

DEMOCRATIC REPUBLIC OF THE CONGO 1993-2003 UN Mapping Report

Climate of impunity in the DRC

Section III of the mapping report (paragraphs 783-979) contains an assessment of the justice system in the Democratic Republic of the Congo (DRC). The succession of armed conflicts that racked the DRC between 1996 and 2003 contributed to a general breakdown in many government institutions, including the justice system. Many of those institutions remain dysfunctional, and numerous people suspected of committing serious human rights violations now hold positions in the government and military. While the need for justice and an end to a climate of near total impunity has only grown, millions of victims are left with nowhere to turn and no opportunity to have their voices heard. The serious violations of human rights and international humanitarian law that were committed between 1993 and 2003, and are chronicled in the mapping exercise report, remain unpunished.

According to Congolese domestic law, only military courts and tribunals are authorized to deal with international crimes – in other words war crimes, crimes against humanity or genocide. (829)

The report notes that, at the time of writing, “the exclusive competence of military courts over crimes under international law has resulted in growing impunity, as demonstrated by the very small number of investigations and prosecutions of war crimes and crimes against humanity, despite the outrageous number of crimes committed.” (974)

“One of the major weaknesses of the judicial system in the DRC is the lack of independence of the courts and tribunals from the executive, legislative and administrative powers of the State. Interference and intrusion by the political and military authorities into judicial affairs are common and widely recognised...” (929)

On several occasions, the United Nations has condemned the multiple examples of interference that have undermined military justice, and has questioned “the capacity of the Congolese military authorities and judiciary – particularly in view of interference from political actors and the military command structure – to decisively address impunity and hold trials for serious human rights violations.” (961)

Many people suspected of committing serious violations of international humanitarian law can today be found in various institutions, in particular holding senior positions in the army, the report says. “During the transition period and in the years that followed, several individuals exposed as being responsible for serious crimes committed in the DRC, some for crimes dating back to the period covered by this report, were promoted on their integration into the national army created by the 2002 peace agreements. Very recent cases have confirmed the government’s unwillingness to exclude them... The presence of such people within institutions, and particularly in institutions that have a monopoly over the use of force, means that the alleged perpetrators of serious violations can use their power to block initiatives, and threaten or simply discourage potential witnesses and victims as needed.” (1138)

“The systematic interference from political and military authorities... is unremitting,” the report says. Now that some of the main perpetrators of the violence have been welcomed into the nation's military (FARDC), “there is a risk that this pressure will increase and become an insurmountable obstacle to the prosecution of some senior leaders who are responsible for past crimes against international law. The absence of procedures and mechanisms to protect victims and witnesses in such cases could have a tragic outcome, with victims often being defenceless in the face of defendants who are armed and in uniform. The safety of judges and investigators is also a problem that could discourage even those with the best intentions, and could pervert the normal course of investigations and prosecutions.” (977)

“The Congolese security forces are not in a position to guarantee the safety of the civilian population, including the main actors of the judicial system. On the contrary, the forces themselves are a source of insecurity and represent some of the main perpetrators of violations of human rights in the country...” (1003)

The mapping team notes that it observed “the constant fear on the part of affected populations that history would repeat itself, especially when yesterday’s attackers are returning in positions that enable them to commit new crimes with complete impunity.” (1143)

Congolese judicial authorities confirmed to the mapping team that “no judgement for war crimes or crimes against humanity had ever been issued under the Military Justice Code of 1972, which remained in force until March 2003. Even when the military criminal law was reformed in 2003, a very small number of cases relating to crimes against international law (in comparison with the number of crimes committed) have been dealt with by military jurisdictions established to date. This lack of dynamism in the Congolese justice system in relation to war crimes and crimes against humanity, particularly in respect of those primarily responsible for them, has only encouraged the perpetration of new serious violations of human rights and international humanitarian law. The problem in the DRC is less a problem of inadequate provisions in criminal law than a failure to apply them...” (893-94)

Of all the crimes against international law committed between March 1993 and June 2003 (as listed in Section I of the report), “military tribunals only dealt with two that were classified as war crimes, one of which ended in the acquittal of all those accused... The prosecutions that have been brought concerning violations of international humanitarian law satisfy neither the DRC’s international obligations to curb serious breaches of the Geneva Conventions and serious violations of human rights, which are imposed by the mechanisms of international law to which the DRC is party, nor international standards concerning the fight against impunity.” (890)

“In summary, given the limited engagement of the Congolese authorities in strengthening the justice system, the minimal resources granted to the judicial system, the tolerance of interference by political and military authorities in judicial affairs, resulting in the judiciary’s lack of independence, the inadequacy of the military justice system, bearing exclusive jurisdiction, to deal with the number of crimes under international law, many of which were committed by security forces, and the fact that judicial practice of military courts and tribunals over recent years is poor, not always substantiated in law, and reflects a lack of independence, it can be concluded that the resources available to the Congolese justice system in order to end impunity for crimes under international law committed between 1993 and 2003 are no doubt insufficient. Furthermore, given the current state of affairs, Congolese military courts, in the eyes of many victims, have neither the capability nor the credibility required in order to step up efforts to fight against impunity for the many violations of fundamental rights committed against them in the past.” (979)

Foreign involvement and impunity

“The high level of involvement of foreign nationals in serious violations of international humanitarian law committed in the DRC also causes a problem for the Congolese courts,” the report says. “Although they have jurisdiction over every individual, whether Congolese or not, they do not have the resources to force suspects who do not live in the country to appear in court. Cooperation on extradition from certain States remains unlikely, given the few guarantees offered by the Congolese military courts in respect of fair and equitable trials and respect for the fundamental rights of defendants, particularly as the death penalty is still provided for under Congolese law.” (978)

“According to the information received,” the report notes, “to this day, no third-party State involved in the conflicts in the DRC has brought proceedings against nationals suspected of perpetrating crimes, despite the existence of considerable evidence pointing to the implication of their forces in crimes committed in the DRC.” (1016)

“The impunity enjoyed by numerous perpetrators of violations who are foreigners or living outside the country... calls for the full cooperation of third-party States, either by prosecuting the perpetrators themselves or extraditing people suspected of committing crimes on DRC territory. The role of the ICC and the Security Council may be a determining factor in this area.” (1006)