Analysis: Justice still remote for victims of atrocities in DRC

Photo: Jodi Bieber/MSF

Women are especially at risk of sexual violence during conflict

LONDON, 11 October 2010 (IRIN) - The authors of the UN “mapping report” detailing more than 600 “serious violations of human rights and international humanitarian law” committed in the Democratic Republic of Congo (DRC) between March 1993 and June 2003 see the landmark document as an important step in delivering justice to victims of the atrocities.

While the report made no claim to meet the evidentiary standards required in a courtroom, it has prompted widespread discussion about what should happen next regarding the alleged abuses attributed to troops from Rwanda, Burundi, Uganda, Chad, Zimbabwe and Angola.

IRIN evaluates the options.

**Congolese judicial system**

Under DRC law only military courts can try international crimes, as the civil criminal code has no provisions relating to war crimes, crimes against humanity or genocide. Military judges have handed down some verdicts in war crimes cases, citing the 1998 Rome Statute of the International Criminal Court, but the system functions poorly and judges reportedly often succumb to political interference.

As the UN report points out, the civil system is barely equipped to deliver justice at any level. It lacks adequate funding personnel, transportation, training, professional development, witness protection and judicial independence.

While most countries spend 2-6 percent of their national budget on justice, the DRC spent an average of 0.6 percent a year between 2004 and 2009, according to the UN report.

**The International Criminal Court (ICC)**
The Hague-based court was established to hear cases of war crimes, crimes against humanity and genocide committed after July 2002. Some crimes committed in Ituri do fall within the ICC’s mandate. However, most incidents in the report occurred from July 1996 to January 2000, during the first and second DRC wars, ruling out the ICC as a legal recourse. The court’s Trust Fund for Victims, which provides reparations for war crimes’ victims even without judicial verdicts, is also unlikely to help for the same reason. “The Trust Fund typically becomes involved once the ICC has substantively become involved in the situation concerned. It would not get involved in other crimes in Congo that pre-date the Rome Statute,” said Carla Ferstman, the director of Redress, a human rights group working with victims of war crimes in DRC.

Three cases involving crimes allegedly committed in DRC are currently before the ICC, including that of Callixte Mbarushimana, a leader of a Rwandan rebel group who was arrested in Paris on October 11. He faces five counts of crimes against humanity (murder, torture, rape, inhumane acts and persecution) and six counts of war crimes (attacks against the civilian population, destruction of property, murder, torture, rape and inhuman treatment).

The International Criminal Tribunal for Rwanda (ICTR)

As with the ICC, the ICTR is also limited by its mandate. This includes trying crimes, including genocide committed in Rwanda, or by Rwandans in neighbouring countries, but only in 1994. The tribunal is also due to close next year. “The ICTR is overloaded and trying to close its doors,” said Phil Clark, research fellow at the Centre for Socio-Legal Studies at the University of Oxford.

The International Court of Justice, ICJ

The ICJ settles disputes between states. In 2005 in ruled in favour of DRC in a case brought against Uganda over the illegal exploitation of natural resources during the second war. Uganda has yet to pay the billions of dollars of reparations ordered by the court.

Both parties to a dispute must be willing participants in any ICJ case. While all UN member states are party to the Court, not all adhere to the principal of compulsory jurisdiction, i.e. of having to answer to charges brought by another state.

For example, a case the DRC hoped to bring against Rwanda was never heard by the ICJ.

Given Rwanda’s blanket dismissal of the UN report, it (and other named states) are unlikely to agree to appear before the ICJ.

The recent rapprochement between Kinshasa and Kigali also reduces the chances of an inter-state court case.

New ad-hoc international tribunal

A request by DRC for the UN to establish an ad-hoc tribunal similar to the ICTR and International Criminal Tribunal for the former Yugoslavia came to nought.
Generally set up outside the country where the crimes were committed, such courts have been criticized as slow and expensive in relation to the number of trials and too distant from the victims of the crimes being prosecuted.

“These crimes took place in Congo so it wouldn’t be good if the whole process of justice took place outside,” said Carina Tertsakian, the senior Rwanda researcher at Human Rights Watch (HRW).

**Hybrid court**

Crimes committed in Sierra Leone, East Timor and Kosovo are, or have been, tried in a family of international judicial entities known as hybrid courts - “hybrid” because they involve staff and apply legislation that is both international and domestic.

Like international tribunals their efficacy is affected by the need for international cooperation and judicial assistance by states and international organizations.

The UN plays a leading role in all existing hybrid courts.

**Mixed chamber**

HRW, as well as the report’s authors, advocate a so-called “mixed chamber” embedded in the DRC justice system with local and international judges and prosecutors working together. Cheaper and quicker to set up than an international tribunal, it would apply Congolese laws and procedures, but would temporarily include non-Congolese staff.

The Bosnian war crimes chamber in Sarajevo could be the model. Tertsakian believes a mixed chamber would give Congolese a sense of “ownership” of the justice process which would also benefit from international involvement.

“We think there needs to be an international component to the process to strengthen and build up the capacity of the Congolese justice system and also provide the process with a degree of additional credibility and to combat political interference,” she said.

“Any case that reaches the trial stage will be politically sensitive, and there is likely to be pressure from various quarters, and to guard against that it would be important to have some international personnel working alongside Congolese judges and prosecutors.”

A mixed chamber, however, would struggle to arrest non-Congolese suspects. Both Rwanda and Angola forbid extradition of their nationals, meaning serious support from the African Union, regional governments and the international community would be essential to avoid the problems already being experienced by the ICC which is unable to execute the majority of its arrest warrants because of lack of cooperation from member states. (Unlike the tribunals for Rwanda and Yugoslavia, the ICC has no personnel with powers of arrest).
Universal jurisdiction

The principle of universal jurisdiction allows suspects of serious international crimes to be prosecuted by third party states.

Belgium, the Netherlands and Spain have in the past prosecuted people from DRC and Rwanda under the principle of universal jurisdiction.

While suspects’ governments may be unable to halt such prosecutions, such cases are very likely to create diplomatic rows over purported infringements of sovereignty.

Truth and reconciliation commission

The UN report says more than 30 commissions have already been set up, in particular in Argentina, Chile, South Africa, Peru, Ghana, Morocco, El Salvador, Guatemala, East Timor and Sierra Leone.

However, a previous DRC truth commission with the ambitious mandate of examining all political, economic and social crimes committed between 1960 and 2003 never really got off the ground.

It collected no witness statements nor opened a single enquiry. Commissioners were drawn from the warring groups and some were involved in the crimes they should have been investigating.

The University of Oxford’s Phil Clark is sceptical that another would work much better.

“I think there is an argument that there is a need for a truth commission, but it needs to be better organized and structured and it can’t involve commissioners from the main protagonists in the conflict. My sense is horse may have bolted on that front,” he said.

Nothing happens ever

The crimes outlined in the UN report have been known for many years and well documented by a variety of local and international human rights and civil society organizations. Some say the reasons nothing was done then - the size of the DRC, the sheer number of crimes committed, the countries involved, the devastation of DRC’s infrastructure - still exist today and that no substantive action will be taken on the report.

Clark believes the “international community” has Congolese justice fatigue. “Unfortunately I am quite pessimistic on the justice side of things that we are going to see any accountability for the crimes that have been identified by the mapping report,” he said.
“There is a sense that so much has been done for this region and the results to date have been fairly patchy so the idea of wading back into the Great Lakes with a new type of institution I think is going to be a fairly unattractive possibility for most global policymakers.”

That’s a view shared by Mauro De Lorenzo, fellow at the American Enterprise Institute. He doubts the “international community” is willing to put at risk improving relations between DRC and its neighbours.

“It’s hard to see people being enthusiastic about putting into jeopardy progress that has been made in the region,” he said.

**Nothing happens yet**

De Lorenzo urges patience. “There’s a time and place. We’re just now having trials in Cambodia. It’s not for us to rush and decide for the Congolese how they should do it,” he said.

The International Centre for Transitional Justice’s DRC head Sharanjeet Parmar agrees Congolese views are essential in determining the next steps. “There is a need for a judicial mechanism, but the process has to come from the Congolese people,” she said.

Parmar, however, says some consensus is needed internationally and that doing nothing is not an option. “These are some of the worst atrocities seen on the continent in recent history, and if the international community can’t work out the diplomatic and political intricacies to deliver on justice then that’s a poor reflection on these international bodies we’ve invested decades in building.”

lc/am/cb

**Theme(s):** Gender Issues, Governance, Human Rights, Conflict.

[This report does not necessarily reflect the views of the United Nations]