	2,128,266,234.41	2,463,734,199.61
2002	5,547,704,080.91	0.1824	7,033,572,334	1,485,868,253.37	1,806,082,148.65
2003	5,673,204,712.25	0.0226	7,253,723,148	1,580,518,436.09	2,017,186,539.17
2004	6,570,002,171.76	0.1581	7,480,764,683	910,762,511.12	1,220,508,870.80
2005	7,103,546,476.39	0.0812	7,714,912,617	611,366,141.07	860,253,555.49
2006	8,543,358,205.97	0.2027	7,956,389,382		
2007	9,378,915,735.00	0.0978	8,205,424,370		
2008	10,365,615,877.22	0.1052	8,462,254,153		
				10,725,239,231.13	12,697,779,493.27

Source: Calculated on the basis of data from the econometric estimation

6.29. This trend in the loss of revenue can be visualized using the graph below, covering the whole of the period concerned, from 1998 to 2005. The blue line shows the estimated GDP (including the effect of the war), while the red line shows constant GDP (that would have existed without the war). The graph also shows that from 2006, the effects of the war diminished as peace returned and was consolidated after the end of the conflict. The deficit or loss of revenue decreased and the Congolese economy started to recover and increase growth. This once again confirms the direct link between the war and the harm suffered by the Congolese economy as a whole, in other words the causality between the harm and the internationally wrongful act.

Graph 6.2.

Visualization of the trend in the loss of revenue recorded by the DRC



**Legend:**

- Retard occasionné par la guerre (manque à gagner) = Gap caused by the war (loss of revenue)
- Exp(In\_PIB\_estimé PIBF1) = Exp(In\_GDP\_estimated GDPF1)
- PIB constant (prix 1998) = Constant GDP (1998 prices)
- Manque à gagner (déficit) = Loss of revenue (deficit)

Source: Calculated on the basis of model data

**Section 6. Compensation owed by Uganda**

6.30. On the basis of the foregoing, the total macroeconomic injury suffered by the DRC as a result of the war is estimated at US\$12,697,779,493.27.

6.31. However, the harm was not caused solely by Uganda’s wrongful acts. It was also a consequence of the acts of other States involved in the war of aggression waged from 1998 against the DRC. In accordance with the breakdown set out in Chapter 1 of this Memorial<sup>621</sup>, Uganda’s share in the compensation owed in this respect amounts to 45 per cent of the total.

6.32. The compensation for macroeconomic damage owed by Uganda thus amounts to US\$12,697,779,493.27 x 45 per cent, or US\$5,714,000,775 (five thousand seven hundred and fourteen million seven hundred and seventy-five United States dollars).

<sup>621</sup>See para. 1.24 above.

7.01. This chapter determines what kind of reparation the Democratic Republic of the Congo is seeking and the amount of that reparation. In the main, the reparation sought by the DRC is financial compensation (Section 1). This form of reparation appears the most appropriate in the situation at the heart of this case, in which the damage caused to the DRC can no longer be made good by means of restitution<sup>622</sup>. Furthermore, in the light of the gravity of the acts which occurred in its territory following its invasion by Uganda and the scale of the resulting damage, the DRC considers that, in addition to paying compensation for those acts, the other Party must also give satisfaction (Section 2). These two aspects of the DRC's claim for reparation will be detailed in turn. Finally, the DRC will set out the reasons why it considers that the costs it has incurred in the present proceedings should also be borne by Uganda (Section 3).

### Section 1. Compensation owed by Uganda

7.02. There are considerable technical difficulties in evaluating the compensation owed by Uganda to make good the damage resulting from the many breaches of international law which it committed during the invasion and then occupation of substantial areas of Congolese territory. This is, *inter alia*, because of the time that has elapsed since the events, and, as was shown in previous chapters, because the many instances of damage caused fell into very different categories. The harm resulting from Uganda's illegal exploitation of the DRC's natural resources was described in Chapter 5 of this Memorial, where its monetary value was assessed<sup>623</sup>. The amounts in question will therefore merely be reiterated at the end of this section (C). The same will apply for the macroeconomic damage suffered by the DRC as a result of the invasion and occupation of parts of its territory by Uganda, which were described in Chapter 6 (D). The DRC will also explain at the end of this section that the principle of full reparation for the injury suffered by the Congolese State and by those present in its territory at the time of the facts requires the application of compensatory interest (E).

7.03. The early part of this section will look at the monetary evaluation of the damage caused to persons and property as a result of Uganda's invasion of Congolese territory from August 1998 and its support for a number of Congolese rebel movements (Chapter 2), Uganda's breach of its international obligations as the occupying Power in the region of Ituri (Chapter 3) and the violent fighting involving the Ugandan armed forces in the city of Kisangani (Chapter 4). The facts examined in these chapters have certain problems in common when it comes to the monetary evaluation of the damage at issue. A distinction will be made between harm caused to persons (A) and damage caused to property (B), since the components of the injury to be made good are not the same in both cases.

7.04. In particular, the extremely tragic circumstances surrounding the conflict in eastern Congo — especially in the region of Ituri — and the violence and cruelty that were typical of most of the personal assaults mean that in some cases, account must be taken of the non-material damage as well as the material harm resulting from these violations. In addition, the compensation for the damage in both categories will be evaluated on the basis of two separate types of factors: a flat-rate evaluation will be made for the harm caused to persons, whereas this approach will be used less systematically for the damage to property, which will instead be quantified on the basis of the records drawn up by the DRC's investigators.

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<sup>622</sup>See Art. 36.1 of the ILC's articles on Responsibility of States (*YILC, 2001, op. cit.* and Annex to resolution 56/83 adopted by the United Nations General Assembly on 12 Dec. 2001) and, for the application of this principle to the facts in this case, Chap. 1 above.

<sup>623</sup>See Chap. 5 above.

## 226 A. Compensation for harm caused to persons

7.05. The general principles applicable in respect of reparation were set out in detail in Chapter 1 of this Memorial. More specifically, in assessing compensation for the harm caused to persons as a result of the violations of international law for which Uganda was responsible in Congolese territory between 1998 and 2003, the DRC also broadly followed the guidelines laid down by the United Nations General Assembly in 2005 in the “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law”<sup>624</sup>. These include the general principle that “[r]eparation should be proportional to the gravity of the violations and the harm suffered”<sup>625</sup>.

7.06. As was stated by the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, “the magnitude of reparations needs to be commensurate with the gravity of the violations, the consequences they had for the victims, [and] the vulnerability of victims”<sup>626</sup>. More specifically, the Principles then clearly identify elements of the harm for which the victims of such acts must be compensated. They provide that:

“Compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as:

- (a) Physical or mental harm;
- (b) Lost opportunities, including employment, education and social benefits;
- (c) Material damages and loss of earnings, including loss of earning potential;
- (d) Moral damage;
- (e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.”<sup>627</sup>

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7.07. Clearly, it is not possible, in a situation such as that before the Court in the present case, where there have been tens of thousands of violations of laws resulting in harm, to examine each of the individual situations at issue. Given that it is impossible to take account of the specific impact on each victim, in socio-economic terms for example, the DRC has had to calculate the amount of compensation owed for each category of harm caused to persons on a flat-rate basis, which is intended to cover all the elements of damage identified by the General Assembly in the above-mentioned Principles. In doing so, the DRC based its assessment on various sources which appeared particularly appropriate for each of the categories of acts in question.

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<sup>624</sup>Annex to resolution 60/147 adopted by the United Nations General Assembly on 16 Dec. 2005; Ann. 7.1.

<sup>625</sup>*Ibid.*, p. 7, para. 15.

<sup>626</sup>United Nations General Assembly, Sixty-ninth Session, *Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence*, document A/69/518, 14 Oct. 2014, p. 24, para. 87; Ann. 7.2.

<sup>627</sup>*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 to resolution 60/147, *op. cit.*, p. 8, para. 20; Ann. 7.1.

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7.08. For all cases where the harm suffered by individuals was the result of acts of violence deliberately targeted at civilian populations (massacres, rapes, injuries or mutilations, etc.), the DRC based the monetary evaluation of the damage in question on the judgments of the Congolese courts which tried and convicted those responsible for serious violations of human rights law and international humanitarian law in eastern Congo. The defendants were mostly members (or former members) of the Congolese armed forces. In the vast majority of cases, the courts found them responsible and, in addition to their criminal conviction, they were sentenced under civil law to pay compensation for the damage suffered by the victims<sup>628</sup>. The Congolese State itself was more or less systematically ordered to pay compensation for the damage, along with the perpetrators. The sums awarded in that respect vary considerably from one court to another, and the reasoning for the decisions often does not go into detail on this point. Nevertheless, the decisions still constitute the principal point of reference for the exercise facing the DRC — and the Court itself — here, in that they establish scales of payments corresponding to the living conditions and living standards found in that part of the Congo. It was therefore on the basis of the average of the sums awarded by way of compensation in those judgments, having eliminated those without any statement of reasons or that were manifestly arbitrary, that the DRC determined the amount of compensation owed for each of the categories of harm to persons included in the categories identified earlier.

7.09. For all cases where the harm suffered by individuals was not the result of deliberate acts of violence against civilian populations (deaths of or injuries to “collateral victims” of the fighting, or to members of the Congolese armed forces, for example), the DRC based the monetary evaluation of the harm on a mathematical formula used in similar circumstances in the context of compensation for harm suffered by persons. A traditional method was used here, which essentially calculated the future income which the victim would have earned, expressed in terms of present value, if the deceased had attained normal life expectancy<sup>629</sup>. It was therefore a case of estimating the years of life lost by the deceased by comparing the average age of the victims and their average life expectancy. An estimate of the human assets lost can thus be obtained by multiplying the number of years left to live by the average income anticipated over the corresponding period. Largely relying on an international database<sup>630</sup>, the DRC used the life expectancy in 2003, the year when the fighting ended, which was 52.11 years. The average age of the victims, as far as can be ascertained from the records produced by the DRC investigators, was 27 years. The average income anticipated over the period was calculated on the basis of the per capita gross domestic product (GDP), which was US\$753.2 for 2015, and this was assumed to be the future income aspired to<sup>631</sup>. This gives the amount of US\$18,913, obtained by multiplying 753.2 (GDP per year and per capita) by 25.11 (corresponding to the years of life lost, i.e., the difference between 27 and 52.11).

7.10. It is mainly on the basis of these figures that the DRC will calculate the amount of compensation owed by Uganda for human lives lost (i), injuries and mutilations (ii), incidences of

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<sup>628</sup>See in particular the decisions examined in the report by the International Centre for Transitional Justice entitled *The Accountability Landscape in Eastern DRC. Analysis of the National Legislative and Judicial Response to International Crimes (2009-2014)*, July 2015, and the attached tables, pp. 39 *et seq.*; Ann. 7.3.

<sup>629</sup>This method is explained, for example, in Economic Commission for Latin America and the Caribbean (ECLAC), *Handbook for estimating the socio-economic and environmental effects of disasters*, p. 12. This lengthy document, cited purely for methodological purposes, is not produced in an annex. Available at <http://docplayer.fr/1275847-Manuel-pratique-d-evaluation-des-effets-socio-economiques-des-catastrophes.html>.

<sup>630</sup>See the figures reproduced in the Sherbrooke University database, available at <http://perspective.usherbrooke.ca/bilan/pays/COD/fr.html>.

<sup>631</sup>Figure obtained from the Sherbrooke University database, available at <http://perspective.usherbrooke.ca/bilan/pays/COD/fr.html>.

229 rape (iii), the recruitment, training and use of child soldiers (iv) and the flight and displacement of populations (v).

**(i) Compensation owed for human lives lost**

230 7.11. The human lives lost as a result of Uganda's breaches of its international obligations in the context of the invasion and occupation of large areas of Congolese territory between 1998 and 2003 come under the two situations described above. A considerable number of people lost their lives in deliberate acts of violence against civilian populations. That was particularly the case in Ituri, as a result of Uganda's breaches of its obligations as the occupying Power in the region between 1998 and 2003. The material and non-material harm caused by the losses of human life in this context cover the following aspects. The material harm largely took the form of loss of income for the families of those who died. As for the non-material harm, this was particularly severe in the Ituri cases, because of the often horrifying conditions in which the civilian populations were massacred. It should be remembered that international reports mention victims' bodies impaled<sup>632</sup> or nailed to wooden planks<sup>633</sup>, others tied up and speared to death<sup>634</sup>, burned alive in their homes<sup>635</sup>, massacred with studded clubs<sup>636</sup> or machetes<sup>637</sup>, sometimes after being tied up<sup>638</sup>. In some cases, victims were then decapitated and their heads carried as trophies by the attackers<sup>639</sup>; more generally, there were frequent reports of victims' bodies being mutilated<sup>640</sup> and even, in exceptional cases, of cannibalism<sup>641</sup>. As the Court noted in its Judgment of December 2005, "the civil war and foreign military intervention in the DRC created a general atmosphere of terror pervading the lives of the Congolese people"<sup>642</sup>. It is thus not difficult to imagine the scale of the psychological suffering of the families, knowing that the deceased had been exposed to such cruel treatment, as well as the distress of the survivors, with local authorities refusing to take action or to prosecute the perpetrators of the crimes.

7.12. The amounts of compensation awarded by the Congolese courts to the families of those killed in the context of the perpetration of serious international war crimes varied between US\$5,000 and US\$100,000, the average sum being US\$34,000. In the light of the factors described above, the Democratic Republic of the Congo considers it reasonable to apply this sum for each person who lost his or her life as a result of deliberate acts of violence against civilian populations following Uganda's breach of its international obligations in the context of the invasion and occupation of large areas of Congolese territory between 1998 and 2003. As noted

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<sup>632</sup>Songolo massacre, 31 Aug. 2002, United Nations Office of the High Commissioner for Human Rights, *Report of the Mapping Exercise, op. cit.*, para. 413; Ann. 1.4.

<sup>633</sup>Mabanga massacre, 28 Aug. 2002, *ibid.*

<sup>634</sup>Komanda massacre, 9 Aug. 2002, *ibid.*

<sup>635</sup>Attack on the village of Loda, night of 29 to 30 May 1999; MONUC, *Special report on the events in Ituri, op. cit.*, para. 19; Ann. 1.6.

<sup>636</sup>Attack on the district of Mudzipela in the city of Bunia, 19 Jan. 2001; United Nations Office of the High Commissioner for Human Rights, *Report of the Mapping Exercise, op. cit.*, para. 407; Ann. 1.4.

<sup>637</sup>Attack on the district of Mudzipela in the city of Bunia, 19 Jan. 2001; *ibid.*, para. 368.

<sup>638</sup>Attack on the village of Saliboko, 5 Nov. 2002; *ibid.*, para. 414.

<sup>639</sup>Attack on the village of Musekere, July 1999; *ibid.*, para. 368.

<sup>640</sup>Victims of the fighting for control of the town of Bambou, 1 Dec. 1999, United Nations Office of the High Commissioner for Human Rights, *Report of the Mapping Exercise, op. cit.*, para. 369; Songolo massacre, 31 Aug. 2002, *ibid.*, para. 413; village and region of Mambasa, 12-29 Oct. 2002, *ibid.*, para. 416.

<sup>641</sup>Village and region of Mambasa, 12-29 Oct. 2002; *ibid.*, para. 416.

<sup>642</sup>*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, I.C.J. Reports 2005*, pp. 241-242, para. 212.

above, these crimes were mainly recorded in Ituri, during the period when the region was under Ugandan occupation. It should be remembered that the number of those who lost their lives here was put at 60,000<sup>643</sup>.

7.13. In view of the scale of the massacres recorded by international organizations in this region during the period in question, a non-exhaustive list of which was given earlier<sup>644</sup>, it may be considered that two thirds of these persons — 40,000 individuals — lost their lives as a result of acts of violence deliberately targeted at civilian populations. The total amount of compensation claimed by the DRC for this category of harm is therefore 40,000 x US\$34,000, giving a total of US\$1,360,000,000.

7.14. As regards those who lost their lives as a result of Uganda's breaches of its international obligations in the context of the invasion and occupation of large areas of Congolese territory between 1998 and 2003 in situations other than those of deliberate acts of violence against civilian populations, the DRC has based its assessment of harm on the formula described earlier<sup>645</sup>. Its application produced an average figure of US\$18,913 per victim. The victims included in this category are as follows:

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- individuals who died in Ituri as a result of Uganda's breach of its obligations as the occupying Power in this region between 1998 and 2003, in situations other than those of deliberate acts of violence against civilian populations: 20,000 persons;
- victims of the fighting between Ugandan and Rwandan armed forces in the city of Kisangani in 1999 and 2000, attributable to Uganda's breach of its international obligations: 920 persons<sup>646</sup>;
- direct and indirect victims of the fighting in other parts of the Congo between 1998 and 2003 attributable to Uganda's breach of its international obligations: the DRC explained earlier that, across the entire country, there were 400,000 cases of excess mortality resulting from the war conducted in its territory between 1998 and 2003, of which 180,000 were attributable to Uganda's actions<sup>647</sup>. From those must obviously be deducted all the deaths already taken into account for the Ituri region (40,000 as a result of deliberate acts of violence against civilian populations and 20,000 in other circumstances, giving a total of 60,000) and for the city of Kisangani (920). This gives a balance of 119,080 persons to be taken into account at this stage.

There were also the soldiers and officers of the Congolese armed forces (FAC) who died in the fighting with the Ugandan army or the rebel movements that it supported. The DRC discussed the estimated 2,000 deaths in the FAC in Chapter 2 of this Memorial.

7.15. The total amount of compensation which the DRC is claiming for losses of human life is thus:

- human lives lost as a result of deliberate acts of violence against civilian populations (Ituri): US\$1,360,000,000;

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<sup>643</sup>See paras. 3.22-3.23 above.

<sup>644</sup>See Chap. 3 above.

<sup>645</sup>Para. 7.09 above.

<sup>646</sup>See para. 4.64 above.

<sup>647</sup>See paras. 2.77-2.78 above.



- 232** — human lives lost in circumstances other than deliberate acts of violence against civilian populations:
- specifically for Ituri:  $20,000 \times \text{US}\$18,913 = \text{US}\$378,260,000$ ;
  - specifically for Kisangani:  $920 \times \text{US}\$18,913 = \text{US}\$17,399,960$ ;
  - for other regions of the Congo (119,080 civilians and 2,000 military):  
 $121,080 \times \text{US}\$18,913 = \text{US}\$2,289,986,040$ ,
- giving a grand total of US\$4,045,646,000 (four thousand and forty-five million six hundred and forty-six thousand United States dollars).

**(ii) Compensation owed for injuries and mutilations**

7.16. Here again, a distinction must be drawn according to whether the injuries or mutilations suffered resulted from deliberate attacks against civilian populations, on the one hand, or as collateral damage from military operations, on the other. In the first case, the material and non-material harm which ensued from the injuries and mutilations inflicted on large numbers of people as a result of Uganda's breaches of its international obligations in the context of the invasion and occupation of large areas of Congolese territory between 1998 and 2003 cover the following aspects. The material harm includes the cost of medical treatment, loss of income because of temporary or permanent physical incapacity resulting from the injuries, and loss of opportunity. The non-material harm includes trauma resulting from the atrocities committed, fear that the crimes will be repeated, suffering as a result of problems in accessing treatment, distress resulting from the local authorities' failure to take action and the failure to prosecute the perpetrators of the crimes, the permanent impairment to the quality of life of the victims of mutilations and the irreparable damage to their self-image and self-esteem.

- 233** 7.17. The amounts of compensation awarded by the Congolese courts to those injured or mutilated in the context of the perpetration of serious international crimes varied between US\$550 and US\$5,000, the average sum being US\$3,500. For minor injuries, compensation varied from US\$50 to US\$200, the average sum being US\$150. In the light of the factors described above, the Democratic Republic of the Congo considers it reasonable to apply these sums for persons who, as a result of deliberate acts of violence against civilian populations, suffered injuries or mutilation as a consequence of Uganda's breaches of its international obligations in the context of the invasion and occupation of large areas of Congolese territory between 1998 and 2003, according to the seriousness of their injuries.

7.18. It was mainly in Ituri that a large number of people were found to have been seriously injured or mutilated during deliberate attacks on civilian populations. The number of victims in this category in Ituri was put at 15,000, and the total amount of compensation claimed by the DRC for this category of damage is therefore US\$52,500,000 ( $15,000 \times \text{US}\$3,500$ ). The number of victims of minor injuries was put at 5,000, and so the total amount of compensation claimed by the DRC for this category of damage is US\$750,000 ( $5,000 \times \text{US}\$150$ ). The total for this sub-category is therefore US\$53,250,000 ( $52,500,000 + 750,000$ ).

7.19. The situation is slightly different for the victims of injuries or mutilations suffered outside situations where civilian populations were specifically targeted by acts of violence. In such cases, although the material harm is similar to that described above (cost of medical treatment, loss of income and loss of opportunity), the non-material harm is more limited and is largely confined

to incapacities resulting from those injuries. It is therefore by reference to the amounts of compensation awarded by the Congolese ordinary courts to the victims of accidental injuries or mutilations that the compensation owed by Uganda in this respect will be evaluated. The amounts here varied between 100 and several thousand dollars. For the purpose of the present proceedings, the DRC will apply the minimum sum of US\$100 for this category of damage.

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7.20. The numbers of victims in this category are as follows:

- those who suffered injuries or mutilations as a direct or indirect consequence of the fighting in eastern Congo between 1998 and 2003 attributable to Uganda's breach of its international obligations: 203 persons<sup>648</sup>;
- those who suffered injuries or mutilations in Ituri as a result of Uganda's breach of its obligations as the occupying Power in that region between 1998 and 2003 in situations other than deliberate acts of violence against civilian populations: 10,000 persons<sup>649</sup>;
- those who suffered injuries or mutilations as a direct or indirect consequence of the fighting between Ugandan and Rwandan armed forces in the city of Kisangani in 1999 and 2000, attributable to Uganda's breach of its international obligations: 1,937 persons<sup>650</sup>.

The total amount of compensation claimed by the DRC for damage suffered by the victims of this type of act is therefore US\$1,214,000 (12,140 x US\$100).

7.21. This gives a total, for all the victims of injuries and mutilations, of **US\$54,464,000 (fifty-four million four hundred and sixty-four thousand United States dollars)** (53,250,000 + 1,214,000).

### (iii) Compensation owed for incidences of rape

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7.22. The material and non-material harm ensuing from the sexual violence suffered by large numbers of people as a result of Uganda's breaches of its international obligations in the context of the invasion and occupation of large areas of Congolese territory between 1998 and 2003 cover the following aspects. The material harm mainly involves the cost of the medical treatment given to the victims. The non-material harm suffered by the victims of such acts is particularly significant. It is the consequence of the humiliating nature of the crime of rape, and the ostracization of the victims by their family members or society in general<sup>651</sup>. When rape occurs, it can result in problems within the household or repudiation of the wife. Similarly, unmarried young girls who have been raped have less chance of finding a husband. Lastly, account must be taken of more particular — but far from exceptional — circumstances, especially where rape was accompanied by other ill-treatment (aggravated rape), or has resulted in persistent pain or infection with a sexually transmitted disease, or where a female victim has lost the child she was carrying or finds herself pregnant by her assailant.

7.23. The amounts of compensation awarded by the Congolese courts to those who suffered simple rape in the context of the perpetration of serious international crimes varied between

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<sup>648</sup>Para. 2.75 above.

<sup>649</sup>Para. 3.29 above.

<sup>650</sup>Para. 4.65 above.

<sup>651</sup>Paras. 2.78 and 3.32 above.

US\$700 and US\$50,000, the average sum being US\$12,600. For aggravated rape, the sums awarded by the same courts varied from US\$10,000 to US\$750,000, the average sum being US\$23,200.

7.24. In the light of the factors described above, the Democratic Republic of the Congo considers it reasonable to apply these sums for each person who suffered sexual violence as a consequence of Uganda's breaches of its international obligations in the context of the invasion of large areas of Congolese territory and the occupation of Ituri between 1998 and 2003.

— The number of victims in the first category (simple rape) may be put at 610 for Ituri<sup>652</sup>, 18 for Kisangani<sup>653</sup> and 12 for the other areas of the DRC invaded by Uganda<sup>654</sup>, giving a total of 630. The amount of compensation claimed by the DRC for this sub-category is therefore US\$7,938,000 (630 x US\$12,600).

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— The number of victims in the second category (aggravated rape) has been put at 1,100<sup>655</sup>, and so the total amount of compensation claimed by the DRC for this sub-category is US\$25,520,000 (1,100 x US\$23,200).

7.25. The total amount of compensation owed for the harm suffered by the victims of rape for which Uganda is responsible is therefore **US\$33,458,000 (thirty-three million four hundred and fifty-eight thousand United States dollars)**.

#### **(iv) Compensation owed for the recruitment, training and use of child soldiers**

7.26. It was mainly in the region of Ituri that these violations of international law were seen, even though such practices were also reported in other regions, including the province of Equateur<sup>656</sup>. The material and non-material harm ensuing from the recruitment, training and use of child soldiers as a result of Uganda's breaches of its international obligations cover the following aspects. The material harm lies, for the direct victims, in denial of access to education and loss of opportunities, and, for their families, in loss of the contributions which these children normally make to the family economy (household chores, minding livestock, etc.). The non-material harm lies in the trauma resulting from the children being torn from their families and exposed to various forms of abuse and the violence of war.

7.27. In the light of the scales of compensation identified from the awards made by the Congolese courts for the victims of acts which caused harm similar to that suffered by the child soldiers, the Democratic Republic of the Congo considers it reasonable to apply the sum of US\$12,000 for each person recruited, trained and used as a child soldier in the DRC as a consequence of Uganda's breach of its international obligations between 1998 and 2003.

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<sup>652</sup>See para. 3.32 above.

<sup>653</sup>See paras. 4.29 and 4.60 above.

<sup>654</sup>See para. 2.79 above.

<sup>655</sup>See para. 3.32 above.

<sup>656</sup>See para. 3.30 above.

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7.28. The number of victims in this category has been put at 2,500<sup>657</sup>, and so the total amount of compensation claimed by the DRC for this category of harm is **US\$30 million** (2,500 x 12,000).

**(v) Compensation owed for the flight and displacement of populations**

7.29. Here again, a distinction must be made between the situation of persons who fled their homes in order to escape deliberate acts of violence against civilian populations and the situation of those who were driven from their homes by the fighting.

7.30. The first of these two scenarios mainly occurred in the region of Ituri. The material and non-material harm caused by the flight and displacement of populations as a result of Uganda's breaches of its obligations as the occupying Power in this region between 1998 and 2003 cover the following aspects. The material harm is chiefly the result of the fact that those who had to flee ceased working for the whole of the period when they were in hiding. The non-material harm consists in the trauma for those displaced resulting from the atrocities committed against other members of their group, the fear that similar crimes would be repeated, and the distress resulting from the local authorities' failure to take action and the failure to prosecute the perpetrators of the crimes. The Democratic Republic of the Congo considers it reasonable to apply the sum of US\$300 for each person forced to flee their home as a consequence of Uganda's breaches of its obligations as the occupying Power in Ituri between 1998 and 2003. The number of victims in this category has been put at 600,000<sup>658</sup>, and so the total amount of compensation claimed by the DRC for this category of harm is US\$180 million (600,000 x US\$300).

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7.31. The second scenario is that of people who fled as a result of acts of war not directly targeted at civilian populations, which mainly included those who fled their homes for shorter periods in regions of eastern Congo, except for Ituri, and in Kisangani. While the material harm was on a similar scale, the non-material harm was confined to their suffering at having to abandon home and the fear of returning to find it damaged, destroyed or looted. For situations in this category, the Democratic Republic of the Congo considers it reasonable to apply the sum of US\$100 for each person forced to flee their home as a consequence of Uganda's breaches of its international obligations in the context of the invasion of large areas of Congolese territory between 1998 and 2003. The number of victims in this category has been put at 68,538 (68,000 in Kisangani and 538 in the other regions of eastern Congo)<sup>659</sup>, and so the total amount of compensation claimed by the DRC for this category of harm is US\$6,853,800 (68,538 x US\$100).

7.32. The total amount of compensation claimed by the DRC for this category of harm is therefore **US\$186,853,800 (one hundred and eighty-six million eight hundred and fifty-three thousand eight hundred United States dollars)**.

**B. Compensation for damage to property**

7.33. The amount of compensation owed by Uganda to make good the damage caused to property in the DRC as a result of Uganda's breach of its international obligations will be determined, for each category and sub-category of damage, on the basis of data from international or national reports and the records drawn up by the DRC's investigators. The amounts of

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<sup>657</sup>See para. 3.36 above.

<sup>658</sup>See para. 3.41 above.

<sup>659</sup>See paras. 4.47 and 2.83 above, respectively.

compensation owed will be detailed in the following pages, separated into cases in Ituri (i), and those in Kisangani and the rest of the DRC territory invaded by Uganda (ii).

**(i) Compensation owed for damage to property in Ituri**

7.34. A more precise distinction will be made between compensation owed for the total or partial destruction of dwellings (*a*) and infrastructure (*b*), while cases of looting are dealt with more specifically (*c*).

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**(a) Destruction of dwellings**

7.35. In absolute numbers, the destruction of private dwellings comes top of the list of damage caused to property as a consequence of Uganda's breach of its international obligations in the context of the occupation of the region of Ituri between 1998 and 2003. The dwellings were obviously not all of the same type. They were often very rudimentary in rural areas, more luxurious in some urban areas, and of medium quality in others. The DRC has therefore used a graduated scale to assess the value of these different categories of property. The scale was drawn up on the basis of the reconstruction cost for the dwellings in question. The details are as follows:

- basic dwellings: US\$300;
- medium-quality dwellings: US\$5,000;
- luxury dwellings: US\$10,000.

Given the characteristics of the housing in Ituri, it may reasonably be considered that the dwellings there can be broken down as follows: 5 per cent luxury dwellings, 15 per cent medium-quality dwellings, and 80 per cent basic dwellings<sup>660</sup>.

7.36. The damage resulting from the destruction of 8,693 dwellings in this region<sup>661</sup> can thus be calculated as follows:

- basic dwellings: 6,954 x US\$300 = US\$2,086,200;
- medium-quality dwellings: 1,304 x US\$5,000 = US\$6,520,000;
- luxury dwellings: 435 x US\$10,000 = US\$4,350,000.

7.37. The amount of compensation claimed by the DRC for this category of damage is therefore **US\$12,956,200 (twelve million nine hundred and fifty-six thousand two hundred United States dollars)**.

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**(b) Destruction of infrastructure**

7.38. As well as private dwellings, various types of infrastructure were also destroyed as a consequence of Uganda's breach of its international obligations in the context of the occupation of the region of Ituri between 1998 and 2003. They included, in particular, numerous schools (public

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<sup>660</sup>Para. 3.45 above.

<sup>661</sup>See para. 3.38 above.

and private), local clinics, health centres and hospitals, administrative buildings and places of worship.

7.39. There are 200 schools in Ituri for whose total or partial destruction the DRC is seeking compensation<sup>662</sup>. The scale of the damage obviously varies considerably from one school to another. In some, only the classrooms and their furniture were destroyed, the buildings having often first been looted of all material capable of being reused or resold (windows and doors, metal roofing, etc.). In others, the damage was sometimes much more significant, with the destruction of scientific or experimental equipment or experimental crops, for example. Overall, the average value of an educational establishment may be estimated at US\$75,000. The total amount of compensation claimed by the DRC in this regard is therefore 200 x US\$75,000, that is, **US\$15,000,000 (fifteen million United States dollars)**.

7.40. As regards local clinics, health centres and hospitals, there are 50 in Ituri for whose total or partial destruction the DRC is seeking compensation<sup>663</sup>. Here again, the scale of the damage does of course vary from one case to another. Overall, the average value of a healthcare establishment may be estimated at US\$75,000. The total amount of compensation claimed by the DRC in this regard is therefore 50 x US\$75,000, that is, **US\$3,750,000 (three million seven hundred and fifty thousand United States dollars)**.

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7.41. In terms of administrative buildings, there are 50 in Ituri for whose total or partial destruction the DRC is seeking compensation<sup>664</sup>. Overall, the average value of an administrative building may be estimated at US\$50,000. The total amount of compensation claimed by the DRC in this regard is therefore 50 x US\$50,000, that is, **US\$2,500,000 (two million five hundred thousand United States dollars)**.

7.42. The total compensation claimed by the DRC for damage to public infrastructure in Ituri between 1998 and 2003 is therefore **US\$21,250,000 (twenty-one million two hundred and fifty thousand United States dollars)**.

**(c) Looting**

7.43. The only tangible figures on which the DRC is able to base its claim for compensation for the many cases of looting which resulted from Uganda's breaches of its international obligations in Congolese territory between 1998 and 2003 are those taken from the records drawn up by the DRC's investigators in the different regions of the country that were affected. According to those figures, the damage resulting from looting in Ituri during the period when the region was under Ugandan occupation amounts to a total of **US\$7,318,413 (seven million three hundred and eighteen thousand four hundred and thirteen United States dollars)**.

7.44. The total damage caused to property in the region of Ituri therefore comes to **US\$41,524,613 (12,956,200 + 21,250,000 + 7,318,413)**.

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<sup>662</sup>This figure was given by the United Nations Secretary-General in his second special report on MONUC, document S/2003/566, 27 May 2003, para. 10; Ann. 3.6.

<sup>663</sup>See para. 3 above.

<sup>664</sup>See para. 3 above.

**(ii) Compensation owed for damage to property in Kisangani and the rest of the territory invaded by Uganda**

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7.45. Outside the region of Ituri, the DRC's investigators were able to draw up detailed lists indicating the type of damage caused to property, the name of the persons affected and a monetary evaluation of the appropriate compensation. These lists are included in various documents annexed to this Memorial<sup>665</sup>, and the resulting amounts may be summarized as follows.

7.46. The total sums for the damage resulting from attacks on property in the various locations affected by the consequences of the violations of international law for which Uganda was responsible in Congolese territory between 1998 and 2003 are as follows:

— Kisangani: US\$17,323,998;

— Beni: US\$5,526,527;

— Butembo: US\$2,680,000;

— Gemena: US\$97,550.

The total for all of these towns and cities combined is therefore **US\$25,628,075 (twenty-five million six hundred and twenty-eight thousand and seventy-five United States dollars)**.

7.47. In addition to these sums, there was also the damage caused to the Société nationale d'électricité (SNEL, National Electricity Company), a detailed evaluation of which is provided in an annex<sup>666</sup>. The figure here is **US\$97,412,090 (ninety-seven million four hundred and twelve thousand and ninety United States dollars)**.

7.48. Account must also be taken at this point of the material damage suffered by the Congolese armed forces. The destruction of vehicles, arms and equipment suffered by the Congolese army in the fighting with the UPDF and the rebel movements that it supported were described in Chapter 2 of this Memorial<sup>667</sup>. The total amount of damage sustained in this respect was **US\$69,417,192.00 (sixty-nine million four hundred and seventeen thousand one hundred and ninety-two United States dollars)**<sup>668</sup>.

7.49. The total damage to property outside the region of Ituri therefore amounts to **US\$198,447,357 (one hundred and ninety-eight million four hundred and forty-seven thousand three hundred and fifty-seven United States dollars)** (25,628,075 + 97,412,090 + 69,417,192).

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7.50. Except for the amounts intended as reparation for the public infrastructure and buildings destroyed, all of the sums produced by the above evaluations are designed to compensate private individuals who have sustained physical and/or material harm as a result of Uganda's

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<sup>665</sup>Ann. 2.4 and 4.3.

<sup>666</sup>Ann. 4.26.

<sup>667</sup>See para. 2 above.

<sup>668</sup>Ann. 7.4.

breach of its international obligations in the context of the invasion and occupation of large areas of Congolese territory between 1998 and 2003. It is to these men, women and children that the compensation will ultimately be paid.

7.51. In order to ensure that the compensation is distributed as fairly and effectively as possible to those concerned, the Democratic Republic of the Congo intends to set up a fund/commission run jointly by the Congolese authorities on the one hand and representatives of international humanitarian bodies on the other. This institution will be responsible for establishing the procedure for victims to submit individual compensation claims, examining those claims and distributing the sums owed by way of compensation. The Democratic Republic of the Congo will, in due course, submit to the Court the regulatory framework governing the setting-up and operation of the commission and the fund.

### **C. Compensation for damage resulting from the illegal exploitation of natural resources**

7.52. In Chapter 5 of this Memorial, the DRC gave a detailed account of the scale of the damage resulting from Uganda's attacks on its natural resources in breach of international law between 1998 and 2003. It will therefore confine itself here to restating the amounts of compensation it is claiming from the Respondent in this respect:

- damage resulting from the illegal exploitation of gold: US\$675,541,972;
- damage resulting from the illegal exploitation of diamonds: US\$7,055,885;
- damage resulting from the illegal exploitation of coltan: US\$2,915,880;
- prejudice caused to fauna: US\$2,692,980,468;
- prejudice caused to flora: US\$100,000,000.

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7.53. The total obtained by adding these sub-categories together is **US\$3,478,494,205 (three thousand four hundred and seventy-eight million four hundred and ninety-four thousand two hundred and five United States dollars)**.

### **D. Compensation for macroeconomic damage**

7.54. In Chapter 6 of this Memorial, the DRC gave a detailed account of the scale of the macroeconomic damage which it suffered as a consequence of Uganda's breaches of its international obligations in the context of the invasion of large areas of Congolese territory and the occupation of Ituri between 1998 and 2003. It will therefore confine itself here to restating that the amount of compensation it is claiming from the Respondent in this respect is **US\$5,714,000,775 (five thousand seven hundred and fourteen million seven hundred and seventy-five United States dollars)**<sup>669</sup>.

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<sup>669</sup>Para. 6.32 above.



## E. Award of interest

7.55. As the DRC recalled in detail in Chapter 1 of this Memorial, the rules on reparation in international law are based on the principle that damage must be repaired in full<sup>670</sup>. That would clearly not be the case if the victims of the wrongful acts committed by Uganda in Congolese territory between 1998 and 2003 had to be content only with the amounts claimed by the DRC by way of compensation, as set out in the previous paragraphs.

7.56. A considerable period of time will have elapsed between the point when the damage occurred, the point when it was evaluated, the point when the present claim was formulated and the point when the victims actually receive compensation. This passage of time will necessarily entail the depreciation of the sums in question, because of inflation, among other things (even though the rate of inflation has slowed markedly in the DRC in recent years). The award of compensatory interest on the sums owed by Uganda by way of compensation is the most effective way to remedy this loss in value.

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7.57. The role of interest as a factor in the full reparation of damage was clearly highlighted by the International Law Commission in its Articles on the Responsibility of States. Article 38 (1) provides that: “Interest on any principal sum due under this chapter [on reparation] shall be payable when necessary in order to ensure full reparation. The interest rate and mode of calculation shall be set so as to achieve that result.” The interest rate and mode of calculation of compensatory interest must therefore be set so as to ensure full reparation of the damage suffered.

7.58. This requirement implies that interest must start to run from the time when the internationally wrongful act is committed. That is the point at which the entitlement to reparation of the victims of such acts begins. This starting-point for the calculation of compensatory interest is also frequently used in arbitration awards<sup>671</sup>.

7.59. In the present case, however, determining the *dies a quo* presents considerable practical difficulties. The *dies a quo* is likely to vary according to the different heads of claim submitted in the present Memorial. In particular, some of the individual records of damage to property reflect prices at the time the records were drawn up, a few years after the Court’s Judgment of December 2005, while others reflect the prices which applied when the wrongful acts were committed. The amounts used to calculate compensation for injury to persons, on the other hand, are based on decisions of the Congolese courts delivered on a range of dates between 2009 and 2015. The damage to natural resources was also evaluated at various points between the Court’s Judgment and recently. The macroeconomic damage was evaluated up to 2005, so that the interest on this item might start to run from 2006.

7.60. The complexity of the figures in the present case has led the DRC to consider other possibilities, without prejudice to its position of principle, which is that interest must start to run from the time of the wrongful act. A first option would be to fix as the starting-point for calculating compensatory interest the date when Ugandan troops finally completed their

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<sup>670</sup>See Chap. 1, section 2, above.

<sup>671</sup>See, for example, *Metalclad Corporation v. United Mexican States*, ICSID Case No. ARB(AF)/97/1, Award, 30 Aug. 2000, para. 128, or *Venezuela Holdings B.V. and others v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/07/27, Award, 9 Oct. 2014, para. 397.

**246** withdrawal from Congolese territory, that is, 2 June 2003<sup>672</sup>. However, this would be problematic, since, as indicated above, a significant number of damage assessments were conducted after that date. Another option, therefore, would be to select as the *dies a quo* a single date after the final evaluations conducted by the DRC for the purposes of this dispute. The date would be that on which the present Memorial was lodged with the Court. This option would be far from ideal for achieving the full reparation for damage that is now being sought. On the other hand, it appears to reflect a certain international practice, no doubt because it is simpler. In its commentary on Article 38, cited above, the International Law Commission states that:

“Using the date of the breach as the starting date for calculation of the interest term is problematic as there may be difficulties in determining that date, and many legal systems require a demand for payment by the claimant before interest will run. The date of formal demand was taken as the relevant date in the *Russian Indemnity* case [UNRIAA, vol. XI, p. 442 (1912)], by analogy from the general position in European legal systems.”<sup>673</sup>

7.61. In the light of all these factors, the DRC considers it reasonable and fair to fix 28 September 2016 as the *dies a quo* for the calculation of compensatory interest, which it seeks to have applied in these proceedings.

7.62. Lastly, as regards the interest rate to be applied in calculating the compensatory interest payable in the present case, the DRC considers that an annual interest rate of 6 per cent would adequately compensate for the loss in value resulting from the late reparation of the damage at issue.

7.63. The DRC would reiterate that this aspect of its claim is without prejudice to the request that it will also submit to the Court to have moratory interest added to the compensation awarded to the Congolese State, should Uganda be unreasonably slow in carrying out the compensation obligations imposed on it by the Court. As the ILC has stated, these are two separate types of interest, and only compensatory interest is covered by the Articles on the Responsibility of States. As the commentary on Article 38 explains, that article

**247** “does not deal with post-judgement or moratory interest. It is only concerned with interest that goes to make up the amount that a court or tribunal should award, i.e. compensatory interest. The power of a court or tribunal to award post-judgement interest is a matter of its procedure”<sup>674</sup>.

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<sup>672</sup>This was the date taken by the DRC as the end of the withdrawal of Ugandan troops from its territory (see *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, I.C.J. Reports 2005, p. 255, para. 254); it was not called into question by the Court.

<sup>673</sup>Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, *YILC*, 2001, *op. cit.*, p. 109, fn. 619.

<sup>674</sup>Commentaries, p. 296.

It is clear, however, that compensatory interest and moratory interest must be adjusted in order to avoid duplicating compensation for the same elements of damage.

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7.64. The following is a breakdown of the reparations sought by the DRC in the form of compensation in the present case:

- compensation for injury to persons: US\$4,409,108,839, representing the sum of US\$4,045,646,000 for human lives lost, US\$54,464,000 for injuries and mutilations, US\$33,458,000 for incidences of rape, US\$30,000,000 for child soldiers and US\$186,853,800 for the flight and displacement of populations;
- compensation for damage to property: US\$239,971,970, representing the sum of US\$41,524,613 for Ituri and US\$198,447,357 for the other sub-regions;
- compensation for damage resulting from the unlawful exploitation of natural resources: US\$3,478,494,205;
- compensation for macroeconomic damage: US\$5,714,000,775.

The total for reparations in the form of compensation is therefore **US\$13,478,122,950 (thirteen thousand four hundred and seventy-eight million one hundred and twenty-two thousand nine hundred and fifty United States dollars)**.

## Section 2. Satisfaction

7.65. It is evident that, regardless of the amount of compensation awarded by the Court to make good the damage caused to the DRC and its population, this type of reparation will not be enough to remedy the scale of the damage and suffering caused by Uganda's breach of its international obligations. That is particularly true for the region of Ituri, where the human consequences of Uganda's breaches of its obligations as the occupying Power were extremely tragic, especially as, in fomenting ethnic conflict in the region, Uganda introduced elements of long-term instability whose harmful effects have continued long after the occupation of this area of Congolese territory ended. The exceptional scale of the damage caused and the terrible acts committed during the Ugandan occupation fully justify an application for exceptional satisfaction to be given, pursuant to Article 37 (1) of the Articles on the Responsibility of States. According to that provision: "The State responsible for an internationally wrongful act is under an obligation to give satisfaction for the injury caused by that act insofar as it cannot be made good by restitution or compensation."

7.66. The DRC therefore requests the Court to order that satisfaction be given in two ways for the damage caused in Ituri, in addition to the compensation that it awards for those acts: the criminal investigation and prosecution of UPDF officers and soldiers involved in the acts in question (A); and the creation of a fund to promote reconciliation between the Hema and Lendu in Ituri (B).

7.67. It is also evident that, besides the extremely tragic impact which it had on the region of Ituri in particular, the war triggered by Uganda in August 1998 and the many breaches of international law which ensued over the following five years caused considerable non-material harm to the Congolese State itself. It is in order to obtain reparation for this non-material harm resulting from Uganda's breaches of fundamentally important international obligations that the DRC is seeking satisfaction in the form of payment of a comprehensive lump sum (C).

## 249 A. Criminal investigation and prosecution

7.68. On several occasions, the seriousness of the violations of international law committed against the civilian population in Ituri led international human rights bodies to call for investigations to be conducted into the events in question and for those responsible to face criminal prosecution. Following the massacres in Bunia in January 2001, for instance, the Special Rapporteur on the human rights situation in the DRC called on the Ugandan Government and the FLC to "launch investigations of the above-mentioned incident with a view to identifying those responsible and bringing them to justice"<sup>675</sup>.

7.69. To date, the DRC has not received any document or information demonstrating that criminal investigations have been launched by the Ugandan authorities into events in which UPDF officers or soldiers committed violations of international humanitarian law or international human rights legislation, either in Ituri or anywhere else in Congolese territory. In particular, the DRC has not, to date, received any document or information demonstrating that members of the UPDF involved in such acts have faced criminal prosecution or been convicted. As the file currently stands, there is no reason to think that the Ugandan authorities have taken such measures, even though it is evident that they are required to bring such prosecutions under international law. As the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, mentioned earlier, state:

"[i]n cases of gross violations of international human rights law and serious violations of international humanitarian law constituting crimes under international law, States have the duty to investigate and, if there is sufficient evidence, the duty to submit to prosecution the person allegedly responsible for the violations and, if found guilty, the duty to punish her or him"<sup>676</sup>.

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7.70. The facts set out in Chapter 3 of this Memorial confirm beyond any doubt that acts of this nature were indeed committed by members of the Ugandan armed forces while Ituri was occupied by the UPDF. The same applied in other regions of the Congo where the Ugandan army was present<sup>677</sup>. In view of the extremely tragic human and material consequences of these acts, the total impunity of the presumed perpetrators resulting from the absence of any criminal investigations or prosecutions is especially shocking. That is why, irrespective of the compensation for material damage caused by the violations of international humanitarian law or international human rights legislation suffered by the Congolese people, the pursuit of prosecutions

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<sup>675</sup>United Nations Security Council, *Sixth report of the Secretary-General on MONUC*, *op. cit.*; RDRC, Ann. 31.

<sup>676</sup>*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*, *op. cit.*, para. 4; Annex 7.1.

<sup>677</sup>See Chap. 2 above.

is a major element of the reparation owed to the DRC for these acts, by way of giving satisfaction<sup>678</sup>.

7.71. The DRC therefore requests the Court to order that the reparations owed to it by Uganda for violations of international humanitarian law or international human rights legislation committed in its territory should include, by way of giving satisfaction, the criminal investigation and prosecution of UPDF officers and soldiers involved in the acts in question.

## **B. Creation of a fund to promote reconciliation between the Hema and Lendu**

7.72. The policy pursued by Uganda during its occupation of Ituri created deep antagonism between the two main communities living in this region<sup>679</sup>. Uganda's actions completely upset the balance in which these people had previously been living. The consequences continue to be felt to this day: relations between members of the two main communities are now marked by fear and mistrust, and there is a risk that the desire for vengeance could, at any moment, trigger further inter-ethnic clashes, with disastrous human consequences. It is much easier to fan the flames of hatred than to extinguish them. It was Uganda which started this conflict and plunged an entire region and the millions of people living there into barbarity. Yet it is now up to the Democratic Republic of the Congo to try to manage the consequences of those irresponsible actions and to maintain civil peace in this area of its territory. The task is all the more difficult because the DRC has few material resources to do this.

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7.73. This is why the allocation of a sum for the creation of a fund to promote reconciliation between the Hema and Lendu appears an appropriate measure of satisfaction. Resources from such a fund could, among other things, establish an effective land registry system to help settle the problems of land ownership caused by Uganda, provide financial support for children's education and for the establishment of memory and reconciliation programmes in schools and communities, and enable the creation of psychological support and monitoring programmes to help the direct victims and also their descendants, many of whom are suffering inter-generational trauma<sup>680</sup>.

7.74. It is fully accepted that giving satisfaction may, in certain circumstances, consist in the payment of a sum of money. In the *Diallo (Compensation)* case, the Court recognized that reparable damage may include non-material injury and that payment of compensation could in such cases constitute adequate reparation<sup>681</sup>. The award, by way of giving satisfaction, of a sum of money earmarked for a particular purpose, usually as a symbolic gesture, is not unprecedented. It occurred, for example, in the *Rainbow Warrior* case, where the Arbitration Tribunal recommended that France should pay two million dollars to a fund "to promote close and friendly relations between the citizens of the two countries" involved in the case<sup>682</sup>. This element of the DRC's claim for reparation follows exactly the same lines.

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<sup>678</sup>For example, criminal prosecutions were demanded against the individuals responsible for the assassination of Count Bernadotte in Palestine in 1948 (Whiteman, *Digest of International Law*, Vol. 8, pp. 742-743), and following the assassination of two American officers in Iran (*RGDIP*, 1966, p. 257).

<sup>679</sup>See Chap. 3 above.

<sup>680</sup>International Criminal Court, *The Prosecutor v. Germain Katanga*, Application by the victims seeking, through the Chamber, the involvement of the Democratic Republic of the Congo in the reparations process, 24 Mar. 2016.

<sup>681</sup>*Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, *Compensation, Judgment*, *I.C.J. Reports 2012 (I)*, paras. 18, 21 and 24.

<sup>682</sup>*RIAA*, Vol. XX (1990), p. 274, paras. 126 and 127.

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7.75. The DRC therefore requests the Court to order that the reparations owed to it by Uganda for violations of international humanitarian law or international human rights legislation committed in the territory of Ituri should include, by way of giving satisfaction, payment of the sum of **US\$25 (twenty-five) million**, for the creation of a fund to promote reconciliation between the Hema and Lendu. The Democratic Republic of the Congo formally undertakes to ensure that this sum is used for that specific purpose. It will be administered by the mechanism that will be set up in order to distribute the compensation owed to the civilian population of the DRC<sup>683</sup>.

### **C. Payment of a lump sum to make good the non-material harm suffered by the Congolese State**

7.76. By invading huge areas of Congolese territory, actively supporting a number of rebel movements engaged in the armed struggle against the ruling government, triggering ethnic conflict, committing massive humanitarian and human rights violations, and looting the DRC's natural resources, Uganda was responsible for serious breaches of the most fundamental norms of the contemporary legal order. The Court made a point of emphasizing several times, in its 2005 Judgment, how serious these breaches were. Thus it condemned Uganda for "grave violations" of the peremptory norm prohibiting the use of force in international relations<sup>684</sup>. Likewise, it held that Uganda was responsible for "massive human rights violations and grave breaches of international humanitarian law"<sup>685</sup>.

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7.77. It is evident that, beyond the immeasurable material damage caused by these breaches of international law, Uganda's actions also caused large-scale non-material injury in the DRC. These actions were deeply humiliating for the Congolese State, whose authority over large areas of its territory was radically undermined by a foreign State. The same was true, at certain points in the conflict, for the country's territorial integrity, which was clearly in jeopardy<sup>686</sup>.

7.78. Uganda deliberately waged a war of aggression against one of its neighbours, helping to trigger a conflict which has frequently been called "Africa's first world war"<sup>687</sup>, because of its scale and the number of protagonists subsequently involved. Uganda treated the Congo like a conquered country, shamelessly exploiting its natural resources, subjugating the local people and going as far as to change the administrative organization of some of the areas under its control. Furthermore, there can be no doubt that the outbreak and continuation of the war caused considerable distress to the whole of the Congolese population, on top of the economic impact which the conflict had on them. It is this non-material injury for which the DRC is now seeking reparation in the form of satisfaction. The DRC considers that, given the scale of the consequences of the breaches of international law at issue, only the payment of a lump sum is capable of constituting adequate satisfaction.

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<sup>683</sup>See paras. 7.48-7.49 above.

<sup>684</sup>*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, *I.C.J. Reports 2005*, pp. 223 and 227, paras. 153 and 165.

<sup>685</sup>*Ibid.*, p. 239, para. 207.

<sup>686</sup>The United Nations Security Council expressed constant concern in this regard: see, among others, S/RES/1234 (1999), para. 1; S/RES/1279 (1999), preamble; S/RES/1304 (2000), preamble; S/RES/1376 (2001), preamble.

<sup>687</sup>See, for example, <https://www.mediapart.fr/journal/international/101008/rdc-congo-retour-sur-la-premiere-guerremondiale-africaine?onglet=full>.

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7.79. Its request is all the more justified since Uganda was fully aware of the unlawful nature of its actions, but that did nothing to dissuade it from pursuing them. At the end of August 1998, the Security Council reaffirmed, in a statement by its President, “the obligation to respect the territorial integrity and national sovereignty of the Democratic Republic of the Congo and other States in the region and the need for all States to refrain from any interference in each other’s internal affairs”<sup>688</sup>. In December 1998, the Council called, in the same way, for “the orderly withdrawal of all foreign forces” from the territory of the DRC<sup>689</sup>. In April 1999, the Security Council deplored “the presence of forces of foreign States in the Democratic Republic of the Congo in a manner inconsistent with the principles of the Charter of the United Nations, and calls upon the States to bring to an end the presence of these uninvited forces and to take immediate steps to that end”<sup>690</sup>. Uganda loftily ignored all these calls. Subsequently, other breaches of international law observed in the conflict were also highlighted by the Council. In February 2000, for instance, it expressed “its serious concern at reports of illegal exploitation of natural resources and other forms of wealth in the Democratic Republic of the Congo, including in violation of the sovereignty of that country, [and] calls for an end to such activities”<sup>691</sup>.

7.80. Far from complying with this request, the Ugandan troops in the territory of the DRC redoubled their efforts to maximize the wrongful exploitation of the wealth of the areas they controlled. Uganda would, a few months later, show the same contempt for the Security Council’s firm demands following clashes between the Ugandan and Rwandan armed forces at Kisangani. Yet the Council had reiterated its “unreserved” condemnation of this fighting “in violation of the sovereignty and territorial integrity of the Democratic Republic of the Congo” and demanded

“that Uganda and Rwanda, which have violated the sovereignty and territorial integrity of the Democratic Republic of the Congo, withdraw all their forces from the territory of the Democratic Republic of the Congo without further delay, in conformity with the timetable of the Ceasefire Agreement and the 8 April 2000 Kampala disengagement plan”<sup>692</sup>.

As everyone knows, it took more than another three years for Uganda to comply with this demand, despite the Council’s regular reminders between 2001 and 2003<sup>693</sup>. The Respondent has not yet, on the other hand, complied with the Security Council’s call in the same resolution “to make reparations for the loss of life and the property damage [which Uganda and Rwanda] have inflicted on the civilian population in Kisangani”<sup>694</sup>.

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<sup>688</sup>United Nations Security Council, *Statement by the President of the Security Council* on “The situation concerning the Democratic Republic of the Congo”, document S/PRST/1998/26, 31 Aug. 1998.

<sup>689</sup>United Nations Security Council, *Statement by the President of the Security Council* on “The situation concerning the Democratic Republic of the Congo”, document S/PRST/1998/36, 11 Dec. 1998.

<sup>690</sup>United Nations, Security Council resolution 1234 (1999), document S/RES/1234 (1999), para. 2.

<sup>691</sup>United Nations, Security Council resolution 1291 (2000), document S/RES/1291 (2000), para. 17; see also United Nations, Security Council resolution 1376 (2001), document S/RES/1376 (2001), para. 8.

<sup>692</sup>United Nations, Security Council resolution 1304 (2000), document S/RES/1304 (2000), paras. 2 and 4.

<sup>693</sup>See, among others, United Nations, Security Council resolutions 1341 (2001), para. 2; 1355 (2001), para. 3; 1468 (2003), para. 12.

<sup>694</sup>United Nations, Security Council resolution 1304 (2000), para. 14.

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7.81. Similarly, it should further be pointed out that Uganda has also not complied with the Court's Order indicating provisional measures of 1 July 2000, as the Court itself found in its Judgment of 19 December 2005<sup>695</sup>.

7.82. Despite these many calls, demands and condemnations by the highest international authorities from the very start of the conflict, Uganda did not amend its conduct in the slightest. On the contrary, it chose to continue deliberately to violate the most fundamental norms of the contemporary legal order and persisted in inflicting immeasurable damage on the Democratic Republic of the Congo and its people. Clearly, this was something that had to be taken into account by the DRC in determining the measures of satisfaction it would request for the non-material damage that it has suffered.

7.83. In the present case, the Democratic Republic of the Congo considers that payment of the sum of **US\$100,000,000 (one hundred million United States dollars)** would be appropriate reparation, by way of giving satisfaction, for the non-material damage suffered by the Congolese State and population as a consequence of Uganda's violation of the most fundamental norms of the international legal order between 1998 and 2003.

7.84. The reparations sought by the DRC by way of giving satisfaction in the present case are therefore as follows:

- the criminal investigation and prosecution of officers and soldiers of the UPDF involved in the violations of international humanitarian law and international human rights legislation committed in Congolese territory between 1998 and 2003;
- payment of the sum of US\$25 million for the creation of a fund to promote reconciliation between the Hema and Lendu in Ituri;
- payment of the sum of US\$100 million to provide compensation for the non-material harm suffered by the Congolese State as a result of the outbreak and continuation of the war from 1998 to 2003.

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### Section 3. Payment of the costs incurred by the DRC

7.85. As well as the compensation and satisfaction described above, the Democratic Republic of the Congo requests the Court to adjudge and declare that the costs incurred by the DRC in the present case must be borne by Uganda. From the initial citing of Uganda's responsibility before the Court to the claim for compensation, the proceedings brought by the DRC to ensure that its most basic rights as an independent State — and those of its people — are protected have proved long and costly. It therefore seems only fair that the Ugandan State, which the Court recognized in the most unambiguous terms in its Judgment of 19 December 2005 as having been fully and entirely responsible for the many violations of international law which it committed during the invasion and occupation of large areas of Congolese territory between 1998 and 2003, should be ordered to pay those costs.

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<sup>695</sup>*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, I.C.J. Reports 2005, pp. 258-259, para. 264.



7.86. The DRC is well aware that such requests are rarely made to the Court, and that the application made by Guinea in the *Diallo (Compensation)* case was dismissed. It was not dismissed absolutely, however, as the relevant extract from the decision clearly shows:

“The Court recalls that Article 64 of the Statute provides that, ‘[u]nless otherwise decided by the Court, each party shall bear its own costs’. While the general rule has so far always been followed by the Court, Article 64 implies that there may be circumstances which would make it appropriate for the Court to allocate costs in favour of one of the parties. However, the Court does not consider that any such circumstances exist in the present case. Accordingly, each Party shall bear its own costs”<sup>696</sup>.

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7.87. The DRC considers that such special circumstances exist in the present case, and that they justify the request it is making here. In this regard, the DRC earlier recalled the gravity of the violations of international law which the Congolese State and its people have suffered. The catastrophic scale of the damage which resulted from these serious breaches of fundamental international norms has been amply demonstrated in this Memorial. As a consequence, the DRC has faced an enormous task in identifying and assessing that damage. This has placed an additional burden on already impoverished public finances, a burden which the DRC would obviously not have had to bear if large areas of its territory had not been invaded and occupied by the Ugandan armed forces for a number of years. Those circumstances therefore fully justify an exception being made, in the present case, to the general rule set forth in Article 64 of the Statute.

7.88. In the final stage of these proceedings, the DRC will submit a breakdown of all the costs incurred by the Congolese State in the present case, in support of this final part of its claim.

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<sup>696</sup>*Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Compensation, Judgment, I.C.J. Reports 2012 (I), para. 60.*

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7.89. For the reasons set out above, and subject to any changes made to its claims in the course of the proceedings, the Democratic Republic of the Congo requests the Court to adjudge and declare that:

- (a) Uganda is required to pay the DRC the sum of US\$13,478,122,950 (thirteen thousand four hundred and seventy-eight million one hundred and twenty-two thousand nine hundred and fifty United States dollars) in compensation for the damage resulting from the violations of international law found by the Court in its Judgment of 19 December 2005;
- (b) compensatory interest will be due on that amount at a rate of 6 per cent, payable from the date on which the present Memorial was filed;
- (c) Uganda is required to pay the DRC the sum of US\$125 million by way of giving satisfaction for all non-material damage resulting from the violations of international law found by the Court in its Judgment of 19 December 2005;
- (d) Uganda is required, by way of giving satisfaction, to conduct criminal investigations and prosecutions of the officers and soldiers of the UPDF involved in the violations of international humanitarian law or international human rights legislation committed in Congolese territory between 1998 and 2003;
- (e) in the event of non-payment of the compensation awarded by the Court by the date stipulated, moratory interest on the principal sum will be payable at a rate to be determined by the Court;
- (f) Uganda is required to reimburse the DRC for all the costs incurred by the latter in the context of the present case.

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*(Signed)* Agent of the Democratic Republic of the Congo.

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