

## DEMOCRATIC REPUBLIC OF THE CONGO 1993-2003 UN Mapping Report

### Transitional justice options

Section IV of the mapping report (paragraphs 980-1144) examines various options for overcoming the enormous obstacles posed by the Democratic Republic of the Congo's (DRC) dysfunctional institutions to enable the provision of truth, justice, reparation and reform for millions of victims of human rights violations. The report notes that those victims currently have nowhere to turn and no opportunities to be heard.

Transitional justice is defined as comprising “the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation” – within a context that is often “marked by devastated institutions, exhausted resources, diminished security and a traumatised and divided population.” (989-990)

Transitional justice mechanisms aim to combat impunity and “to promote the dynamics for reform and reconciliation within societies recovering from armed conflicts or a period marked by large-scale abuses. They must also contribute to the prevention of further conflicts, the strengthening of democracy and the re-establishment of the rule of law, all of which must be supported by new consensual foundations. Transitional justice also seeks to restore dignity to the victims of human rights violations through the establishment of provisions for justice, truth and reparation for the wrongs they have suffered.” (991)

Given the many challenges in the DRC, the report states that it is “crucial that a holistic policy of transitional justice be adopted, which will depend on the creation of diverse and complementary mechanisms, both judicial and non-judicial.” The decision on which mechanisms apply is ultimately a government responsibility and should be based on input from its citizens. Among the report’s suggestions:

**Justice:** The number of violations reaching the threshold of crimes under international law is so high that even a properly functioning justice system working at full capacity would not be able to handle such a large number of cases. The perpetrators of those crimes number in their thousands, even tens of thousands, and their victims in their hundreds of thousands. (996)

The “frequently decisive role” played by foreigners in the conflicts in the DRC “poses a serious challenge to the implementation of certain global transitional justice measures... The process of seeking truth and finding facts, even more so the establishment of accountability, will be difficult in certain cases without the help and cooperation of third-party States or their citizens. It will be more difficult to establish the extent to which foreign commanders, sponsors and those who gave orders are responsible without the assistance of the authorities in the relevant countries...” (999)

The mapping team considers that “a hybrid prosecution mechanism – made up of international and national personnel – is necessary to do justice to the victims” given the lack of capacity of the DRC’s existing mechanisms “and the numerous factors that impede judicial independence.” The operating methods and exact form of such a court “should be decided on and specified in detail by consulting the actors concerned, as well as the victims affected...” A mechanism of this kind should also – among many other things – apply international criminal law in relation to international crimes, including “the responsibility of superiors for the acts committed by their subordinates;” it should “exclude the jurisdiction of the military courts in this area;” and should “have jurisdiction over anyone who has committed these crimes, whether they are nationals or non-nationals, civilians or military personnel.” (1052 / 1054)

**Truth-seeking:** Declaring that the Congolese people have a “right to the truth on all the serious violations of human rights,” the report suggests the establishment of a new, non-judicial “truth commission” that can help to determine institutional, political, military and other responsibilities; preserve evidence; identify the perpetrators of atrocities; recommend compensation measures and institutional reforms; and provide individual victims with a broader platform in which to air their grievances and concerns. (1057 / 1060-1061)

The success of any new truth-seeking mechanism in the DRC “remains highly dependent on a strong commitment from the government to confront the past and on a conviction that establishing the truth is essential if there is to be a peaceful transition to a country in which the rule of law is respected.” It would

be important, the report says, for the government to make a series of commitments, including “to create as soon as possible an independent, neutral, credible, impartial and professional body...; promote recruitment of leaders and of staff who have the necessary integrity...; equip the commission with a clear and realistic legal framework, and the material and financial resources required...; undertake to implement recommendations issued by the truth-seeking mechanism once the final report is received, and if necessary to create specific mechanisms with the mandate to implement the recommendations of the Truth and Reconciliation Commission.” (1071)

**Reparations:** Given the huge number of victims, the report says a comprehensive and creative approach to the issue of reparation is clearly required, and notes that the Congolese government should be the first to contribute. But it also points to the responsibilities of other countries involved in the conflict and notes that individuals and corporate entities such as multinationals which exploited the DRC's natural resources during the conflict could also be ordered to pay compensation if found criminally responsible.

Hundreds of thousands of victims have suffered psychological and physical damage as a result of the terrible violence they experienced between March 1993 and July 2003. “These populations, most of whom are in a disastrous economic situation, desperately wish for tangible steps towards reparation. Their high expectations make the issue of reparations a particularly difficult one. The right to reparation must take into account all harm suffered by the victim. The possible forms of material or non-material reparation include: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.” (1074-75)

Third-party countries that have international responsibility for serious violations of human rights and international humanitarian law also have an obligation to pay reparations. (1089) (see also Fact Sheet No.6 – Neighbouring States)

**Reform of the justice system:** One of the purposes of the transitional justice policy is to establish guarantees that serious human rights and international law violations committed in the past will not be repeated. If this aim is to be met, it is of primary importance to reform institutions that have committed such violations or failed to prevent them. In light of the impunity enjoyed by the perpetrators of serious violations of human rights and international humanitarian law, and the repetition of crimes within the territory of the DRC, successful reform of the country's justice and security sectors is crucial. (1126-1129)

A committee on justice reform has devised a Plan of Action for Justice Reform in the DRC. It aims to drive wide-scale legislative reform and support the strengthening of the judicial system, in particular by reforming criminal legislation, deploying legal administration throughout the whole country and retraining judges and judicial staff. A clear-cut division of powers within government would help ensure the independence of the judiciary. (1131-32)

As part of efforts to curb and prevent crimes against international law, the report says, “the DRC has undertaken, by ratifying the Rome Statute, to prosecute the perpetrators of crimes listed in the Statute and to provide for all forms of co-operation with the [International Criminal] Court in its national legislation... It is vitally important that the Bill implementing the Rome Statute be adopted... In spite of the importance of this reform, serious doubts remain over the true desire of the Congolese Parliament to pass that Bill, which is particularly opposed by the military authorities...” (1134-1135)

**Reform of security services:** The most obvious link between transitional justice and institutional reform is the vetting procedure. This is a mechanism that aims to ensure that government workers who are personally responsible for flagrant human rights violations, particularly personnel in the army, the security services, the police, the intelligence services and the judicial system, must be prevented from working in government institutions. “Vetting is particularly important in cases where many people who were responsible for serious human rights violations were employed as government workers as a result of the peace agreements. It constitutes a preventive measure for human rights violations while allowing a certain degree of satisfaction for the victims, insofar as alleged perpetrators who are not prosecuted are at least excluded from positions of authority. It is a non-judicial procedure that aims to identify and remove those responsible for human rights violations from public institutions, in particular the security forces.” (1137)