

# Specific Reparation for Specific Victimization: A Case for Suitable Reparation Strategies for War Crimes Victims in the DRC

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## Abstract

The vast number of victims as well as their tremendous needs have to be taken into consideration by the International Criminal Court (ICC) that is dealing with some of the war criminals from the DRC. However, while many international instruments provide war victims with rights to reparation, the ICC is limited in terms of who it considers a victim and what it can offer in terms of reparation. The Trust Fund for victims, however, does not suffer these same limitations. Nevertheless, the Trust Fund is grossly underfunded. Thus, it should be supplemented by a national compensation fund for war victims financed by the international community, the DRC as well as States involved in Congolese armed conflict. As we will see later on, although this research is focused to victims of the DRC armed conflict, many of its lessons might have broader implications and apply to other situations involving war-induced victimization.

## Keywords

reparation; victims; war crimes; ICC; DR; Congo

## Introduction

The war in the Democratic Republic of Congo (DRC) erupted in October 1996, when the Rwandan and Ugandan Armies entered the DRC's territory; the goal of the operation was the forced ejection of the former President Mobutu. The ejection had been made in favour of the AFDL (*Alliance des Forces Démocratiques pour la Libération du Congo-Zaïre*), a newly formed rebel group led by Laurent-Désiré Kabila. In 1998, Kabila turned on the allies who had previously helped him access power; those allies later joined forces against Kabila, and began a new rebellion that quickly held the east side of the DRC. The civil war that later followed turned into a full-scale regional conflict. At least eight African nations, including Angola,

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Burundi, Chad, Namibia, Zimbabwe, Rwanda, Sudan and Uganda have directly taken part in the war in the DRC. Uganda, Burundi and Rwanda aided rebel groups, and Angola, Chad, Namibia, Zimbabwe and Sudan were fighting side by side with Congolese National Army. Despite an official end to the war with the signing of the Lusaka peace agreements in 2003, the fighting still continues in Eastern DRC, and as of now numerous local and foreign armed groups are still operating in the DRC.<sup>1</sup>

The case of the DRC has become a real imbroglio for the Great Lakes region of Africa, and the international community as a whole. This situation has complicated the peaceful resolution of the conflict while taking or threatening the lives and security of millions of Congolese people.<sup>2</sup> Recently, the war in this country has been declared by humanitarian organizations as the deadliest war since the Second World War.<sup>3</sup> It is estimated that some 5.4 million people have died since 1998, and it is estimated that another 45,000 people die on a monthly basis as the conflict continues.<sup>4</sup>

It is well established that each armed conflict has its own specificity in terms of the frequency and severity of human rights violations that can occur during hostilities.<sup>5</sup> War crimes victimization in the DRC is characterized by extreme cruelty, including an unprecedented level of sexual violence. The major reason for the continued existence of armed conflict in the DRC was confirmed by a UN Panel of experts in 2001 to be a result of illegal exploitation of natural resources and other forms of wealth of the DRC. A recent UN report also referred to the illegal exploitation of natural resources as one of main causes of continuing war crimes in the

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<sup>1</sup> As of 2003, the number of armed groups in the DRC were estimated to be around 20. See Harvard Humanitarian Initiative & Oxfam, *Now, the World is Without Me: An Investigation of Sexual Violence in Eastern Democratic Republic of Congo*, April, 2010 available at: <http://www.oxfam.org/sites/www.oxfam.org/files/DRC-sexual-violence-2010-04.pdf> (Accessed 20 April 2013).

<sup>2</sup> Many were expecting a gradual return to peace at least in North Kivu when the rebellion of the National Congress for the Defence of the People (CNDP or *Congrès national pour la défense de peuple*) joined the *Forces armées de la République démocratique du Congo* (FARDC) as a result of the March 2009 Goma peace agreements. However, the former CNDP commander in Chief, ex-Congolese general Bosco Ntaganda, recently defected from the National army and fled into the bush in March 2012 with hundreds of his men. He is believed to be behind the DRC's most recent rebel group called the March 23th Movement (M23) officially led by Colonel Sultani Makenga a former senior CNDP officer like Ntaganda. In May 2012, the M23 started new fighting against the FARDC (the national army) in the Masisi and Rutshuru districts of eastern Congo, causing the death of hundreds of civilians including children and the escape of thousands of others from their homes.

<sup>3</sup> <http://www.globalissues.org/article/87/the-democratic-republic-of-congo> (Accessed 2 April 2013).

<sup>4</sup> International Rescue Committee, *Mortality in the Democratic Republic of Congo: An Ongoing Crisis*, 2007, p. 16, available at: [http://www.rescue.org/sites/default/files/resource-file/2006-7\\_congoMortalitySurvey.pdf](http://www.rescue.org/sites/default/files/resource-file/2006-7_congoMortalitySurvey.pdf) (Accessed 20 April 2013).

<sup>5</sup> Christopher W. Mullins, "War Crimes in the 2008 Georgia–Russia Conflict", *British Journal of Criminology* (2011), pp. 918–936.

DRC.<sup>6</sup> In addition, UN High Commissioner for Human Rights, Navi Pillay, recently stated that “the lack of progress in official investigations and in legal action against the perpetrators poses a severe obstacle to deterring future violations.”<sup>7</sup> Referring to the mass rape that is taking place in the DRC, she added: “[S]ince the attacks in Walikale there have been many other instances of rape and other types of sexual violence being systematically used as weapons of war and reprisal by armed groups.”<sup>8</sup>

The specificity of wartime victimization, when compared with other forms of criminal victimization, is well-known among those interested in international humanitarian law. This can be seen by its recognition 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>9</sup> However, little has been done to conduct a more comprehensive study related to war victimization in general and war victimization in developing countries such as the DRC in particular. When war victimization is mentioned in relation to the situation of the DRC, it is often in connection with specific war crimes, especially rape as well as other forms of sexual abuse.<sup>10</sup>

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<sup>6</sup> See OHCHR, Final Report of the Fact-finding Missions of the United Nations Joint Human Rights Office into the Mass Rapes and other Human Rights Violations Committed by a Coalition of Armed Groups Along the Kibua-Mpofi axis in Walikale Territory, North Kivu, from 30 July to 2 August 2010, July 2011, available at [http://www.ohchr.org/Documents/Countries/ZR/BCNUDHRapportViolsMassifsKibuaMpofi\\_en.pdf](http://www.ohchr.org/Documents/Countries/ZR/BCNUDHRapportViolsMassifsKibuaMpofi_en.pdf) : “the weakness of the State authority in Walikale territory has been one of the causes of the proliferation of the armed groups which have monopolized control over the mining industry and are trafficking arms in the region, thus causing increasing insecurity for the civilian population”. For more details in relation with the link between war and mining resources, see ReliefWeb, *Briefing Kit for Global Witness + Rwanda*, 01 Jun 2012, at : [http://reliefweb.int/sites/reliefweb.int/files/reliefweb\\_pdf/briefingkit-e5bf70b49e71f739e6773867ec50a44.pdf](http://reliefweb.int/sites/reliefweb.int/files/reliefweb_pdf/briefingkit-e5bf70b49e71f739e6773867ec50a44.pdf) [Accessed 20 April 2013].

<sup>7</sup> See OHCHR, *DRC: Investigation into Mass Rapes and Other Human Rights Violations in Walikale Reveals Prevailing Lack of Accountability*, 6 July 2011, available at : <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11206&LangID=E>.

<sup>8</sup> *Ibid.*

<sup>9</sup> UN General Assembly, *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 : resolution / adopted by the General Assembly*, 21 March 2006, A/RES/60/147, available at : <http://www.unhcr.org/refworld/docid/4721cb942.html> [Accessed 20 April 2013].

<sup>10</sup> See, for example, Susan McKay and Dyan Mazurana, *Where are the Girls? Girls in Fighting Forces in Northern Uganda, Sierra Leone, and Mozambique: Their Lives During and After War*, Quebec, Rights & Democracy, 2004, available at : [http://www.dd-rd.ca/site/\\_PDF/publications/women/girls\\_whereare.pdf](http://www.dd-rd.ca/site/_PDF/publications/women/girls_whereare.pdf) [Accessed 20 April 2013]; Anne-Marie De Brouwer, “Reparation to Victims of Sexual Violence: Possibilities at the International Criminal Court and at the Trust Fund for Victims and Their Families”, 20 *Leiden Journal of International Law* (2007), p. 208; Harvard Humanitarian Initiative & Oxfam, *supra* note 1; Susan A Bartels et al. “Patterns of Sexual Violence in Eastern Democratic Republic of Congo: Reports from Survivors Presenting to Panzi Hospital in 2006”, 4 *Conflict and Health*, (2010); Kirsten Johnson et al. “Association of Sexual Violence and Human Rights Violations with Physical and Mental Health in Territories of the Eastern Democratic Republic of the Congo”, 304 (5) *Journal of American Medical Association*

Although accurate, this picture does not take into account the full reality of war crimes victimization in this central African country.

The aim of this article is to emphasize the real magnitude of victimization in connection with war crimes in the DRC. The premise is that the widespread, systematic and discriminatory nature of attacks taking place during the on-going war in the DRC has put victims in a more vulnerable situation than victims of war crimes in any other area of the world. Although other African conflicts, particularly in Rwanda and Sierra Leone, have also been horrifying, the nature and extent of victimization in the DRC is certainly greater than in many other war-torn societies. Even if each war victim deserves reparation, war victims in the DRC deserve a somewhat distinctive care because of the length and the magnitude of atrocities. In fact, war crimes have been occurring in the DRC since 1996 and it is believed that more than 4 million people died directly or indirectly due to the war. As we will see below, sexual violence against women and girls is also occurring at a degree never seen before as many attacks are organized with the sole intention to rape.

Furthermore, as studies have shown, the pre-existing economic, social and institutional weakness in a given country amplifies the profound impact of wartime victimization.<sup>11</sup> Yet, in the DRC, hospitals are almost non-existent and transport services are rare and/or unavailable for the great majority of people. After twenty years of war, the country has reached an unprecedented level of poverty. Consequently, thousands of war victims do not receive any of the medical services they need. The vulnerability and trauma of war victims in the DRC is then mostly the result of pre-existing social and economic problems. The situation of war crimes victims in the DRC is thus considerably worsened by the precariousness of everyday life in this part of the world.

This specificity of war crimes victimization should be taken into consideration by reparation mechanisms, especially the ICC as well as the States reparation regimes. The success of any action designed to redress the needs of war victims depends on taking into account the uniqueness of wartime victimization in a given area. Therefore, it is important to highlight the real effects of the mass criminality particular to the DRC in order to ensure the efficacy and success of reparation initiatives undertaken for war crimes victims in this country.

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(2010), p. 553; UN, *Report of the Panel on Remedies and Reparations for Victims of Sexual Violence in the Democratic Republic of Congo to the High Commissioner for Human Rights*, March 2011, para. 124, available at : [http://www.ohchr.org/Documents/Countries/ZR/DRC\\_Reparations\\_Report\\_en.pdf](http://www.ohchr.org/Documents/Countries/ZR/DRC_Reparations_Report_en.pdf) [Accessed 20 April 2013].

<sup>11</sup> See Garry Stevens et al., "Public Effects of Disasters and Mass Violence", in George Fink (ed.), *Encyclopedia of Stress* (2<sup>nd</sup> ed.), (Academic Press, Amsterdam, 2007), p. 815: "it has been observed that following a disaster, individuals from developing countries experience severe mental health outcomes at more than twice the rate of those from developed countries".

Using the case of war victimization in the DRC, this article seeks to make a comprehensive study of the magnitude of mass crimes victimization in this country and to propose a reparation scheme that is appropriate to this particular situation. The ultimate result will respond to two questions. First, what makes war crimes victimization in the DRC different than other war crimes victimizations? Second, what suitable reparation does this particularity deserve? The goal of this article consists of bringing out the peculiarity of the situation of war crimes in the DRC in order to foster changes in the practice of the ICC, as well as States involved, and to ensure that the real needs of all war victims are prioritized in the establishment and the operation of reparation regimes.

Part 1 of this article overviews various forms of war crimes occurring in the DRC. After comparing some provisions of the Rome Statute on war crimes with facts from the field, this study shows that a great number of war crimes have occurred in the DRC. Part 2 discusses the general consequences of criminal victimization in the DRC especially those in relation to death, injuries, loss of property and displacement of the population. Part 3 deals with some specific effects of war crimes victimization in this country. Part 4 ends with proposals in relation to the improvement of reparation mechanisms designed to take into account the specificity of victims' experience in the DRC.

## 1. Some Forms of War Crimes Taking Place in the DRC

War crimes are generally considered grave breaches of the Geneva Conventions of 12 August 1949, namely, Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Convention (III) relative to the Treatment of Prisoners of War and Convention (IV) relative to the Protection of Civilian Persons in Time of War. More precisely, war crimes are crimes committed against persons or property protected under the provisions of the relevant Geneva Convention concerning protections granted during warfare. Those crimes are divided into four categories: use of prohibited weapons, engaging in prohibited means of combat, altering the status of particular civilians, and targeting crimes.<sup>12</sup> Those crimes may include killing, torture or inhuman treatment, causing great suffering, or serious injury to body or health, destruction and appropriation of property, compelling a prisoner of war or other protected person to serve in the forces of a hostile Power, depriving a prisoner of war or other protected persons of the rights of fair and

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<sup>12</sup> Noah Weisbord and Carla Reyes, "War Crimes", in Mangai Natarajan (ed.), *International Crime and Justice* (Cambridge University Press, Cambridge, 2011), pp. 321-328.

regular trial, deportation or transfer or unlawful confinement, taking of hostages, etc.<sup>13</sup> Other kinds of war crimes are enumerated by sections 8(2) (b)–8(2)(f) of the Rome Statute of the ICC. They include, among other things, sexual violence, enforced prostitution, forced pregnancy, using civilians as human shields, depriving civilians of objects indispensable to their survival, enlisting children under the age of fifteen years into armed forces or groups, mutilation, humiliating and degrading treatment, executions without previous judgement pronounced by a regularly constituted court, ordering the displacement of the civilian population for reasons related to the conflict, employing poison or poisoned weapons, etc.

All of the above war crimes as well as many others have been committed, or are still being committed during the on-going armed conflicts in the DRC. For example, a recent UN report mentioned that about 200 combatants from two rebel groups, the Democratic Forces for the Liberation of Rwanda (FDLR) and the *Mayi Mayi Sheka*, systematically attacked civilians in 13 villages in Walikale territory in South Kivu province (Eastern DRC) between July 30 and August 2, 2010, and raped at least 387 civilians “including 300 women, 23 men, 55 girls, and 9 boys during the attack on villages along the Kibua-Mpofi axis.” The report furthermore noted that “It is highly likely that the number of victims is higher, as some victims did not come forward [...]”<sup>14</sup> The UN report also indicated that on the night of July 30, 2010, in a district of Luvungi called Chobu, “the men spent the night in the forest because they were afraid of being abducted and forced by the assailants to carry looted goods.”<sup>15</sup> It observed that

[While] wives and children remained in Chobu, the assailants surrounded it and systematically raped the women and children living in each of the 40 houses there. [...] Most of the rapes appear to have been committed in the presence of the victims’ children and relatives, as well as community members. [...].<sup>16</sup>

The UN report added that during the attacks, at least 923 houses and 42 shops located in various villages were looted by the assailants sometimes collectively according to their affiliation and sometimes individually while an estimated number of 12 men and 3 boys were subjected to cruel, inhuman or degrading treatment.<sup>17</sup>

According to the report, the coalition of rebel groups committed war crimes by breaching the provisions of Common Article 3 of the four Geneva conventions and Additional Protocol of 8 June 1977 relating to the protection of victims of

<sup>13</sup> *The Rome Statute of the International Criminal Court*, article 8(2) (a), , available at : <http://www.icc-cpi.int/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEng1.pdf>.

<sup>14</sup> See OHCHR Report, *supra* note 6, para. 25.

<sup>15</sup> *Ibid.*, paras. 28–29.

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*, paras. 30–32.

non-international armed conflict.<sup>18</sup> However, those war crimes are also committed by some members of the National army (FARDC) as well as the National police (PNC).<sup>19</sup> All of those war crimes, including murder, rape, enslavement of civilians and forced displacements, are also considered crimes against humanity, if and when the contextual elements are met.

War crimes take place in a context of war of national and/or international dimensions. In other words, war crimes take place in a context of organized violence where resources such as food and medicine are already strained. It is important to bear this context in mind when one seeks to address victims' needs and in particular, their need for reparation including rehabilitation.

Another unique feature of war crimes is that victims may be civilian or members of the armed forces. Perpetrators or combatants may also experience victimization.<sup>20</sup> While child soldiers are the most vulnerable perpetrators,<sup>21</sup> it is also recognized that exposure to dead bodies and grotesque human remains can abruptly traumatize other normal combatants or emergency services personnel.<sup>22</sup>

## 2. General Effects of War Crimes Victimization in the DRC

War crimes generally involve large numbers of victims and war has effects on all members of the community in general, including individuals and families.

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<sup>18</sup> *Ibid.*, para. 34.

<sup>19</sup> Amnesty International, *Amnesty International Annual Report 2012 - Democratic Republic of the Congo*, 24 May 2012, available at: <http://www.unhcr.org/refworld/docid/4fbc394250.html> [Accessed 21 April 2013]: 'on 31 December 2010 and 1 January 2011, FARDC soldiers reportedly committed mass rapes in Bushani and Kalambahiro villages, Masisi territory, North Kivu. On 1 and 2 January, FARDC soldiers committed mass rapes in Fizi town, South Kivu. On 27 April, a PNC agent allegedly raped a 16-year-old girl in Mbuji-Mayi, Kasai orientale province. Between November 2010 and January 2011, FDLR fighters raped at least 102 women and one girl during attacks on villages in Katanga and South Kivu provinces. In June, following clashes between Mayi-Mayi Sheka and Alliance des patriotes pour un Congo libre et souverain, elements of both armed groups reportedly committed mass rapes in Mutongo and surrounding villages, Walikale territory, North Kivu'

<sup>20</sup> Tess Browne et al., "Explanations for the Increase in Mental Health Problems in UK Reserve Forces who Have Served in Iraq", 190 *British Journal of Psychiatry* (2007), p. 484; Amy C. Iversen et al. "Risk Factors for Post-Traumatic Stress Disorder among UK Armed Forces Personnel", 38 *Psychological Medicine* (2008), p. 511; Amy C. Iversen and Neil Greenberg, "Mental Health of Regular and Reserve Military Veterans", 15 *Advances in Psychiatric Treatment* (2009), p. 100; Ross McGarry and Sandra Walklate, "The Soldier as Victim: Peering through the Looking Glass", 51 *Br J Criminol* (2011), pp. 900-917.

<sup>21</sup> Theresa S. Betancourt et al. "Sierra Leone's Former Child Soldiers: a Longitudinal Study of Risk, Protective Factors, and Mental Health", 49(6) *J Am Acad Child Adolesc Psychiatry* (2010), pp. 606-15.

<sup>22</sup> Brett T. Litz and Matt J. Gray, "Early Intervention for Mass Violence: What is the Evidence? What Should Be Done?", 9 *Cognitive and Behavioral Practice* (2002), p. 268.

Moreover, the collective nature of war affects the functioning of the whole community. Consequently, its result is not only limited to individuals' injuries or loss of lives, but also the destruction of habitats, families, properties, social and economic infrastructures, financial resources etc. As Kauzlarich mentions, due to warfare "families are divided, people turn up missing, buildings and homes are destroyed, and the basic needs for proper nutrition, clean water and working sewers cannot be met."<sup>23</sup> As a consequence, all present individuals and those of future generations are affected by war and many individuals are in desperate and painful conditions; conditions, which deteriorate further as the economic and social future of the region affected by war may be crippled.<sup>24</sup> The population in the DRC is estimated to be around 68 million, and it would not be an exaggeration to hold that a great majority of these people have experienced, directly or indirectly, the effects of war.

### 2.1. *War Crimes Victimization Consequences in Relation to Death, Injuries and the Loss of Properties*

The most stinging effect of war crimes is the death of victims. When they have not been killed, war crimes victims may experience life threats, enforced disappearance, physical trauma and psychological injuries. Because war crimes are the direct result of human malevolence, they often produce higher levels of distress and psychological impairment for their victims, as compared to victims of ordinary crimes or natural disasters.<sup>25</sup>

Death may be directly inflicted by war criminals or indirectly by inhumane and degrading living conditions. Apart from deaths directly caused by armed conflicts, many other deaths are disease and hunger related, and these are sharply increased in war zones and among victims of conflict-induced displacement.<sup>26</sup> Furthermore, war crimes, including widespread killing, affect primary loved ones like parents, children, and partners as well as other close relatives, friends, neighbours, community and political leaders or faith leaders, etc.

By January 2008, the International Rescue Committee had documented 5.4 million Congolese dead during the 10 years period of war and armed conflict in the DRC. The US-based non-profit organization estimated that over 45,000 lives are taken on a monthly basis.<sup>27</sup> Today, the total number of deaths since 1998 is

<sup>23</sup> David Kauzlarich, "Victimization and Supranational Criminology", in Alette Smeulers and Roelof Haveman, (eds.), *Supranational Criminology: Towards a Criminology of International Crimes*, Antwerp, Intersentia, 2008, p. 439.

<sup>24</sup> Jo-Anne Wemmers and Anne-Marie De Brouwer, "Globalization and Victims' Rights at the International Criminal Court", in Rianne Letschert and Jan van Dijk (eds.), *The New Faces of Victimhood: Globalization, Transnational Crimes and Victim Rights*, Springer: Dordrecht, 2011, pp. 279-300.

<sup>25</sup> *Ibid.*

<sup>26</sup> Adam Roberts, "Lives and Statistics: Are 90% of War Victims Civilians?", 52 *Survival* (2010), p. 127.

<sup>27</sup> See International Rescue Committee, *supra* note 4.

estimated to be around 7 million in this country. Harvard Humanitarian Initiative that had conducted a field research in South Kivu (Eastern DRC), mentioned the emotional distress and trauma caused by losing a child, spouse or other family member especially when people were forced to watch the violence and could do little to protect their loved ones.<sup>28</sup> Many of those deceased victims are entitled to reparation before the International Criminal Court, as their death has been caused by crimes within the jurisdiction of this Court.<sup>29</sup>

War crimes survivors may be bodily injured by weapons while others may be tortured, ill-treated, unlawfully detained or otherwise wounded by belligerent forces. Of particular significance are rape related injuries,<sup>30</sup> as victims of those crimes may experience lifelong physical and psychological problems as a result of this inhumane and cruel treatment. As a report by the UN indicated, in the social context of the DRC, the physical, psychological and material harms suffered by victims of rape are “greatly compounded by the stigma they face in families and communities, which is further compounded by fistula, pregnancy, and sexually transmitted diseases including HIV/AIDS”.<sup>31</sup>

Studies show that ill-treatment and physical injuries may ultimately result in a pattern of psychiatric morbidity or depression and generalized anxiety disorder.<sup>32</sup> In other words, traumatic injuries may result in mental health problems, the impact of which increases with the severity of the injury.<sup>33</sup> As one report from the UN asserted, when asked about their victimization, “most of the victims cried and still seemed severely traumatized, months after the events. They had still received none of the assistance needed, which was mainly medical”.<sup>34</sup>

Furthermore, in the DRC the killing and the wounding of civilians are accompanied by a high degree of pillaging of cash, food, livestock, clothing and other

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<sup>28</sup> Harvard Humanitarian Initiative and Oxfam, *supra* note 1, p. 43: “[Many] women reported the deaths of children and / or husbands at the time they were sexually assaulted. The emotional distress caused by losing a child or spouse was immense, especially when survivors were forced to watch their family members being tortured and killed. Some women expressed enormous guilt about not being able to protect their loved ones, especially young children, from an untimely death. There was also considerable remorse about the inhumane manner in which family members were sometimes killed. For survivors, mourning the loss of family members was compounded by the physical injuries and emotional distress arising from their own experiences of sexual violence”.

<sup>29</sup> See Héctor Olásolo and Alejandro Kiss, “The Role of Victims in Criminal Proceedings before the International Criminal Court”, 81 *Revue internationale de droit pénal* (2010), pp. 128-130.

<sup>30</sup> As some women become pregnant after sexual violence, they may experience other health problems in addition to actual sufferings. As reported, some women die during childbirth while many other women suffer non-lethal complications. It is also believed that “although the risks of childbirth are real for any Congolese woman, they are significantly higher for young girls whose bodies are not mature enough for labor and delivery and for women who have serious pelvic injuries”. See Harvard Humanitarian Initiative and Oxfam, *supra* note 1, p. 41.

<sup>31</sup> Report of the UN, *supra* note 10, para. 124.

<sup>32</sup> Stevens et al. *supra* note 11, pp. 815-816.

<sup>33</sup> *Ibid.*, p. 815.

<sup>34</sup> Report of the OHCHR, *supra* note 6, para. 29.

possessions. The destruction or appropriation of houses and other properties have also been reported. As the DRC population already faces an unprecedented level of poverty,<sup>35</sup> the relative impact of these losses is titanic.

While many war victims are killed and injured, many others are still externally or internally displaced, or are hidden in forest without any kind of support to heal their suffering.

## 2.2. *Impacts of War Crimes Victimization Resulting from Forced Displacement*

War crimes induce massive displacements of people from their homes in search of safer areas. Millions of people have been displaced during the endless war and armed conflicts in the DRC. On an internal level only, the United Nations High Commissioner for Refugees (UNHCR) estimates that 2 million people have been displaced internally in the DRC by armed conflict.<sup>36</sup> Thousands of Congolese refugees have also fled from their homes to neighbouring countries such as Rwanda, Burundi, Uganda, Angola,<sup>37</sup> Congo-Brazzaville, the United Republic of Tanzania, etc. Those displacements induce the extreme poverty as many people lose their properties, either following pillage or destruction by combatants. As a great majority of Congolese people are farmers, the displacement from their homes deprives them of an essential source of revenue and subsistence.

As a result of the above, forced displacement will amount to further victimization, along with injury-related victimization, victimization resulting from the loss of properties, jobs or homes and victimization from the loss of loved ones, etc. Forced displacement often leaves war victims vulnerable to other human rights violations, as displaced populations are left without the basic protection provided by their livelihoods, communities and administrative structures. As Duthie has pointed out, those persons are particularly vulnerable to many acts of violence and human rights violations, including round-ups, sexual assault, gender-based violence, human trafficking and forced military enrolment.<sup>38</sup>

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<sup>35</sup> See Harvard Humanitarian Initiative and Oxfam, *supra* note 1, p. 29 : “[Many] women described looting of the family’s valuables, including cash, livestock, food and clothing. Occasionally, the family home was destroyed in the attack. While loss of property and valuables would be devastating to any family, these losses were particularly severe blows in Eastern DRC, where poverty is both extreme and widespread”.

<sup>36</sup> UNHCR, 2011 UNHCR Country Operations Profile - Democratic Republic of the Congo, available at : <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e45c366> (Accessed 20 April 2013).

<sup>37</sup> However, Angola has recently begin to expel Congolese nationals from its territory to the DRC. Some of expelled persons reportedly suffered human rights violations, including rape, looting, torture in Angola.

<sup>38</sup> Roger Duthie, “Transitional Justice and Displacement”, 5(2) *International Journal of Transitional Justice* (2011), pp. 244-245.

As thousands of family members are separated and dislocated from their homes and communities, intense and long-term distress may be the common result for most of them. Individuals who have experienced the disappearance of their loved ones or those who are obliged to repeatedly move to new safe places, are the first ones more likely to be mentally affected.<sup>39</sup> Furthermore, family separation and dislocation may result in further psychological problems as family members are first to whom victims generally turn to in order to recover from their traumas.<sup>40</sup> The rate of post-traumatic stress disorder is found to be generally high among displaced persons who end up in refugee camps in national territory<sup>41</sup> or in foreign countries.<sup>42</sup>

Apart from those effects that strike war victims in general, other particular effects worsen the already vulnerable living conditions of the DRC war victims.

### 3. Specific Effects of War Crimes Victimization in the DRC

The supplementary effects of war crimes victimization in the DRC may be discussed according to many criteria. This contribution will limit its analysis to the criteria of socio-economic conditions, gender and age.

#### 3.1. *Effects of War Crimes Victimization Due to Unsound Living Conditions*

Most violent crimes target victims who are poor, marginalized, and disempowered within a given society.<sup>43</sup> In wartime, segments of the disempowered population may be even more vulnerable than others.<sup>44</sup> Some studies indicate that the state of vulnerability is not only the result of previous exposure to stressful events, but is also linked to personal characteristics of victims.<sup>45</sup> While in general, the psychological impact of victimization increases when the person was already vulnerable prior to their victimization, this is particularly important in the case of war victims.

<sup>39</sup> Stevens et al. *supra* note 11, pp. 817–818.

<sup>40</sup> Irvin Waller, *Rights for Victims of Crime: Rebalancing Justice* (Toronto: Rowman & Littlefield Publishers, 2011), p. 78.

<sup>41</sup> Joseph Westermeyer, "Health of Albanians and Serbians Following the War in Kosovo Studying the Survivors of Both Sides of Armed Conflict", 284(5) *Journal of American Medical Association* (2000), pp. 615–616.

<sup>42</sup> Wemmers and De Brouwer, *supra* note 24, p. 287. See also Jelena Jaukovic, "The Forms of Victimization in the Territory of the Former Yugoslavia", 10 *Eur. J. Crime Crim. L. & Crim Just* (2002), p. 114; Matt Porter and Nic Haslam, "Forced Displacement in Yugoslavia: a Meta Analysis of Psychological Consequences and their Moderators", 14 (4) *J. Trauma Stress* (2001), p. 817.

<sup>43</sup> I. Robbins, "Crime Victims", *Encyclopedia of Stress*, *supra* note 11, pp. 659–662.

<sup>44</sup> Mullins, *supra* note 5.

<sup>45</sup> Edvard Hauff and Per Vaglum, "Vietnamese Boat Refugees: the Influence of War and Flight Traumatization on Mental Health on Arrival in the Country of Resettlement: A Community

In the DRC, war crimes victimization could well be described as horrible, and increasingly so depending on the levels of poverty, disempowerment, belonging to a specific ethnic group or a combination of several of those factors. By way of example, in some of the regions of the DRC, besides hunger and lack of medicine, it is an additional threat to life and security to belong to a given ethnic group. Of the many trials currently taking place at the ICC, two involve three Lendu and Hema militia leaders who are charged with inciting or directing mutual massacres with the use of bullets, spears and machetes between members of the two ethnic groups.<sup>46</sup> In many regions of the DRC, there are different armed groups belonging to one ethnic group, who conduct armed attacks against members of other ethnic groups. In addition to those ethnic driven attacks, rival armed groups usually take revenge on civilians accusing them of collaboration with enemies. As the UN maintains, the war crimes committed in the Walikale territory in 2010 have been justified by their perpetrators as “a punitive strike intended to subjugate local communities living along the Kibua-Mpofi axis, considered as ‘traitors’ for reportedly sympathizing with Government forces, and aimed at equipping the coalition of armed groups. The armed groups allegedly decided to scare them forever through extremely humiliating acts, hence the planning of mass rapes.”<sup>47</sup>

It is also worth noting that the armed conflict in the DRC is taking place in rural regions, as it is an easy location for perpetrators to hide after the commission of war crimes. As a consequence of the above attacks and availability of hideouts, populations living in those rural areas are the more often victimized by war crimes than individuals living in urban areas. In this respect, the absence of adequate and immediate post war support worsens the impact of the victimization in the DRC. The lack of access to medical support and education, as well as the extreme poverty of rural populations significantly increases the impact of war victimization. The Harvard Humanitarian Initiative found that:

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Cohort Study of Vietnamese Refugees in Norway”, 88 *Acta Psychiatr Scand*, (1993), p. 162; Derrick Silove, “The Psychosocial Effects of Torture, Mass Human Rights Violations, and Refugee Trauma: Toward an Integrated Conceptual Framework”, 187 (4) *J Nerv Ment Dis*. (1999), p. 200; Chris R. Brewin, Bernice Andrews and John D. Valentine, “Meta-Analysis of Risk Factors for Posttraumatic Stress Disorder in Trauma-Exposed Adults”, 68 (5) *Journal of Consulting and Clinical Psychology* (2000), p. 748; Troy L. Holbrook, David B. Hoyt, Murray B. Stein and William J. Sieber, “Gender Differences in Long-Term Posttraumatic Stress Disorder Outcomes after Major Trauma: Women are at Higher Risk of Adverse Outcomes than Men”, 53(5) *J. Trauma* (2002), p. 882; Troy L. Holbrook and David B. Hoyt, “The Impact of Major Trauma: Quality-of-Life Outcomes are Worse in Women than in Men, Independent of Mechanism and Injury Severity”, 56(2) *J. Trauma* (2004), p. 284; Zachary Steel et al., “Association of Torture and other Potentially Traumatic Events with Mental Health Outcomes among Populations Exposed to Mass Conflict and Displacement: a Systematic Review and Meta-Analysis”, 302 (5) *Journal of the American Medical Association* (2009), p. 537.

<sup>46</sup> See the ICC cases in Lubanga, Ngujolo and Katanga affairs.

<sup>47</sup> OHCHR Report, *supra* note 6, para. 26.

[Some] sexual violence survivors are displaced from their homes and their communities either because the family home was lost in the attack, because their marriages dissolve, because they can no longer feel secure in their homes, because they are ostracized by the community or because they move to a larger town to access the services they require. Regardless of the etiology behind the displacement, these women are all forced to desert their fields and to at least temporarily abandon their source of livelihood.<sup>48</sup>

The absence of rapid humanitarian assistance contributes to the long-standing morbidity, and that may further result in chronic health problems.<sup>49</sup> Psychological illness following war victimization may also result in loss of goods and resources like homes, furniture, money, work, marriage and school opportunities, as well as loss of self-esteem<sup>50</sup> for populations. In addition, the destruction of cultural goods such as monuments, school, churches, palaces etc. may raise further psychological problems among war crimes victims.

### 3.2. *Effects of War Crimes Victimization in Relation with Gender*

Compared to men, women are particularly vulnerable to victimization during war and armed conflicts, as they are often already marginalized in many countries.<sup>51</sup> While the psychological impact of victimization generally increases when individuals were already vulnerable prior to their latest victimization incidents, this is more significant in the case of war victimization associated with gender vulnerability. A study conducted on Sudanese victims of war has shown that women were more than twice as likely to exhibit symptoms of PTSD as compared to men, and that respondents who were no longer married (divorced/separated, widowed, or forcefully separated) were more than twice as likely to exhibit symptoms of PTSD.<sup>52</sup> In the case of the DRC, the Harvard Humanitarian Initiative reported that “[Women] in South Kivu are not safe anywhere; they are attacked not only while they farm their fields or collect firewood in the forest but also in the supposed safety of their own homes, often while sleeping at night with their families”.<sup>53</sup>

While men and boys are said to be “legitimate targets of political violence”,<sup>54</sup> as they are meant to directly take part in armed conflicts as combatants, nowadays,

<sup>48</sup> Harvard Humanitarian Initiative & Oxfam, *supra* note 1, p. 44.

<sup>49</sup> Patrick Vinck et al., “Exposure to War Crimes and Implications for Peace Building in Northern Uganda”, 298 (5) *Journal of the American Medical Association* (2007), p. 543.

<sup>50</sup> Stevens et al. *supra* note 11 at 817.

<sup>51</sup> Vesna Nikolic-Ristanovic, “War and Post-war Victimization of Women” 10 *Eur. J. Crime Crim. L. & Crim. Just.* (2002), p. 138.

<sup>52</sup> Bayard Roberts et al. “Post-Conflict Mental Health Needs: a Cross-Sectional Survey of Trauma, Depression and Associated Factors in Juba, Southern Sudan” *BMC Psychiatry*, (2009), available at: <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2656503/pdf/1471-244X-9-7.pdf> (Accessed 20 April 2013).

<sup>53</sup> Harvard Humanitarian Initiative & Oxfam, *supra* note 1, p. 2.

<sup>54</sup> Charli Charpenter, “Recognizing Gender-Based Violence Against Civilian Men and Boys in Conflict Zones”, 27 *Security Dialogue* (2006), p. 88; Jo-Anne Wemmers, “War Victims”, in Bonnie

females are also increasingly involved in armed conflicts as combatants.<sup>55</sup> However, even if women are involved in combat, they are further exposed to sexual assaults not only by their enemies, but also by their male fellow soldiers. In many cases, mass rape of women belonging to a hostile group has been practised as a weapon of war, designed to neutralize opponents by destroying “the role and identity of the men in the group as providers and protectors of the family and the group”.<sup>56</sup> In other situations, “female combatants are forced to marry men either as a strategy of creating alliances or to satisfy the needs of men isolated from the family sphere during war”.<sup>57</sup> It has also been demonstrated that women combatants are further “exposed to risk of rape, abuse and stigmatization by members of their own community as a result of their new and more public roles and responsibilities during conflict”.<sup>58</sup>

In recent months, tens of thousands of women and young girls in the DRC, have suffered from unprecedented and catastrophic number of rape incidents, and especially in eastern region. While it is recognised that men have also been experiencing rape and other forms of sexual violence in the DRC,<sup>59</sup> women are believed to be suffering at a higher rate.<sup>60</sup> A recent study has indicated that about four women are raped in the DRC every five minutes.<sup>61</sup> Furthermore mass rape and gang rape are generally accompanied by physical injuries and other cruel, inhuman and degrading treatments;<sup>62</sup> as a result, the damages suffered by the victims are of many different types. The UN Panel on Remedies and Reparations for Victims of Sexual Violence in the DRC reported the case of a woman unable to

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S. Fisher and Steven P. Lab, (eds.), *Encyclopedia of Victimology and Crime Prevention* (SAGE Publications, 2010), pp. 1049-1053.

<sup>55</sup> David Bloomfield, “The Context of Reconciliation” in David Bloomfield, Teresa Barnes and Luc Huyse, Eds. *Reconciliation after Violent Conflict: An Handbook* (Stockholm : International IDEA, 2003), p. 55: “Women have joined the ranks of several Latin American guerrilla forces, of the Irish Republican Army (IRA) and of the Liberation Tigers of Tamil Eelam (LTTE), among others. During the Ethiopian civil war of the 1980s, approximately one-third of the rebel Ethiopian People’s Liberation Front (EPLF) fighters were women”.

<sup>56</sup> Bloomfield, *ibid.*, p.55.

<sup>57</sup> *Ibid.* See also Liebling-Kalifani et al., *supra* note 10; McKay and Mazurana, *supra* note 10.

<sup>58</sup> Bloomfield, *ibid.* p. 55. McKay and Mazurana, *Ibid.*

<sup>59</sup> See Johnson et al. *supra* note 10 at 553; Annie Bunting, “Forced Marriage’ in Conflict Situations: Researching and Prosecuting Old Harms and New Crimes”, 1 (1) *Canadian Journal of Human Rights* (2012), p. 182.

<sup>60</sup> Chile Eboe-Osuji, “From Sympathy to Reparation for Female Victims of Sexual Violence in Armed Conflicts”, 4 *Afr. J. Legal Stud.* (2011), p. 257.

<sup>61</sup> Amber Peterman, Tia Palermo and Caryn Bredenkamp, “Estimates and Determinants of Sexual Violence Against Women in the Democratic Republic of Congo”, 101 (6) *Am J Public Health* (2011), pp.1060-1067.

<sup>62</sup> “[The] sexual assaults are also remarkable for extraordinary brutality including genital mutilation, instrumentation with foreign objects, forced rape between victims and rape in the presence of family members. There are also horrific reports of young children being slaughtered in front of their parents and of family members being tortured and killed”. See Harvard Humanitarian Initiative & Oxfam, *supra* note 1, p. 2.

have sexual relations with her husband, and as a result of pain and bleeding caused by such types of massive and repeated rape.<sup>63</sup> Another raped woman's leg became paralyzed, thereby making her unable to carry anything and threatening her survival.<sup>64</sup> In another similar case, a young girl suffers from incontinence;<sup>65</sup> in another case, was another woman has been suffering from uterine prolapse after experiencing gang rape.<sup>66</sup>

In another study conducted on rape victims who were admitted to a local hospital in 2006, the authors found that victims had suffered from physical and psychological consequences. They suffer from a range of symptoms including but not limited to pelvic pain, lumbar pain, abdominal pain, pregnancy, malaise, vaginal discharge, vaginal itching, abnormal menses, anxiety about rape, anxiety about spousal abandonment, concern about sexually transmitted diseases, constant fear of HIV, concern about loss of spouse, and grief about loss of child/children as well as other general symptoms.<sup>67</sup> Longombe et al. also found that war-related sexual violence was the source of specific gynaecological complaints among victims; effects include but are not limited to infertility, chronic lower abdominal pain, abnormal vaginal bleeding, and sexual dysfunction.<sup>68</sup> These symptoms and effects are most commonly found among thousands of women raped during warfare,<sup>69</sup> even if reports and studies do not disclose the full magnitude of the effects, and are only limited to a small sample of women victims of rape and other forms of sexual violence.

Severe mental health problems including trauma are likely to affect victims of massive rape.<sup>70</sup> For example, young girls who experience gang rape may experience eating and sleep problems, as well as suffer from frequent and severe flashbacks; the effects of such problems are the urge to flee, thinking the attackers are coming again to rape and destroy.<sup>71</sup> The trauma may also result in the rejection of

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<sup>63</sup> Report of the UN, *supra* note 10, p. 16.

<sup>64</sup> *Ibid.*

<sup>65</sup> *Ibid.*, p. 11.

<sup>66</sup> *Ibid.*, p. 17.

<sup>67</sup> See Bartels et al., *supra* note 10.

<sup>68</sup> Ahuka Ona Longombe et al. "Fistula and Traumatic Genital Injury from Sexual Violence in a Conflict Setting in Eastern Congo: Case Studies", 16(31) *Reprod Health Matters* (2008), pp.132-41.

<sup>69</sup> See Eugene Kinyanda et al. "War Related Sexual Violence and It's Medical and Psychological Consequences as Seen in Kitgum, Northern Uganda: A Cross-Sectional Study", 10 *BMC Int Health Hum Rights* (2010), p. 28.

<sup>70</sup> See Priscilla M. Schulz, Davorka Marovic-Johnson and L. Christian Huber, "Cognitive-Behavioral Treatment of Rape- and War-Related Posttraumatic Stress Disorder With a Female, Bosnian Refugee", 5(3) *Clinical Case Studies* (2006), pp. 191–208.

<sup>71</sup> Report of the UN, *supra* note 10, p. 17. See also Erin K. Baines, "The Haunting of Alice: Local Approaches to Justice and Reconciliation in Northern Uganda", 1 *The International Journal of Transitional Justice* (2007), pp. 91–114. The author reports the history of Alice, a former female child soldier forced to marry an older rebel fighter after being obliged to stab her sister until she

victims by close relatives.<sup>72</sup> The previously mentioned UN report had documented emotional pain suffered by many female victims of rape, and whose husbands had rejected and sent them away from their homes along with their children.<sup>73</sup> In addition to abandoned spouses, many young girls who return pregnant from combat or with young children are rejected by their families as well as their communities.<sup>74</sup>

Distress and mental health problems may result from unwanted pregnancy following rape. Mental health problems may increase once victims of rape give birth to children fathered by their tormentors. Those “unwanted babies” usually constitute a source of distress and shame, as they are a never ending reminder of the rape suffered. Thousands of rape victims are still living with untreated sexually transmitted diseases, such as HIV-AIDS. HIV infection may further result in prostitution activities undertaken by women, struggling to survive in response to poverty or following trauma caused by warfare.<sup>75</sup> Women who contracted HIV/AIDS are deeply troubled and distressed not only by concern over their health but also over what will happen to their children in the events of their deaths.<sup>76</sup> In addition, infertility resulting from rape is a further source of on-going trauma for them, as women without children are subjected to extensive forms of stigma and discrimination in the current social context of the DRC. The effects of the victimization experience for these girls and women is clearly multiplied as a result of the rest of the factors.<sup>77</sup> The ICC recently recognized this specific form of victimization and the specific reparation principles needed for victims.<sup>78</sup>

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was dead: “Alice displays signs of psychological trauma that are believed to be signs of cen: she is often seized with fear brought on by certain triggers, such as when digging in nearby gardens – a place where civilians are commonly abducted. She has sometimes found herself suddenly running, unaware of what she is doing. Alice reports that this usually occurs after she has imagined hearing rebels charging in an attack. Other symptoms include severe nightmares, with the sensation of being choked by spirits. She claims that her sister’s image keeps coming to her, especially when she is alone inside her hut. She often screams out during the night and more recently has begun to suffer from suicidal depressions. Alice once attempted to buy some rat poison to kill herself and her children to ‘forget about the sufferings [they] were undergoing.’ She claims that it would have been ‘better to have died in the bush than to live like this”.

<sup>72</sup>) McKay and Mazurana, *supra* note 10, p. 67.

<sup>73</sup>) Report of the UN, *supra* note 10, p. 31.

<sup>74</sup>) *Ibid.*

<sup>75</sup>) Patric Lundberg et al. “Poor Mental Health and Sexual Risk Behaviours in Uganda: a Cross-Sectional Population-Based Study”, 11 *BMC Public Health* (2011), p. 125.

<sup>76</sup>) Report of the UN, *supra* note 10, p. 31.

<sup>77</sup>) McKay and Mazurana, *supra* note 10.

<sup>78</sup>) See *The Prosecutor v. Thomas Lubanga Dyilo*, Situation in Democratic Republic of the Congo, Trial Chamber I, *Decision establishing the principles and procedures to be applied to reparations*, 07 August 2012, ICC-01/04-01/06-2904, paras. 207-209.

### 3.2. *Effects of War Crimes Victimization in Connection with Age*

Children and young people are examples of populations reported to have suffered the most negative consequences by war in the DRC. Children are particularly vulnerable because of life threats, loss of parents, separation and dislocation of families or because of the distress resulting in witnessing their parents' victimization.<sup>79</sup> According to Bloomfield,

These young victims of political, ethnic or religious aggression carry the effects of their traumatic experiences throughout their lives. The risk that this unhealed hurt and resentment can become the basis for new violence highlights the need to develop special protection, healing and rehabilitation programmes specifically for children and young people [...].<sup>80</sup>

In the context of the DRC, as summarized by the Harvard Humanitarian Initiative, war crimes committed in this country "have affected not only the current generation but also the next generation."<sup>81</sup> Firstly, many children have lost parents and / or other family members, while others have been abandoned or have endured the dislocation of their families. Secondly, thousands of children have witnessed war crimes such as the horrific murder, rape or torture of their relatives. Finally, children born out of rape are highly stigmatized and traumatized by the family, or the community because they are viewed as offspring of the enemy. In some instances, these children are killed or abandoned because they were conceived from rape.<sup>82</sup>

Children who have already been abandoned are generally the "best candidates" for conscripting in armed groups. After conscripting, children undergo many inhumane treatments before being able to take part in combat activities. Referring to Child soldiers in Liberia, Cummings mentions that they commonly were

forced to witness or participate in atrocities, often against other children or family members, in order to desensitize them, normalize acts of violence, and solidify a break between the recruits and their families as well as to sever their links to civil society.<sup>83</sup>

Thomas Lubanga, a former warlord of Ituri (North-Eastern DRC) was recently found guilty by the ICC of enlisting and conscripting a large number of children under the age of 15, and using them to participate actively in hostilities in the

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<sup>79</sup> Stevens et al., *supra* note 11, p. 820. See also Jordans et al. "Practice-Driven Evaluation of a Multi-layered Psychosocial Care Package for Children in Areas of Armed Conflict", 47 (3) *Community Mental Health Journal* (2011), pp 267-277.

<sup>80</sup> Bloomfield, *supra* note 55, p. 57.

<sup>81</sup> Harvard Humanitarian Initiative & Oxfam, *supra* note 1, pp. 45-46.

<sup>82</sup> *Ibid.*

<sup>83</sup> Sara Kuipers Cummings, "Liberia's "New War": Post-Conflict Strategies for Confronting Rape and Sexual Violence", 43 *Ariz. St. L.J.* (2011), pp. 223-233.

context of armed conflict from September 2002 to December 2003. While many of those recruitments were forcibly carried out, other children voluntarily joined the armed groups after the loss of their close relatives, or were made available by their parents.<sup>84</sup> Upon completion of their military training, those children were sent to the front line for fighting and many of them lost their lives in combat.<sup>85</sup> In addition, some of them were used as bodyguards by commanders, while others were used in gold mines. In its final judgement, the Trial Chamber I of the ICC recalled that

the Convention on the Rights of the Child, a widely ratified human rights treaty, requires the State Parties to take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities and to refrain from recruiting any person who has not attained the age of fifteen years into their armed forces in all types of armed conflicts.<sup>86</sup>

It added that the provisions of this Convention recognise the fact that children under the age of 15 are particularly vulnerable, and require privileged treatment in comparison with the rest of the civilian population in order to protect them not only from

violence and fatal or non-fatal injuries during fighting, but also the potentially serious trauma that can accompany recruitment including separating children from their families, interrupting or disrupting their schooling and exposing them to an environment of violence and fear.<sup>87</sup>

It concluded that children in this context “are exposed to various risks that include rape, sexual enslavement and other forms of sexual violence, cruel and inhumane treatment, as well as further kinds of hardship that are incompatible with their fundamental rights”.<sup>88</sup>

Not only thousands of children and young people have lost their parents in the DRC or have been separated from them, but also in some other circumstances, others have been forced to inflict death or injuries on their parents and family

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<sup>84</sup>) See *Le Procureur c. Lubanga Dyilo*, ICC-01/04-01/06, Décision sur la confirmation des charges, (29 janvier 2007), CPI, La Chambre Préliminaire I, para. 252. All to forms of recruitment are illegal under international law. The Trial Chamber I ruled that “conscription’ and ‘enlistment’ are both forms of recruitment in that they refer to the incorporation of a boy or a girl under the age of 15 into an armed group, whether coercively (conscription) or voluntarily (enlistment)”. See *The Prosecutor v. Thomas Lubanga Dyilo*, Judgment Pursuant to Article 74 of the Statute, ICC-01/04-01/06, 14 March 2012, para. 607.

<sup>85</sup>) *Lubanga Dyilon*, Pre-Trial Chamber Decision on the Confirmation of Charges, *ibid.*, para. 266.

<sup>86</sup>) *Lubanga Dyilo*, Judgment Pursuant to Article 74, *supra* note 84, para. 604.

<sup>87</sup>) *Ibid.*, para. 605.

<sup>88</sup>) *Ibid.*, para. 606.

members or to watch their victimization especially the rape of their mothers and sisters. In addition, many young boys have been forced to rape their own mothers in the presence of all family members, while many fathers have been compelled to publicly rape their daughters.<sup>89</sup> These are cruel and degrading treatments that are designed to traumatize and humiliate the whole community. Those kinds of war crimes may also have negative impacts on physical or psychological health including the shame, horror and trauma of the individuals as well as families involved. The effects of such crimes are likely to jeopardise the development and identity of affected persons; in particular, children are more likely to be aggressive, and suffer from traumatic stress and other anti-social behaviour as consequences. Those events may also adversely affect the family cohesion and harmony needed in the community, as well as compromise the future of the whole society.<sup>90</sup> While some operations including the enlisting and conscripting of children and young people have been encouraged by their family members, and as a mean to seek protection for their communities, some of those children unfortunately face stigmatization by of their own community, following their involvement in odious crimes. This may be a source of further victimization, as those young people can no longer expect a normal post-conflict life either at their homes or at schools. So, for them, the reparation process should include some public information sessions designed to rebuild confidence, understanding, tolerance and mutual acceptance between former child soldiers and the population in general. The ICC has just issued a number of specific principles that have to be applied to reparation in favour of child soldiers.<sup>91</sup>

In sum, the war in the DRC has been described as the deadliest since the Second World War. Essentially, the entire population has been effected in one way or another. People have often experienced multiple victimizations in addition to poverty and forced displacement. In this context, where victims' needs are seemingly endless, reparation is very important.

#### 4. A Case for Enhancing the Reparation Mechanism for War Crimes Victims

Before making a proposal for the adoption of an enhanced reparation mechanism for war victims in the DRC, it is important to mention some provisions of international instruments that provide for the rights of victims to reparations.

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<sup>89</sup> Report of the UN, *supra* note 10, p. 35.

<sup>90</sup> Jill E. Trenholm et al. "Battles on Women's Bodies: War, Rape and Traumatization in Eastern Democratic Republic of Congo", 6 (2) *Glob Public Health* (2011), pp. 139-52; Cummings, *supra* note 83, p. 234.

<sup>91</sup> *The Prosecutor v. Thomas Lubanga Dyilo*, *supra* note 78, paras. 210-216.

4.1. *The Right to Reparation for War Crimes Victims in the DRC*

The principle that there is no right without a remedy is a well-established principle of international law.<sup>92</sup> The right to reparation is entrenched in core international instruments, which deal with the protection of basic human rights. By way of example, article 9 (5) of the International Covenant on Civil and Political Rights,<sup>93</sup> a cornerstone of the International Bill of Human Rights, clearly reaffirms that

[a]nyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation". Article 2(3) a) adds that "[each State Party to the present Covenant undertakes [to] ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.

The Human Rights Committee further mentioned that "without reparation to individuals whose Covenant rights have been violated, the obligation to provide an effective remedy, which is central to the efficacy of Article 2, paragraph 3, is not discharged".<sup>94</sup>

Article 14 of the Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment<sup>95</sup> provides that "[E]ach State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible". It further states that "nothing in this Article shall affect any right of the victim or other person to compensation which may exist under national law".

In addition, Article 24(2) of the International Convention for the Protection of All Persons from Enforced Disappearance<sup>96</sup> states that "[e]ach victim has the right to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person [...]." Article 24(3) adds that "[each] State Party shall take all appropriate measures to search for, locate and release disappeared persons and, in the event of

<sup>92</sup> Eboe-Osuji, *supra* note 60, pp. 257-302.

<sup>93</sup> UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <http://www.unhcr.org/refworld/docid/3ae6b3aa0.html> [Accessed 20 April 2013].

<sup>94</sup> The United Nations Human Rights Committee, General Comment No 31, Doc No CCPR/C/21/Rev.1/ Add.13 (2004), para. 16.

<sup>95</sup> UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85, available at: <http://www.unhcr.org/refworld/docid/3ae6b3a94.html> [Accessed 20 April 2013].

<sup>96</sup> UN General Assembly, *International Convention for the Protection of All Persons from Enforced Disappearance*, 20 December 2006, available at: <http://www.unhcr.org/refworld/docid/47fdfae0.html> [Accessed 20 April 2013]

death, to locate, respect and return their remains". According to Article 24 (4) "[each] State Party shall ensure in its legal system that the victims of enforced disappearance have the right to obtain reparation and prompt, fair and adequate compensation".<sup>97</sup>

Referring to rehabilitation in favour of children affected by acts amounting to mistreatments, the Convention on the Rights of the Child,<sup>98</sup> one of the most ratified international treaties, declares that

State Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.<sup>99</sup>

The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict<sup>100</sup> also imposes similar obligations to its State Parties; to accord to children recruited or used in hostilities all the appropriate assistance needed, for their physical and psychological recovery and their social reintegration.<sup>101</sup> It further requires States Parties to cooperate together in its implementation, including the prevention of any activities contrary to its provisions, and in the rehabilitation and social reintegration of persons who are victims of acts contrary to it.<sup>102</sup>

Finally, Article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination<sup>103</sup> affirms

[states] Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

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<sup>97</sup> See also Article 8 (2) : "[each] State Party shall guarantee the right of victims of enforced disappearance to an effective remedy during the term of limitation".

<sup>98</sup> UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <http://www.unhcr.org/refworld/docid/3ae6b38fo.html> [Accessed 20 April 2013].

<sup>99</sup> *Ibid.*, Article 39.

<sup>100</sup> UN General Assembly, *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*, 25 May 2000, A/RES/54/263, available at: <http://www.unhcr.org/refworld/docid/3ae6b38bc.html> [Accessed 21 April 2013].

<sup>101</sup> *Ibid.*, Article 6(3).

<sup>102</sup> *Ibid.*, Article 7(1).

<sup>103</sup> UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195, available at: <http://www.unhcr.org/refworld/docid/3ae6b394o.html> [Accessed 21 April 2013].

Similarly, Article 75 (1) of the Rome Statute states that “The Court shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation”. However, as McCarthy observes, the use of the word ‘including’ indicates that the Court’s power to establish reparation principles, is not limited to these forms of redress. Therefore, although indirectly, Article 75(1) confers a significant degree of discretion upon the Court.<sup>104</sup>

In the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power,<sup>105</sup> reparation is generally approached in terms of financial or material reparation. Specifically speaking, Articles 8 to 11 refer to restitution by the offender, while Articles 12 and 13 provide for compensation by the State. The Declaration also includes assistance for victims, however, this is not framed as a form of reparation or rehabilitation. Thus, in comparison to the UN Declaration, the Rome Statute expands the definition of reparation to include rehabilitation.<sup>106</sup> In contrast, the Basic Principles and Guidelines<sup>107</sup> provide an extensive description of the goals, as well as the forms of reparation, based on the needs of victims of these particularly serious crimes. Section IX deals with “Reparation for harm suffered”. Article 15 declares that the aim of reparation is “to promote justice by redressing gross violations of international human rights law or serious violations of international humanitarian law”. The Basic Principles also emphasize the importance of proportionality between reparation and the gravity of the violations and harm suffered. Article 18 set forth the necessity of ‘full and effective reparation’ for victims of gross violations of international human rights law, as well as the serious violations of international humanitarian law ‘as appropriate and proportional to the gravity of the violation and the circumstances of each case’.

The various forms of reparation are defined in Articles 19 to 23; they include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. In its Article 24(5), the International Convention for the Protection of All Persons from Enforced Disappearance<sup>108</sup> also states that:

[the] right to obtain reparation referred to in paragraph 4 of this Article covers material and moral damages and, where appropriate, other forms of reparation such as: (a)

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<sup>104</sup> Connor McCarthy, “Reparations under the Rome Statute of the International Criminal Court and Reparative Justice Theory”, 3 *Int J Transitional Justice* (2009), pp. 250–271.

<sup>105</sup> UN General Assembly, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*: resolution / adopted by the General Assembly, 29 November 1985, A/RES/40/34, available at: <http://www.unhcr.org/refworld/docid/3boof2275b.html> [Accessed 21 April 2013].

<sup>106</sup> Jo-Anne Wemmers, “Reparation and the International Criminal Court: Report of the Workshop held January 28th 2006”, *International Centre for Comparative Criminology*, Université de Montréal.

<sup>107</sup> Basic Principles and Guidelines, *supra* note 9.

<sup>108</sup> UN General Assembly, *International Convention for the Protection of All Persons from Enforced Disappearance*, 20 December 2006, available at: <http://www.unhcr.org/refworld/docid/47fdfaebo.html> [Accessed 21 April 2013].

Restitution; (b) Rehabilitation; (c) Satisfaction, including restoration of dignity and reputation; (d) Guarantees of non-repetition.

As the drafters of the Rome Statute referred to international instruments during the drafting process, the ICC needs to expand its reparation mechanisms, and in order to take into consideration all of various aspects of reparation according to international law. Furthermore, as a signatory of the International Covenant on Civil and Political Rights,<sup>109</sup> the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment,<sup>110</sup> the International Convention on the Elimination of All Forms of Racial Discrimination,<sup>111</sup> Convention on the Rights of the Child,<sup>112</sup> and the Convention on the Elimination of All Forms of Discrimination against Women,<sup>113</sup> the Congolese State is bound to provide for adequate reparation following victimization in wartime. Hence, there is a clear legal obligation, both at the international and the national level, to provide reparation to victims.

#### 4.2. *Towards an Enhanced Reparation Mechanism for War Victims in the DRC*

##### 4.2.1. *The Limits of Current ICC Reparation Mechanisms*

As previously explained, the consequences of war crimes affect the entire wellbeing of a community. Yet, Rule 94(1) of the ICC Rules of Procedure and Evidence declares that:

A victim's request for reparations under article 75 shall be made in writing and filed with the Registrar. It shall contain the following particulars: (a) The identity and address of the claimant; (b) A description of the injury, loss or harm; (c) The location and date of the incident and, to the extent possible, the identity of the person or persons the victim believes to be responsible for the injury, loss or harm; (d) Where restitution of assets, property or other tangible items is sought, a description of them; (e) Claims for compensation; (f) Claims for rehabilitation and other forms of remedy; (g) To the extent possible, any relevant supporting documentation, including names and addresses of witnesses.

This individualized procedure gives rise to several practical problems. The presentation of material proof, for example, can be very difficult in war-torn situations. Because of the fact that war has endured for an extensive period and for a long period there has been no public authority designated to deliver death certificates in the DRC, this constitutes an obstacle when asked to prove the death of a loved one using the correct legal procedures. Without a death certificate, how can one

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<sup>109)</sup> 1 November 1976.

<sup>110)</sup> 18 Mar. 1996.

<sup>111)</sup> 21 Apr 1976.

<sup>112)</sup> 27 Sep 1990.

<sup>113)</sup> 17 October 1986.

prove to the Court that a person died? Furthermore, material losses are difficult to document; victims who flee a war zone do not have time to gather proof before they leave their homes.<sup>114</sup> While the ICC Trial Chambers are reported to follow a more moderate approach in the assessment of the applicants' proof of identity,<sup>115</sup> difficulties may arise regarding victims' address. Many war victims in the DRC live in villages that do not have a residential address, and thousands of those victims have fled their homes and are currently living in forests; they do not have any means of communicating with other communities. Also, any witnesses to their victimization may not have an address either, and can neither be found nor contacted. In addition, certain physical and psychological damages such as pain and suffering, are difficult to evaluate. The requirement to provide positive identification of persons of whom the victim believes to be responsible for the injury, loss or harm is often extremely challenging; this comes as a result of a multitude of combatant groups operating on the DRC's territory wearing similar combat uniforms. In addition, because of the nature of war crimes, some victims are scared to file a victim application, fearing reprisals from the accused or accomplices who remain at large and beyond the reach of the ICC.<sup>116</sup> It is hoped that these problems will not result in the automatic disqualification of victims' claims.<sup>117</sup>

Furthermore, the context and its effects on victims' ability to obtain reparation must not be forgotten. The DRC is a developing country and many war victims did not have access to education and not even elementary school, which may make it difficult for them to fully describe the extent of their damages when making a claim. Moreover, cultural factors can encourage silence, and thus hide victimization. Many war victims, especially women who have experienced sexual violence, are rarely vocal on their own behalf due to cultural patterns; as a result, their suffering may go unrecognized.<sup>118</sup> Furthermore, a great number of Congolese war victims are still unaware of the ICC's reparation procedures, or do not know what to do in order to bring their claims before the ICC.<sup>119</sup> Similarly, some of the victims do not have any confidence in judicial mechanisms. Their distrust of authorities and lack of faith in justice is understandable; based on their experience with

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<sup>114</sup>) Liesbeth Zegveld, "Victims Reparations Claims and International Criminal Courts: Incompatible Values?", 8 *Journal of International Criminal Justice* (2010), pp. 79–111.

<sup>115</sup>) See Tatiana Bachvarova, "Victims Eligibility before the International Criminal Court in Historical and Comparative Context", 11 *International Criminal Law Review* (2011), p. 671.

<sup>116</sup>) Christodoulos Kaoutzakis, "Two Birds with One Stone: How the Use of the Class Action Device for Victim Participation in the International Criminal Court Can Improve Both the Fight against Impunity and Victim Participation", 17 *U.C. Davis J. Int'l L. & Pol'y* (2010), p. 131.

<sup>117</sup>) See Eva Dwertmann, *The Reparation System of the International Criminal Court. Its Implementation, Possibilities and Limitations* (Martinus Nijhoff Publishers, 2010), pp. 204–205.

<sup>118</sup>) See I. Robbins, "Crime Victims", *Encyclopedia of Stress*, *supra* note 11, pp. 659–662.

<sup>119</sup>) See Christine H. Chung, "Victims' Participation at the International Criminal Court: Are Concessions of the Court Clouding the Promise?", 6 *Nw. U. Int'l Hum. Rts.* (2008), p. 540.

national courts that had never succeeded to enforce their own decisions dealing with reparation for war crimes.<sup>120</sup>

Fortunately, the Trust Fund for Victims is not limited to victims of the case, and can take a broader approach in reparation process. As the Prosecutor of the ICC has received referral for international crimes allegedly committed anywhere in the territory of the DRC since the entry into force of the Rome Statute,<sup>121</sup> the absence of victims' claims or prosecution in a given area should not prevent victims from receiving assistance. As Zegveld explains,

Regardless of any order for reparation by the ICC and prior to any such legal determination, the Trust Fund, in its humanitarian function, may use its 'other resources' for the benefit of victims of crimes within the jurisdiction of the Court. The Trust Fund's projects can thus also assist victims whose injuries have no causal link to the crimes tried by the Court and long before a trial has resulted in a conviction or the discharge of the defendant. It is in this non-judicial capacity that the Trust Fund has already started its first projects.<sup>122</sup>

Furthermore, Rule 46 of the Regulations for Trust Fund for Victims states that

resources collected through awards for reparations may only benefit victims as defined in rule 85 of the Rules of Procedure and Evidence, and, where natural persons are concerned, their families, affected directly or indirectly by the crimes committed by the convicted person.<sup>123</sup>

Obviously, the ICC's rules prioritize individuals that are direct or indirect victims of international crimes at the expense of collective victimization. Yet, this is contrary to the terms of the UN Declaration of Basic Principles of Justice for Victims

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<sup>120</sup> See Amnesty International, *The Time for Justice is Now: New Strategy Needed in the Democratic Republic of the Congo*, 10 August 2011, p. 48, available at: <http://www.amnesty.org/en/library/asset/AFR62/006/2011/en/6cd862df-be60-418e-b70d-7d2d53a0a2d4/af620062011en.pdf> (Accessed 20 April 2013): "In cases where military courts have awarded reparation to victims against perpetrators or the state, the decisions have not been enforced. Despite a number of judgments ordering the state to provide reparation, Amnesty International failed to identify a single case to date where the reparation has in fact been paid. This failure has undermined confidence of individuals in the justice system. It has influenced victims' decisions as to whether to seek justice".

<sup>121</sup> It is also remarkable that once he received the referral letter, the Prosecutor decided, in June 2004, to initiate an investigation in the whole territory of the DRC since 1 July 2002. See *The Office of the Prosecutor of the International Criminal Court opens its first investigation*, ICC-OTP-20040623-59, Situation: Democratic Republic of the Congo, Press Release, 23.06.2004.

<sup>122</sup> See Zegveld, "Victims' Reparations Claims and International Criminal Courts...", *supra* note 114, p. 89. See also Frédéric Mégret, "Justifying Compensation for the International Criminal Court's Trust Fund for Victims: Lessons from Domestic Compensation Schemes", 36 *Brooklyn Journal of International Law* (2010), pp.141-142.

<sup>123</sup> Resolution ICC-ASP/4/Res.3 adopted at the 4th plenary meeting on 3 December 2005, by consensus.

of Crime and Abuse of power.<sup>124</sup> The Declaration defines the victims as “persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights [...]”.<sup>125</sup> The same wording has been used in the Basic Principles and Guidelines.<sup>126</sup> Clearly, these international instruments recognize several different categories of victims, including direct and indirect victims, secondary victims as well as the community as a victim. Hence, collective victimization should be taken into consideration in all reparations processes. According to Rule 97(1) of the Rules,<sup>127</sup> “the Court may award reparations on an individualized basis or, where it deems it appropriate, on a collective basis or both”. In the *Lubanga* Decision on principles and procedure to be applied to reparations, the ICC Chamber I recognized that “reparations may be awarded to: a) individual victims; or b) groups of victims, if in either case they suffered personal harm”.<sup>128</sup> In other words, direct as well as indirect victims who suffered personal harm, including material, physical and psychological harm, may receive reparation before the ICC on an individual or collective basis. Nevertheless, in some cases, it may be difficult to determine whether or not collective victimization resulted in personal harm. In addition, this decision is only related to *Lubanga* case and cannot be applied to all cases before the ICC. However, the principles laid down in this decision are likely to have wider application. They may be applied to many other cases involving war-induced mass victimization.

But, as collective victimization is not formally recognized by the ICC system, there remains a danger that this approach may be ignored and will not lead to obtaining reparation through the Court. Also, as the ICC system does not fully recognize indirect victimization,<sup>129</sup> there is a danger that, when the direct victims survived, those who suffered harm in their families remain without reparation.<sup>130</sup>

Moreover, any one victim may find that his or her victimization (namely direct or indirect victimization) is only partially recognized by the Court. In the same way, direct or indirect victims of an international crime whose perpetrator is not prosecuted or convicted by the ICC will not receive reparation. A good example is the decision regarding the applications for participation of the DRC victims in

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<sup>124</sup>) Basic Principles and Guidelines, *supra* note 9.

<sup>125</sup>) *Ibid.* s. 1.

<sup>126</sup>) *Ibid.*, s. 8.

<sup>127</sup>) *Supra* note 123.

<sup>128</sup>) *The Prosecutor v. Thomas Lubanga Dyilo*, *supra* note 78, para. 217.

<sup>129</sup>) On indirect victimization, see for example, Ibrahim Kira, “Assessing and responding to secondary traumatisation in the survivors’ families”, 14 *Torture* (2004), p. 38.

<sup>130</sup>) See *The Prosecutor v. Thomas Lubanga Dyilo*, Situation in Democratic Republic of the Congo, Trial Chamber I, Decision on ‘indirect victims’, 08 avril 2009, ICC-01/04-01/06-1813, para. 51.

criminal proceedings rendered by the ICC Pre-trial Chamber I in 2006.<sup>131</sup> In this decision, the ICC drew a distinction between victims of the situation and victims of the case. While victims of the situation are those who suffered harm during the perpetration of any war crime that falls under the jurisdiction of the ICC in a given situation under investigations, victims of the case are those related to specific incidents, during which one or more war crimes are committed by one or more identified suspects.<sup>132</sup> Only the latter are entitled to participate in the proceedings and possibly receive reparations from the convicted person.<sup>133</sup> Yet, the ICC cannot trial all of the perpetrators of international crimes committed on the entire territory of the DRC. With respect to reparations, the notion of victims of a case is then a notion leading to a narrower approach in regards to many victims.<sup>134</sup>

A further difficulty may result in cases of child soldiers involved in the commission of war crimes. By way of example, in the *Lubanga* case, the Trial Chamber I considered that for the purpose of participation in the proceedings, individuals who had been directly injured by child soldiers were excluded from proceedings as (indirect) victims as they were not considered victims “of the crimes charged”. The *Lubanga* ruling bases itself on grounds that only victims “of the crimes charged” may participate in the trial proceedings.<sup>135</sup> Yet, the harm suffered by these victims was the result of the harm suffered by child soldiers who were conscripted, enlisted or used to participate actively in hostilities while under the age of fifteen.<sup>136</sup>

While this ruling makes sense legally speaking,<sup>137</sup> it may raise many questions in practice as some forms of reparation for child soldiers may be perceived by other victims as a reward for those who perpetrated war crimes. In fact, there is a

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<sup>131</sup> ICC, *Decision on the applications for participation of victims in the proceedings of VPRS1, VPRS2, VPRS3, VPRS4, VPRS5 and VPRS6*, 17 January 2006, ICC-01/04-101.

<sup>132</sup> *Ibid.*, para. 65.

<sup>133</sup> *The Prosecutor v. Thomas Lubanga Dyilo*, Situation in Democratic Republic of the Congo, *Decision on the Applications for Participation in the Proceedings Submitted by VPRS 1 to VPRS 6*, 29 June 2006, ICC-01/04-01/06-172-tEN, p. 6: “the Applicants must demonstrate that there is a sufficient causal link between the harm they suffered and the crimes for which there are reasonable grounds to believe that Thomas Lubanga Dyilo is criminally responsible and for whose commission the Chamber issued an arrest warrant”.

<sup>134</sup> See Gilbert Bitti, “Les droits procéduraux des victimes devant la Cour pénale internationale”, 44 (2) *Criminologie* (2011), pp. 63-98.

<sup>135</sup> ICC, Trial Chamber I, *Decision on ‘indirect victims’ Lubanga*, 8 April 2009, (ICC-01/04-01/06-1813), paras. 51-52,

<sup>136</sup> *Ibid.* See also Cécile Aptel, “Prosecutorial Discretion at the ICC and Victims’ Right to Remedy: Narrowing the Impunity Gap”, 10 *J Int Criminal Justice* (2012), p. 1367: “As Patel mentions, ‘the judges ruled that the victims of crimes committed by other victims (i.e. child soldiers) could not be deemed ‘indirect victims’. The understanding of who is deemed a victim by the ICC was thus restricted to only those who were directly victimized by the crimes charged against the accused. As such, many victims were excluded from the proceedings by the narrow set of charges.”

<sup>137</sup> Obviously, those victimized by child soldiers are not victims of using child soldiers within the legal meaning of this crime.

more convincing approach that considers that the child offenders, even if they are victims themselves, should be held accountable, and deserve retribution rather than compensation. Of course, child soldiers are perpetrators of a different kind as they are very vulnerable, and, as such, should be treated differently from adult perpetrators. Perhaps, the suitable strategy would consist in prioritizing the physical and psychological rehabilitation of child perpetrators so that they can be reinserted within society rather than to give them immediate monetary or other material compensation. The international instruments related to the protection of the child support this standpoint.<sup>138</sup>

Obviously, all of the challenges noted could not be confronted under the Article 75 scheme without overloading the ICC as and losing sight of its core mandate, which is to deliver criminal justice with limited means. However, in its first decision establishing the principles and procedures to be applied to reparations for victims in the *Lubanga* case, the ICC recently recognized that “it would be inappropriate to limit reparations to the relatively small group of victims that participated in the trial and those who applied for reparation”.<sup>139</sup> In this regard, the Trust Fund may help address many of those challenges. The Trust Fund can receive donations that may be used “for the benefit of victims within the jurisdiction of the court and the families of such victims”.<sup>140</sup> The Trust Fund is also a very flexible reparation mechanism able to reach many victims within the jurisdiction of the ICC. It does not require that an individual be recognized as a victim of the case in the legal sense in order to offer aid. Thus, even when the ICC had not yet completed a single trial, the Trust Fund had already invested in projects for some war victims in the DRC. These projects include psychological and materiel supports as well as physical rehabilitation in relation to sexual violence. They have been provided for some victims of rape in North Kivu and South Kivu provinces.<sup>141</sup> In so far that these projects recognize victimization, they can be an important source of reparation for victims.

#### 4.2.2. *Prioritizing Needs*

The challenges facing the ICC also require that we set priorities with regard to addressing war victims’ needs. In fact, the ICC is limited in its possibilities to

<sup>138</sup>) See *supra* note 101.

<sup>139</sup>) *The Prosecutor v. Thomas Lubanga Dyilo*, *supra* note 78, para. 187.

<sup>140</sup>) *Rome Statute*, *supra* note 13, art. 79.

<sup>141</sup>) According to the brochure Trust Fund for Victims, *Empowerment, Hope & Dignity*, psychological support, physical rehabilitation, and material support related to sexual violence are provided for victims (men, women and children) in Walungu territory, Fizi, Uvira, Bukavu, South Kivu, Beni, North Kivu, Goma, Bunia, Irumu, Djugu, Mahagu and Ituri province. Psychological support and material support are provided for ex-child soldiers and abducted children in Bunia and Ituri provinces, Irumu, Djugu, Mahagi. Also, psychological support is provided for families of murdered victims in Bunia, Nyakunde, Ituri province, Aru, Goma, Masisi territory, in North Kivu province.

provide reparation for victims and the needs of victims in the DRC are immense. Due to widespread and systematic victimization, large numbers of victims in the DRC need reparation.<sup>142</sup> They include direct, indirect, secondary and collective victims, but more often than not, individuals will fall under many of these categories at the same time. In addition, as the armed conflict is still going on in many zones of the DRC, there is no doubt that the number of war victims continues to grow. Can the ICC ever meet the demand?

The exponential needs of war victims in the DRC means that it is necessary to prioritize victims' needs. In the context of war, Wemmers and De Brouwer mention that victims will focus first on their basic physiological needs.<sup>143</sup> Based on Maslow's pyramid of needs, they contend that victims' primary need is food, water and medical care. Studies have shown that in the earliest stages following the experience of victimization, reparation is simply not a priority, not even an issue, for victims.<sup>144</sup> Victims need to be able to eat and to sleep. Moreover, there is a pressing need for those who are injured to receive medical care.<sup>145</sup> In the absence of these basic resources, the individual's survival is threatened. Yet, in the DRC, access to medical care is rather uncommon<sup>146</sup> and with the war comes the risk of famine as farmers are afraid to go out and work in their fields.<sup>147</sup>

However, responding to victims' basic physiological needs is not a task of the ICC alone. Moreover, victims need care immediately and cannot wait until the ICC has run its course and reached a decision on reparation. Furthermore, the Geneva Conventions specify that such aid should be available to all people, regardless of whether they are victims or offenders. This is humanitarian aid, which should be provided by humanitarian organizations to anyone in need. Normally humanitarian aid does not differentiate between victims and offenders.

Once victims' primary physiological needs are met, they need safety and security. Victims are afraid of victimization in general and re-victimization by their aggressors in particular.<sup>148</sup> In the DRC, the violence is on-going and many millions of war victims are living outside of their homes. These war victims are vulnerable

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<sup>142</sup> See *supra* note 4.

<sup>143</sup> Wemmers and De Brouwer, *supra* note 24 at 288.

<sup>144</sup> See The REDRESS Trust, *Torture Survivors' Perceptions of Reparation- Preliminary Survey* (Aldridge Print Group, Mitcham, 2001), p. 64, available at : <http://www.redress.org/downloads/reparation/TSPR.pdf> (Accessed 20 April 2013).

<sup>145</sup> Kirsten Johnson et al., "Association of Sexual Violence and Human Rights Violations with Physical and Mental Health in Territories of the Eastern Democratic Republic of the Congo", 304(5) *Journal of the American Medical Association* (2010), pp. 553–562.

<sup>146</sup> Owen Bowcott, LRA spreads fear and threat of famine in DRC. Mail&Guardian-online, <http://mg.co.za/article/2009-09-01-lra-spreads-fear-and-threat-of-famine-in-drc> (Accessed 21 April 2013).

<sup>147</sup> *Ibid.*

<sup>148</sup> Wemmers and De Brouwer, *supra* note 24, p. 288.

and at risk of re-victimization. The immediate need for war victims is their release from the dangerous situation.<sup>149</sup> They need safety and security for themselves and their beloved ones.

While the prosecution of war criminals is regarded by the Rome Statute's preamble as a means to attain peace and security,<sup>150</sup> so far, it is difficult to assess the real contribution of the ICC in the establishment of peace and security in the DRC. In so far that the ICC can catch and detain war criminals, the Court can contribute to victims' safety. With offenders behind bars, victims may feel safer. Besides the isolation of war criminals, the ICC may have a general deterrent effect, restraining potential war criminals from committing new crimes. However, the on-going hostilities in the DRC suggest that any deterrent effect of the ICC is limited in its scope. In this respect, the limited capacity of the Court to intervene in conflicts poses a threat to its short term ability to guarantee victims' safety. In addition, the activities of the Court may put victims in danger. For example, victim-witnesses who are seen as collaborating with the Court may be at risk of violence from opposition forces and their supporters. Victims who may receive individual reparations may also be targeted by offenders in the DRC. The attainment of peace and security is, in any case, a long-term goal and therefore it would be somewhat difficult to expect the ICC to bring hostilities in the DRC to an immediate end.

The next level of need is a feeling of belonging and acceptance. Victims of war crimes may feel rejected by their families and their communities. For example, girls enlisted in armed forces are often used as "bush wives". If and when they are released, they often have small children and are usually rejected by their families.<sup>151</sup> Victim support is aimed to rehabilitate victims and reintegrate them into their communities. This includes psychological help and support for victims, which would enable them to function in society. The ICC cannot adequately deal with these needs because it is slow: a trial takes years to complete and some war victims' needs cannot wait this long. However, the Trust Fund for Victims, which is part of the ICC, may play a significant role in the victims' rehabilitation process.

#### 4.2.3. *A Search for Other Reparation Mechanisms*

The ICC's focus on victims of the case means that only victims whose offender is condemned by the ICC may be eligible for financial reparation through the Court.<sup>152</sup> Yet, the UN Declaration specifies whether it is irrelevant that the

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<sup>149</sup> *Ibid.*

<sup>150</sup> "Determined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes".

<sup>151</sup> Susan Mackay and Dyan Mazuana, "Où sont les filles?" (Droits et Démocratie, Québec, 2004).

<sup>152</sup> William A. Schabas, *The International Criminal Court: A Commentary on the Rome Statute* (Oxford / New York, Oxford University Press, 2010), p. 879.

perpetrator of the crime is identified, apprehended, prosecuted or convicted in order to be considered a victim.<sup>153</sup> However, as we saw above, the Rome Statute provides that if the ICC is incapable of providing reparation, the Trust Fund can offer alternative reparation. But the Trust Fund is grossly underfunded, something that displays a massive gap between the legal rights of victims to reparation, and the actual resources available to them. Here, there is a duty for the State Parties to the Rome Statute of the ICC, as well as the whole international community, to provide adequate resources to the Trust Fund in order to provide effective redress including compensation and rehabilitation for war victims. As the prohibition of war crimes is a part of *jus cogens* norms subject to the universal criminal jurisdiction,<sup>154</sup> there is an urgent obligation for State Parties to the Rome Statute as well as a moral obligation for other States to contribute to the Trust Fund, and for the victims to be financially secured regardless of any other consideration. A good financial support to the Trust Fund would significantly enhance the opportunities to compensate war crime victims in the DRC.

Additionally, aside from the ICC reparation system, redress for war victims in the DRC should be sought before national courts. The DRC, that is the Situation State, is the first State to bear responsibility to provide a domestic legal remedy to victims of violations of humanitarian law norms committed in its territory.<sup>155</sup> This is in conformity with the complementarity principle entrenched in the Rome Statute of the ICC. Historically, a version of the Draft Statute for the International Criminal Court had even made a good proposal. It had proposed that the ICC should make an order or recommend that an appropriate form of reparations to victims be made by a State in the event that the convicted person was, in committing the offence, acting on behalf of that State in an official capacity. The draft added that in any case, the Court may also recommend that States grant an appropriate form of reparations to victims, including restitution, compensation and rehabilitation.<sup>156</sup> The current version of the Statute is less compelling on the part of States.<sup>157</sup>

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<sup>153</sup>) UN Declaration, *supra* note 105, s. 2; Basic Principles and Guidelines, *supra* note 9, s. 9.

<sup>154</sup>) This means that those crimes “affect the interests of the world community as a whole because they threaten the peace and security of humankind and because they shock the conscience of humanity”. See Cherif Bassiouni, “International Crimes: Jus Cogens and Obligatio Erga Omnes”, 59 *Law & Contemp. Probs.* (1996), p. 63. Hence, States should provide redress to victims irrespective of where the crimes occurred.

<sup>155</sup>) Cherif Bassiouni, “International Recognition Victims’ Rights”, *Human Rights Law Review* (2006), p. 213.

<sup>156</sup>) UN Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, *Report of the Preparatory Committee on the Establishment of an International Criminal Court, Draft Statute for the International Criminal Court*, U.N. Doc. A/CONF.183/2/Add.1, 14 April 1998, p. 118, available at <http://www.un.org/law/n9810105.pdf> (Accessed 20 April 2013).

<sup>157</sup>) See Rome Statute, *supra* note 13, article 75.

The fact that many rebel groups are involved in the commission of most war crimes in the DRC does not deprive victims of the right to reparation from the State.<sup>158</sup> In addition, international instruments, such as the ICCPR, urge signatory states to ensure remedy, and reparation to victims regardless of whether the crimes have been committed by persons acting in an official capacity.

The Panel of experts convened in 2011 by the UN human rights Commissioner, for the purposes of hearing from rape victims in the DRC about their needs acknowledged the DRC Government's initiative in establishing a national strategy to combat gender-based violence including a reparation fund for sexual violence victims whose perpetrators are unknown or are not arrested. It did mention however that there was no real financial contribution to this reparation fund; the panel then called for the speeding up of the fund's implementation and for the Government as well as the international community to make financial contributions to it.<sup>159</sup> The international community certainly bears some kind of responsibility, as the war in the DRC has brought to light its failure to protect civilians against war crimes despite the presence of more than twenty thousand UN soldiers in this country. The international community, namely the UN has also failed to provide protection against other serious violations of international humanitarian law including sexual violence committed by some members of its mission in the DRC.<sup>160</sup> In addition, some international doctrines, such as Responsibility to Protect urge the international community to actively participate in addressing transitional justice issues including truth, reparations, reconciliation and instituting guarantees of non-repetition.<sup>161</sup>

The proposed reparation fund should not only benefit those victims whose perpetrators are unknown or are not arrested as even when perpetrators are arrested and convicted, they usually do not have enough money to compensate the victims.<sup>162</sup> Moreover, besides the reparation for victims of sexual violence, the proposed fund should be expanded to include victims of other war crimes.

<sup>158</sup> Eboe-Osuji, *supra* note 60, pp. 279-280.

<sup>159</sup> See OHCHR, *Reparations for Sexual Violence Survivors in DRC*, 4 March 2011, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/ReparationsforsexualviolenceinDRC.aspx> (Accessed 20 April 2013). In its report on remedies and reparations for Victims of Sexual Violence in the DRC, the UN panel considers that so far efforts to get reparation for victims from the Government have resulted in a failure.

<sup>160</sup> See Carol Allais, "Sexual Exploitation and Abuse by UN Peacekeepers: The Psychosocial Context of Behaviour Change", 39 *Journal of Military Studies* (2011), pp. 1-15.

<sup>161</sup> Jeremy Sarkin, "Is the Responsibility to Protect an Accepted Norm in International Law in the post-Libya Era? How its Third Pillar Ought to be Applied", 1 *Groningen Journal of International Law* (2012), pp. 11-48.

<sup>162</sup> In fact, many war crimes victims are genuinely unable to identify their offenders or they are too "afraid to do so due to fear of further violence or the perpetrators are simply unable to pay any compensation ordered by the Court or other reparation awarding authority". See Eboe-Osuji, *supra* note 60, p. 289. Furthermore, even the former president of Cote d'Ivoire Laurent Gbagbo has been qualified by the ICC as indigent person not capable of paying for his defense team.

As a signatory state to core international human rights treaties, the Congolese State is bound to provide redress to victims of war crimes, including, but not limited to, fair and adequate compensation, as well as full rehabilitation and reintegration. The DRC has a great economic potential that can enable it to contribute to the reparation fund, and with little cooperation from the international community.

Furthermore, the DRC needs to modernize its criminal justice system, including the drafting of new criminal laws consistent with international standards, as well as the training of the National Army, and police forces, as well as the rebuilding and equipment of the judicial infrastructure. There is also an urgent need for the strengthening of the public health sector in order to cope with war victimization health-related problems.

In addition, the gravity of war crimes requires States where the DRC war crimes victims have fled to, to provide them with some forms of reparation regardless of the nationality of the perpetrator or the victim.<sup>163</sup> In this respect, the fulfilment of the most urgent aspects of reparation such as rehabilitation and reintegration should be of utmost importance. In addition, those States would allow lawsuits for compensation against the offenders, as well as against the DRC government if the former are not in a position to provide compensation for victims. The States where the DRC war crimes victims have fled to should ease any legal action filed by them in order to ensure their access to compensation from the reparation fund to be established, if and when law suits are successful.

More interestingly, in cases where the DRC is not in a position to fully compensate all of the war crimes victims, the States that have sent military forces into the DRC should be involved in redressing wrongs committed by their forces, on the territory of the DRC.<sup>164</sup> Each of those countries contributed both directly and indirectly to the commission of war crimes in the DRC.<sup>165</sup> Thus, all States that sent

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<sup>163</sup> See Christopher Keith Hall, "The Duty of States Parties to the Convention against Torture to Provide Procedures Permitting Victims to Recover Reparations for Torture Committed Abroad", 18 *European Journal of International Law* (2007), p. 921. Whether this would result in countries shutting their borders to refugees remains an open question.

<sup>164</sup> As we saw outset, no less than eight countries had directly taken part in armed conflict in the DRC, namely Angola, Burundi, Chad, Namibia, Zimbabwe, Rwanda, Sudan and Uganda.

<sup>165</sup> For example, in 2005, the International Court of Justice found that "the Republic of Uganda, 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". The Court then concluded that "the Republic of Uganda is under obligation to make reparation to the Democratic Republic of the Congo for the injury caused". See *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v.*

armed forces into the DRC should contribute to the establishment and the funding of the proposed reparation fund in the DRC. No State should be allowed to escape responsibility for reparation following violations of the rights of citizens of other States, and especially in their own territories.<sup>166</sup> We propose the reference to the Great Lakes Region Pact<sup>167</sup> adopted by eleven African States in December 2006, and as a model political scheme. This Pact would assist in negotiating the possible contribution of the States involved in war in the DRC, for the funding of the reparation fund for war crimes victims in the DRC.<sup>168</sup>

## Conclusion

In light of these findings, it is evident that the war in the DRC is particularly ghastly and, consequently, highlights the specificity of victimization. In addition, war crimes are different than other crimes; they often involve multiple victimizations inflicted upon an already vulnerable population. Due to the chronic victimization and the precarious living conditions of the population, the impact of war victimization is amplified.

Furthermore, war crimes always entail multiple, continuing or repeated victimization, poly victimization or chronic victimization.<sup>169</sup> This means that not only war crime victims may not only suffer from several kinds of crimes, but also that a same war crime, such as rape, may be collectively committed many times by many perpetrators over a longer-term period. War victims who experience multiple and repeated rapes, may also witness the torture and the death of family members, as

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*Uganda*), Judgment of 19 December 2005, available at: <http://www.icj-cij.org/docket/files/116/10455.pdf> (Accessed 20 April 2013).

<sup>166</sup> Eboe-Osuji, *supra* note 60.

<sup>167</sup> *Pact on Security, Stability and Development in the Great Lakes Region*, 14–15 December 2006, entry into force June 2008. The Pact is comprised of ten protocols designed to create conditions for security, stability, and reconstruction in the region, namely the *Protocol on Democracy and Good Governance*, the *Protocol on Judicial Cooperation*, the *Protocol against the Illegal Exploitation of Natural Resources*, the *Protocol on the Management of Information and Communication*, the *Protocol for the Prevention and the Punishment of the Crime of Genocide, War Crimes and Crimes against Humanity and All Forms of Discrimination*, the *Protocol on the Specific Reconstruction and Development Zone*, the *Protocol on Non-Aggression and Mutual Defence*, the *Protocol on the Prevention and Suppression of Sexual Violence Against Women and Children*, the *Protocol on the Protection and Assistance to Internally Displaced Persons*, the *Protocol on Property Rights of Returning Persons*. See The London School of Economics International Humanitarian Law Project at : <http://www.lse.ac.uk/collections/law/projects/greatlakes/Pact%20on%20Security%20Stability%20&%20Development.pdf> (Accessed 20 April 2013).

<sup>168</sup> The Great Lakes Region of Africa is made up of eleven States (Angola, Burundi, Central African Republic, Congo-Brazzaville, DRC, Kenya, Rwanda, Sudan, Tanzania, Uganda and Zambia). At least five of them took part in Congolese armed conflict.

<sup>169</sup> See Jelena Jaukovic, 'The Forms of Victimization in the Territory of the Former Yugoslavia', 10 *Eur. J. Crime Crim. L. & Crim Just.* (2002), p. 109; Uwe Ewald and Ksenija Turković, (eds.),

well as experience loss of housing, land and other possessions.<sup>170</sup> Before the victim has time to recover from the initial victimization, a new victimization may occur,<sup>171</sup> putting the victim in a situation of permanent trauma. For some cultures, a permanent trauma may also result in non-performance of certain rites for dead family members during wartime as people are forced to flee their homes immediately.<sup>172</sup>

This article attempted to deconstruct reparation for victims of war crimes before the ICC. The article shows that while many international instruments provide war victims with rights to reparation, meeting war victims' most urgent needs lies outside of the reach of the ICC. There is an inherent conflict between the ICC's objective to punish perpetrators of war crimes and its other mission to secure reparation for victims. While many victims' needs are very urgent and ought to be addressed very quickly, the ICC procedures are taking a very long time. Moreover, the ICC does not have sufficient legal and monetary means to meet all the needs of war victims.

The international community and States have a key role to play in prioritizing victims' needs. This would be for meeting victims' physiological needs and promote their safety and security. Once these primary needs have been met, the Trust Fund, with its broad definition of victims as well as its reparation ability, can play a key role in meeting victims' social needs, especially through the provision of both support programs and services. In fact, the Trust Fund offers the ICC a second means to provide reparation to victims which extends the reach of the Court to a wider audience. Only when these fundamental needs have been met, and victims' need for self-esteem becomes relevant, can the ICC play a role in providing reparation. However, due to its limited means as well as its narrow approach of victims any role that it plays will be limited.

The limited role of the ICC means that the focus of reparation for victims of war crimes needs to shift away from the ICC; the focus would need to shift to the Member States, including the DRC, the Situation State, especially in relation to most urgent wants and needs of war victims. The international community can promote reparation for victims through the provision of development funds, aimed at strengthening the DRC legal and judicial infrastructure, and through donations to the Trust Fund as well as the proposed national victim fund.

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*Large-Scale Victimisation as a Potential Source of Terrorist Activities Importance of Regaining Security in Post-Conflict Societies* (IOS Press, 2006), p. 80.

<sup>170)</sup> Wemmers and De Brouwer, *supra* note 24, pp. 286-287.

<sup>171)</sup> *Ibid.*, p. 287.

<sup>172)</sup> Patrick J. Bracken, Joan E Giller and Derek Summerfield, "Psychological Responses to War and Atrocity: the Limitations of Current Concepts", 40 *Social Science Medicine* (1995), p. 1077. For example, in Africa, many ethnic groups believe that the absence of funeral ceremonies may be a source of malediction for survivors. It is also undeniable that some war victims may themselves be involved in committing other human rights violations. See Johnson et al. *supra* note 10, p. 561; Bunting, *supra* note 59, p. 182.

The States that have sent military forces to the DRC should also contribute to redress for war victims; this particularly due to the fact that they have had an influential role, whether directly or indirectly, in the deterioration of the security of this country.

In short, the reparation mechanism envisaged in this article is two-tier: 1) the broadening the ICC reparation framework especially the financial capability of the Trust Fund so that it can deal with all victims of the situation; 2) the strengthening of national legal and judicial mechanisms in order to ensure effective reparation including guarantees of non-repetition. This would include the training of police and the modernisation of criminal laws as well as the creation of a national compensation fund for war victims that could be financed by the international community, the DRC as well as States that took part in Congolese armed conflicts.

Finally, the ICC reparation mechanism constitutes a significant progress for international criminal law. However, while reparation for victims will remain an important issue in international criminal justice, further research needs to be done to propose the establishment of a suitable reparation mechanism or the enhancement of the current reparation process for war crimes victims. A much broader reparation scheme is needed to ensure that all victims are properly valued.