

Corrigé
Corrected

CR 2021/9

**Cour internationale
de Justice**

LA HAYE

**International Court
of Justice**

THE HAGUE

ANNÉE 2021

Audience publique

tenue le vendredi 23 avril 2021, à 15 heures, au Palais de la Paix,

sous la présidence de Mme Donoghue, présidente,

*en l'affaire des Activités armées sur le territoire du Congo
(République démocratique du Congo c. Ouganda)*

Réparations dues par les Parties

COMPTE RENDU

YEAR 2021

Public sitting

held on Friday 23 April 2021, at 3 p.m., at the Peace Palace,

President Donoghue presiding,

*in the case concerning Armed Activities on the Territory of the Congo
(Democratic Republic of the Congo v. Uganda)*

Reparations owed by the Parties

VERBATIM RECORD

Présents : Mme Donoghue, présidente
M. Gevorgian, vice-président
MM. Tomka
Bennouna
Yusuf
Mmes Xue
Sebutinde
MM. Bhandari
Robinson
Salam
Iwasawa
Nolte, juges
M. Daudet, juge *ad hoc*
M. Gautier, greffier

Present: President Donoghue
Vice-President Gevorgian
Judges Tomka
Bennouna
Yusuf
Xue
Sebutinde
Bhandari
Robinson
Salam
Iwasawa
Nolte
Judge *ad hoc* Daudet
Registrar Gautier

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The PRESIDENT: Please be seated. The sitting is open. The Court meets this afternoon for the first of two sessions of questioning of the Court-appointed experts.

For reasons that he has duly made known to me, Judge Abraham is unable to be present on the Bench this afternoon.

I shall first explain the procedure to be followed during the questioning of the experts. The experts have followed the first round of hearing via web stream and will now be questioned via WebEx video link. They will be called for questioning in the order in which their respective contributions appear in the expert report. So, today, questions will first be put to Mr. Henrik Urdal and then to Ms Debarati Guha-Sapir. On Monday, questions will be put to Mr. Geoffrey Senogles and then to Mr. Michael Nest. Before being called for questioning, the relevant expert will have joined the meeting by video link using the WebEx platform. The expert will then be invited to make a solemn declaration provided for in Article 64 (*b*) of the Rules of Court. With respect to each expert, the Democratic Republic of the Congo will be afforded 30 minutes to put questions. Thereafter, Uganda will be afforded 30 minutes to put questions to that expert. And then, finally, there will be 20 minutes for any follow-up questions from individual Judges to that expert. If any aspect of the questioning takes less time than has been allocated, the schedule for that day's sitting will be advanced accordingly. Between the questioning of the two experts, I expect that the Court will observe a short break of approximately 10 minutes.

The first expert to take questions this afternoon is Mr. Urdal, who has joined the meeting via video link.

Good afternoon, Mr. Urdal. I call upon you to make the solemn declaration for experts as set down in Article 64 subparagraph (*b*), of the Rules of Court.

Mr. URDAL: I solemnly declare upon my honour and conscience that I will speak the truth, the whole truth and nothing but the truth and that my statement will be in accordance with my sincere belief.

The PRESIDENT: Thank you, Mr. Urdal. I now give the floor to Ms Michelle Butler who will put questions to Mr. Urdal on behalf of the Democratic Republic of the Congo. You have the floor, Madam.

Ms BUTLER: Madam President, distinguished Members of the Court, it is a privilege to appear before you today and to represent the Democratic Republic of the Congo in these proceedings.

Mr. Urdal, my name is Michelle Butler. I'm a barrister at Matrix Chambers in London and it's my role to ask you some questions on behalf of the DRC. I have only 30 minutes and I have quite a lot to cover, so I'd be very grateful if you could try to keep your answers as succinct as possible. I'll start by asking you your job title and area of specialism.

Mr. URDAL: I'm the Director of the Peace Research Institute Oslo, and also a Research Professor at the same institute. My area of specialty is demographic causes and consequences of armed conflict.

Ms BUTLER: Thank you. You were appointed by the Court to estimate the number of civilian deaths occurring during the DRC armed conflict between 1998 and 2003?

Mr. URDAL: That is correct, and specifically the direct deaths in civilians.

Ms BUTLER: Thank you. You and Professor Guha-Sapir were both appointed to opine on that question. She was appointed to look at excess deaths. You were appointed to look at direct civilian deaths. Have you previously come across each other in your work?

Mr. URDAL: We have not worked together, but I am well aware of Ms Guha-Sapir's work.

Ms BUTLER: Is it right that you invited her to deliver the 2018 Annual Peace Address at your Peace Research Institute in Oslo?

Mr. URDAL: That is correct.

Ms BUTLER: She is internationally respected in her field?

Mr. URDAL: I would certainly say so, yes.

Ms BUTLER: Thank you. I'd now like to ask you a few questions to assist the Court in understanding how your and her approaches differ, if I may. So we've already touched slightly upon this. Ms Guha-Sapir uses an epidemiological approach to calculating excess deaths; is that right?

Mr. URDAL: That is correct.

Ms BUTLER: And you adopt a different approach. You apply a political science perspective?

Mr. URDAL: That is correct.

Ms BUTLER: Your analysis relies on the Uppsala Conflict Data Program's Georeferenced Events Dataset (UCDP-GED). Do you mind explaining to the Court very briefly what that is?

Mr. URDAL: So the University of Uppsala collects global data on armed conflict and specifically on armed conflict deaths. That includes three different types of conflict between armed actors, where at least one of the actors is a State, and that's what we define as State-based conflict. Armed conflict between two parties of which neither is a State, and that's defined as . . . I have to . . .

Ms BUTLER: Take your time.

Mr. URDAL: No, that's fine. Non-State conflict, but with armed actors. And then we have a final category of one-sided violence, which is violence directed by an armed group, either a State or a non-State actor against a civilian population.

Ms BUTLER: Thank you. So in short, the dataset measures battle-related deaths and deaths resulting from attacks on civilians?

Mr. URDAL: That is correct.

Ms BUTLER: It doesn't measure excess deaths?

Mr. URDAL: It does not measure excess death.

Ms BUTLER: Right. So, in fact, there is no inherent inconsistency between your report and Professor Guha-Sapir's report? They're measuring different things?

Mr. URDAL: That is correct. And that is also explicitly stated in the report.

Ms BUTLER: Thank you. Now, I'll just get some more detail from you, if I may, as to the Uppsala dataset. As you mentioned, it's with a university in Sweden. It's independent. Would you say it's a trusted dataset?

Mr. URDAL: It is a trusted dataset. It's used both extensively in academic work and it's also used by policy — the policy community from the United Nations and ~~two~~ to governments.

Ms BUTLER: And is it used extensively because it adopts a very prudent or a cautious approach to data collection and reporting?

Mr. URDAL: I would say that it is much used both because it's clearly independent. It's following very strict definitions of what an armed conflict is, and it certainly is also open in a sense that it is accessible to everyone, which also means that it is — the Uppsala Conflict Data Program is also taking feedback systematically and revising their estimates when new evidence becomes available.

Ms BUTLER: Thank you. And you explained just then that it's got a very strict definition of armed conflict. In relation to the inclusion of incidents within the database, does it adopt a fairly lax inclusion approach, or is it quite a strict inclusion approach?

Mr. URDAL: It is a very strict inclusion criteria for events in the so-called Events Dataset, and it's based on — in order to be included, it has to be known actors. They will have to be announcing a name. They have to announce the reason for the political inconsistency. It has to pass at least 25 battle-related deaths per year, so it is certainly a very strict definition of armed conflict.

Ms BUTLER: Thank you. I'd like to ask you some questions now about whether certain deaths are included in the dataset. Before I do so, I want to make clear that nothing I say is intended as a criticism of you or your method. I'm simply seeking to assist the Court to understand what the dataset does include and what the dataset doesn't include. So does it include deaths from malnutrition caused by looting of food distribution warehouses?

Mr. URDAL: No, it does not.

Ms BUTLER: Thank you. Does it include deaths from preventable diseases such as malaria or cholera or pneumonia caused by the destruction of healthcare facilities?

Mr. URDAL: No, it does not.

Ms BUTLER: And does it include neonatal- and pregnancy-related deaths caused by population displacements?

Mr. URDAL: No, it does not.

Ms BUTLER: So the dataset's strict inclusion criteria means it doesn't measure indirect deaths? It's not designed to; is that right?

Mr. URDAL: That is correct.

Ms BUTLER: Thank you. Now, I'd like to turn now to some of the limitations of the dataset that you actually touched upon in your report. Is it right to say that if a direct conflict death is not reported on by the media or an NGO, it's not included in the database?

Mr. URDAL: That is correct. It has to be a written source that is available to the coders that are putting together the data.

Ms BUTLER: And can you briefly explain, is media or an urban bias a particular problem when you are collating data in that way?

Mr. URDAL: Here I need to speak on general terms because I have no specific knowledge about the data collection on the DRC during this period, when it comes to the availability specifically of data. But generally there is a known bias in datasets like this, that are based on news sources, that there are biases both in terms of differences between countries, differences over time, as well as differences then within countries, and an urban versus rural bias is certainly among those kind of biases that are generally known to these kind of datasets.

Ms BUTLER: Thank you. So you explain that there is a bias between countries. Would you say that there can be a systematic under-reporting of African events versus non-African events in the mainstream media?

Mr. URDAL: I would not be surprised if there is such a general bias, but I do not have any solid evidence to say anything about what level of bias that might be. But as I said, the data is based on news sources and news reporting, and to the extent that media presence is different between different regions of the world and between different countries and between different regions within countries, that may be a source of bias.

Ms BUTLER: And that point there that you've just made about regions within countries, would it be right that, say, deaths occurring in a very remote location within a country, or in a location with very poor cell phone coverage, would be unlikely to be reported on by the media and therefore unlikely to be included in the database?

Mr. URDAL: That is a likely assumption, but it depends entirely on media presence. And, of course, if regions are of particular interest for one reason or another, it might see increased media presence, and it's the media presence and the presence of organizations, and especially international non-governmental organizations, that are the sources of this information. So it will depend and will obviously differ from case to case.

Ms BUTLER: Now, media presence that you have just touched on there. So if we have an area of, say, very dense fighting, would it be likely that the media would be present right in the thick of that fighting and being able to report on deaths happening right there, or would it be more likely that they would actually have to be a little bit back from the fighting for safety reasons?

Mr. URDAL: This is difficult for me to be entirely precise about, because this again will differ from situation to situation. I would say that it does not depend — this kind of data does not depend on journalists being present exactly when the conflict events are taking place. It might be reported based on reports that could come in a significant time after the actual event happened. So even though security issues will, of course, determine, to some extent, whether or not journalists as well as other

observers can be present in specific regions, it is not necessary that the observers are present at the time of the event.

Ms BUTLER: Thank you. So it is not necessary that the observers are present at the time of the event. But, for example, for events where there are no surviving witnesses, it would be quite hard for the media to report on that, because there would be nobody left to tell their stories to the media. And so those kinds of incidents would not be reported in the database; is that right?

Mr. URDAL: That is correct.

Ms BUTLER: And what about incidents where a person does not die immediately? So, for example, let us say a woman surviving being raped initially but then some weeks later she succumbs to her injuries. Would that be included in the dataset?

Mr. URDAL: That is dependent. Sometimes — so that will be a grey zone. And if the media reporting is sufficiently detailed, that particular death can be, with some level of certainty, connected to a specific event, then that death will be counted as a direct death and associated with that specific event. But it could very well be that there are clear connections between violence happening and the much later death of an individual, that is not covered by the data.

Ms BUTLER: So the key point then, from what you are telling me, is that there has got to be this detailed media report of each death, and in the absence of that, it is not on the dataset?

Mr. URDAL: That is correct.

Ms BUTLER: I would like to touch now on confidence intervals. This is something that you dealt with in your report. As I understand it, the Uppsala dataset has three confidence intervals. Would you mind briefly explaining those?

Mr. URDAL: Yes. The Uppsala conflict database has a minimum, a most likely, and a maximum estimate. So the best estimate is what is used in my report.

It is important to underscore that the UCDP has a very conservative cautious approach so that the minimum estimate is quite often identical to the best estimate. The best estimate is either often

identical to or just marginally higher than the minimum estimate. While the maximum estimate is an estimate that is not the highest possible number but the highest reliable number.

And there might be a news report that, for instance, gives ranges, so between 50 and 70 people were killed. And if that is then considered reliable information, the UCDP would normally call 50 as the minimum estimate, and also the best estimate, and 70 as the maximum estimate.

Ms BUTLER: Thank you. That is very helpful. So, in effect, the best estimate is often the same as the minimum. And we see that in your report with respect to the DRC where, I think, if we round the figures off, we have approximately 28,000 in the low estimate, 29,000 in your best estimate, and 51,000 in your high estimate. Is that correct?

Mr. URDAL: That is correct. And that is all direct. That is in the whole of the DRC.

Ms BUTLER: Thank you. And so when you say the maximum is not the highest possible, it is right, is it not, that you have described that as still being a conservative assessment because it does still rely on that inclusion of the data through these news media reports and NGO reports?

Mr. URDAL: That is correct. There are a number of biases that are impossible to estimate with any level of certainty.

Ms BUTLER: But you adopted the best estimate in your report rather than the high estimate, even though even the high estimate is quite conservative. Are you able to explain why you adopted that estimate?

Mr. URDAL: That is the estimate that is used in virtually all works as simply the best number that we can, with some cautious certainty, say that we have evidence that existed. And it is important also to say that when the UCDP is considering reliability, of course, it is not always possible to say with any great certainty how we may best assess such reliability.

And this is also why I think it is important to underscore that in conflict settings, much information is uncertain. The *p*arties, obviously, have an interest in either inflating or reducing numbers. And that is why the approach is taken to be cautious when estimating casualties and why

also the best estimate is the one that is used both in academic work as well as in most of the policy work.

Ms BUTLER: Thank you. So this cautious approach, you were asked by the Court to estimate civilian deaths. Not military deaths. Is that right?

Mr. URDAL: That is correct.

Ms BUTLER: And if you had chosen to adopt the high estimate, could you have done that? Are the military deaths and the civilian deaths separated in the high estimate dataset?

Mr. URDAL: No, it is only available for the best estimate.

Ms BUTLER: Right. So in order to answer the Court's question, in effect, you were sort of shoe-horned into using the best estimate rather than using the high estimate, because otherwise you could not have separated out the civilian numbers?

Mr. URDAL: It was not possible to make the same kind of estimation as I did for my report using the high estimates. That is correct.

Ms BUTLER: Thank you. That leads me on to my next topic, which is the issue of the military versus civilian deaths.

So looking at your best estimate numbers, of those your report indicates that there are approximately 8,000 deaths which could not be counted in your final numbers because we could not determine from the dataset whether they were civilian or military. There was not enough data to determine their status; is that correct?

Mr. URDAL: That is correct. It is 7,824 deaths that cannot be categorized as either military or civilian.

Ms BUTLER: And is it likely that a substantial proportion of those 8,000 deaths were civilians?

Mr. URDAL: I would say it is likely that a significant portion are civilians, but there is no information available that could give us an indication of what proportion we would be talking about.

Ms BUTLER: Okay. And is it likely that certain demographics of victims, like young men, for instance, might be wrongly recorded as military victims even though they were not taking part in hostilities at the time of their deaths?

Mr. URDAL: It is a possibility. But, again, the UCDP is careful about the way that they are coding, and the number of military victims among the 28,000 in total is relatively low. It is less than 25 per cent. So it is, again, difficult to make an assessment, but it is a possibility.

Ms BUTLER: So because of these issues, though, there is a propensity to underestimate civilian deaths in the Uppsala dataset.

Mr. URDAL: I would definitely agree that there is a likely undercount. This can be considered a cautious, if not the minimum, number.

Ms BUTLER: Yes, okay. So this minimum number that you have settled on using the best estimate dataset — so we've got 11,227 targeted civilian deaths and 3,436 collateral civilian deaths. In light of what you've very carefully and helpfully explained about the very strict inclusion criteria of the dataset, what's the likelihood that those numbers are a substantial underestimate of the true numbers of civilian deaths?

Mr. URDAL: I would say that it is almost certainly an underestimate. The question is what the margin of error is, and that is simply impossible to say anything about. But we know, given the significant sources of biases, that this is likely to undercount the total number of casualties in total, both, as I mentioned, because of the inclusion criteria as well as — sometimes — the difficulty in distinguishing between civilian and military victims.

Ms BUTLER: Thank you. So, it is a minimum number; it is an undercount; it is a cautious approach. We know that, but it's impossible to estimate the scale to which it's an undercount; is that right?

Mr. URDAL: That is correct.

Ms BUTLER: Thank you. I'd just like to ask you one further set of questions, Professor Urdal, in relation to the heavy reliance that was placed by Uganda yesterday in their submissions. I think four or five times during the hearing, the counsel for Uganda kept on returning to this figure of 32. They were saying that your report proves that there are 32 civilian deaths in the whole of the DRC, in the whole of the war, that involved Ugandan troops. What's your reaction to that suggestion?

Mr. URDAL: So this is the number specifically that is related to activities where we can say demonstratively that the Government of Uganda was on one of the sides, and it is also a number specifically that excludes both events that are undetermined — as to who the actors were and where there might also be uncertainty. So, again, I would caution against saying that this is the number, but it is a minimum number.

But I would also like to underscore that I was not asked to undertake a full analysis of deaths associated with actors, which, in principle, might be possible.

Ms BUTLER: Yes, that's right. So what you were saying there about uncertainty and unknowns, is it right that if it is not known who were the actors involved in a particular death, that death is actually not recorded in the best estimate category?

Mr. URDAL: That is correct. If we cannot assess who the actor is, it is not included in the dataset.

Ms BUTLER: And how likely do you think it is that Ugandan forces only killed 32 civilians in the entire five-year conflict?

Mr. URDAL: That is beyond my competence to respond to. I have no particular area of expertise that would allow me to say something about that, I am afraid.

Ms BUTLER: And that is because the Uppsala dataset is not designed to determine the legal attribution of deaths, is it?

Mr. URDAL: Exactly.

Ms BUTLER: Thank you, Professor Urdal. Thank you, Madam President.

The PRESIDENT: I thank you, Ms Butler. And I give the floor now to Mr. Lawrence Martin to put questions to Mr. Urdal on behalf of Uganda. You have the floor, Mr. Martin.

Mr. MARTIN: Good afternoon, Madam President.

Good afternoon, Mr. Urdal. I apologize for the somewhat awkward nature of this questioning, since I cannot look directly at you while we are speaking together, and I hope you will be patient with me.

I am going to cover some of the same ground that you just covered, but I will do my best not to be duplicative. So, I think we have established that in your report you examined the Uppsala conflict data programme or UCDP; is that correct? Did you hear me, Mr. Urdal?

Mr. URDAL: Yes, I responded as well. That is correct.

Mr. MARTIN: Okay, thank you. Sorry, I did not hear your response.

And why did you choose the UCDP data in particular?

Mr. URDAL: The UCDP data is considered to be the most, or at least one of the most, authoritative sources. They have a very stringent definition of conflict and it makes it possible to very clearly delineate what the methodology has been for the inclusion of the data.

It is also a global dataset. It has been collected for now a total of around 25 years, so it is a dataset that has been over the years developed into a very trusted source.

Mr. MARTIN: In fact, in paragraph 14 of your report you referred to it as *the* authoritative conflict dataset; is that right?

Mr. URDAL: Yes, that is right.

Mr. MARTIN: And you also characterized it at paragraph 17 as one of the most trusted sources of armed conflict data in academia as well as the policy domain; is that correct?

Mr. URDAL: That is correct. That is correct.

Mr. MARTIN: And you said also that it is frequently referenced in key policy reports by international organizations like the UNDP and the World Bank: is that correct?

Mr. URDAL: That is correct.

Mr. MARTIN: You also said, I believe at paragraph 25, that it meets the highest academic standards: is that correct?

Mr. URDAL: That is correct.

Mr. MARTIN: Thank you. Thank you. Are you aware of the Armed Conflict Location & Event Data Project or ACLED at the University of Sussex in the United Kingdom?

Mr. URDAL: Yes, I am. It was originating at my own institution, the Peace Research Institute Oslo.

Mr. MARTIN: And is there is a reason you chose to use the UCDP over the ACLED dataset?

Mr. URDAL: These are comparable datasets. The UCDP has a slightly different, sort of, definition than ACLED. And when it comes to defining clearly the difference between actors, the structure of the UCDP datasets make for an easier comparison. But I would like to underscore that also the ACLED dataset is a very trusted and much used source with a lot of the same information that the UCDP dataset is including.

Mr. MARTIN: Thank you. Thank you. That is very helpful.

Now, I would like to discuss the results of your analysis of the dataset for a moment, if I may. You went over some of this ground with counsel for the DRC. But, in your report you chose numbers from the best estimate: is that correct?

Mr. URDAL: That is correct.

Mr. MARTIN: And in your report at paragraph 21 you characterize a best estimate as being considered to be the most reliable estimate of deaths identified in the sources: is that right?

Mr. URDAL: That is correct.

Mr. MARTIN: If I understood correctly in your responses just a few moments ago, you also described it as the most likely number and the most often used number: is that correct?

Mr. URDAL: I would caution to say “the most likely” because it is the most reliable, given the sources that we have. And as I did describe, there are biases that, in many cases, are in reality unknown. So, we do not know what the margin of error is. But we do not have any better and more reliable data sources.

Mr. MARTIN: Okay. So, you stand by your observation that that is the most reliable estimate?

Mr. URDAL: Yes, I do.

Mr. MARTIN: Thank you. And the result of your analysis suggested that the best estimate was that, throughout the entire territory of the DRC, there were 14,663 civilian deaths from direct violence: is that correct?

Mr. URDAL: That is correct. That is for the period of 1 August 1998 through 2 June 2003.

Mr. MARTIN: And again, that is throughout the entire territory of the DRC?

Mr. URDAL: That is throughout the territory of the DRC.

Mr. MARTIN: Now, there were some discussion earlier of the fact that for some of those deaths it was unknown whether they were civilian deaths or military deaths; is that correct?

Mr. URDAL: That is correct.

Mr. MARTIN: Okay. In your report, you stated that there were 23 events across the DRC recorded as having involved the troops of Uganda as one of the actors of the dataset; is that correct?

Mr. URDAL: Yes, that is correct.

Mr. MARTIN: And most of those events took place in North Kivu; is that correct?

Mr. URDAL: Yes, that is also correct.

Mr. MARTIN: And that is different than Ituri; is that correct?

Mr. URDAL: I have to admit that my detailed knowledge of geography of the DRC is limited. But, according to my notes, yes, the majority of the events — exactly 20 — took place in the province of North Kivu. Yes, that is correct.

Mr. MARTIN: Thank you. And your results indicate that there was a total of 211 people reported killed, of which 179 were military deaths and 32 were civilians; right?

Mr. URDAL: That is correct. And that is specifically events that involved the Government of Uganda troops on one of the sides.

Mr. MARTIN: Thank you. And in this instance, in events involving troops of Uganda, there were zero unknown deaths. That is, zero deaths that could not be attributed to as either military or civilian deaths; is that correct?

Mr. URDAL: That is correct.

Mr. MARTIN: So according to your analysis then, 32 of 14,663 civilian deaths took place during events that involved the Government of Uganda as one of the actors; is that right?

Mr. URDAL: That is correct.

Mr. MARTIN: And if I told you that that represents 0.22 per cent of the direct civilian deaths, would that surprise you?

Mr. URDAL: It does not surprise me in the sense that this is mathematically entirely correct, yes.

Mr. MARTIN: The DRC asked you a number of questions about limitations in the dataset and the fact that that may produce conservative numbers. Do you recall those questions?

Mr. URDAL: I do.

Mr. MARTIN: At paragraph 29 of your report, you wrote: "I have no data allowing for an assessment of what this potential underestimation of direct conflict deaths may amount to." Is that correct?

Mr. URDAL: Yes, that is correct.

Mr. MARTIN: And in your response to the Parties' observations on your report, you indicated: "[I]t is not possible to provide a sound assessment of how significant this underestimation is." Did you not?

Mr. URDAL: Yes, I did.

Mr. MARTIN: So, in other words, any effort to quantify the underestimation would be speculative, wouldn't it?

Mr. URDAL: Yes. I mean, there are ways that one could do it, including comparing the different data sources that we discussed with ACLED, but there will be significant uncertainties. And it will be difficult to establish with any level of certainty what the actual number would be. That is correct.

Mr. MARTIN: Thank you. Now in your report, you indicated that one of the limitations that can lead to underestimation of the numbers is that it "only includes events associated with armed conflicts in which at least 25 battle deaths have occurred within a calendar year"; is that right?

Mr. URDAL: Yes, that is correct. So, events of violence happening between actors that do not meet the 25-battle-deaths threshold in a year are not included.

Mr. MARTIN: But that limitation is not relevant to the DRC, is it?

Mr. URDAL: It is relevant to the DRC, but we do not know, *because* there might be violent organizations that engaged in a number of armed *groups conflicts* that were active in the DRC, also that included in the Ituri province, that may have been clashing between each other. So it is a pair of actors, which means that if some pairs of these actors had violent clashes leading to deaths that did

not pass the 25 deaths in a year, those deaths belonging to that specific dyad, that specific pair of actors, would not be included.

Mr. MARTIN: I see. I understood your report to mean that 25 battle-related deaths in a country during the course of the year?

Mr. URDAL: No, that was not the case. It is 25 battle deaths between pairs of actors.

Mr. MARTIN: Very good. Another limitation you mentioned concerned changing reporting practices; right?

Mr. URDAL: That is correct.

Mr. MARTIN: But in your report at paragraph 26, you said that this is “considered less of a problem when studying one country during a limited [period of time], such as the DRC over the 1998-2003 period”. Is that correct?

Mr. URDAL: That is correct.

Mr. MARTIN: And in response to questions from counsel for the DRC about whether the fact that a location being rural and remote might result in it receiving less press attention, you responded that you had no direct knowledge on that issue; is that correct?

Mr. URDAL: I have no direct knowledge about this issue for the case of the DRC, no.

Mr. MARTIN: Thank you. At paragraph 40 of your report, you listed a total estimated value of civilian lives lost to US\$388,350,000; is that correct?

Mr. URDAL: That is correct.

Mr. MARTIN: But all you did there was multiply the total number of civilian deaths throughout the DRC during the relevant period — multiply those figures — by the figures suggested by Mr. Senogles; is that correct?

Mr. URDAL: That is correct.

Mr. MARTIN: So you are not actually recommending that Uganda pay that amount?

Mr. URDAL: I am specifically not recommending anything when it comes to specific reparations, that is correct.

Mr. MARTIN: And, in fact, in your response to the observations of the Parties, you specifically said: “No attribution to Uganda of a particular number of deaths has been made”; is that correct?

Mr. URDAL: Yes, that’s correct. I am making no judgment about the attribution of any deaths.

Mr. MARTIN: Very good. Thank you. Those are all the questions I have, Dr. Urdal. Thank you very much.

Madam President, if I may, just for the record: counsel for the DRC characterized our argument yesterday concerning Mr. Urdal’s report. This is not a moment to really address that, but I just want to place on the record that we object to that characterization as inaccurate.

The PRESIDENT: Thank you, Mr. Martin. Let me just take a minute to see whether there are any questions from the judges for this expert. I have two methods for receiving them. One method from the people who are in the Great Hall, one from the people onscreen.

I am not seeing any questions from the judges for you, Mr. Urdal. So that brings . . . So that was not the method I had in mind, but it worked, and so if I understand correctly it’s Judge Sebutinde who is interested in asking a question. So please go ahead, Judge Sebutinde.

Judge SEBUTINDE: Thank you, Madam President.

Mr. Urdal, thank you for your testimony. I am going to ask you a question arising out of your report, and I am just seeking to understand the figures.

In paragraph 14, you refer to an estimated total value of civilian lives lost in the amount of US\$388,350,000. You also refer to the total number of civilian deaths as 14,663 deaths. That’s in that paragraph. We then come to the table shown as table 1.3, I think towards the middle, just before the appendices. And in that, you repeat these figures, the estimated value remains US\$388,350,000. And if I add up roughly, the number of civilians is still 14,663 civilians.

Now, my question is: is this figure both the total number of civilians and the figure of the value, does this relate to civilian deaths in the whole of the DRC in the period in question, or just deaths in Ituri province? That is my question.

Mr. URDAL: Yes, the number of civilian or the number of deaths mentioned in paragraph 14 totalling 28,981 deaths, are military as well as civilian as well as unknown deaths in the whole of the DRC during this period.

The numbers in table 1.3 are the numbers specifically for the Ituri province, and that has a lower total number rather than 28,981, the total number of deaths in table 1.3 is 10,398. And it is distributed across the different categories: civilian deaths, military deaths and unknown deaths.

The total amount that is provided in paragraph 14 — of US\$388,350,000 — is the amount for all civilian deaths. That is both: deaths that are deliberate as well as collateral damage according to the per capita reparation amounts set by Mr. Senogles.

So the total amount, again, is the amount for all civilian deaths for the whole of the DRC, as that was the request in my terms of reference.

The PRESIDENT: Do you have any further questions, Judge Sebutinde? Are there any other questions from someone who is sitting at the Bench in the Great Hall?

Very well. In that case, this brings to an end the questioning of Mr. Urdal. We thank you very much, Mr. Urdal, for appearing before us, for providing your report.

Mr. URDAL: Thank you, Madam President.

The PRESIDENT: You may now sign out of the WebEx platform and continue to follow the remainder of the hearing via webstream if you wish. The Court will now observe a 10 minute break, after which it will resume for the questioning of Ms Guha-Sapir. Thank you.

The Court adjourned from 3.50 p.m. to 4.05 p.m.

The PRESIDENT: Please be seated. The sitting is resumed. The Parties and the Court will now have an opportunity to put questions to Ms Debarati Guha-Sapir, who has joined the meeting by video link. Good afternoon, Ms Guha-Sapir. I call upon you to make the solemn declaration for experts, as set down in Article 64, subparagraph (b), of the Rules of Court.

Ms GUHA-SAPIR: I solemnly declare upon my honour and conscience that I will speak the truth, the whole truth, and nothing but the truth, and that my statement will be in accordance with any sincere belief.

The PRESIDENT: Thank you. I now give the floor to Professor Philippe Sands to put questions to Ms Guha-Sapir on behalf of the Democratic Republic of the Congo. You have the floor, Professor Sands.

Mr. SANDS: Thank you, Madam President, and Members of the Court. It's an honour for me to appear before you once again on behalf of the Democratic Republic of the Congo after a short 17-year interlude.

Professor Guha-Sapir, I am a Professor at University College London and a barrister at Matrix Chambers. I have about 30 minutes with you and a number of questions to address, so I would be hugely grateful if you could keep your responses as tight and short as possible. I wonder if you could begin by telling us your professional title and your area of expertise.

Ms GUHA-SAPIR: I am Professor of Epidemiology at the University of Louvain, in the Faculty of Medicine, and I specialize in epidemiology of disasters and civil conflicts.

Mr. SANDS: Thank you. And you are originally from India; is that right?

Ms GUHA-SAPIR: I still am.

Mr. SANDS: Very good. And you studied a Master's at Johns Hopkins University?

Ms GUHA-SAPIR: That's correct, yes.

Mr. SANDS: And then a PhD at the University of Louvain in Belgium?

Ms GUHA-SAPIR: Yes.

Mr. SANDS: Thank you so much. And you are appointed by the Court, are you, as an independent expert?

Ms GUHA-SAPIR: Yes, that's correct.

Mr. SANDS: So, your area of expertise causes you to study, does it, disasters and conflicts by reference to an epidemiological approach?

Ms GUHA-SAPIR: Yes.

Mr. SANDS: Could you briefly explain what that epidemiological approach is?

Ms GUHA-SAPIR: So, the study of disasters and armed conflicts for epidemiologists is really focusing on risk factors. So that's the essence of epidemiology; what factors increase your risk of mortality, or morbidity, in certain settings. And in the settings that I work in, it's disasters and civil conflicts, and therefore, for example, my studies would involve looking at what risk factors increase your probability of dying, of mortality, in a conflict or in a natural disaster setting. So that's essentially the scope of my work.

Mr. SANDS: And would you say that one of your particular areas of specialism is, indeed, in measuring mortality in conflict situations?

Ms GUHA-SAPIR: I have done a lot of work on that, yes.

Mr. SANDS: And that work, has it included assisting with other courts and tribunals, for example, the International Criminal Court, in the past?

Ms GUHA-SAPIR: Yes, I have served as an expert testimony witness for the case on Darfur, on the accusation of genocide in Darfur, yes.

Mr. SANDS: So you're familiar with the process that we are going through right now, I take it?

Ms GUHA-SAPIR: Yes, vaguely familiar, yes.

Mr. SANDS: You have been appointed by the Court in this case to assist the judges in providing a global estimate of lives lost amongst the civilian population due to the armed conflict in the Democratic Republic of the Congo between 1998 and 2003; is that correct?

Ms GUHA-SAPIR: That is right, yes.

Mr. SANDS: And you have prepared for the Court and the judges two reports, one from 21 December 2020 and one from 1 March 2021; is that correct?

Ms GUHA-SAPIR: Yes.

Mr. SANDS: And is it the case that the second report was prepared in response to observations you received which had been prepared by Uganda and by my client, the Democratic Republic of the Congo, in mid-February 2021?

Ms GUHA-SAPIR: Yes.

Mr. SANDS: And is it right that your overall conclusion is that excess mortality in the Democratic Republic of the Congo between 1998 and 2003 was around 4.98 million human beings for the country as a whole, of which 401,057 are in Ituri and 3,713,065 are in the eastern region?

Ms GUHA-SAPIR: Yes.

Mr. SANDS: Thank you. Let's turn now to some of the criticisms made by Uganda in relation to your methodology.

In its observations, Uganda has criticized you for not basing your mortality estimations on death certificates, civil registration logs, or mortuary records. Could you tell us why you did not rely upon those kinds of records in preparing your expert report?

Ms GUHA-SAPIR: Well, anybody who has worked in an African country in those kinds of settings. Not just in an African country, but in an area where there is a conflict going on and security is very high, death certificates are often a pipe dream. And the institutions of civil registration,

certification of deaths, are essentially inexistent. And understandably so when you think of some of the towns in the eastern DRC have paved roads which are about 300 kilometres from the village itself. So there is no incentive for anybody to go and report a death, because it brings no benefit to the family and there is, indeed, almost no institutional infrastructure to record those deaths. So I think it goes without saying that death certificates or civil registration is not going to be a source of any data.

Mr. SANDS: Sadly, I am familiar with the kinds of accounts that you are giving in that situation. So in the absence of such records, as you have just described and explained, to reach your figure you applied an excess mortality methodology. Could you briefly explain to us what that methodology is?

Ms GUHA-SAPIR: Right. So excess mortality is an approach that is being used increasingly for deaths which are hard to pin down to a specific cause. So, like, heatwaves in Europe, excess mortality is what is used to attribute the number of deaths.

What does it do? In fact, all it does is it looks at how many deaths would be expected in a population had nothing — counterfactual, in fact — so if nothing had happened, then how many deaths would you expect; and then you look at the observed number of deaths. So you get the number of deaths that actually happened, and the difference between what is expected and what is observed are the excess deaths.

Mr. SANDS: Thank you very much. In fact, just on a personal note, I'm speaking to you from London, the United Kingdom, and we are, of course, very familiar with this methodology in relation to COVID-19 right now.

Ms GUHA-SAPIR: Yes.

Mr. SANDS: We almost have daily figures. Is that the same approach that is being taken in relation to the current pandemic.

Ms GUHA-SAPIR: Yes, the basic idea is identical. It's what would you expect, how many people would you expect to die if nothing had happened. So you use a baseline, and then you look at

the difference between what you would expect and what you actually observe. And that's exactly what's going on with COVID-19, yes.

Mr. SANDS: And so that is a methodology that is tried and tested around the world, is it?

Ms GUHA-SAPIR: It is. Right now it is, yes.

Mr. SANDS: And would you say then that it is a reasonable approach to use in the circumstances which you faced in this particular case?

Ms GUHA-SAPIR: I do. I do think it is a reasonable approach, yes.

Mr. SANDS: Thank you. Let's turn to a second Ugandan criticism, and that is the choice of the baseline crude death rate, the CDR.

Uganda has criticized your choice of the baseline. You, in your report, have relied on a UNICEF crude death rate that was carried out in 1997 and published in 1999: is that correct? And if so, why did you use that CDR?

Ms GUHA-SAPIR: Two reasons. One is we wanted to have a baseline which was drawn from a respectable source, so the United Nations. We wanted that kind of respectability on the estimate of the baseline. Secondly, it was a baseline which was in a very appropriate year. So, it was 1997. It was a year just before the period we are supposed to study, we were looking at, for the impact of the war, and it was the closest to that period, and it was from the UNICEF, which is a respectable and reliable source. That was essentially the reason for using it, yes.

Mr. SANDS: Thank you. UNICEF was a Member of the United Nations family. What the Ugandan Government says is that you've used the wrong CDR. What you should have used was a 2019 calculation that was included in the UN Population Division publication called World Population Prospects. So, could you explain why you chose to use the UNICEF statistics rather than the latest statistics? It may be that you have already answered this, but since the critique is quite robust by our Ugandan friends on that issue, it would be helpful if you could explain why the 2019 UN Population Division statistics were not chosen by you.

Ms GUHA-SAPIR: Well, actually, the UN Population Division statistic is a projection. And there, it is not really statistics drawn from data from the crowd. It is a projection. And if my memory serves me, it did not provide, say, any kind of confidence intervals in which we could situate the UN Population Division estimate. But I think the main reason we did not use it was, they are projections. They kind of project backwards or they project forward, depending on where they are, and the UNICEF estimate was a much more defensible estimate. It was from the right year. It was from the year just before the war began, before the conflict stepped up, and the methodology of the UNICEF and the estimate was the most reliable one that we could choose, yes.

Mr. SANDS: Would it be fair to say that it is more reliable because it offered a closer reflection of the reality of the situation that you were asked to assess?

Ms GUHA-SAPIR: Yes, absolutely. Absolutely. It was drawn from the region. It was drawn from the country. Clearly, it was the best baseline to be used. There was nothing else that could really face the kind of scrutiny that would be required for a baseline, defensible baseline, no.

Mr. SANDS: And I think you say in your second report at paragraph 26, that even if you had used that 2019 baseline figure, it would have reduced the figure by a very large number of people, 288,640, but only 5.8 per cent of the figure you had used: is that correct?

Ms GUHA-SAPIR: Yes, yes, that's right. It wouldn't have changed a great deal in that, in fact.

Mr. SANDS: Very good. Can we come to a third area of criticism from the Ugandan side — and one that relates to the use of small-scale surveys? Uganda has criticized you for using these small-scale surveys. And I wonder if I could just ask you a couple of questions on that, rather than the crude death rates of the 2019 report, which you have just explained why you did not want to use that.

Are the crude death rates for 1998-2003 contained in the 2019 document based on death certificates or contemporaneous census records?

Ms GUHA-SAPIR: Sorry, would you repeat that, Mr. Sands?

Mr. SANDS: Yes, of course. I'm so sorry. Are the crude death rates for 1998 to 2003, which are included in the 2019 worldwide population prospects document, are those figures based on death certificates or contemporaneous census records?

Ms GUHA-SAPIR: I wouldn't put my hand on fire about that, but I would be extremely surprised. I would be really, really amazed if they were dependent on death certificates.

Mr. SANDS: And then a related question: To the best of your knowledge, are the figures in the 2019 documents based on annual surveys which were conducted each year between 1998 and 2003 in the Democratic Republic of Congo by the United Nations?

Ms GUHA-SAPIR: I am not aware of any annual surveys that have been conducted by the United Nations in the Democratic Republic of Congo. The only nation-wide surveys that are conducted are the demographic and health surveys, and that was conducted many, many, many years ago, so I would, again, be very surprised if there are any surveys on which they are based. These are really projections, model projections.

Mr. SANDS: That's understood.

A final point on this. Uganda proposes that it is possible to accurately measure excess death from an armed conflict using crude death rates which are derived from data taken at six-year intervals. What is your reaction to that proposal?

Ms GUHA-SAPIR: To be quite frank, I have not seen that proposal. It seems — I cannot get my head around these six-year intervals, how we could get these excess death rates. This has to be explained a little better to me before I can pronounce.

Mr. SANDS: In your experience, and in your practice over your career, have you ever used such an approach?

Ms GUHA-SAPIR: No.

Mr. SANDS: Right. And would you say that the approach on the basis of your knowledge and expertise that you are using is a more accurate approach than the one that Uganda proposes?

Ms GUHA-SAPIR: I think it would be safe to say that it is an approach that is underwritten by most epidemiologists for this purpose. The approach of excess deaths using a baseline and observed values has been the way that these calculations are made. I am not even aware of a great deal of other alternative methods. So, yes, I think the approach that we have put forward is, in fact, the prevailing, if you like, methodology.

Mr. SANDS: Thank you, Professor Guha-Sapir. It seems on some readings, applying the crude death rates from the United Nations' 2019 data as Uganda proposes might show that there were no excess deaths during the 1998 to 2003 war. Does that strike you as a reasonable conclusion?

Ms GUHA-SAPIR: Frankly, no. You know, I cannot embellish that any more, but the answer to that is, it does not seem to me like a reasonable conclusion. I think, in the questions, they did mention the questions raised by Uganda on this, and I think there was also a question of whether or not the quality of life, in fact, was improved. But, no, it does not seem to me like a reasonable —

Mr. SANDS: Thank you. The surveys that you have placed reliance upon have been criticized by Uganda on the basis, in part, that they were conducted by advocacy groups, as they call them, whose independence cannot be relied upon. Do you agree with that critique?

Ms GUHA-SAPIR: The short answer is no. Most of the surveys that I have used — about 38 separate surveys — have been conducted by Coghlan, who is a professor in Melbourne, I think, right now — he's an Australian professor of some renown and some reputation; by Professor Les Roberts, who is a professor in Columbia School of Public Health, by the CDC, the United States Centers for Disease Control.

And I think one could safely say that all of these sources are respectable sources done by people who have a reputation to protect and it is very unlikely they have simply put together a survey for an advocacy purpose only.

Mr. SANDS: Indeed. In fact, I just had a look earlier today at the CDC website and noticed that precisely on COVID-19 they use a methodology on excess mortality that is very much akin to the one that you use, so that does seem to endorse your approach.

Can I turn to another subject, as we reach a close? And that is the appropriateness of the application by the Democratic Republic of Congo of coefficients. And I appreciate that you are not asked in your expert report to attribute or to come up with specific numbers, but you do say a little about this, at paragraph 47 and onwards of your report.

And if you are comfortable — if you prefer to have that in front of you, that is absolutely fine, of course. At paragraph 47 of your first report, you describe the concerns of the Democratic Republic of the Congo on challenges in estimating numbers of deaths, and you characterize them as legitimate and widely acknowledged by the academic and research community. Is that right? That is your view on the concerns of the DRC on this point?

Ms GUHA-SAPIR: The legitimacy applies to, really — pertains to the estimation of deaths in these settings, and that they are a challenge in any of these settings is absolutely legitimate and is widely acknowledged, which is the reason for which there is always a great deal of debate in academia about these things, as you probably are aware, of Iraq, of Darfur and now in Congo.

I am less able to say anything, really, intelligent or even instructed, on the coefficients. I really — it is hard for me to make a pronouncement on that. In the coefficients that the DRC has used, that's 10 per cent — 45 per cent of 10 per cent, is what it is. And I have simply applied it to show what it would — how my estimates would compare to the Congo's estimates.

Mr. SANDS: Understood. I mean, we are not for a moment putting to you that you have endorsed these in any way. That is very clear and very helpful and, if I may say, very fair in your report. I am simply making the point, and please correct me if I am wrong, that you are, in effect, saying that in the circumstances in which the Democratic Republic of Congo found itself, it was legitimate for it to find *an approach* to work out what the numbers might be?

Ms GUHA-SAPIR: That is correct. I think that is a good representation of what I am saying here, yes.

Mr. SANDS: And you do also say, I think, at paragraph 47 in relation to the 10 per cent, which leads to the Democratic Republic of Congo's figure of an estimated 400,000 deaths, you describe that as, using your word in quotes, as "conservative". Do you stick by that?

Ms GUHA-SAPIR: Given the condition of Ituri and eastern Congo at that time, in those five years, and the complete breakdown — I mean, I am just — the complete breakdown of any primary healthcare, any vaccination programme, any child support, I think, honestly, I think that 10 per cent is probably a conservative — but again, I say: “is *probably*” a conservative — estimate.

Mr. SANDS: I have understood you very clearly, Professor Guha-Sapir, on this, and I am certainly not pushing you any further than that. I do note that applying those coefficients, the DRC’s figure ended up being 182,000 human beings, and you ended up on those coefficients at 244,500. So, I mean, it is a lot of human beings . . .

Ms GUHA-SAPIR: It is.

Mr. SANDS: . . . but in relative terms, it is not a huge difference, is it?

Ms GUHA-SAPIR: No, it’s not. It is not. It is not a huge difference between the Congo’s estimates. Ours is higher. Mine is higher, somewhat higher, yes. But it is not a huge difference, that is correct, yes.

Mr. SANDS: I have just got two or three concluding points, very briefly. You may have heard before, when my colleague Ms Butler asked Professor Urdal about the relationship between *his* figures and *your* figures, and he explained that there was no inconsistency between the two sets of figures. Is that also your view, that you and he have engaged in a different exercise and that the figures he has come up with are, in effect, subsumed within your larger figure? Is that a fair way of putting it?

Ms GUHA-SAPIR: Yes, it is. I think Mr. Urdal explained it very well. I think I have been looking at excess deaths which are indirect deaths. They do subsume the UCDP estimates, because essentially an excess death, if there was no war, the soldiers would not have died or the combat-related deaths would not have occurred. So it does include Urdal’s estimates, and we were doing two different things altogether, yes.

Mr. SANDS: Yesterday, as you may have heard, counsel for Uganda, Mr. Martin, criticized you on a number of occasions, and I am going to be very precise about what he said. He described your estimates as “unreliable” and he described your methodology as “unreliable”. That is his word. How do you react to that critique?

Ms GUHA-SAPIR: You know, I would be interested to hear what would be a *more* reliable methodology. That would interest me as an academic, and I am always open for, you know, to stand corrected. But at this time, I think what I did comes closest to a reliable estimate for excess deaths using the best methodical approaches that are prevailing at this moment, yes.

Mr. SANDS: Can I take it from your answer that, notwithstanding the written and oral challenges to the reliability of your reports, your position is that you maintain the positions you have set out? Is that fair?

Ms GUHA-SAPIR: Yes, I do maintain the position. I am confident about we have done, what I’ve done. And, yes, the answer to that is yes.

Mr. SANDS: And, finally, one last question: is there any reason you might be aware of, why the reports you have written should not be made public?

Ms GUHA-SAPIR: No, I think that — I mean, I don’t see any reason not to make it public.

Mr. SANDS: We have had this exchange of questions which are certainly very public, and your answers have been very public.

Professor Guha-Sapir, thank you so much for answering these questions.

Madam President, that brings the Democratic Republic of Congo to the end of its questions for Professor Guha-Sapir, and we thank her for her report and her time today.

The PRESIDENT: Thank you, Professor Sands. I now give the floor to Mr. Lawrence Martin to put questions to Ms Guha-Sapir on behalf of Uganda. You have the floor, Mr. Martin.

Mr. MARTIN: Thank you again, Madam President, distinguished Members of the Court. And good afternoon, Dr. Guha-Sapir. I will apologize to you, as I did to Dr. Urdal before you, for the

somewhat awkward nature of this conversation we are about to have. I am looking at you on a small piece of a video screen off to my right, and I am not quite sure what you are seeing. So I apologize for the awkwardness of this.

I'd like to begin with a point that you've already discussed with Professor Sands, but just so we are proceeding from a common platform. As you described it, your methodology for estimating the number of excess deaths attributable to the conflict involves comparing the hypothetical death rate had the conflicts *not* occurred — that is the baseline crude death rate — with the nominal death rate during the conflicts, the posterior crude death rate: is that correct?

Ms GUHA-SAPIR: Yes.

Mr. MARTIN: Thank you. And in your opinion, since you calculate the baseline crude death rate as being lower than the posterior crude death rate, there were a large number of excess deaths during the conflict: right?

Ms GUHA-SAPIR: Yes, “large” is a qualitative term. So, yes, there was a number of excess deaths, yes.

Mr. MARTIN: And in your opinion you have estimated the baseline crude death rate by reference to UN data for 1997, the year before the conflict: correct?

Ms GUHA-SAPIR: Yes, yes.

Mr. MARTIN: And that number was 14 deaths per 1,000 people per year — or 1.2 per 1,000 people per month: correct?

Ms GUHA-SAPIR: That's right.

Mr. MARTIN: And you got that number from a 1999 UNICEF publication: correct?

Ms GUHA-SAPIR: That's right. I think that link is there, as a footnote.

Mr. MARTIN: In fact, I believe in your questions and answers with Professor Sands, you referred to them as UNICEF statistics.

Ms GUHA-SAPIR: Yes.

Mr. MARTIN: Are you aware that the number itself actually came from the UN Population Division?

Ms GUHA-SAPIR: Yes, yes, absolutely. I think they use each other's numbers and they adjust it according to their own methodology.

So, UNICEF typically does use the UN Population Division's numbers. But they are not identical, as you may have noticed as well. The figures on the UNICEF report is not identical to the UN Population Division figures.

Mr. MARTIN: But they're comparable?

Ms GUHA-SAPIR: Yes, so, UNICEF does use the UNDP numbers, but they adjust it to their own using their own methodology. They have a special working group, a task force, a mortality task force, and they adjust it according to that.

In this particular case, I do not know what adjustments were made but the numbers are not the same.

Mr. MARTIN: In your report you used a different method to estimate that posterior crude death rate. You did so by reference to retrospective mortality surveys, right?

Ms GUHA-SAPIR: Yes.

Mr. MARTIN: Okay. And the number you came up with was 2.929 per 1,000 people per month; is that right?

Ms GUHA-SAPIR: Which paragraph are you referring to?

Mr. MARTIN: I am afraid I do not have the paragraph in front of me. It is in one of the tables.

Ms GUHA-SAPIR: And you are referring to exactly what?

Mr. MARTIN: I am referring to the number that you calculated for the posterior crude death.

Ms GUHA-SAPIR: Yes, I see. I see. It is on page 28 and it is table 2.2.

Mr. MARTIN: And it is 2.929 per 1,000 per month; is that correct?

Ms GUHA-SAPIR: Not quite. Is it? It is — from what I see, sorry. Yes, I am sorry. I am sorry,
Mr. . . .

Mr. MARTIN: Martin. Not at all. Not at all.

Ms GUHA-SAPIR: Martin, sorry. Yes, you are right. You are right.

Mr. MARTIN: Okay. And are you aware that the most recent 2019 revision of the *World Population Prospects* published by the UN Population Division indicates that the crude death rate in the DRC in 1997 was 1.386 per 1,000 people per month?

Ms GUHA-SAPIR: No, I cannot say I am familiar with that. The posterior crude death rates that we have calculated are based on surveys in the region that have been done in the Congo, and our position, my position, on this is that using surveys from the country itself, from the study site has a much more reliable estimate of what is going on in the country than the projections made by the United Nations.

Mr. MARTIN: I understand that, Dr. Guha-Sapir. But for the moment, I am just asking you about certain specific statistical data from the UN Population Division.

Ms GUHA-SAPIR: Yes.

Mr. MARTIN: And if I told you that the crude death rate, according to the UN Population Division in 1997, was 1.386 deaths per 1,000 people, would you have any reason to disbelieve that?

Ms GUHA-SAPIR: I think “disbelieve” is rather a strong word to use. I think it really is a difference between the methodologies that have been used to come to 1.386 or come to 2.929. It is a difference in methodologies. And you can argue about whether or not the methodology used by UN Population Division . . . We spoke to them, I consulted them. I have very good colleagues in there.

Most of their work is modelled work, is modelled projections, and so it is a question. It is not so much a disbelief as much as whether or not the methodology of one, how the methodology of one, compares to the other. So I wouldn't say that I disbelieve . . .

Mr. MARTIN: I very much appreciate that . . .

Ms GUHA-SAPIR: I'm done.

Mr. MARTIN: I very much appreciate that, Dr. Guha-Sapir. And I apologize. But just because our time is limited, if we could keep the conversation as focused as possible on the specific questions, that would be helpful. Of course, I don't want to stop you from adding anything you consider relevant, but I would like to keep the conversation as focused as we can.

So, the UN Population Division shows that the crude death rate in the DRC in 1997 was 1.386. This is higher than the figure of 1.2 that you used; is it not?

Ms GUHA-SAPIR: Yes.

Mr. MARTIN: Are you also aware that the most recent UN Population Division data for the years 1998 through 2003 indicates that in each and every one of those years, the crude death rate in the DRC was actually lower than the crude death rate in 1997?

In that respect, I would refer the Court and you to paragraph 38 of Uganda's observations on the Experts' Report. And if you have that in front of you, I would be happy to run through those numbers. Do you have that in front of you, Dr. Guha-Sapir?

Ms GUHA-SAPIR: What would you like me to look at?

Mr. MARTIN: Paragraph 38 of Uganda's observations on the Experts' Report.

Ms GUHA-SAPIR: I have my own response, but I may have addressed paragraph 38 and — no, that is paragraph 38 of my own. I don't have it in front of me in hard copy. So, if you really want me to, I can look it up on the computer.

Mr. MARTIN: No, that is fine. As I say, Dr. Guha-Sapir, they are stated in our observations at paragraph 38. But according to the United Nations data, the most recent United Nations data, the crude death rate in 1998 — this is stated in per 1,000 individuals per month — is 1.376.

Ms GUHA-SAPIR: Yes.

Mr. MARTIN: In 1999: 1.357; 2000: 1.329; 2001: 1.294; 2002: 1.254; 2003: 1.212.

Now, all of these figures are substantially less than the 2.929 figure that you used; are they not?

Ms GUHA-SAPIR: Yes, it is. Yes.

Mr. MARTIN: Okay. And since all of these figures are lower than the 1997 figure of 1.386 per 1,000 individuals per month, if — and I understand if you would not agree, but if you were to use the most recent UN Population Division numbers in your calculation, the result would be that there would be no detectable excess deaths in the DRC during the relevant period; right?

Ms GUHA-SAPIR: That's correct, yes.

Mr. MARTIN: Thank you.

In your response to Ugandan's observations on your report, you said the 1999 estimate of the baseline crude death rate "more closely reflects the reality of the situation compared to projections made later"; did you not?

Ms GUHA-SAPIR: Yes.

Mr. MARTIN: Are you aware that in discussing its methodology, the UN Population Division states that:

"The preparation of each new revision of the official population estimates and projections of the United Nations involves the incorporation of new information about the demography of each country or area of the world involving, in some cases, a reassessment of the past."

Are you familiar with that?

Ms GUHA-SAPIR: Yes.

Mr. MARTIN: Now, in some of your writings you have identified difficulties with trying to estimate excess deaths in conflict situations; have you not?

Ms GUHA-SAPIR: Yes.

Mr. MARTIN: In particular, in this 2018 article in *The British Medical Journal*, of which you were the lead author, you wrote that death estimates for the DRC are “highly controversial” and overestimates of deaths from armed conflicts are “common”; is that correct?

Ms GUHA-SAPIR: Yes.

Mr. MARTIN: And in the same article, you emphasize the need for “verifiable body counts from mortuaries and vital registration records” in producing reliable death estimates. Is that also correct?

Ms GUHA-SAPIR: Yes, correct in the sense, yes, I have written that in that paper.

Mr. MARTIN: Thank you. As we discussed, you relied exclusively on retrospective sample surveys to estimate the posterior crude death rate; is that correct?

Ms GUHA-SAPIR: Yes.

Mr. MARTIN: Do you recall that in the same 2018 article I just mentioned, you stated that sample surveys have “inevitably large confidence intervals and all the usual sampling biases that prevail in affected communities”?

Ms GUHA-SAPIR: Yes.

Mr. MARTIN: In any case, you relied on 38 surveys, I believe; 33 by the International Rescue Committee and five by Médecins Sans Frontières (MSF); is that right?

Ms GUHA-SAPIR: I don't know whether that is — so, let us see. So there were 38 surveys of which 20 were undertaken by the CDC, six by Les Roberts and the IRC, five by the IRC, five by Michel Van Herp of MSF, and one by Ogle. That's the distribution.

Mr. MARTIN: Thank you. So, in any event, you incorporated at least some of the IRC surveys in your study?

Ms GUHA-SAPIR: Yes.

Mr. MARTIN: In a 2009 co-authored article in the journal *Conflict and Health*, you stated that the IRC surveys in the DRC “have faced security and logistical obstacles that intensify the methodological limitations in risk to personnel, hinder the implementation of best practices and ensure that difficult choices must be made throughout the data collection period”; correct?

Ms GUHA-SAPIR: Yes.

Mr. MARTIN: Thank you. Are you also aware that Mr. Les Roberts, the lead investigator for 31 of the 33 IRC surveys, in a 2001 report said that there was “no follow-up or confirmation of the information provided by interviewees”, and he acknowledged that “people may have lied to interviewers”?

Ms GUHA-SAPIR: He may have said that, yes.

Mr. MARTIN: And are you aware that in another article co-authored by Mr. Roberts, that article states:

“Survey implementation is often haphazard and fraught with biases, and surveys conducted during complex humanitarian emergencies are prone to several methodological limitations.”

Ms GUHA-SAPIR: Yes, I can see how Professor Roberts could have said that.

Mr. MARTIN: Given these problems, why do you use United Nations data for the baseline crude death rate but a different source, sample surveys, for the posterior crude death rate?

Ms GUHA-SAPIR: As far as I am concerned, the baseline that we have used is a baseline which is a UNICEF estimation, and I depend on UNICEF to provide me with a reliable estimation. For the conflict period mortality, I do not have any other sources except the 38 surveys that we have used.

Now, this is the only source of data on mortality from the ground that is, in fact, available, with its pros and its cons. And debate in the academic circles is always fraught with tensions and stresses. That is the whole nature of debate. That is what happens in academics.

Nonetheless, the 38 surveys that have been used for this particular estimation, for the work for this Court, have been probably the most — the most, I am not saying the reliable, the most reliable — sources of data from the ground on mortality that were available. And that is what I have done, and I think that is the best possible estimation that one could have come up with at this time and with the kind of information that is available from that period.

Mr. MARTIN: Thank you, Doctor. But data is also available from the United Nations Population Division. And I think we have agreed if, and I understand that it is a very big if in your mind, we were to use that data to perform the same analysis, the result would not show any detectable excess deaths; is that not right?

Ms GUHA-SAPIR: Yes, that is right. That is right. Absolutely.

Mr. MARTIN: Thank you. Now, in reaching your expert opinion, you made no determination of any kind as to any deaths for which Uganda may be directly responsible, is that right?

Ms GUHA-SAPIR: That is right.

Mr. MARTIN: In fact, in your response to the Parties' observations, in paragraph 38, you said "[m]y Terms of Reference do not ask me to assign indirect deaths to specific perpetrators". Is that correct?

Ms GUHA-SAPIR: Yes.

Mr. MARTIN: Thank you, Dr. Guha-Sapir. That is all the questions I have. I very much appreciate your patience in dealing with this awkward technology.

And I thank you also, Madam President.

The PRESIDENT: I thank Mr. Martin. And let me now check and see whether any of my colleagues on the Bench have a question for this expert. I am not seeing any here. I am not seeing any on the screen.

However, I do have a question of my own, which will reveal, perhaps, my ignorance, Ms Guha-Sapir.

So when we talk about excess mortality, which Professor Sands noted has gotten more attention in the popular press lately due to the COVID-19 pandemic, I understand we are trying to appreciate how one specific event has changed mortality over time. And what I do not understand is the baseline year was a year, and various things were taking place during that year. And then the subsequent years also are individual years where various events occurred. So, for example, in the baseline, there may or may not have been an epidemic, or locusts, or extreme weather, or a volcano, and then in year two, year three, year four, there may or may not also have been those other variables. So I am just trying to understand how this methodology takes into account the fact that, as I understand it, the methodology attempts to indicate the excess mortality as a result of one cause, in this case, the conflict, but in the meantime there are changes year over year of all sorts. So if you could explain that, that would be very helpful to me. Thank you.

Ms GUHA-SAPIR: Yes, I think you have raised a very good point. And you are absolutely right. What it is saying is how do we discount for everything else that is occurring that may have also contributed to the excess deaths.

That is essentially what. And why is it that we are saying that the excess deaths are actually entirely attributable to this one particular cause. I think that's a valid question and I think that requires a much more detailed analysis of whether or not there were other significant events in those years which would have actually changed the mortality profile of the country in question, which needed to be taken into account.

What this is in the Congo, in particular, in these five years, is really an expression of the people who have died in those five years that would not have died in the previous year. That is it. And so after that to attribute it to a very particular cause is not possible, no. These are excess deaths. That is

all it is. These are these many people who have died who should not have died had the prevailing baseline rates been applied.

So the prevailing baseline rates of 1997, if they were applied to the five years that followed, these people should not have died. But you are absolutely right in the sense that it is very difficult to attribute it to a particular cause that all of these deaths were actually attributable to a particular cause. That cannot be done.

The PRESIDENT: Thank you. And now I have a question from my colleague, Judge Robinson, who is joining us on screen.

The PRESIDENT: Judge Robinson, please. You have the floor. You will have to do something to adjust your audio, Judge Robinson, please.

Judge ROBINSON: Can you hear me?

The PRESIDENT: Yes, we can hear you now, Judge Robinson. Please go ahead. Thank you for your patience, Ms Guha-Sapir.

Judge ROBINSON: And I too would wish to thank her for her patience and for the information that she has provided.

She stated in answer to Mr. Martin that the UN Population Division has modelled projections, and so I wanted to ask her what does that mean and what impact, if any, the approach of model projections would have on the soundness or accuracy of that approach?

Ms GUHA-SAPIR: So, in many cases, you know, this — I am not making pronouncement on the entire UN Population Division and the demographic models that they use.

In general, for countries where statistical reporting is very weak — which is the case of the Democratic Republic of Congo — most of the times, in my consultations with them in preparation for this report, *most of the times* they essentially look at the past ten years and they put in some adjustment factors and they project it for the next five years. What those adjustment factors are, I cannot tell. They differ. They use factors that they have got from somewhere. I am not exactly 100 per cent sure what they are, but that is essentially what is done, because there is no statistical

reporting. Or they only get the results from civil registration, such as it is, remembering that the statistical division of the United Nations has, in one of its papers, reported that about 13 per cent of the total mortalities reported by civil registration. 13 per cent. So the majority of the deaths are not reported to civil registration.

But nonetheless, the UN Population Division may use the civil registration data to adjust their figures from the past years to make projections for the next years. That is more or less the way I believe it works here.

Judge ROBINSON: Am I right in thinking that you do have some doubts about the soundness of this method?

Ms GUHA-SAPIR: Some of my best friends work in that division.

Judge ROBINSON: It does not matter.

Ms GUHA-SAPIR: So, yes, I think — I do not know about the soundness. But I think the UN Population Division's projections, if you look at them, especially from countries where statistical reporting is weak, they are more or less — they stay very stable. Why do they stay stable? It is because they use the previous years and they adjust it a tiny little bit, of which they are absolutely sure, and they project it to the next year. And I would say — being a field person myself and being a field epidemiologist — I would be hesitant to use those figures for any kind of denominators or any analysis that I would use for my papers, yes.

Judge ROBINSON: Just one other more an observation or a request for a clarification than a question.

Mr. Martin had you confirm that the estimates of deaths is based on mortuary reports and some other factors that I cannot recall. But in your answer, I was observing your demeanour and I had the impression that you might have wanted to say something else by way of answer, apart from confirming what he asked. And I just wanted to find out whether you did want to say something else, something additional, or whether that was, indeed, the totality of your answer.

Ms GUHA-SAPIR: Honourable Judge, to ask for mortuary reports from places like Ituri and the eastern Democratic Republic of Congo is — as I said in my report, in my response — is ingenuous, really. It really is. Not to mention unfair. And I think mortuary reports is not a realistic scenario. There is no possibility. There is no institution in that region of the Congo that would even register the death of a five-year-old child who could not be taken to the hospital because there was a war going on. There was not even an institution. If you want the parents to carry that dead body of the child to an institution to register her death, there is no incentive for the family, except taking the risk of their own lives on the way to the hospital, to the institution. So to ask for death certificates and mortuary reports is really, I think . . .

I cannot see — I cannot see the basis for such a . . . such a position, yes.

Judge ROBINSON: Thank you.

The PRESIDENT: I thank Judge Robinson for his question. I am not seeing any other questions here in the Great Hall. I am not seeing any other questions from those who are joining remotely.

So that then brings to *the an* end the questioning of Ms Guha-Sapir. I thank you very much for appearing before us and for contributing to the report. You may now go ahead and sign out of the WebEx platform and continue to follow the remainder of the hearing via webstream if you wish.

Ms GUHA-SAPIR: Thank you, Madam President.

The PRESIDENT: Now I shall give the floor to Judge Tomka, who has a question directed to both of the Parties. Judge Tomka, you have the floor.

Judge TOMKA: Thank you, Madam President.

Ma question adressée aux deux Parties est la suivante :

Le 8 mars 2021, la Chambre de première instance VI de la Cour pénale internationale a rendu en séance publique son ordonnance de réparation aux victimes en vertu de l'article 75 du Statut de Rome dans l'affaire *Le Procureur c. Bosco Ntaganda* s'agissant de certains crimes commis en Ituri.

Pour rendre sa décision, la Chambre s'est appuyée notamment sur deux rapports d'experts. Ces rapports ont pris en compte quelque 50 décisions rendues par les juridictions congolaises.

Ayant à l'esprit que la Cour pénale internationale traite de questions relatives à la responsabilité pénale individuelle pour les crimes de guerre et les crimes contre l'humanité, les Parties pourraient-elles indiquer quel est, selon elles, le poids à donner à l'approche suivie par la Chambre de première instance VI en matière d'évaluation du préjudice subi dans l'affaire *Ntaganda* ? Je fais tout particulièrement référence aux paragraphes 237 et suivants de l'ordonnance de réparation.

My question addressed to both Parties is as follows:

On 8 March 2021, Trial Chamber VI of the International Criminal Court delivered in a public sitting its Order on Reparations to victims under article 75 of the Rome Statute in the case of *The Prosecutor v. Bosco Ntaganda* for certain crimes committed in Ituri. In coming to its decision, the Chamber relied *inter alia* on two experts reports. These reports have taken into account some 50 recent cases in the courts of the Democratic Republic of the Congo.

Bearing in mind that the International Criminal Court deals with matters relating to individual criminal responsibility for war crimes and crimes against humanity, could the Parties provide their views as to the weight to be given to the approach adopted by Trial Chamber VI in the *Ntaganda* case in relation to the valuation of the harm suffered? I refer them particularly to paragraphs 237 and following of the Order on Reparations.

Thank you very much, Madam President.

The PRESIDENT: I thank Judge Tomka. The written text of this question will be communicated to the Parties as soon as possible. The Parties are requested to respond orally to the question during the second round of oral pleadings. The Court will meet again on Monday 26 April 2021 at 3 p.m. for the second and final session of the questioning of Court-appointed experts. The sitting is adjourned.

The Court rose at 5.05 p.m.
