



Time Works Against Justice

Ending Impunity in Eastern Congo

Aaron Hall & Annette LaRocco February 2012



enough

The project to end genocide and crimes against humanity

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COVER: Prisoners sit in a courtroom before a military tribunal in South Kivu province, Democratic Republic of the Congo. Walter Y. James/The Advocacy Project

In the village of Buramba in the North Kivu province of the Democratic Republic of the Congo, or DRC, a church stands as a reminder of a violent past and an unstable future seemingly devoid of justice. At this church one can still see human bones in the ground—a result of multiple massacres committed by the then-rebel, ethnic Tutsi National Council for the Defense of People, or the CNDP, against the ethnic Hutu village accused of being aligned with and aiding the Rwandan Hutu based rebel group, the Democratic Forces for the Liberation of Rwanda, or the FDLR, as well as local militias known as Mayi-Mayi.

In 2004 and again in 2007, residents of Buramba were led inside the church by a call for a community meeting. In both cases once the people were inside, the doors were barricaded by CNDP soldiers who fired their weapons into the church, summarily executing all the men, women, and children trapped within. These acts were messages to others in the area that even a suspicion of collaboration with the FDLR or Mayi-Mayi would have fatal consequences. In 2009, through a peace deal reached with the government of the Congo, the CNDP was absorbed into the Congolese national army, or the FARDC. The CNDP commander responsible for the massacres in Buramba became a colonel in the FARDC and is currently in command of an FARDC brigade stationed just outside of the village.

The residents of this village point to the bones in the ground around the church and to the military encampment on a nearby hill. They say the officer responsible for these massacres is right there, in that camp, now tasked with protecting the community he terrorized. One human rights advocate in the region, who wished to remain anonymous for security reasons, told the Enough Project, “When you speak of justice to these people, they will look you in the eye and think that you are crazy!”¹

This is just one of numerous cases of injustice in eastern Congo that fuel an environment of impunity and insecurity. Rebel and military commanders who have committed egregious crimes including systematic murder and rape remain free and unpunished, accepted in the national army under the edict of “integration,” in some cases with promotions. Senior commanders, such as the infamous General Bosco “the Terminator”

Ntaganda—known to have ordered civilian massacres and exploited natural resources for personal profit—walk freely in the streets of Goma and Bukavu, and can often be seen dining in the same restaurants and bars as United Nations and humanitarian workers. Reforming the justice system is essential to break this flagrant cycle of impunity and promote accountability.

The lack of accountability for war crimes including the murder of civilians, rape, plunder, extortion, and enslavement is one of the key obstacles to creating an environment for peace and development in eastern Congo. The painful facts of the past must be brought to light and reconciliation must occur in order for the country to move forward. Concurrent with truth-telling exercises, the worst perpetrators must be brought to justice. Sustainable peace will not take root in Congo while perpetrators remain free. In the country's turbulent East, the Congolese army must establish itself as the protector of civilians, not their predator.

Yet the issue of military-justice reform and transitional justice in Congo is complex and politically divisive. There must be political will from the Congolese government and from within the FARDC. There must be willingness on the part of the international community to apply pressure as well as assist and support local efforts for a sustained period of time. Finally, there must be participation and equitable input from local communities, civil society, and traditional leaders. Failure to follow this path will condemn the region to live out the famous saying from playwright Eugene O'Neil, "There is no present or future, only the past, happening over and over again, now."²

This paper addresses the challenges of justice reform in Congo and explores potential solutions for the future. The ideas set forth are gleaned from discussions with many individuals on the front lines in this battle against impunity.

Efforts at reform are underway and there have been recent signs of success. Recently established mobile courts in eastern Congo supported by the government, the FARDC, and international partners have detained, tried, and convicted military officers of rape and war crimes in North Kivu for the first time. There is an initiative within the Congolese government to establish specialized mixed courts—composed of both Congolese and international lawyers, prosecutors, and judges—with the jurisdiction and capacity to try international war crimes and crimes against humanity committed in the eastern portion of the country between 1994 and 2003, as well as more recent and ongoing cases. These courts would also help build capacity more generally within the Congolese judicial system. In addition the FARDC, United Nations, and Congolese civil-society groups are working to establish and implement guidelines and mechanisms for civilian protection that would allow individuals and communities to testify in cases without fear of retribution. These crucial developments highlight the holistic interface between meaningful judicial and security sector reform.

There has never been a systematic attempt to address the issue of impunity within the Congolese justice system, but rather a series of ad hoc initiatives aimed at capacity building or external intervention to try human rights abuses. While both are necessary they must be part of a larger comprehensive agenda that focuses on several other sectors including governance, security, and resource management. Given the current state of the justice system in Congo, those Congolese champions who wish to enact reform require international partnership at the onset—otherwise, the obstacles are too great and the resources too few. If the international community engages in sustained and coordinated partnership with local civil-society groups, Congolese legal professionals, and other stakeholders to create long-term strategies for reform, success is possible in time.

In the short term the Enough Project proposes five recommendations for the U.S. government and other donor nations to bolster justice reform in Congo and aid in the fight against impunity.

1. Use a multipronged approach of state-level conditionality-based pressure and civil-society grassroots support to ensure that the specialized mixed courts law is adopted and implemented.
2. Work with local implementing partners to expand the prosecutorial jurisdiction of mobile courts to include economic crimes and the pillaging of natural resources. Put in place long-term capacity building strategies to enhance residual justice mechanisms that house the mobile courts.
3. Pressure the Congolese and Rwandan governments for the immediate arrest of General Bosco Ntaganda.
4. Coordinate with the United Nations, International Criminal Court, and the Congolese government to expand the international and national judicial focus to pillaging of property and natural resources as well as economic war crimes. Begin issuing indictments on the worst offenders.
5. Publicly support Congolese groups and individuals working for the establishment of Truth and Reconciliation Commissions, or TRCs, to be created in conjunction with the specialized mixed courts to allow communities affected by conflict to use traditional methods towards conflict resolution at the grassroots level.

There are many within the Congolese government who continue to adopt the mantra “justice is the enemy of peace” and fear that attempts to prosecute the worst offenders will spark renewed conflict. Many former rebel leaders from the first and second Congolese wars hold high-level positions within the government today and could be implicated in war crimes themselves, therefore making them hesitant to support real reform and the linkage of justice reform with broader efforts toward accountable

leadership and security sector reform in the Congo. Finally, the protection of individuals who would engage in truth and reconciliation efforts or testify as witnesses in criminal cases is currently far from guaranteed—without civilian protection, justice-reform initiatives will be hollow at best.

While eschewing justice in favor of short-term stability may have some political support, to establish sustainable peace the Congolese must tackle their painful history of violence. Without bringing those responsible for the worst crimes to justice and addressing ongoing grievances and hatreds arising from years of conflict, violence is likely to continue. To cultivate peace, justice must be served.

An overview of the Congolese justice system

The DRC is a civil law country with its legal roots based in its Belgian colonial past. In many rural areas, customary or tribal law bolsters the formal legal framework and is able to regulate cases dealing with marriage, inheritance, and property rights. The formal system is divided into three branches: public law, private law, and economic law. Public law regulates the state and state authority, private law regulates private persons, and economic law regulates issues around trade, labor, investment, and natural resources.³

The Supreme Court is the highest court in Congo and, while nominally independent, it is connected to the Office of the High Council of Courts for the prosecution of criminal cases. The Congolese justice system contains both the civilian- and military-justice systems under the single national office of the Office of the High Council of Courts, which includes the position of High Prosecutor.⁴ In both the military and civilian systems there are three levels of courts mandated to try cases from the highest offenses to the lowest claims. From highest to lowest these courts are:

- **The civilian and military high courts.** In the civilian system these courts hear appeals that have made their way through the national appeals process. On the military side they are meant to hear appellate cases as well as trials involving individuals with the rank of colonel and higher. Under the DRC's constitution, these courts have the jurisdiction to try international war crimes and crimes against humanity committed on Congolese soil.
- **General military and civilian courts/courts of appeal.** On both the civilian and military side these courts try cases that would require sentences of at least five years' imprisonment and function as the first courts of appeal. In the military system these courts try individuals up to the rank of captain.
- **Military operation courts.** These courts exist only in military justice and are meant to function as military courts solely for use in active combat zones. Currently there

are only two official zones of combat, both in North Kivu, which belies the broader reality of armed conflict on the ground in a wide variety of locations. Only officially declared combat zones have access to a Military Operational Court for crimes committed during active combat missions.⁵

- **Military and civilian peace tribunals.** These tribunals are meant to function for small claims to lower felony courts. The tribunal courts cannot hand down sentences longer than five years.

The challenges of justice reform in the DRC

The absence or failure of judicial mechanisms and the culture of impunity in the Congo, particularly in the East, are the most significant impediments to stability and development in the country. Armed actors are able to maintain the threat of violence, retribution, and destruction to keep a stranglehold on communities. This prevents civilians from seeking justice, making peace with the past, or taking steps to develop their lives and communities through economic development. Living under constant threat with no credible source of protection stymies all positive growth—good governance, education, public health, economic diversification, and the creation of a legitimate mining sector all fail when a culture of impunity reigns.

Congolese courts lack resources and infrastructure in both the civilian- and military-justice systems. This pervasive incapacity is due largely to a combination of factors, including the lingering deleterious effects of the Mobutu regime; the lack of political will among political leaders, many of whom are personally implicated in crimes in the East; widespread corruption; mismanagement; diminished human resources due to lack of education; and the crippled correctional system. Further, the national infrastructure to enforce laws is in tatters. In many rural areas formal legal mechanisms are all but absent. In the conflict-ridden East, citizens put little faith in the ability to receive a speedy or fair trial. Courthouses are literally crumbling. Police, prosecutors, and judges are corrupted.

Prisons are also shockingly insufficient, rendering the state or provincial authorities unable to detain those convicted of crimes, even if they did receive a fair trial. For example, in researching this paper one author visited the prison in Goma, North Kivu province's capital city. The prison was built several years ago to house roughly 350 individuals. It now holds 1,026, with both military and civilian prisoners mixed together in appalling conditions. Prison breaks are a regular occurrence.⁶

In an amazing example of the pervasiveness of corruption within the system, while interviewing a warden of a North Kivu prison, and after clearly explaining the interview would be used for a published paper, the interview was interrupted by a series of phone calls in which the warden openly negotiated his cut for releasing a recently convicted

soldier with a local magistrate who called to demand the prisoner's release based on payment received from a nearby commander. A local prosecutor sat in the office, mouth agape, shocked that warden was carrying out the call and transaction during the interview. The warden clearly did not expect consequences.

In addition to institutional weakness, the current justice system in Congo completely flouts constitutional guarantees for the rights of the accused both in civilian and military trials. There is no judicial review of pretrial detentions; a suspect can spend a year or more, in some cases up to five years, in custody without appearing in any legal proceeding to determine the legitimacy and scope of his case. Judicial independence is continually compromised by political manipulation. Moreover, the military has begun unilaterally expanding its jurisdiction by trying civilians in military court for offences such as "inciting members of the armed forces to commit acts contrary to the law or their discipline," which enables military actors to create indirect links between civilians and military offenses.⁷

Finally, the continued presence of accused war criminals within the senior ranks of the FARDC propels the notion of impunity and bolsters the appearance that war crimes can pay. This is best exemplified by the case of Bosco Ntaganda. Since 2006 Ntaganda has been indicted by the International Criminal Court, or ICC, for the war crime of enlisting and conscripting children under the age of 15 as soldiers. The former chief of staff for the rebel group CNDP, Ntaganda was given the rank of general in the FARDC in 2005 although he initially refused. In 2009 he and CNDP were subsumed into the national army in a peace deal struck between the government of Congo and the rebel group. Over the past decade Ntaganda has been accused of systematic murder, ordering and carrying out torture and rape, inciting ethnic violence, violations of U.N. arms embargos, and continued manipulation and exploitation of the mineral sector in eastern Congo for personal profit and perpetuation of conflict.⁸ In 2007 the government of Congo requested assistance from the United Nations to arrest Ntaganda, but the mission failed. Since that period no efforts have been made, and Ntaganda has been integrated into the Congolese army. Many in the Congolese government make the case that Ntaganda's arrest would create more conflict than currently exists. They say "justice is the enemy of peace." However, as long as Ntaganda continues to exist freely in eastern Congo, there will be no peace.

These are the systemic obstacles that must be addressed for sustainable reform in the Congolese justice system to succeed. Ultimately, the solutions involve governance, budgetary, and infrastructural reforms that can only come from the Congolese state and people themselves. However, there are initiatives underway supported by the international community that can assist in the fight against impunity by chipping away at the barriers created by regional obstructionists and aid in spotlighting and building popular movements for justice and change. International efforts at reform must include local level buy-in and participation.

Current efforts at reform

In the current fight against impunity in the East, a number of small-scale sensitization efforts are underway to build the understanding of Congolese citizens about their constitutional rights and justice mechanisms they may avail, particularly as they relate to sexual violence cases. However, there are two initiatives that potentially could have a significant impact on supporting the infrastructure and judicial process of the Congolese system—the potential parliamentary passage and implementation of the Specialized Mixed Courts Law and the bolstering of military and civilian mobile courts. These efforts have shown measurable results in the fight against impunity and both have sizeable backing from the international donor community.

Specialized mixed courts

Following the release of the U.N. Mapping Exercise Report on October 1, 2010, about 250 local and international organizations called for setting up a transitional justice system to prosecute international crimes committed in Congo that did not fall under the jurisdiction of the ICC.⁹ The mapping exercise, led by the Office of the U.N. High Commissioner for Human Rights, or OHCHR, had three objectives:

- Conduct a mapping exercise of the most serious violations of human rights and international humanitarian law committed within the territory of the DRC between March 1993 and June 2003.
- Assess the existing capacities within the national justice system to deal appropriately with such human rights violations that may be uncovered.
- Formulate a series of options aimed at assisting the Congolese government in identifying appropriate transitional justice mechanisms to deal with the legacy of these violations, in terms of truth, justice, reparation, and reform, taking into account ongoing efforts by the Congolese authorities, as well as the support of the international community.

Over the past two years, discussions among Congolese civil society organizations, global human rights advocates, and the Congolese government led to the recent drafting and submission of a bill to establish a specialized mixed court to prosecute international crimes committed on Congolese soil since 1990. This bill was rejected by Congolese Senate in late 2011 due, primarily, to procedural error. However, it remains in the parliament and may be reintroduced when that body returns to session in the coming year.

The specialized mixed court would be mandated and empowered by the national government but would receive technical, logistical, and personnel support from the

international community. It is a hybrid that attempts to address some of the flaws of international ad hoc tribunals such as the International Criminal Tribunal for Rwanda on the one hand, and the limitations of a purely national system on the other. The domestic ownership of the process will give the Congolese more responsibility for justice-seeking and facilitates a coming to terms with violence that will be more locally satisfying. However, the international element would facilitate the court's independence from political influence, put an external guarantor and watchdog in place, and allow for capacity and institution building by bringing skilled jurists and legal professionals into the severely dysfunctional Congolese justice system. In addition, unlike ad hoc tribunals, the specialized court need not be time limited. Because it would be embedded in the national legal system it does not necessarily have an ending mandate. It can continue with prosecutions as crimes occur, acting as a deterrent and solidifying the culture of accountability, with the ultimate goal of handing the process over fully to the Congolese judicial system.

The specialized court would balance two imperatives of justice reform—local ownership of the process and international expertise—while Congolese jurists and lawyers expand their capacity. The specialized mixed court would bolster the civilian judiciary system that is essential to the long-term rule of law.

These proposed specialized mixed courts should be given primary jurisdiction over war crimes cases including genocide, crimes against humanity, and pillaging of natural resources. Ideally, the mixed court is to be housed in Kinshasa, as well as in all provincial appeals courts, and have mobile capability to provide proximity justice in remote and rural areas. This initiative is supported by the current Congolese minister of justice and other elements of the Congolese government, the United States, United Nations, Congolese civil society, and a number of international human rights groups. A group of international and local human rights organizations met in Goma in April 2011 and produced a common position regarding the mixed court legislation and the document expressed overall support for the proposed mixed court as well as provided key amendments to be made that guarantee the court's independence, credibility, and effectiveness.¹⁰

Mobile courts and prosecution support

Mobile courts are traveling versions of military and civilian general courts that are able to move to rural areas and try up to 10 cases in 10 days.¹¹ Thus far, the bulk of these cases have focused on instances of sexual abuse committed by armed groups. The mobile system is built into the Congolese constitution and legal code and was purely a domestic creation. The courts operate within the existing justice system and utilize local judges, prosecutors, and defense counsel. Each court conducts both civilian and military trials, depending on the status of the accused. Mobile teams are meant to have the expertise and capacity to try sexual and gender-based violent crimes, and also to handle

coordinated mass attacks that constitute crimes against humanity under international law. They provide tremendous value in most cases due to the proximity of the judicial process to the victims by allowing for individuals to directly confront their alleged abusers. The result of this process is a challenge to impunity and the development of a positive relationship between citizens and the judicial system.

The mobile courts initiative is heavily supported in terms of logistics, capacity, and resources by the international community. Mobile court projects are being carried out by a number of stakeholders including the U.S. Department of State-funded American Bar Association Rule of Law Initiative, or ABA-ROLI; the Open Society Institute Justice Initiative; the United Nations Development Project, or UNDP; the United Nations peacekeeping mission to the Congo, or MONUSCO; the European Union Police Mission, or EUPOL; and the government of Congo. Mobile courts also receive support from the U.S. Military Defense Institute of International Legal Studies, or DILS, and the U.N. Rule of Law Unit, Prosecution Support Cells.

However, gaps still exist, including the lack of political will to try cases committed in the wake of the Rwandan genocide and through the two subsequent Congolese wars, the lack of regional cooperation to extradite the worst offenders who have fled to Uganda and Rwanda, the reluctance of mobile court donor bodies to expand their mandate beyond sexual and gender-based violent crimes, and the inability to provide for the establishment of truth and reconciliation mechanisms for the worst affected communities in the eastern provinces.

These two initiatives, specialized mixed courts and mobile courts, if supported and sustained, would enable the Congolese government, with support from the international community, to begin to arrest, try, and detain some of the worst human rights and war crimes offenders at multiple levels within the Congolese military and those roaming free as FDLR, Mayi-Mayi, or other illegal armed actors.

Policy recommendations

Justice reform in the Congo cannot be addressed in a piecemeal fashion. Specialized mixed courts must be combined with truth and reconciliation mechanisms for affected communities. Mobile courts make a significant contribution on the local level, but it is necessary to establish the specialized mixed courts to try the worst and most responsible highest-ranking offenders who exercise command and control of mid-level commanders. The Enough Project proposes a comprehensive approach to justice reform that enables the prosecution of grave human rights crimes to take place in parallel with truth-telling reconciliation processes in communities and the meaningful reform of the security sector through the prosecution of high-ranking offenders.

- 1. Use both conditionality-based pressure and civil society support to ensure that the specialized mixed courts law is adopted and implemented.**

Given the recent electoral turmoil in Congo, legislative deliberation on the specialized mixed court bill is at a standstill. Parliament will not be able to take up the issue until a new body is constituted and called into session. Further, it is still unclear whether supporters of the legislation, such as current Minister of Justice Luzolo Bambi Lessa will remain in their respective positions. However, this delay also presents an opportunity for Congolese civil society organizations that are advocating for the passage of the mixed courts law. With support from international partners and funders, Congolese civil society can use this opportunity to engage in public education and build a broader coalition nationwide to call for the passage of the law when the national legislature convenes. More pressure from the grassroots in support of the law lessens the opportunity for those opposed to the bill in Kinshasa to dismiss this initiative as international meddling. At the same time increased support and understanding at the civil society level will aid tremendously in galvanizing both the necessary external support and domestic political buy-in to ensure passage and implementation.

That the specialized mixed courts would get their mandate and legitimacy from national legislation creates an opportunity for the Obama administration to apply pressure. As a major donor to the Congolese government, the United States must push for passage of the legislative components of justice reform as well as promote political buy-in from the government in Kinshasa. At the same time the administration should support civil society capacity building efforts to educate and build popular movements in support of the passage of the mixed courts law.

Specifically, the U.S. government through the State Department's Office of International War Crimes should ensure that the amendments to the law, drafted by local and international human rights groups be adopted and implemented in full. These amendments contain important clauses that give the mixed courts jurisdiction to try crimes committed after 2003, provide for international magistrates, make arrangements for the protection of civilians, and strengthen the accused's right to a fair trial. These amendments, and the process in general, require high-level attention from the international community, particularly the United States, in order to prod the DRC government into action.

- 2. Expand the jurisdiction of mobile courts to include economic crimes and the pillaging of community property and natural resources, and put in place long-term capacity-building strategies to enhance residual justice mechanisms that house the mobile courts.**

In doing research for this paper, the authors encountered a great deal of frustration among local lawyers, prosecutors, and experts on the ground with what many see as restrictions placed on the mobile courts due to a hyperfocus on crimes of sexual and

gender-based violence. While the Congolese are crying out for political and economic accountability, the ability of indigenous legal practitioners to take on these cases is circumscribed due to many international donors tying their funding to the condition that their financial and logistical support only be used to try sexual abuse crimes. This is a critical limitation that must be addressed.

Mobile courts need to expand the application of their jurisdiction—prosecuting only sexual and gender-based violence is not enough to address widespread impunity and lawlessness in Congo. Prosecutorial scope must also expand beyond the current focus on sexual and gender-based violence to include economic crimes and the pillaging of natural resources as well. The pervasive culture of exploitation and impunity in the natural resources and mining sector is corrosive to economic growth and development critically essential to Congo.

Continued support for both Congolese military and civilian mobile-court systems requires long-term strategies for building traditional provincial courts that eliminate the reliance on mobile elements. We call on the groups promoting these initiatives, plus the appropriate allocating committees in Congress, to increase allocation of resources towards long-term planning that also builds capacity and infrastructure for traditional provincial courts, so that over time the mobile elements become less necessary.

3. Pressure the Congolese and Rwandan governments for the immediate arrest of General Bosco Ntaganda.

The continued presence of Bosco Ntaganda in eastern Congo flies in the face of the very notion of justice reform. The United States and other donor nations should use coordinated conditionality and diplomatic-based pressure on both the governments of Congo and Rwanda to ensure that Ntaganda is arrested and brought to justice. As long as he is allowed to move freely in eastern Congo, corruption, intimidation, and impunity will continue to shape the political, economic, and security landscape in Congo.

4. Coordinate with United Nations, ICC, and the Congolese government to expand international and national judicial focus to pillaging of property and natural resources, as well as economic war crimes, and begin issuing indictments on the worst offenders.

Economic crimes—classified as pillage, plunder, or looting—while often left unadjudicated, are also considered prosecutable war crimes. There is an ample legal framework for the prosecution of economic war crimes dating from as early as the 1907 Hague Regulations and reconfirmed in the post-World War II Geneva Conventions. Economic war crimes are within the jurisdiction of the International Criminal Court as well as ad hoc tribunals like the International Criminal Tribunal for Rwanda, or ICTR, and the Special Court for Sierra Leone, SCSL.¹² The possibility of indictment from the ICC

can change the political calculus of leaders suspected of war crimes. During the recent period of post-electoral instability in Congo, the ICC Prosecutor Luis Moreno-Ocampo stated that election-related violence supported by President Kabila or opposition leaders would not be tolerated.¹³

In the case of Congo, justice reform must be accompanied by a normative change that expands judicial focus to incorporate war crimes committed in the economic sector, particularly the exploitation of natural resources, including conflict minerals. The difference between a mineral and a conflict mineral is basic. When a mineral is sold it can be used to develop and empower the masses of the Congolese people. When a conflict mineral is sold it is used to exploit and degrade the Congolese people. Quite simply, the actions of individuals turn a regular mineral into a conflict mineral. These individuals can and should be held accountable for their corrosive misuse of resources. It is essential to try those responsible for morphing minerals that could be used to uplift a community into minerals that terrorize a community.

5. Publicly support Congolese groups and individuals working for the establishment of Truth and Reconciliation Commissions, or TRCs, to be created in conjunction with the specialized mixed courts to allow communities affected by conflict to use traditional methods towards conflict resolution at the grassroots level.

A palpable sense of fear and paralysis exist in many communities regarding the subject of justice in the East. In 2005 the government of Congo created a Transitional Justice Committee to address the issue of impunity in the East. One of its primary objectives was to establish TRCs. This initiative, like all of those mandated by the Transitional Justice Committee, died when President Kabila consolidated power in 2006. However, based on Enough Project interviews with a broad cross-section of local civil society groups as well as international actors, there is a strong desire for the establishment of TRCs in the volatile eastern region of the Congo. A framework drawn up by a coalition of government, military, and civil society actors, for such a committee exists on paper but has yet to be put into practice, despite the hopes of the civilians in the East.

The type of reconciliation promoted by a TRC could provide an important contribution to the overall goal of transitional justice by supplementing more formalized judicial mechanisms. On numerous occasions the Enough Project was told that many communities that suffered atrocities through the two wars and into the present day would be happy with the establishment of truth, as opposed to any material reparation. An act as simple as having an offender appear in front of a community, admit to what he did, and explain why he did it, could have positive effects on the development of communities and the manner in which they view the national army and legal system. The act of acknowledging crimes on a local level, in the presence of victims, goes a long way to facilitate the healing process that must accompany the more technical elements

of justice reform. Addressing atrocities openly is a critical first step to reweaving a social fabric torn by years of heinous human rights violations.

Many individuals throughout Congolese civil society, including faith-based communities and those communities affected by conflict, desire the establishment of TRCs and should be supported. The Congolese government must be pressured into establishing Truth and Reconciliation Committees in the East to address crimes committed during both Congo wars and into the current day.

We call on both the State Department's Office of International War Crimes and the newly appointed special advisor to the Great Lakes region to strongly urge the government of Congo to enact the legislation necessary to establish specialized mixed courts as well as encourage the growth of a domestic Congolese constituency pushing for truth and reconciliation.

Conclusion

Reform of the Congolese judicial system will not be easy nor will it come quickly. It is essential, however, to solidifying any other gains made in Congo's post-conflict transition. Without banishing the culture of impunity in which Congolese society is embedded more specific reforms and improvements will be based on a shaky foundation.

The tradeoff between justice and peace is not sustainable, and eastern Congo provides ample evidence of this. Years of unaddressed conflict have festered and rebounded on itself with the historical memory of violence triggering continued cycles of violence. Without reconciliation and accountability any peace brought to the Congo will be temporary and tenuous, at best. There can be no peace without accountability.

Endnotes

- 1 Based on a series of interviews with Congolese human rights advocates in Goma, North Kivu province DRC. July 9-12, 2011.
- 2 Eugene Gladstone O'Neill, *Long Day's Journey Into Night*, (New Haven, 1956).
- 3 Dunia Zongwe, Francois Butedi, and Phebe Mavungu. "The Legal System of the Democratic Republic of Congo," (New York: Hauser Global Law School, New York University, 2007).
- 4 Ibid.
- 5 Based on an interview with the High Military Prosecutor of the FARDC 10th Military Region, Bukavu, South Kivu province, DRC. July 16, 2011.
- 6 Based on a series of interviews with personnel at the Goma State Prison. Goma, North Kivu province, DRC. July 14, 2011.
- 7 Based on an interview with the High Military Prosecutor of the FARDC 10th Military Region, Bukavu, South Kivu province, DRC. July 14, 2011.
- 8 Human Rights Watch. "Letter to President Kabila: Arrest Bosco Ntaganda," February 1, 2011, available at <http://www.hrw.org/fr/node/80324>
- 9 United Nations High Commission for Human Rights. "Mapping Report for the Democratic Republic of Congo, 1993-2003" (2010), available at http://www.ohchr.org/Documents/Countries/ZR/DRC_MAPPING_REPORT_FINAL_EN.pdf.
- 10 Human Rights Watch. "Common Position on Establishment of Mixed Courts for the Prosecution of Serious International Crimes in the Democratic Republic of Congo" (2011), available at http://www.hrw.org/sites/default/files/related_material/DRC%20Mixed%20Chamber%20Common%20Position%2004.15.11.pdf.
- 11 Based on interview with personnel from the American Bar Association-Rule of Law Initiative, Bukavu, South Kivu province, DRC. July 16, 2011.
- 12 For an extensive examination of the legal arguments in support of economic war crimes prosecution see: Open Society Justice Initiative Publication, James G. Stewart, "Corporate War Crimes: Prosecuting the Pillage of Natural Resources" (New York: Open Society Justice Initiative, 2011).
- 13 Rebecca DiLeonardo, "ICC Prosecutor: DRC Election Violence Will Not Be Tolerated," *Jurist Legal News and Research*, December 6, 2011, available at <http://jurist.org/paperchase/2011/12/icc-prosecutor-drc-election-violence-will-not-be-tolerated.php>.

Enough is a project of the Center for American Progress to end genocide and crimes against humanity. Founded in 2007, Enough focuses on the crises in Sudan, South Sudan, eastern Congo, and areas affected by the Lord's Resistance Army. Enough conducts intensive field research, develops practical policies to address these crises, and shares sensible tools to empower citizens and groups working for change. To learn more about Enough and what you can do to help, go to www.enoughproject.org.

