Reparations in the Democratic Republic of Congo

A Report by the Sanela Diana Jenkins Human Rights Project at UCLA
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Executive Summary

The Rome Statute of the International Criminal Court (“ICC”) provides for reparations to victims of crimes under the ICC’s jurisdiction, but does not specify to whom they are to be made, what kind they are to be, or how they are to be provided. In February 2012, the Sanela Diana Jenkins Human Rights Project sponsored a field study trip to North Kivu and the Ituri District in the eastern Democratic Republic of the Congo (“DRC”). The study team consisted of six students and was led by Professor Richard Steinberg of UCLA School of Law. On that trip, the study team spoke with approximately twenty representatives of NGOs, as well as members of the Bogoro community of victims, about reparations schemes. While there was general agreement among the NGOs that collective reparations are preferable, the elders of Bogoro expressed a strong and consistent preference for individual reparations. Neither the NGO representatives nor the Bogoro victims expressed a clear preference for how a reparations scheme should be implemented. However, the NGO representatives with whom we met generally believed that reparations funds should be committed to institutions such as medical facilities, schools, or other types of aid for victims. Given the difficulty of administering an effective reparations scheme for individuals, the importance of community rehabilitation, and the
urgent need for institutional aid, a collective reparations scheme which creates lasting institutions may be preferable to individual reparations alone.

1. Findings:

a. Existing Reparations Schemes

Multiple sources stated that Congolese law provides for the state to create a fund for victims of crimes. Although there is thus a legal framework supporting a domestic reparations scheme for victims, and some believed that funds for that scheme had been collected by the DRC government, reparations payments are not yet a reality in the DRC. This could be due to corruption. A representative of one NGO noted that the lack of a working reparations system contributes to the distance that most Congolese feel from the formal justice system.

The formal justice system could provide for reparations by fining perpetrators or through a private right of action against them. However, the courts are so unreliable and susceptible to bribery, that instead of going to court to seek damages, victims of crimes often will instead resort to traditional justice processes. In such “arrangements,” two parties will come to a resolution in which a wronged family is paid in goats or other livestock. In the current situation in the DRC, this is often more effective than any formal scheme, at least for small-scale crimes.

In addition, no person with whom we spoke was aware of any activity by the ICC’s Trust Fund for Victims (TFV) in the DRC. This could be attributed to a general lack of awareness, or to the fact that its activities are conducted in areas far from the eastern Congo. Alternatively, it was suggested to us that the TFV may keep such projects secret. Regardless, we found no knowledge of any existing international reparations scheme either in Goma or in Bogoro.
b. Institutional Perspectives - NGOs

The NGO representatives with whom we met generally expressed a preference for either a mixture of collective reparations (e.g., medical clinics or schools) and individual reparations (e.g., cash or livestock to victims), or for only collective reparations. They also generally highlighted the need to somehow categorize victims of different crimes into groups when implementing reparations schemes.

Representatives of the Research Center on Environment, Democracy, and Human Rights (Centre de recherche sur l’Environnement, la Démocratie et les Droits de l’Homme, or CREDDHO) viewed the problem of reparations from a transitional justice perspective. They believe that it is important for victims to speak out about their suffering in order to fight impunity and to begin a long-term healing process. Reparations awards might encourage this process by giving victims an award in return for an account of their suffering.

At the same time, CREDDHO representatives took the stance that crimes toward individuals cannot be repaired individually, in light of the number of victims and the variety of crimes which have taken place. The situation in the DRC has made victims of many people, both directly and indirectly. Often, it would be difficult to clearly define all individual crimes and victims. For this reason, CREDDHO representatives stated that reparations are best given collectively. Furthermore, from a transitional justice point of view, such a scheme might facilitate the community healing process by recognizing entire groups as victims.

CREDDHO representatives further advocated that victims be organized into different groups for reparations purposes. This organizational scheme would account for the severity of the crime suffered, what the victims need, and what the victims would like to be repaired. They
recognized that this scheme would be no easy task given the number and nature of crimes suffered. Ultimately, however, they prefer this method - a collective scheme in which victims are organized into different groups, each of which gets a different award.

Representatives of Heal Africa preferred a dual system of reparations that is both collective and individual. First, they identified the need to recognize individual suffering in identifying those responsible for the crimes. They suggested that fostering accountability and establishing an account of the crime is an important element of reparations.

At the same time, the Heal Africa representatives presented several reasons why collective reparations are critical. Like the CREDDHO representatives, they noted that it would be difficult to find all victims of crimes. Defining who is a victim can be a difficult task, given the nature of the conflict and its indirect effects on children and families. For instance, they explained that victims of rape often abandon their children or are unable to support them, thus creating a generation of children that could be deemed indirect victims. In such circumstances, a collective award presents the best opportunity to help all who have been victimized. It may also help a broad group of people, without having to make difficult decisions based on who qualifies as a victim.

Heal Africa representatives also noted that in many cases, individual crimes such as rape cause a breakdown of both physical and cultural infrastructure, thus dealing a blow to the community as well. When a married woman is raped, she is viewed as an adulterer and will often be abandoned by her husband. Thus, mass rape destroys families, prevents girls from being marriageable, and victimizes the community as a whole. Therefore, collective reparations may be preferable to individual reparations. Programs that rebuild community infrastructure, in the form
of institutions such as hospitals or schools, provide a practical way of administering the benefits that a community needs.

Finally, Heal Africa representatives, as well as others with whom we spoke, emphasized the importance of helping victims of crimes other than sexual violence. Much international attention has justifiably been paid to the extreme problem of rape in the DRC. At the same time, however, other victims have lost property, been displaced or orphaned, or have been recruited as child soldiers. Each of these crimes may call for a different remedy. For most, however, reintegration into society presents an important obstacle that must be overcome. In all cases, a long-term solution with follow-through is critical. For this reason, many victims will benefit from institutional reparations which strengthen and rebuild the community.

c. Victim Perspectives - Bogoro Village

In order to get victim perspectives of the reparations issue, we travelled to the village of Bogoro, outside Bunia, to speak with its inhabitants. Many of these people had been victims of attacks on Bogoro in 2003 led by militia leaders Germain Katanga and Mathieu Ngudjolo Chui, who have been charged at the ICC with murder, destruction of property, and sexual enslavement.¹ The people of Bogoro were largely from the Hema tribe, although the chiefs asserted that there are now also Ngiti and Lendu inhabitants. The Hema tribe is the same tribe to which the recently convicted Thomas Lubanga belonged. Thus, the people were supporters of Lubanga, but hostile to Katanga, Chui, and Bosco Ntaganda. We spoke with a group of men, including the village and regional chiefs.

The chiefs had previously held a village meeting with the victims, from which they gathered information regarding reparations from the ICC. They stated that 80% of victims want

individual and not collective reparations awards. In their view, a community award would not sufficiently address the needs of victims. Many people now living in the village are not from Ituri and were not victims of the 2003 attacks. Perhaps more importantly, many perpetrators now live alongside victims in the village. Thus, a community award would benefit victims and perpetrators alike. Although the Bogoro chiefs stated that their people of their village had largely reconciled after the tragedies that had taken place, they did not want a collective award which would benefit those other than the victims.

The chiefs further pointed out the extent of some victims’ loss. They noted that some people had been able to rebuild their property or homes, while others had not. Many families lost their male heads who had served as primary care providers. Widows were left without means of support, or without money to pay for their children’s school. Many children were left orphans, without any money to pay for food or other necessities. Such people still in need, the chiefs argued, should be entitled to individual reparations. They argued that money should be given to them, rather than to the community as a whole. They also noted that some victims had not yet returned to Bogoro, and a collective award would not benefit them at all.

At the same time, the elders did exhibit an interest in limited collective aid. They expressed desire for a television or other means of following ICC trials. Furthermore, they had asked for a village tombstone to be built for victims, and were disappointed that this had never been realized.

When asking victims about their preferences with respect to reparations, the chiefs said that they had mostly talked about whether collective or individual reparations were preferable. They had not discussed how to allocate the awards to victims. However, they suggested two
things with respect to those issues. First, the chiefs noted the great difference between the crimes that victims had suffered, both in the severity, type, and amount of crimes that each person had experienced. Like the representatives from CREDDHO and Heal Africa, they indicated that it would be important for a reparations scheme to consider the differences in suffering for victims. Second, the chiefs showed deference to the ICC in implementing reparations schemes. They felt that some issues were up to the Court to decide, including how to value a certain person’s loss.

We also spoke with the chiefs about traditional justice mechanisms, and any role that they might play in a reparations scheme. Within the same tribe, we were told that issues are traditionally resolved in a manner similar to the “under the tree” process followed in other tribes. When two families are involved in a conflict, they will discuss the situation and come to a mutual agreement. One family will pay the other family a fine in an agreed-upon number of cattle. In addition, one cow is killed, and its blood spilled upon the ground in atonement. If the families cannot agree, the formal Congolese justice system may be used. Thus, the traditional means of reparations, at least in the Hema tribe, consist of a valuable resource (cattle) given to a family as a whole. This resource is likely to be considered primarily the property of the male head of household.

3. Recommendations:

It is important to keep in mind the unique perspectives of NGOs and individuals when they are asked for their input on reparations. Common sense and economic reasoning suggest that most individuals, when asked, will opt to receive individual as opposed to community awards. Among other things, individual reparations provide a more direct benefit, more control over that benefit, and the ability to exclude others from that benefit. Meanwhile, NGOs may have
a more holistic view of a certain situation, as they are generally more removed from any direct benefit. Depending on their mission, they may also have a bias as well.

After speaking with both individuals and NGO representatives, some could conclude that a mixture of individual and collective reparations, but with an emphasis on collective reparations, presents the best solution in the DRC. This is because individual reparations have advantages but are difficult to administer; because of the imperative to rebuild the community; and because the practical needs of many victims in the DRC are served well by collective projects.

Despite the Bogoro community’s strong preference for individual reparations, the process of identifying all possible victims and determining who will receive reparations awards is a difficult task. Even if the ICC had unlimited resources, because of the ambiguity of the definition of “victim,” and because many victims are displaced or of unknown whereabouts, it is extremely difficult to identify which victims may be recipients of awards. Furthermore, individual reparations from the ICC generally derive from funds seized from or provided by the convicted perpetrator and given to the victims of his or her crime. Because very few perpetrators of crimes are under arrest by the ICC, a very small and arbitrary portion of victims in the DRC would benefit from a scheme which awarded individual reparations in this way.

In addition, as a Heal Africa representative suggested, the desire for individual reparations seems to derive at least in part from a desire for accountability and individual justice. However, establishing a collective system of accountability or judicial process might make victims feel as though justice has been done as much as an individual award would. Moreover, a collective reparations scheme which helps to create a judicial-type infrastructure might simultaneously serve a community function and address individual grievances. If these schemes
thus favor victims, they might alleviate the Bogoro villagers’ concern of perpetrators benefitting from reparations schemes.

A community-based reparations scheme might also best address the needs of the DRC’s victims given the types of crimes committed. Generally, entire villages or communities have been targeted by perpetrators. Acts such as mass rape or murder, destruction of villages and farmland, or mass abduction of children have been common crimes in the DRC. Each of these acts obviously creates numerous individual victims, but also destroys communities, both physically and in terms of infrastructure. Thus, reparations schemes targeted at these communities would help restore what was destroyed. They may thereby strengthen society and create stability.

Finally, it could be argued that collective reparations schemes are preferable to individual awards in providing what victims truly need. Given the situation in the DRC, victims live in an environment in which their security is uncertain and most governmental or institutional infrastructure is ineffective or nonexistent. Thus, overall society requires community-based aid, such as a judicial system, medical centers, educational facilities, or economic institutions.

For these reasons, reparations that help to create or rebuild infrastructure in a community should be emphasized. Especially where such projects can benefit a specific group of victims (i.e. orphaned children, the psychologically traumatized, or families with land grievances)—and victims alone— such reparations will solve the problem that more broadly collective goods could be enjoyed by perpetrators as well as victims.