



Background Note and Recommendations on Ongoing Transitional Justice and Gender Issues in the Democratic Republic of Congo

Submitted by the International Center for Transitional Justice

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Introduction

The International Center for Transitional Justice (ICTJ) welcomes the work of the U.S. Senate Subcommittee on Human Rights and the Law. The Center is pleased to submit a statement to the Subcommittee regarding strategies it believes can help address sexual violence in conflicts, with a focus on the Democratic Republic of Congo (DRC).

In numerous recent conflict and post-conflict contexts, there has been an evident upsurge in sexual and gender-based violence (SGBV) against women, girls, men, and boys. Civilians have been increasingly targeted during conflicts - while 100 years ago war affected ten percent of the civilian population, it now impacts on 90 percent, of which women and children constitute the majority. Rape has been integral to war strategies in many contexts, but unfortunately the role of armies and non-state actors as perpetrators of gender based violence is often simply accepted as a consequence of war. This is particularly stark in the DRC where sexual violence has currently reached epidemic proportions.

International law is evolving to respond to the pervasive nature of gender based violence in conflicts, especially sexual and reproductive violence. Initiatives include the 1998 Rome Statute establishing the International Criminal Court (ICC) which expanded the definition of crimes against humanity to include rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence. UN Security Council Resolution

1325 on Women Peace and Security of 2000 commits the United Nations and its member states to improve the protection of women in conflict zones. At the continental level, the African Union's Protocol on Women of 2005 also includes a number of articles which specifically address the need to protect women's rights in conflicts and the need to ensure gender sensitive justice. Despite this increased international recognition that fundamental human rights include the protection of civilians from sexual violence, these crimes nonetheless remain widespread.

In the context of the DRC, impunity for sexual violence both preceded the recent conflicts and continues unabated in the post-conflict period. A key feature of the conflicts in the DRC has been the endemic rates of sexual violence (including sexual slavery, abduction, forced pregnancy and the intentional transmission of HIV/AIDS) and the systemic use of rape as a weapon of war by all armed forces and armed groups, leading John Holmes, the United Nations under secretary general for humanitarian affairs, to describe sexual violence in the region as "the worst in the world".¹ While official statistics are lacking, it is estimated that over 250,000 were raped or sexually mutilated during the conflicts, including up to two thirds of girls and women between the ages of ten and thirty in eastern DRC. It has also been suggested that 70 percent of these attacks were part of a coordinated strategy of war.

Current statistics of SGBV are equally difficult to confirm, but the United Nations Population Fund (UNFPA) estimated the occurrence of 300 rape cases a month in North Kivu alone during 2007. Médecins Sans Frontières-Suisse has noted that since 2003, between 30 and 500 patients reported sexual assaults every month in Ituri. According to Panzi General Hospital's director, Denis Mukwege Mukengere, the hospital in Bukavu, South Kivu's capital admits at least ten victims of sexual assault daily, an average of 3,600 cases a year. Since 2000, an

¹ www.care.org/newsroom/articles/2007/12/20071210_drc_sexualviolence.asp

estimated 16,000 victims of rape, many suffering from obstetric fistula², have been treated at the hospital. Between June 2006 and May 2007, UNICEF identified nearly 13,000 survivors of sexual violence in the eastern Congo of whom 33 percent were children.

Yakin Erturk, the UN Human Rights Council's Special Rapporteur on Violence against Women, has estimated that 4,500 cases of rape were reported in South Kivu in the first six months of 2007 alone, with many more going unreported. Sexual violence, she noted, was perceived as "normal" by local communities. And according to the UN World Food Programme: "Rape remains a daily threat for women in eastern DRC: in the fields, on their way back from market or in their own homes. Victims say all the armed groups are responsible."³ Achieving justice for Congolese women and girls will require breaking this cycle of sexual violence, and ensuring it does not become normalized as part of women's everyday lives.

The Congolese government must be held accountable for its failure to address the high rate of sexual violence perpetrated by its own forces and the myriad militias operating in its territory, particularly in the East. With its specialist knowledge in the field of transitional justice and gender, as well as its experience of working in the DRC since 2003, the ICTJ is uniquely placed to suggest ways in which the U.S. and the international community can better promote accountability for SGBV in the DRC.

The ICTJ believes that a far-reaching approach is needed to provide accountability and redress for victims of sexual violence and that this approach should include prosecutions, truth-telling initiatives (such as truth commissions, whether local or national), reparations, and

² Obstetric fistula (or vaginal fistula) is a severe medical condition in which a fistula (hole) develops between either the rectum and vagina or between the bladder and vagina. Sexual abuse and rape are among the causes for the development of obstetric fistula, especially within conflict/post-conflict areas.

³<http://www.alertnet.org/thenews/newsdesk/IRIN/54adc57b1de7f9627334202d58d1f9f9.htm>

institutional reform. Vital to addressing sexual violence, efforts to ensure effective reforms must include gender-sensitive strategies for the demilitarization, demobilization, and reintegration (DDR) of former combatants and for the reform of the military, police, and the judiciary through security sector reform (SSR).

Context

The DRC has endured a number of conflicts since its independence from Belgium in 1960. Preisent Mobutu Sese Seko controlled the country from 1965 until he was deposed in 1997. In 1997 Mobutu's overthrow by Laurent Kabila led to outbreak of conflicts. This left an estimated 5.4 million dead⁴, hundreds of thousands displaced, and countless victims of gross human rights violations. The conflict was exacerbated by an influx of refugees as a result of the 1994 Rwandan genocide, as well competition between various armed groups over the country's abundant mineral resources, particularly in the east. Despite the fact that DRC's conflicts have proved the most deadly to civilians since the Second World War, the international community has failed to respond coherently to this catastrophic situation. The most recent setback is the UN Human Rights Council's failure to renew the mandate of the Special Expert for the DRC in March 2008.⁵

The Sun City Accords of 2002 established a transitional government based on power-sharing agreements among the belligerents. Since the 2006 elections which led to the presidency of Joseph Kabila, there have been some positive developments such as the passage of a new constitution. However, there is little political will to address justice and human rights issues.

⁴ International Rescue Committee, 2008.

⁵ UN: Rights Council Fails Victims in Congo, Human Rights Watch, 27 March 2008. Formerly appointed by the UN Secretary General and now by the Human Rights Council, "special procedures mandate" holders are experts who investigate geographic and thematic issues of great concern for human rights agendas. The mandate of the special expert for the DRC was not renewed.

Furthermore, there was no concerted attempt to prevent the subsequent resumption of fighting in the eastern part of the country. Atrocities against civilians, including epidemic levels of sexual and gender-based violence and pillaging of natural resources continued.⁶ An estimated 30,000 children continue to serve as child soldiers despite enormous international attention on the conflict and increasing concern regarding the issue of child soldiers.

In January 2008, the government and all armed groups in North and South Kivu, signed a new peace accord, following a renewal of armed conflict in which more than 400,000 people were displaced, scores of civilians were killed or abducted, and widespread rape and looting and destruction of property occurred. The January 2008 Goma Conference on Peace, Security and Development raised hopes of ending the conflict in the Kivus.

However, there is no reason to assume this will prevent the epidemic rate of sexual violence. Armed groups continue to impose a reign of terror on the civilian population and the army and police are believed to be responsible for the vast majority of current human rights violations. The catalogue of serious human rights violations (summary executions, rape, torture, assault) investigated by United Nations Organization Mission in DRC (MONUC) and ascribed to security forces is a daily reality for a majority of the population.

Impunity for sexual-based violence committed during the conflict has severe repercussions on the level of sexual violence endured in civilian life – whether by still active forces, demobilized combatants, peacekeeping forces, or family members. The consequence of rape on this scale has created a public health disaster: HIV infection rates are thought to be as high as 27 percent among rape survivors; fistulas, urinary and fecal incontinence, and permanent

⁶ “A First Few Steps: The Long Road to a Just Peace in the Democratic Republic of Congo, International Center for Transitional Justice, Occasional Papers Series, October 2004.

damage to women's reproductive organs are widespread. Furthermore, families keep children at home fearing for their safety, thus interrupting a generation's education. Rape survivors, their children, and children of rape are stigmatized, rejected or otherwise re-abused by their communities.⁷ This particular vulnerability of women and girls is compounded by the secondary role women play to men in positions of political, economic and social power in the DRC.

Legal Frameworks, Impunity and the Implementation Gap

The DRC is subject to both international and domestic legislation regarding SGBV. It is signatory to several international treaties, including The Convention on the Rights of the Child, the Rome Statute of the International Criminal Court, the Convention on Elimination of all Forms of Discrimination Against Women, and the African Charter of Human and People's Rights. These treaties all promote the right of women and girls to be protected from violence.

The International Criminal Court's first prosecution centered on the DRC will try Thomas Lubanga who is accused of recruiting and using child soldiers. Despite intensive lobbying by gender activists, the charges against Lubanga failed to include sexual violence, despite evidence of links to the widespread sexual enslavement of girls.⁸ More recently, ICC prosecutors have charged two additional DRC militia leaders, Germain Katanga, the former senior commander of the FPRI militia group, and Matthew Ngudjolo, the former leader of the National Integrationist Front militia group.⁹ The International Criminal Court has an opportunity

⁷ USAID/DCHA Assessment report: "Sexual Terrorism: Rape as a Weapon of War in Eastern Democratic Republic of Congo"

www.peacewomen.org/resources/DRC/USAIDDCHADRC.pdf

⁸ <http://www.iccwomen.org/publications/briefs/index.php>

⁹ DRC is a signatory to the Rome Statute establishing the International Criminal Court and as such when rape and sexual violence are committed as part of a widespread or systematic attack against any civilian population, they are considered crimes against humanity, and in some cases may be considered part of genocide.

to establish precedents in the Germain Katanga trial, when he faces nine counts of war crimes and crimes against humanity, including sexual slavery.¹⁰ ICC prosecutors have also accused Matthew Ngudjolo of nine counts of war crimes and crimes against humanity, including murder, inhumane acts, sexual enslavement and using child soldiers in connection with an attack on Bogoro in which 200 civilians died.

While the successful prosecutions of Lubanga, Katanga, and Ngujulu may provide some deterrent, most high ranking members of the armed forces accused of serious human rights violations enjoy almost complete impunity. In reality, the vast majority of perpetrators will never be prosecuted.

Furthermore, the prosecutions are unlikely to impact the ongoing endemic rate of sexual violence. It will fall on national institutions to bear responsibility for bringing perpetrators of sexual violence and other human rights violations to justice. Therefore, national courts have a critical role to play in the prosecution of perpetrators of sexual violence.

The DRC's domestic framework includes several structures and laws to address sexual violence. In February 2006, the new constitution specified the need for the elimination of all forms of discrimination against women.¹¹ In June 2006, the National Assembly approved

¹⁰ Women's Initiatives for Gender Justice:
http://www.iccwomen.org/news/docs/Launch_GRC_2007.pdf

¹¹ It includes the following provisions:
"The public authorities will make sure that any kind of discrimination against women is eliminated and they will ensure women's protection as well as promoting women's rights.
"They will make sure that any kind of discrimination against women is eliminated and they will ensure women's protection as well as ensuring women's rights.
"They will take, in every area, and notably as far as civil, political, economic, social and culture areas are concerned every appropriate measure to ensure a comprehensive fulfillment and participation of women in developing the nation.
"They will take every measure to fight against any type of violence made against women, in their privacy as well as in their public sphere.
"Women are entitled to be equally represented among national, provincial and local institutions.

legislation expanding the definition of rape to include rape of male victims, sexual slavery, and sexual harassment among other crimes. The law requires timely investigations, judicial in camera hearings to protect victim confidentiality, and free court services, psychological and medical assistance and legal assistance for victims.¹² However, this sophisticated piece of legislation is seldom implemented for a variety of reasons ranging from capacity, the weak judicial system and poor infrastructure. A further obstacle is the lack of provision for witness protection under Congolese law; victims and witnesses genuinely fear reprisal. The costs involved in bringing a case to court put justice well beyond the reach of most women. Not only are the police not trained in investigating sexual violence, but many women fear reporting rape for further risk of being raped again at the police station.

A significant development has been the use of military tribunals to try cases of SGBV as crimes against humanity in the DRC. In April 2006, a military court in Mbandaka found seven army officers guilty of mass rape of more than 119 women¹³ (according to the UN estimate the number was over 200)¹⁴ at Songo Mboyo on 21 December 2003, the first time rape was tried as a crime against humanity in DRC, and the first such sentence against FARDC personnel for these crimes. The FARDC is the new national army known as the Armed Forces of the Democratic Republic of Congo.¹⁵ The officers had rebelled against their commanders and attacked the villages of Songo Mboyo and Bongandanga. For the destruction of the villages and the mass rape, they received sentences of life imprisonment (although the charges could carry the death

¹²“The State ensures the implementation of men-women parity in those institutions.

¹³“The Law settles the implementation of modalities of those rights.”

¹⁴Loi no. 06/018 20 July 2006

¹⁵The Norwegian Council on Africa

¹⁶UN News Centre

¹⁷UN Action Report Work in Progress

penalty). The verdict requires that each victim's family receive reparations in the amount of US\$10,000.00. Rape victims are to receive US\$5,000.00

These men were former members of the rebel group MLC (Mouvement pour la Liberation du Congo), who had been integrated into the FARDC. All those found guilty escaped and are now at large. The limits of the Songo Mboyo case underscore the great challenge and importance of ongoing military tribunals. It also points to the need for gender-sensitive, well-planned and properly-resourced efforts in DDR and SSR.¹⁶

However, turning the FARDC into a disciplined force subject to democratic control is not simply a matter of promoting technical expertise in DDR and SSR programs. There are considerable vested interests in maintaining the status quo. The current chaos within the army and particularly in areas rich in natural resources are often linked to serious profit-making enterprises. Corruption – in financial terms and disguised as patronage – is endemic throughout the country. However, this should not prevent attempts to further push for security sector reform, including ensuring representation of women in all security forces as well as using training and other strategies to transform the culture of these forces to ensure that all citizens and women in particular are protected rather than preyed upon.

Furthermore, while prosecutions should be a priority, it is important to recognize not only DRC's structural limitations but also the fact that prosecutions can create limitations in addressing victims' calls for justice. Rehabilitation and repair are vital to address SGBV crimes and a number of transitional justice mechanisms have the capacity to bridge this gap. As has

¹⁶ There is no lack of information on gender-sensitive approaches to DDR and SSR. See for example, "MONUC: DDRRR, DDR, Military and Rule of Law Reform—Reducing Violence Against Women: Recommendations for Change (Action Aid, 2006) and Megan Bastick and Kristin Valasek, (eds), "Gender & Security Sector Reform Toolkit", the Geneva Center for the Democratic Control of Armed Forces, OSCE/ODIHR, and UN-INSTRAW, 2008.

been shown in a number of alternative contexts where SGBV has been endemic, legitimate, locally-driven and consultative truth commissions can provide victims of SGBV an opportunity to voice their experiences and this is often more inclusive than the story which may be appropriated for the purpose of a trial. A number of truth-seeking initiatives have revealed their ability to empower women on a public stage to tell their story and this in turn helps dispel the shame and stigma that often shrouds gender based violence. They also have the potential to encourage men and boys to share their experiences of sexual violence. Truth-seeking initiatives afford the opportunity to document the role of SGBV in the conflict and its effects in the aftermath of conflict, making those connections which are often overlooked. Furthermore, commissions provide scope for the making of recommendations based on the specific needs of victims, such as addressing issues such as fistula as well as identifying further methods of accountability for perpetrators.

As indicated in the Songo Mboyo case, reparations have already been used as a strategy in the DRC but these can be developed more creatively beyond monetary payment. There are options for reparations to be linked to the promotion of community education on SGBV and stigma or more broadly to support memorials, which recognize this scourge. While there are obvious resource limitations, there is a moral imperative for the state and actors to recognize their role in the high levels of SGBV and thus to try to provide some measure of reparations that are not tainted by politics and do not further regional divisions.

The world is well informed of the epic and increasing levels of sexual and gender-based violence in the DRC. However, despite the involvement of dozens of United Nations and bilateral agencies, as well as international human rights and humanitarian organizations in the country, the severity of gender-specific violations is often overlooked in transitional-justice-

oriented interventions. The United Nations, international organizations, and governments interested in human rights, such as the United States, must assume leadership in encouraging the Congolese government and the international community to end impunity for sexual violence as a weapon of war. Prosecutions at all levels will demonstrate zero tolerance for the idea that rape is an inevitable part of war for which leaders and combatants will not be held accountable.

RECOMMENDATIONS

The International Center for Transitional Justice has been engaged in the DRC since 2003 and opened its Kinshasa office in the DRC in 2006. Based on the social, political, and legal contexts in the DRC, in-country engagement, ongoing research, and victims' surveys, the ICTJ's DRC office and the Gender Program staff have identified key priorities and recommendations.

These include:

1. **Continued support for ongoing initiatives** to increase security throughout the country, and particularly in the East, through engagement with the US embassy and collaboration with Special Envoy, Tim Shortley. Although the Amani program (the government's follow-up to the Goma conference) is still in its early stages, it offers the potential to address security in the Kivus. As levels of gender-based violence are intrinsically connected to armed conflict in this region, as elsewhere, combating the conflict will alleviate violations against women and girls.
2. **Disarming and demobilizing remaining militia**, both foreign and domestic, must remain a priority, as it will increase security for all and for women and girls in particular. It is important to note however, that disarmament and demobilization will not in themselves resolve the problem of sexual violence, and may instead simply move violence to the home: the increased incidence of rape in the civilian population is often closely linked to the presence of

demobilized combatants. Consequently, while disarmament and demobilization are a crucial step, they must be developed in the context of a holistic reintegration program and of ongoing security development for women and girls.

3. **Strong United States support for vetting** of public institutions, including the army. Vetting programs and procedures can be developed and carried out in collaboration with the United Nations Mission in DRC (MONUC) subsequent to the inclusion of vetting in MONUC's mandate following United Nations Security Council Resolution 1794 in December 2007.

4. **United States government support for the successful prosecution of senior officers** for rape and sexual violence, including but not limited to orchestration of rape campaigns, supporting a culture of using rape as a weapon of war, and failing to prevent the men under their command from committing sexually-based or gender-specific human rights violations. Prosecutions of high-ranking officers for SGBV is a first step toward addressing impunity for these crimes since training and/or sensitizing for lower ranks will always falter if those in command remain immune from prosecution for these acts.

5. **US Advocacy** for legal provision for witness protection under Congolese law. The absence of this results in systematic intimidation of witnesses and victims in the few cases that come to trial.

6. **Support for legal redress for victims through either domestic or mixed courts/tribunals** and sponsoring the creation of a court exclusively for SGBV cases.

7. **Promoting** accountability and redress for victims of sexual violence through alternative transitional justice mechanism such as truth-telling initiatives, reparations, and institutional reform.

8. **Avoid separating gender based-violations from other human rights violations affecting women and men**; it is already a low national priority, and international efforts to address gender-based violence in isolation from other human rights violations is likely to further increase the belief that this is "foreign" rather than national justice.

9. **Support efforts to increase representation of women in public institutions** to help address women's low status. Article 14 of the Constitution calls for gender parity in public institutions, though the government has not formulated any plans to address the dismal male-to-female ratio in public institutions.

The extent of sexual and gender-based violence in the DRC has been well-documented and reported by the media, NGOs and international institutions. Initiatives and calls for mobilization against sexual violence have multiplied over the years, but have failed to deliver adequate results on the ground. We look forward to the United States taking leadership in helping to address the grave human rights abuses experienced by Congolese citizens, most specifically sexual and gender-based violence.

About the International Center for Transitional Justice

The International Center for Transitional Justice (ICTJ) assists countries pursuing accountability for past mass atrocity or human rights abuse. The Center works in societies emerging from repressive rule or armed conflict, as well as in established democracies where historical injustices or systemic abuse remain unresolved. Contributions to this report came from ICTJ's Kinshasa and Cape Town offices, as well as the Gender Program and the Africa Program.