

DEMOCRATIC REPUBLIC OF THE CONGO 1993-2003 UN Mapping Report

War Crimes, Crimes against Humanity and Genocide

The mapping report identifies the legal framework applicable to the violence that occurred during the decade covered by the report (1993-2003) and draws conclusions on the general legal classification of the incidents or groups of incidents cited. It notes that the vast majority of the 617 most serious incidents described in the mapping report point to the commission of multiple violations of human rights and/or international humanitarian law, which may constitute crimes against humanity or war crimes, and often both at the same time. (463-464)

War Crimes

The term “war crimes” refers to serious breaches of international humanitarian law committed against civilians or enemy combatants during an international or domestic armed conflict, for which the perpetrators may be held criminally liable on an individual basis. Such crimes are derived primarily from the Geneva Conventions of 12 August 1949 and their Additional Protocols I and II of 1977, and the Hague Conventions of 1899 and 1907. Their most recent codification can be found in article 8 of the 1998 Rome Statute for the International Criminal Court (ICC). (23)

The vast majority of incidents listed in the report could, if investigated and proven in a judicial process, “point to the commission of prohibited acts such as murder, wilfully causing great suffering, or serious injury to body or health, rape, intentional attacks on the civilian population, pillage, and unlawful and arbitrary destruction of civilian goods, including some which were essential to the survival of the civilian population. The vast majority of these acts were committed against protected persons, as defined in the Geneva Conventions, primarily people who did not take part in the hostilities, particularly civilian populations and those put out of combat. This applies in particular to people living in refugee camps, who constitute a civilian population that is not participating in the hostilities, in spite of the presence of military personnel among them in some cases.” The report notes that almost all the violent incidents listed from 1996 onwards fall within the scope of armed conflict, whether internal or international in nature. “The duration and intensity of the violent incidents described, and the apparent level of organisation of the groups involved, could lead to the conclusion that, with few exceptions, this was an internal conflict and not simply domestic disturbances or tensions or criminal acts. In conclusion, the vast majority of violent incidents listed in this report are the result of armed conflict and if proven in a judicial process, point to the commission of war crimes as serious breaches of international humanitarian law.” (24)

Crimes against Humanity

The definition of ‘crimes against humanity’ is codified in article 7 of the Rome Statute of the International Criminal Court (ICC). “The notion encompasses crimes such as murder, extermination, rape, persecution and all other inhumane acts of a similar character (wilfully causing great suffering, or serious injury to body or to mental or physical health), committed ‘as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack’.” (25)

The mapping report says that most incidents listed may fall within the scope of “widespread or systematic attacks” characterized by “multiple acts of large-scale violence, carried out in an organised fashion and resulting in numerous victims. Most of these attacks were directed against non-combatant civilian populations consisting primarily of women and children. As a consequence, the vast majority of acts of violence perpetrated during these years, which formed part of various waves of reprisals and campaigns of persecution and pursuit of refugees, were in general terms all transposed into a series of widespread and systematic attacks against civilian populations and could therefore be classified as crimes against humanity by a competent court.” (26)

The report suggests that acts that may amount to crimes against humanity were committed throughout the entire 1993-2003 reporting period. Some acts, such as the mass forced deportation of Kasaians from Katanga province in 1993, were committed outside the framework of an armed conflict. Others, such as the 1996-1997 systematic massacre of Hutu refugees, and the murder, torture, and violence directed at Tutsis in the DRC at the start of the August 1998 war, occurred within an armed conflict, and may therefore also amount to war crimes. (493-499)

The Crime of Genocide

Since it was initially formulated in 1948, in article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide, the definition of 'genocide' has remained substantially the same. Article 6 of the Rome Statute borrows from this Convention and for example, defines the crime of genocide as "any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such." The definition is followed by a series of acts representing serious violations of the right to life, and the physical or mental integrity of the members of the group. The Convention states that it is not just the acts of genocide themselves that are punishable, but also "conspiracy to commit genocide," "direct and public incitement to commit genocide," the "attempt to commit genocide" and "complicity in genocide." It is the specific intention to destroy an identified group either "in whole or in part" that distinguishes the crime of genocide from a crime against humanity. (27)

The mapping report notes that "The question of whether the numerous serious acts of violence committed against the Hutus (refugees and others) constitute crimes of genocide has attracted a significant degree of comment and to date remains unresolved." The report repeatedly stresses that this question can "only be decided by a court decision on the basis of evidence beyond all reasonable doubt." (28)

With that caveat, the Mapping Exercise drew the following conclusions:

- The scale of the crimes committed against the Hutu ethnic group in the DRC, which probably involved tens of thousands of victims, are illustrated by the numerous incidents listed in the report (104 in all): "The extensive use of edged weapons (primarily hammers) and the apparently systematic nature of the massacres of survivors after the camps had been taken suggests that the numerous deaths cannot be attributed to the hazards of war or seen as equating to collateral damage. The majority of the victims were children, women, elderly people and the sick, who were often undernourished and posed no threat to the attacking forces. Numerous serious attacks on the physical or mental integrity of members of the group were also committed, with a very high number of Hutus shot, raped, burnt or beaten. If proven, the incidents' revelation of what appears to be the systematic, methodological and premeditated nature of the attacks listed against the Hutus is also marked: these attacks took place in each location where refugees had allegedly been screened by the AFDL/APR¹ over a vast area of the country. The pursuit lasted for months, and on occasion, the humanitarian assistance intended for them was allegedly deliberately blocked... thus depriving them of resources essential to their survival. Thus the apparent systematic and widespread attacks described in this report reveal a number of inculpatory elements that, if proven before a competent court, could be characterised as crimes of genocide." (31)
- However, the report also points out there are "a number of countervailing factors that could lead a court to find that the requisite intent was lacking, and hence that the crime of genocide was not committed." These include "facts which tend to show that the APR/AFDL spared the lives, and in fact facilitated the return to Rwanda of very large numbers of Hutu, which militate against proving a clear intent to destroy the group." Also the intent underlying the killings, rather than being to destroy the group in whole or in part, could be interpreted as collective retribution against Hutu civilians in Zaire suspected of involvement with the ex-FAR/Interhamwe, reinforced by the APR/AFDL's conviction that upon destroying the camps, all Hutu remaining in Zaire were in sympathy with the perpetrators of the 1994 genocide in Rwanda. (32, 520)
- Consequently, the report notes, "it is important that a full judicial investigation take place, in order to shed light on the reported incidents" in 1996-97. "Only such an investigation and judicial determination would be in a position to resolve whether these incidents amount to the crime of genocide." (522)

¹ Given the heavy presence of Rwandan army soldiers (APR) among the troops and commanding officers of the AFDL Congolese rebel group, and the difficulty witnesses had in distinguishing between members of the AFDL and the APR on the ground, the report uses the acronym AFDL/APR to refer to armed elements of the AFDL and soldiers of the APR engaged in operations in Zaire from Oct 1996 to June 1997. Other acronyms in this fact sheet include ex-FAR: the Rwandan army prior to the 1994 genocide in Rwanda.