NECESSITY AND DIFFICULTIES TO ESTABLISH A REPRESSIVE SYSTEM FOR INTERNATIONAL CRIMES COMMITTED IN THE DRC

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Abstract. *More than 600 well-documented crimes have been identified in the Democratic Republic of Congo during the armed conflicts that have raged there since 1993 to the present day. Crimes against humanity, serious violations of international humanitarian law, crimes of aggression, crimes of genocide, and terrible human rights violations have been committed. The perpetrators of these crimes must be brought to justice and punished so that the victims of these crimes can be restored to their rights and the Congolese social fabric can be rebuilt. There is no need to dream of an international criminal court for the Congo created under the auspices of the Security Council. The majority of its permanent members are involved. The trial and punishment of any criminal is the discretionary competence of the State or States acting in a sovereign manner. To better achieve this objective, it is important to take stock of the Congolese law enforcement system and to conclude whether or not it is capable of punishing the perpetrators of international crimes in the DRC. Taking into account the number of suspects to be judged and the almost non-existence of specialists in international criminal law in the country, it would be appropriate to resort to international criminal justice, either at the universal or regional level. The creation of a Truth, Justice and Reconciliation Commission, both at the national and regional levels, will facilitate the political and social reconstruction of the State and promote popular cohesion.*

Key-words: *International justice, creation of an international criminal jurisdiction, international crimes, capacity to create an international criminal jurisdiction, Truth, Justice and Reconciliation Commission.*

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Resume. *Plus 600 crimes très bien documentés ont été identifiés en République Démocratique du Congo dans les conflits armés qui y sévissent depuis 1993 jusqu'à nos jours. Des crimes contre l'humanité, des violations graves du Droit International Humanitaire, des crimes d'agression, des crimes de génocides, de terribles violations des droits de l'homme ont été commis. Leurs auteurs doivent être traduits en justice et sanctionnés afin que les victimes de ces crimes puissent être rétablies dans leurs droits et que le tissu social congolais soit reconstruit. Point n'est besoin de rêver d'une juridiction pénale internationale pour la Congo créée sous les auspices du Conseil de Sécurité. La majorité de ses membres permanents y sont impliquée. Le jugement et la sanction de tout criminel est de la compétence discrétionnaire d'Etat ou des Etats agissant de manière souveraine. Pour mieux atteindre cet objectif, il importe de faire l'état des lieux du système répressif congolais, par conclure, si oui ou non, il est capable de réprimer les auteurs de crimes internationaux en RDC. En tenant compte du nombre de suspects à juger et de la quasi- inexistence des spécialistes du Droit International Pénal dans le Pays, il s'avérera opportun de recourir à la justice pénale internationale, soit au niveau universel, soit au niveau régional. La création d'une Commission Vérité, Justice et Réconciliation, tant au niveau national qu'au niveau régional facilitera la reconstruction politico-sociale de l'Etat et promouvra la cohésion populaire.*

Mots-cles: *Justice internationale, création d'une juridiction pénale internationale, crimes internationaux, compétence de création d'une juridiction pénale internationale, Commission vérité, justice et réconciliation.*

Introduction: Depuis 1960, la République Démocratique du Congo n'a cessé d'être le théatre de conflits armés. Ayant atteint leur paroxysme en 1993, les Nation Unies ont initiés une enquête approfondie sur les crimes internationaux qui y ont été commis depuis 1993 jusqu'en 2003. Le Rapport Mapping a documenté plus 617 cas de violations graves de Droit International Pénal et de Droit International Humanitaire. Des rapports complémentaires ont continué de compléter ce fabuleux travail. Pour éviter de pérenniser l'impunité, le Rapport suggère la traduction de criminels devant les cours et tribunaux, la cour pénal international et suggère la création d'une Juridiction Pénale Internationale spécialement créée pour la République Démocratique du Congo.

L'Objectif fondamentale de cette analyse est de rechercher les voies et moyen de réprimer et sanctionner les crimes internationaux qui ont été commis en République Démocratique du Congo. En plus, c'est une tentative de recherche des pistes que doivent emprunter les leaders Congolais dans le processus de mise en place d'un système de répression de crimes internationaux commis en RDC.

En rapport avec les publications récentes à ce sujet, force est de reconnaitre que ce thème n'a jamais été intéressé par les juristes internationalistes. Sans vouloir affirmer notre position de pionnier à cause du caractère récent de la problématique, il serait pourtant honnête de reconnaitre l'existence de quelques timides discussions et prises de position sur ce sujet, pourtant de très grande importance pour la RDC et pour l'Afrique des Grands Lacs. L'on peut évoquer par exemple, KITENGE KYUNGU Junior, Jean-Pierre FOFE DJOFIA MALEWA, Joseph KAZADI MPIANA, Cécile APTEL.

Principaux résultats de la Recherche : Au cours de notre réflexion, nous avons pu comprendre que la mise en place des juridictions pénales internationales est acte discrétionnaire de l'Etat ou des Etats. L'intervention du Conseil de Sécurité est subsidiaire et ne peut intervenir qu'en cas des ruptures de la paix et de la sécurité internationale. En matière de répression des crimes internationaux commis au sein d'un Etat, le système répressif peut faire recours au système judiciaire national, au système judiciaire international ou régional et enfin à l'institutionnalisation d'un organe politico-social dit « Commission vérité, justice et réconciliation.

Introduction. Since 1960, the Democratic Republic of Congo has been the scene of continuous armed conflicts. Having reached its climax in 1993, the United Nations initiated an in-depth investigation into the international crimes that were committed there from 1993 until 2003. The Mapping Report documented more than 617 cases of serious violations of international criminal law and international humanitarian law. Additional reports have continued to complete this fabulous work. To avoid perpetuating impunity, the Report suggests that criminals be brought before the courts and tribunals, the International Criminal Court, and suggests the creation of an International Criminal Court specially created for the Democratic Republic of Congo.

The fundamental objective of this analysis is to seek ways and means to repress and punish international crimes that have been committed in the Democratic Republic of Congo. In addition, it is an attempt to find the paths that Congolese leaders should take in the process of setting up a system of repression of international crimes committed in the DRC.

In light of recent publications on this subject, it must be recognized that this topic has never been of interest to international lawyers. Without wishing to assert our position as a pioneer because of the recent nature of the issue, it would be honest to acknowledge the existence of a few timid discussions and positions on this subject, which is of great importance for the DRC and for Africa's Great Lakes. We can mention, for example, KITENGE KYUNGU Junior, Jean-Pierre FOFE DJOFIA MALEWA, Joseph KAZADI MPIANA, and Cécile APTEL.

Main results of the research: During our reflection, we were able to understand that the establishment of international criminal jurisdictions is a discretionary act of the State or States. The intervention of the Security Council is subsidiary and can only intervene in case of disruptions of international peace and security. In terms of repression of international crimes committed within a State, the repressive system can have recourse to the national judicial system, the international or

regional judicial system and finally to the institutionalization of a political and social body known as the "Truth, Justice and Reconciliation Commission.

The problem of "the establishment of a system for the repression of international crimes committed in the Democratic Republic of Congo" only encourages international jurists, criminalists and political scientists to shake their heads before formulating an effective and lasting solution for the effective and permanent repression of criminals who have specialized and still specialize in the commission of international crimes against the peoples of the Great Lakes region of Africa. It should be emphasized without fear or risk of being mistaken, this problem is only the logical, normal and direct outcome of the seriously violent conflicts that have plagued Africa's Great Lakes region since 1960 (Le Congo dans la guerre: 1977).

The creation of judicial bodies for the repression of international crimes is not the prerogative of the Security Council. Did the International Criminal Court need this UN body to be set up? Sovereign States, as original sovereigns, have undeniable pre-eminence in this field. Alone or collectively, the State has the primary competence to repress them.

The creation of judicial institutions to judge the criminals involved in the decimation of the populations of Central Africa can only be properly apprehended and radically combated if it is placed and approached within a strictly regional framework for several reasons. First of all, those who are at the origin of this situation of extermination of the populations of Central Africa and plundering of natural resources are mainly from the neighboring countries of the Democratic Republic of Congo (GIBBS D : 1991 ; ZIEGLER J : 1962 ; BRASSIME DE LA BUISSIERE J. : 2016, MASSON P. : 1970 ; BAKAJIKA B. T. : 1997). Secondly, the planners, organizers and perpetrators of the crimes committed there basically came from Rwanda (SPEED D.: 1997; NERETSE E. and MUSABYIMANA G.: 2010) Burundi (CHOSSUDOVKY M.: 2003; KRUEGER R and K.: 2007, ONANA Ch.: 2009; PHILPOT R.: 2013; NDANYUZWE N.: 2014), Uganda (MUTUZA KABE R., 2009; BUCYALIMWE MARARO S.: 2016), multinationals, neo-colonialist Western powers - USA, Belgium, Great Britain, France (TAOUFIK R.: 2005) obviously having accomplices from the Democratic Republic of Congo NGBANDA H.: 2005; HARMON SNOW K.: 2012). Third, the victims of these criminal acts are Congolese, Burundian, Rwandan, etc. (ICJ: 2005). Therefore, it is logical that the reflections concerning the creation of a jurisdiction called to repress all these crimes should be done in the same dynamic and with the same vision. Any initiative aiming to find a logical and objective, just and sustainable, truly African and humanitarian solution must not deviate in any way from the observations we have just made.

Indeed, the last decade of the twentieth century saw Africa's Great Lakes get bogged down in a cycle of unspeakable violence. Already, the war of aggression against Rwanda by Uganda sounded the death knell for the entire region (PEAN P.: 2005; PHILPOT R.: 2003; ONANA Ch.: 2005; MUTABAZI E.: 1990; MUSABYIMANA G.: 2003; PRUNIER G.: 1992). Rwanda, to begin with, discovered genocides, organized massive massacres, collective rapes, emasculations, forced transfers of population, indiscriminate destruction of heritage, massive exoduses of the population, cleverly organized deportations, uprooting disguised as resettlement to distant confines, acts of terrorism orchestrated by state powers and military-political organizations (PHILPOT R. 2003; MUPENDANA P.C. 2018).

Since March 1993, while Rwanda was moving dangerously towards the macabre killings between Hutus and Tutsis in 1994, everything was boiling over in Zaire. The "Banyamulenge" phenomenon had just mysteriously appeared. In 1994, more than two million Rwandan and Burundian Hutu refugees flooded into eastern Zaire, fleeing the genocides in Rwanda and Burundi. The Rwandan, Ugandan and finally Burundian Tutsis then put into action alibis conceived a long time ago to rush to Zaire, this immense Central African country: To hunt down the Hutu genocidaires in order to force them to return to Rwanda to be judged, to come to the aid of the Banyamulenge who were about to undergo genocide following the example of the Tutsis in Rwanda and finally the ardent desire to conquer Zaire and to drive out the dictator Field Marshal MUBUTU. Professor Filip Reyntjens expresses it in these terms: to justify the war against the Democratic Republic of Congo, it was undertaken "a real resistance of the Congolese Tutsis who feared

reprisals; the instrumentalization of this struggle by the Rwandan regime in order to cover up the intervention of the RPA in Zaire, and the commitment made to the Anglo-Saxons to conquer the wealthy Zaire and free it from the Mobutu dictatorship (REYNTJENS F.: 1999). On the Rwandan and Ugandan side, an offensive was set in motion. After small-scale attacks in North Kivu, at the nerve center of the ex-FAR military apparatus, and infiltrations into South Kivu, a larger-scale attack was launched in September 1996. The operation began in the "soft underbelly" of Kivu, in the stronghold of the Tutsi Banyamulenge population, which was the most directly threatened, constituting the most obvious anchor point for the essentially Tutsi government in Kigali. The mountainous terrain of the "Banyamulenge" offered an ideal environment for the infiltration of weapons and men prior to the start of the conflict, as well as for guerrilla-type operations (SONDJI J.B.: 1999).

Small-scale attacks took place from the beginning of August, probably to test the resistance capacity of the Zairian troops. At the end of August, columns of young armed men crossed the Ruzizi River, which forms the border with Burundi, at the ford of Luvungi. They regrouped in the mountains and high plateaus around Uvira, which is partly the region of the Banyamulenge, and headed towards their "capital" Minembwe (WILLAME J.C.: 1997; MARYSSE S. and REYNJENS F.: 1996; KENNES E.: 1997). These are young Tutsis from Masisi, trained in Rwanda, young Banyamulenge demobilized by the RPF and soldiers of the Burundian Armed Forces. Banyamulenge" officers, formerly members of the FAZ, lead the movement. On September 13, 1996, the Zairian government accused the Rwandan government of having enrolled 3,000 Banyamulenge in its army (HAUT CONSEIL DE LA REPUBLIQUE-PT: 1994). These were the beginnings of the invasion of Zaire. A war that was very bloody and that continues to swallow thousands of human lives.

The multiple NGOs that abounded in the refugee camps based in the East of the Democratic Republic of Congo witnessed and witnessed the horrible massacres of which the refugees and the Bantu populations were victims. Religious figures, for having openly denounced the macabre systematic massacres of which the Hutu refugees were victims, paid with their lives. The late Archbishop MUNZIHIRWA, Archbishop of BUKAVU, speaking in the name of the Movement for the Defense of Kivu, for peace and against the war in Kivu said, in his capacity as Moderator: "We ask especially the Tutsis of Rwanda, whom we have welcomed many times as refugees, not to spit in the wells where they have drunk. Today they are rewarding us with bombs... Let them remember that history is turning. (CHIRHALWIRWA kagwi Milikuza: sd)" This message is dated October 26, 1996. His successors Archbishop Emmanuel KATALIKO and Archbishop Charles MBOGHA suffered the same fate.

In the face of this tragedy, part of the international community spared no effort to demand a thorough investigation of the countless exactions committed in the Democratic Republic of Congo since 1993. In 1994, the United Nations Commission on Human Rights created a set of mechanisms to investigate violations of human rights, either in a specific country or in relation to a particularly abject or perverse form of violation of human dignity. These mechanisms have proven to be increasingly effective, as evidenced by the confidence placed in them by human rights defenders and organizations and the impact of their reports. Their publicity is also an advantage (E/CN.4/1997/6/Ad.2: 1996/97).

When the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) discovered more than three mass graves in North Kivu in late 2005, it became imperative to investigate this painful reminder that past gross human rights violations in the DRC had gone largely unpunished and uninvestigated. After extensive consultations within the United Nations, the initial idea of reactivating the 1997-1998 Investigative Team established by the Secretary-General was discarded in favor of a broader project aimed at providing the necessary tools to Congolese authorities to begin the fight against impunity. Consultations between the UN Department of Peacekeeping Operations (DPKO), MONUC, the Office of the High Commissioner for Human Rights (OHCHR), the Department of Political Affairs (DPA), the Office of Legal Affairs (OLA), and the Office of the Special Adviser on the Prevention of Genocide (OSPG)

resulted in an agreement to recommend that a stocktaking exercise be conducted covering the period from March 1993 to June 2003. The mutually agreed goal was to collect, analyze and make public the prima facie evidence of violations of human rights and international humanitarian law and, based on the results of this exercise, to assess the capacity of the national justice system in the DRC to respond to the violations that are uncovered. It was agreed that this initiative should also lead to the formulation of options for appropriate transitional justice mechanisms that would adequately address the consequences of these violations. Finally, it was considered that the human rights mandate of MONUC approved by the Security Council in 2003 (Resolution 1493 (2003)) could cover the activities of the "Mapping Report" as proposed. It was assigned the main task of "providing the basic elements necessary to formulate initial investigative hypotheses by giving an idea of the scale of the violations, establishing their characteristics and identifying the possibilities for obtaining evidence (OHCHR: 2008).

The so-called Mapping Project, as it was named, was intended to provide an essential tool for advocacy with the Government and Parliament, as well as the international community, for the establishment of appropriate transitional justice mechanisms and to foster concerted efforts to combat impunity. In his June 13, 2006 report to the Security Council on the situation in the Democratic Republic of Congo, the Secretary-General expressed his intention to "send a team of human rights experts to the DRC to compile an inventory of the serious violations committed there between 1993 and 2003 (MONUC (S/2006/390)).

The OHCHR was entrusted with the management of the project and a dozen interested partners provided funding through voluntary contributions. UNDP-DRC provided the financial administration of the Project and MONUC provided logistical support. An agreement was signed between these three entities delineating their respective rights and obligations. The constant and massive support of these three entities for the Mapping Exercise deserves to be highlighted at this point.

In the words of the then High Commissioner, the Mapping Exercise report "is intended to be the first and only comprehensive United Nations report documenting the major human rights violations committed in the DRC between 1993 and 2003. As such, the report should be of fundamental importance in the context of efforts to protect human rights and combat impunity. By making an important contribution to documenting the most serious violations of human rights and international humanitarian law committed in the DRC during this period of conflict, this report aimed to help the Congolese authorities and civil society identify and implement a strategy to bring justice to the many victims and thus combat widespread impunity. It was also intended to help mobilize more international resources to address the key justice and reconciliation challenges facing the DRC.

The Terms of Reference instructed the Mapping Exercise Team to "complete its work as quickly as possible, to assist the new government with the necessary tools to manage post-conflict processes. A period of at least two months was planned for the Team members to be recruited and for the Team to be deployed and fully operational, followed by an additional six months to complete the Project, with the possibility of an extension "if necessary. If the duration of the Project seemed too short in the eyes of many in view of the magnitude of the task to be accomplished, it was nonetheless necessary in view of the urgency of quickly concluding this exercise (the launch of which had been postponed many times) in order to immediately benefit Congolese society. In the end, the Project lasted just over ten months, from the Director's arrival in Kinshasa at the end of July 2008 to the submission of the final report to the United Nations High Commissioner for Human Rights in mid-June 2009. It documented over six hundred crimes committed in the Democratic Republic of Congo.

The Mapping Exercise report on the most serious violations of human rights and international humanitarian law committed between March 1993 and June 2003 on the territory of the Democratic Republic of Congo was made public in August 2010. However, it has been supplemented by occasional reports and by another report issued pursuant to UN Security Council resolutions 2528 (2020). The report continues to be supplemented, as was the case with the report

submitted to the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of Congo on November 23, 2020, which was considered on December 3, 2020.

At the end of a fascinating and laborious exercise of in-depth analysis of a document with a content of at least 500 pages, the "Mapping Exercise Report", it is clear that it can be summarized as follows The report can be summarized in one word as a form of "advocacy" of an incentive nature, highlighting the urgency and necessity of setting up sufficiently equipped legal and judicial bodies to fight against impunity for crimes and abuses committed on DRC territory during a specific period from 1993 to 2003 (KITENGE KYUNGU Junior: sd). Moreover, this exercise makes it possible to note that transitional justice does not exclude traditional criminal justice insofar as the latter is an integral part of the range of solutions offered by transitional justice and even constitutes one of its pillars. By transitional justice, it is important to understand, in countries where the rule of law has been established or re-established, the set of measures aimed at clearing up the past, through classic procedures (prosecution of criminals, amnesties...) or more original ones, on the model of the Truth and Reconciliation Commission created in South Africa after the end of the apartheid regime (GUINCHARD S., DEBARD Th. (dir.): 2017).

To this end, criminal repression is necessary to recognize the rights of victims and rebuild the social fabric. This is all the more true since it should be stated that the success of transitional justice mechanisms, and the creation of an international jurisdiction relies on the real participation of victims, particularly through their participation in hearings of a truth and reconciliation commission, opinions on legislative and institutional reforms during public consultations, involvement in legal proceedings by constituting themselves as civil parties, etc.

The other particularity of this transitional justice is that it has caused great excitement among the Congolese population and the peoples of the Great Lakes region. In order to implement the institution of the "Responsibility to Protect", everyone is of the opinion that peace in the DRC and in the entire region seems to be an illusion as long as the supporters of the armed groups are never uncovered. Hence the request of the President of the Republic, His Excellency. Félix Antoine TSHISEKEDI, deserves attention beyond speeches, but the pressing need to protect human lives in this part of the world and for hundreds of thousands of people in insecurity for decades. The question remains: with the political, socio-economic, security and diplomatic context of the DRC, can we hope that the Security Council and the world commonly known as the international community are willing to create an International Criminal Court for the DRC? Can the serious crimes committed after 2003 not be taken into account, especially since there are doubts about exemplary legal proceedings to discourage those responsible for the insecurity and serious violations of human rights? (VERS UN TRIBUNAL: 2000).

From the outset, one has the impression that only the Security Council has the right to create an International Criminal Court. This is completely false. Does the International Criminal Court need the agreement of the Security Council to be created? It is only sovereign states that have taken this decision. Moreover, each sovereign State has the right and the absolute obligation to repress any crime perpetrated on its territory. Thus, for example, according to article 530 of the Code of Military Justice, whoever is accused of destroying all or part of a nation, an ethnic group, a religious or political group (physical genocide), or proceeding to slowly suffocate the group by limiting or preventing births, for example by systematic measures of sterilization (biological genocide), or finally eliminating progressively ethnic and cultural characteristics (intellectual genocide), must be punished with the death penalty (REPUBLIC OF ZAIRE: 1972). Such legal provisions repressing crimes of an international nature are found in several national legal instruments. Therefore, the criminal repression of any international crime is above all a discretionary act of any sovereign institution. Finally, this repression can be the object of a pooling of actions and wills of States. Thus, at least two States can decide to create a judicial body for the repression of international crimes without the prior authorization of the Security Council. Since the Security Council intervenes in the field of international peace and security, it will have the obligation to cooperate with those States that have exactly the same obligation based on the United Nations Charter. This

constitutes one of the driving purposes of the United Nations: "To maintain international peace and security and to this end: to take effective collective measures for the prevention and removal of threats to the peace and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace.

Thus, the creation of an international criminal jurisdiction is originally the intrinsic and inherent competence of the State power. The Security Council can only intervene subsidiarily in cases of emergency and force majeure, because the rights and competences it has in this area are only indirectly conferred upon it. The main holders of these jurisdictional powers in international law are and can only be sovereign States. Hence, the first and fundamental initiative to create an International Criminal Court for the Congo must come from the Congolese government.

Since the idea of setting up repressive institutions for crimes committed in the DRC, every citizen is invited to the public debate to actively participate. Lawyers have the noble mission to formulate their suggestions, to bring about a great gathering around this humanitarian enterprise that aims to establish a world of secure peace.

Since 1945, the contemporary system of international law has seen the development of International Humanitarian Law and, in its wake, International Criminal Law, which aims to analyze "the way in which the international legal order reacts to crimes involving an element of internationality (ASCENSIO (H.), DECAUX (E.) and PELLET (A.) (eds.): 2000) and/or a set of institutions that organize the prosecution and punishment of persons who have violated certain norms of international law, directly and by virtue of that same international law (GLASERS.: 1954; PLAWSKY S.: 1972). The jurists, being called to work for the doctrinal and technical development of the International Criminal Law, must conduct research on its origin, foundation, functioning and evolution for a better implementation of its institutions; the term institution being understood here in the sense of institutions-mechanisms, which are considered as bundles of rules governing a certain institution-organ or a given legal situation (GUINCHARD S., DEBARD Th. (dir.): 2017).

In this dynamic, the deciphering of the idea of "repression of international crimes committed in the Democratic Republic of Congo" invites to answer two fundamental questions: What are the international crimes that have been committed in the Democratic Republic of Congo that require the intervention of a national, mixed or international vigilante? A second question linked to the first is to indicate the mode of establishment of the judicial jurisdiction, the structure and nature of this judicial institution and the competencies that will be vested in it. The whole process of finding answers to these questions must always take into account the extent of the very destructive violence committed during ten years (1993-2003) of conflict over a very vast territory, a selection of the most serious incidents. Each incident listed must be capable of revealing the commission of one or more serious violations of human rights and international humanitarian law localized in time and space. Occasionally, a wave of individual violations (e.g. arbitrary arrests and detentions, summary executions, collective and selective deprivation of life, etc.) is considered an incident. In order to select the most serious incidents, those revealing the commission of the most serious violations, a severity scale similar to that used in International Criminal Law is used to identify the most serious situations and crimes that should be investigated, thoroughly analyzed and prosecuted. The scale of gravity provides a series of criteria to identify those incidents that are serious enough to be objectively included in the object of this reflection. These criteria interact with each other. None of them is decisive in itself and all of them can justify the decision to consider the incident as serious.

The criteria used to identify the most serious crimes prohibited by contemporary international law fall basically into four categories, according to contemporary practice:

a) **The nature of the crimes and violations revealed by the incident**: Each incident listed must reveal the commission of one or more crimes under international law, namely war crimes, crimes against humanity, the crime of genocide and other crimes that constitute serious violations of human rights. All of these crimes must be classified according to the objective scale of gravity, which must have the ambition to retain the violations of the right to life as the most serious

(murders, massacres, summary executions, etc.), followed by violations of the right to physical and psychological integrity (sexual violence, torture, mutilation, bodily harm, etc.), the right to liberty and the right to life.), the right to liberty and security of person (arbitrary arrest and detention, forced displacement, slavery, recruitment and use of child soldiers, etc.), the right to equality before the law and equal protection of the law without discrimination (persecution) and, finally, violations related to the right to property (destruction of civilian property, looting, etc.).

b) **The extent of the crimes and violations revealed by the incident**: Each recorded incident should reveal the commission of many crimes causing many victims. The number of crimes committed and the number of victims are taken into account in determining the seriousness of the incident. Also, it is important to consider the frequency and regularity of the incident.

c) **How the crimes and violations were committed:** Crimes and violations of a widespread nature, committed in a systematic manner, targeting a specific group (vulnerable groups, ethnic groups, political groups, etc.), indiscriminate/disproportionate attacks resulting in large numbers of civilian casualties, all contribute to raising the level of seriousness of an incident.

d) Finally, **the impact of the crimes and violations that have been committed**: Apart from the number of victims of the crimes revealed, some incidents can have a devastating impact in the context, either by triggering conflict, threatening ongoing peace efforts, preventing humanitarian relief or the return of refugees or displaced persons, etc. The regional impact of an incident or its consequences on a specific community, its particular significance for certain groups (ethnic, political, religious, etc.) can also contribute to its degree of seriousness.

The use of this categorization leads us to identify the main crimes that were allegedly committed in the Democratic Republic of Congo. The Mapping Report concludes that three international crimes have been identified:

1- **War crimes**, which are generally understood as all serious violations of international humanitarian law committed against civilians or enemy combatants during an international or internal armed conflict, violations which entail the individual criminal responsibility of their perpetrators. These crimes are essentially derived from the Geneva Conventions of August 12, 1949 and their Additional Protocols I and II of 1977 and from the Hague Conventions of 1899 and 1907. Their most recent codification is found in Article 8 of the Rome Statute (ROME STATUTE: 1998) of the International Criminal Court (ICC), Article of the ICTY Statute (Annex: S/Res.827 (1993)) and Article 4 of the ICTR Statute (Annex. S/Res.955 (1994)).

2- **Crimes against humanity** have been observed in several places in the armed conflicts that have plagued the Democratic Republic of Congo. They are codified in paragraph 1 of Article 7 of the Rome Statute of the ICC. They are defined as acts such as murder, extermination, rape, persecution and all other inhumane acts of a similar character intentionally causing great suffering or serious injury to body or to mental or physical health committed "as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack" (BOUCHET-SAULNIER (F.): 1998).

3- **As for the crime of genocide**, since its first formulation in 1948, in article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide, the definition of the crime has remained essentially the same. It is found in Article 6 of the Rome Statute, which defines the crime of genocide as "any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such". This definition is followed by a series of acts that represent serious violations of the right to life and physical or mental integrity of the members of the group. The Convention also provides that not only the execution as such, but also the conspiracy to commit genocide, direct and public incitement, attempt and complicity are punishable (CPRCG: 1948). It is the specific intent to destroy a group mentioned in whole or in part that distinguishes the crime of genocide from the crime against humanity. The existence of acts of genocide committed in the DRC has been documented in 104 incidents. Based on the jurisprudence in force, we realized that "among the factors, facts and circumstances retained by the international tribunals to infer or deduce a genocidal intent, we note the general context, the perpetration of other reprehensible acts systematically directed against the same group, the scale and number of atrocities

committed, the fact that certain victims were systematically targeted because they belonged to a particular group, the fact that the victims were massacred without regard to their age or gender, the coherent and methodological manner in which the acts were committed, the existence of a genocidal plan or policy and the recurrence of destructive and discriminatory acts", are found in the case of the extermination of Hutus (Rwandan and Burundian refugees and Hutus of Congolese nationality).

4- In addition to these three crimes highlighted by the Mapping Report, a gap can be raised. All of these crimes were committed against a background of violence, a background of armed conflict. The qualification of this conflict has been discussed enough to specify whether it is a non-international armed conflict or an international armed conflict. In any case, it is common knowledge that it was the National Armies of Rwanda, Burundi and Uganda that unleashed the hostilities in the Congo (SPEED D.: 2010). Throughout this Mapping Report, it is always stated that the RPA (Rwandan Patriotic Army), the NRA (National Resistance Army) and the FAB (Forces Armées Burundaises) are on the front lines in the DRC. At one point, the RPA and NRA fought in Kisangani in the DRC (STEENBERGHE R. Van: 2006). On February 9, 2022, the International Court of Justice issued a judgment enjoining Uganda to compensate the victims of its military activities on Congolese territory, especially when it fought with the RPA in Kisangani (I.C.J. Reports 2022). The combatants in this conflict were foreign armed forces, all of whom were led by a commander-in-chief and wore a uniform identical to that of the national army of their country of origin. On the basis of these few fragmentary elements, we can see that the Democratic Republic of Congo was subjected **to a war of aggression**. Therefore, the rulings issued by the International Court of Justice and further analysis will lead to the assertion that a fourth crime has been committed in the Democratic Republic of Congo: the crime of aggression.

Finally, the other question, and not the least, to which a solution will have to be found in order to repress criminally, correctly with a guarantee of resources, the international crimes we have just mentioned is to specify the jurisdictional bodies to which this mission would be entrusted. These bodies are undoubtedly unavoidable if impunity is to be combated. The legal duty to protect the victim in all things requires action. To achieve this, in the situation that concerns us, it is important to answer four sub-questions that derive from the previous one:

1- **What is the state of the Congolese repressive system?** Is it able to logically carry out this noble mission? Are the criminal chambers in its courts and tribunals sufficiently equipped to judge the authors of international, foreign and national crimes? Indeed, the justice system of the DRC is undermined by corruption, the lack of independence of judges and magistrates, the dilapidated infrastructure, the absence of training structures for new magistrates and the lack of continuous training for old magistrates. The Congolese justice system is unable to deal with the legacy of crimes and serious human rights violations inherited from successive wars. And yet, it is essential that justice be rendered to the victims so that they can consider that society has recognized their suffering, their pain, even if there is not sufficient reparation, knowing that any reparation is always symbolic.

Moreover, justice in the Democratic Republic of Congo is characterized by the lack of application of the various legal texts and therefore by arbitrariness in all its forms, materialized by arbitrary arrests, illegal detentions and serious and massive violations of human rights (KAZADI MPIANA J.: 2012; FOFE DJOFIA MALEWA J.P.: 2012) ... How then to prosecute those guilty of international crimes with all this avalanche of evils that abound in the Congolese justice? A profound and well conducted reform of the entire judicial system is needed to achieve this. While waiting for this reform, which has been announced for several years now, some victims die, others have moved to several places. And even, some of the perpetrators are also dead, the evidence is fading, others are destroyed. It is therefore impossible, in the current state of justice, to envisage the prosecution of these crimes by national courts (KITOKO F.: sd)

To this end, the Civil Society Organizations plead for an increase in the budget reserved for justice, and for the reinforcement of the logistical and technical capacities of the institutions of the justice sector. They advocate for the adoption of important laws that guarantee that the law will be

properly applied and that the victims and affected communities will obtain compensation for the damages they have suffered. Finally, they invite the Government to make intelligent use of experiences from elsewhere (LAUCCI C.: 2000; MARTINEAU A.Ch.: 2007; ASCENCIO H., Elisabeth Lambert ABDELGAWAD L., SOREL J.M.: 2006).

2- **Since the Congolese Judicial System is deficient, does this mean that the perpetrators of crimes should go unpunished?** By virtue of the duty to protect the victims, would it not be better to consider reforms to the judicial system or to resort to international justice to support the national justice system? It is advisable to also use the international model while reforming the judicial system.

Two phenomena have contributed - after the end of the Cold War - to the resurgence of the idea of international criminal justice. On the one hand, the crimes committed in the former Yugoslavia and in Rwanda led to the creation of two ad hoc international criminal tribunals by the United Nations. On the other hand, some European States have adopted laws of universal jurisdiction, which allow them to prosecute persons presumed responsible for crimes that had previously gone unpunished, even if these crimes were not committed on their territory, such as the case of General Pinochet.

These two events, and their echo in public opinion thanks to the media and the work of NGOs, contributed to the revival of the idea of creating a permanent and independent jurisdiction; the Rome conference, held from June 15 to July 17, 1998, gave birth to a new jurisdiction, the International Criminal Court.

This institution, which came into force on July 1, 2002 after the deposit of the sixtieth ratification by the DRC on April 11, 2002, has jurisdiction to prosecute persons suspected of having committed war crimes, the crime of genocide, crimes against humanity and soon the crime of aggression. This jurisdiction cannot be activated automatically; it is limited by the theory of complementarity that must characterize the judicial relations between the states that have ratified the Rome Statute and the ICC. Also, the ICC cannot prosecute all persons suspected of having committed the crimes under its jurisdiction because the founding text of the ICC provides that it can only prosecute the most senior officials (ROME STATUTE: 2002). Even then, the ICC will not be able to prosecute all of the highest-ranking officials because of its budget, which cannot afford to do so, and also because of its small staff. Thus, the "small fish" must be prosecuted by national jurisdictions and the other "big fish" will not fall into the ICC's net.

In the case of the DRC, this is not possible given the current state of the national justice system. A profound and well-conducted reform of the judicial system is needed to consider the possibility of prosecuting those suspected of having committed international crimes in national courts. The International Criminal Court is not in a position to prosecute all the people who have committed the crimes under its jurisdiction in the DRC because of the limitations we have just mentioned above. Another mechanism must be found that can prosecute these offenders. The International Criminal Court has already prosecuted five people, including four Congolese, suspected of having committed international crimes on DRC territory. What will happen then to the 600 people already suspected of having committed more than 617 crimes, which are well documented by the "Mapping Report"? If nothing is done on the margins of the International Criminal Court, there is reason to fear that another form of impunity will take hold in the Great Lakes region of Africa.

In any case, the Congolese must find a mechanism so that crimes committed on their territory cannot go unpunished. International criminal justice remains essential. Indeed, international criminal jurisdictions mark one of the spheres of international relations where the recognition of universal legal principles is taking shape. The very idea of international justice is based on the postulate that certain crimes are so serious that they touch the essence of humanity. The principle fiat justitia ne pereat mundus (let justice be done so that the world does not perish) enunciated by Hegel is then applied: the repression of these crimes is so important that it must absolutely take place, even if it means organizing it at the international level, beyond national sovereignty. International justice thus has a strong symbolic value: that of the refusal of the "international

community" as a whole to see genocide, crimes against humanity, crimes of aggression and war crimes go unpunished. Its realization, although still limited, demonstrates that such legal principles are being taken into consideration in international relations, no doubt in response to the concerns of public opinion, relayed or fueled by certain media and non-governmental or humanitarian organizations, which use public opinion as a powerful lever (APTEL C.: 2007).

3- If this initiative is impossible and unfeasible, the Democratic Republic of Congo must face another possibility: **the creation of an International Criminal Court**. This is something it has already initiated politically, not strategically. Should we be satisfied with an International Criminal Court for the Congo? This question is extremely crucial. Has the one created for Rwanda fulfilled its mission? It seems realistic that this jurisdiction will be created for an indefinite period. The history of the Great Lakes Region attests to the fact that genocide is a social fact that has become rooted in the practice of certain military policies in the Region. The genocidal act originated in Rwanda in the 15th century. After the conquest of independence in 1960, with the fall of the monarchical regime in Rwanda, the practice of genocide spread to Burundi, Congo, Uganda... Certain acts similar to this practice have been observed in Tanzania. Moreover, this genocidal practice has rallied sister ethnic groups in these countries. Thus, it will be noted that the genocide of the Baganda was committed by the Rwandan Tutsis with their Hima brothers. The Rwandan genocide was committed in solidarity with the Hema, the Tutsis of Rwanda, Burundi and the Democratic Republic of Congo. The Burundian genocides benefited from the support of the Rwandan Tutsis. The extermination of the Congolese Bantu was made possible by the alliance between the Tutsis of the entire region. Therefore, if it is necessary to undertake the creation of an international jurisdiction to eradicate this evil forever, it is imperative that this jurisdiction be regional or be put in place for as long as it takes to purge the African Peoples of the Great Lakes of all the people who fuel these crimes. Thus, the countries of the region will have the obligation to oppose any idea that would seek to limit its jurisdiction rationne materiae, temporis, loci and personae. This jurisdiction would be created on the basis of a regional agreement that would seek the support of the international community.

In order to attract the support of the international community to this ongoing initiative, it will be necessary to multiply awareness campaigns, information meetings and mobilization of various organizations, both non-governmental and governmental, throughout the world and in particular in countries that can influence the urgent launch and implementation of multi-faceted actions to ensure the triumph of Truth, Justice and Reconciliation for all victims of the crimes documented in the "Mapping Exercise" in the Democratic Republic of Congo. Thus, it will be necessary to consider a plan or means of working with different types of groups supporting this initiative in the countries concerned by the initiative.

In order to reconcile all the citizens of the Great Lakes region of Africa, it will be urgent to resort to another form of dialogue at the level of the entire region and of each country. The foundation of these true and constructive exchanges should lead to the discovery of several truths that would originally lead to the search for peace, justice and especially good cohabitation with all human beings.

4- The foundation of the search for truth, materialized by the truth and reconciliation commission, is political and legal. The process is open, civil and civic, and is at the service of the national community. The last thirty years have seen many of the dictatorial regimes give way to democratic evolution in some states deeply permeated by civil war and massive human rights violations. In order to facilitate the transition from war or dictatorship to stability characterized by non-war or democracy, and to enable the population to come to terms with a painful past, many of these new governments have resorted to an extrajudicial process: truth commissions.

Truth commissions perform a very different function from that of judicial institutions. They take a much broader view of human rights crimes and violations and seek to understand the root causes of the crimes or violations that are the subject of the truth-seeking process. Whereas judicial bodies, by definition - and although their role is essential - focus only on specific crimes and their perpetrators.

Truth and reconciliation commissions are official, temporary institutions set up to investigate past violations of human rights and international humanitarian law. They are given varying degrees of mandate. They are generally charged with investigating these violations and recommending reforms to prevent their recurrence. They encourage public acknowledgement of crimes that are often denied or kept secret by the perpetrators. They put the victims at the center of their work.

Truth and Reconciliation Commissions educate by explaining that one does not reconcile with someone one agrees with, but rather with someone one disagrees with. Giving voice to the victims and making the perpetrators speak, who are all present by mutual consent, recognizing and repairing the harm experienced by the former and forgiving the latter, such is its mission which distinguishes it from that of the courts and tribunals.

It is not a question of confronting evidence against evidence as in the courts, but of letting the facts come out. They listen to the victims as well as the perpetrators. They investigate the circumstances, the environment and the causes, they try to establish the political and moral responsibility of the authors.

It is up to the victims to express themselves first, to tell what they have experienced and suffered. But beyond the story, the commission aims at restoring the dignity of the victim, at reparation and reconciliation to the extent possible.

The truth commissions pay particular attention to the commitments of those who want to make reparation for their wrongdoing, so that they keep their word. They insist on the awkwardness that parties must overcome when they refuse to recognize the contribution of others because they do not belong to their camp (COURTOIS G.: 2009). They emphasize the responsibility of the socio-professional groups that have benefited from the situation.

In order to understand the place that the notion of forgiveness occupies in Truth and Reconciliation Commissions, we must follow the fine analysis of Antoine Garapon (GARAPON A.: 2001). To be sensitive to the fact that South African reconstructive justice brings into play "a combination of the judicial and the extra-judicial, a mixture of law and politics, law and anthropology, law and psychology", even law and theological morality. It practices a deformed law that does not shy away from the staging of emotions, revealing a contrario "the emotional poverty of law". It goes beyond positive law by "reviving all that the latter had repressed - vengeance, forgiveness, religion in law - not to go backwards but, on the contrary, to go beyond the past". It is a justice of "recognition" in the double sense, vertical, where it imposes the admission of terrible facts, and horizontal, where it engages people in a reciprocity of mutual recognition (GARAPON A.: 2001).

Truth commissions also have their weaknesses. Sometimes the psychosocial and therapeutic support is deficient, reparation is a delicate matter: the social fabric, the State is not always able to ensure it. Reconciliation remains a long-term process.

The political class of the Democratic Republic of Congo, meeting in Sun City, South Africa, during the inter-Congolese negotiations, reached a consensus known as the global and inclusive agreement. One of the resolutions of this agreement recommended the creation of institutions to support democracy and among these institutions was the truth and reconciliation commission. Thus, a truth commission was created in the DRC.

Unfortunately, the commission, although established, did not accomplish the mission for which it was created for two main reasons. On the one hand, some of the members of the commission's bureau had participated, as rebels, in the commission of serious human rights violations, either directly or as a line manager. This situation was not conducive to the emergence of the commission's work. On the other hand, the lack of vision of the chairman of the said commission who had no knowledge of transitional justice issues until his appointment to this position. Thus, a lot of time and money were lost and spent on training missions abroad to learn the basics of transitional justice. Also, he had no reputation and did not have the support of the population to do this job well, especially since he himself was not known in Congolese national opinion except within his church in Bukavu.

It should also be noted that the establishment of the aforementioned commission did not respect the process generally followed and accepted in the creation of truth commissions throughout the world, in particular the consultation of the population as to whether or not such a commission was justified. For our part, we consider that the truth and reconciliation commission of the DRC has never existed. To paraphrase Professor Joseph Yav, we would say with him that there has been in the DRC "an omission of truth and reconciliation" (CCJT Report: 2005).

In view of the crimes committed in the DRC and the number of victims who are waiting for justice, the DRC must create a truth and reconciliation commission worthy of the name. However, this can only be possible if there is political will to create this institution and if the principles universally recognized and accepted in the process of creating such a commission are respected.

Finally, the person who will be appointed to lead the commission must not only be the subject of a great consensus at both the political and civil society levels, but must also enjoy a great reputation in order to lead the work of the commission to a successful conclusion. Only under these conditions can the DRC have a true truth and reconciliation commission that can do a good job.

At the end, how do we deal with the major obstacles that already stand in the way of the repression of international criminals in the DRC? Won't the foreign powers, some of whom have always been involved in committing acts energetically prohibited by international law and who are also the major decision-makers in the UN for the establishment of the international repressive institution, torpedo this action? Will the national and international groups targeted by the Mapping Report remain inert without trying to get their legs under them to escape justice?

It is therefore conceivable that the road to repression of international crimes committed in the DRC is still long, but not impossible. The will, the determination and the courage of peace-loving men and women who are concerned about fighting, destroying and eradicating impunity forever for a world where conviviality reigns and strict and absolute respect for the rights of all men.

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