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**Transitional Justice and Sexual Violence in the Democratic Republic
of Congo: Ways Forward for Reconciliation?**



Professeur Angélique SITA-AKELE MUILA
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The Democratic Republic of Congo (DRC) has gone through a fifteen-year political transition marked by instability due to internal conflict, poor governance and external pressures that include the hosting of more than two million Rwandan refugees in 1994. Wars between 1996 and 2002 have completely exhausted the country. A transitional national government has been based in Kinshasa since June 2003, and the first round of elections are scheduled for July 30th.

High levels of violence remain throughout the eastern part of the country. Justice has become a privilege for the friends of those in power. For the rest of the Population of the DRC they are victims of justice that fluctuates between arbitrary, impunity and vengeance. and has been elusive for the victims of these crimes. According to Africa Initiative Program in East DRC : “Justice has become the forgotten child of the Congolese peace process, and nowhere is this more apparent than in the case of violence committed against women.”

Recent work carried out by Professor Angelique Sita-Akele Muila at the University of Kinshasa, shows that the past 40 years have been catastrophic for the socio-political life of the DRC. Muila’s findings form the basis for this summary report, and assess possible solutions, in terms of transitional justice, in dealing with massive human rights abuses and sexual violence against women.

As part of her assessment, Muila cites the historic, detrimental impact of the Mobutu regime, (which lasted from 1964 to May 1997), the 1996 war which led to the overthrow of the Mobutu regime, and the current insecurity and civil conflict which started in 1998 (which has also involved the neighboring countries of Rwanda, Uganda and Burundi).

Hostilities officially ceased in June 2003, however rogue factions and different militias remained active in the east of the country and the humanitarian emergency and killings have continued. The consequences of these wars have been tragic both in terms of the loss of lives and serious acts of violence - particularly against the most vulnerable groups such as women, children, internally displaced people (IDPs), minority groups and refugees.

The scope and severity of violent sexual crimes against women in the DRC is being increasingly documented by international and national NGOs and other observers. Hospitals and clinics are inundated with cases of violent rape which they fear represent only the tip of the iceberg. Women and girls take the full brunt of the civil war, the breakdown of society and dissolution of law. According to Muila, these crimes include widespread rape, sexual enslavement, abductions and sexual mutilation.

In October 2003, the Special Rapporteur for the United Nations on human rights in the DRC, Julia Motok declared: “Human rights violation in DRC can be considered as one of the most serious situations in the world.” Some observers claim the situation has only deteriorated since 2003.

Motok’s report made clear that the widespread human rights violations fall under the definition

| Interview Brigitte Mapendo, Director of AIP based in Ituri. May 2006

reported in the Rome Statute of the International Criminal Court (ICC), and therefore require a mechanism to be established to document all abuses. This mechanism should be international but should also involve the DRC justice system. Motok stated that impunity should be stopped to ensure the sustainability of the peace and reconciliation process in the country.

Concerning the crimes committed - and which continue to be committed against the population during the two wars, observers inside and outside DRC are calling for clear and severe punishment for those responsible for these ongoing violent crimes. However, the communities involved in the conflict also need to start living together again through reconciliation. The big dilemma, claims Muila, is whether aggressive pursuit of those responsible for human rights violations is the only option available, or whether there are other ways of solving the conflicts.

“There is no peace without reconciliation; there is no reconciliation without justice; there is no justice without reparations; there are no reparations without forgiveness; there is no forgiveness without truth,” said Professor Luzolo of the University of Kinshasa. His comment suggests that it would be difficult and undesirable to build a sustainable peace process without including truth and justice.

A country may also decide not to put on trial those people responsible for crimes against humanity in order to facilitate the peace and reconciliation processes. If this route is chosen, political agreement is required both at national and international levels.

In her 2006 report “Transitional Justice and the Cessation of Sexual Violence against women in DRC”, Muila claimed that it is important to obtain as much political backing as possible at the national level, and to a lesser extent within the civil society. She believes that this consensus needs to be established clearly and democratically - probably through a referendum. The following step, she argued, would be negotiations with the international community in order to obtain the support of the UN member states.

To date, those who have committed crimes during the wars have acted with almost complete impunity¹¹. The courts as well as the police force of the DRC have been weak, ineffectual and corrupted; and in some cases, have resulted in a lawless society where militias, war lords and unregulated soldiers rule by force.

According to Muila, despite the existing institutions - national courts; the parliament; the DRC Truth and Reconciliation Commission, and the ICC - very little progress has been made in terms of setting up judiciary mechanisms. Mechanisms, which Muila hopes, will not only address violations, but also have the backing of the population and the political parties. This, Muila believes, is the best way forward to reconcile the fractured and wounded community.

¹¹ Despite these continuing abuses some progress has been made to put an end to impunity of soldiers and armed groups. The Military Court in Ituri sentenced Captain Masamba to life imprisonment for the execution of five students, and sentenced 20 soldiers for indiscipline. The Judicial system has upheld its obligation to the Statute of Rome which classifies rape as a crime against humanity. See FEWER-Africa. “Stumbling Blocks and Opportunities for Peace in the DRC” June 2006.

Acts constituting crimes against humanity, war crimes, or genocide committed after 1 July 2002, fall within the jurisdiction of the newly established ICC and can be tried in the DRC through national courts or in The Hague (under ICC auspices). The DRC is party to the Rome Statute that underpins the ICC.

At the request of the DRC government, and following the agreement and subsequent investigation by the ICC, Tomas Lubanga became the first Congolese to be indicted. He currently awaits trial in The Hague.

Crimes committed before July 2002 cannot be investigated or prosecuted by the ICC, and can only be prosecuted by national courts - or some form of special international tribunal for the DRC, if one were to be established.

What is important, according to Muila's report, written for the Forum on Early Warning and Early Response-Africa, is that no action will be successful without the involvement of civil society, and the people who directly suffered the cruelty of these wars. The report concludes with a recommendation for two options for new judicial instruments to address the numerous and violent crimes committed.

Firstly, she recommends the establishment of an International Criminal Tribunal for DRC. The Lusaka Ceasefire Agreement of 1999 justifies the creation of this tribunal.

The second mechanism could be the introduction of hybrid courts, using local and international jurists, as has been done in Sierra Leone and in Cambodia.

The idea of mixed courts has already been discussed at various conferences, but has not won much support, being seen as an interference with the sovereignty of the country and the establishment of the preferred International Criminal Tribunal for DRC.

Brutality against civilians, specifically sexual violence, is an integral part of the war in Congo. Forces involved in acts of sexual violence against women continue to be rewarded by their leadership and by their powerful patrons for their actions. As long as the climate of impunity persists in DRC, women will continue to be targeted in what human rights organizations, as well as women's organizations, have begun referring to "a war within a war" and to a "war against women". Civil society, particularly women, need to be empowered to face and respond to such situations, and, according to Muila, implementing the rule of law is the first necessary step towards this empowerment.

FEWER-Africa

OCHA House Phone Kenya: +254 2 7621 911, 0733 417 385

Gigiri Crescent Phone UK : +44 7624 120 084

UN Avenue Email : info@fewerinternational.org

P.O. Box 30218 www.fewer-international.org

Nairobi, Kenya

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