

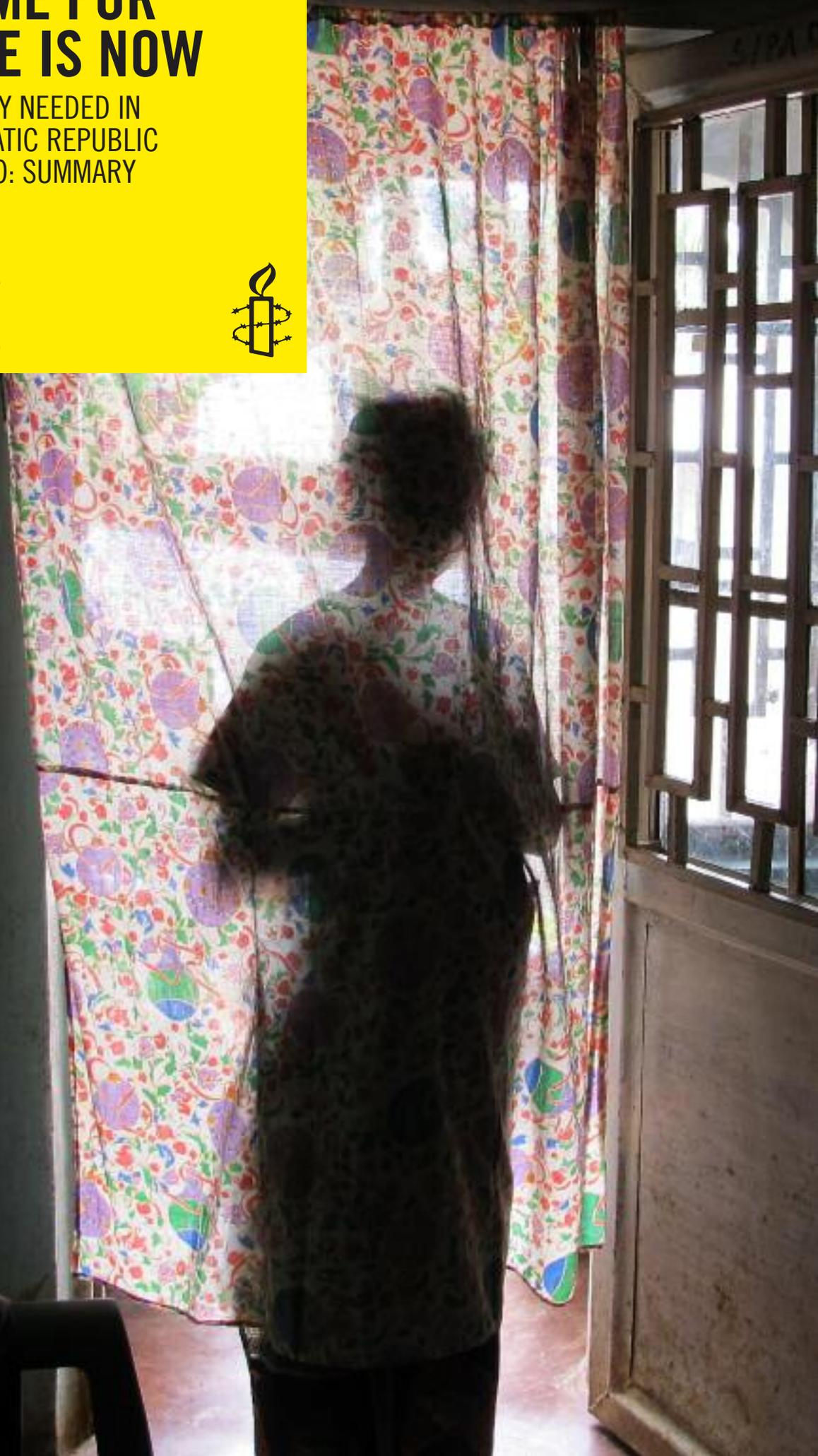
THE TIME FOR JUSTICE IS NOW

NEW STRATEGY NEEDED IN THE DEMOCRATIC REPUBLIC OF THE CONGO: SUMMARY

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CAMPAIGN FOR
INTERNATIONAL
JUSTICE



The people of the Democratic Republic of the Congo (DRC) have been beset by violence and human rights abuses for two decades. Crimes under international law – including mass rapes and killings – have been committed in almost every corner of the country and are still being committed with alarming frequency.

Despite some efforts at reform, the DRC authorities have failed to ensure justice, truth and reparations to the victims of crimes under international law.

Impunity remains pervasive: while millions of men, women and children have suffered as a result of the violence, only a handful of perpetrators have ever been brought to justice.

The failure to hold those responsible for violations to account has a pernicious impact: it further entrenches a culture of impunity; it fosters cycles of violence and violations; it undermines any efforts to create a culture of respect for the rule of law; and it damages the credibility of the justice system in the eyes of the Congolese people.

As the scheduled November 2011 presidential and legislative elections approach, justice and the fight against impunity must be a priority.

After decades of neglect, mismanagement and poor governance, the Congolese justice system is largely unable to deliver accountability, address impunity and secure reparation for victims. Its credibility is low because of political and military interference, endemic corruption, lack of personnel, training and resources and its failure to protect victims and witnesses, provide legal aid, enforce its own rulings or even keep convicted prisoners behind bars.

Amnesty International identified fundamental flaws within the justice system that are often overlooked by current policies and programmes. They examined the role that could be played by the proposed Specialized Court tasked to investigate and prosecute crimes under international law, a role complementary to that of the Congolese courts and the International Criminal Court.

Amnesty International's research focuses on the investigation and prosecution of

crimes under international law. Currently military courts have exclusive jurisdiction over genocide, crimes against humanity and war crimes. Amnesty International considers that ultimately, civilian courts should have sole jurisdiction over crimes under international law.

The scale and nature of the violations committed in the DRC and the widespread impunity that prevails highlight the urgent need to develop a more comprehensive approach to bringing those responsible to justice. Amnesty International is urging the DRC government, with the support of the international community, to develop a long-term and comprehensive justice strategy that can deliver sustainable reform of the Congolese justice system in order to overcome impunity.



PAUL

Paul is a 30-year-old man from Masisi who told Amnesty International his story:

“The FARDC [the Congolese army] are systematically looting our villages, carrying out executions, isolated but recurrent rape. When there is nothing valuable in our houses, they come and take the women. In September 2010 my house was burnt down. At around 10pm, several soldiers came to my house and kicked down the door. They found me and started beating me, breaking one of my ribs. They then started beating my wife and children. To stop their violence, I went outside to give them my nine goats and pleaded with them to take my

goats and leave my family. When the military left, I fled to the forest with my wife and children. When we came back the next morning, our house had been burnt down.

“What I have just told you has happened to almost everyone in my village. ... I am now in Goma to seek to mobilize people to organize assistance for us. I am not sure using the legal channel will help us much. Every legal dispute in my village is monopolized by these same military. If we lodge a complaint in Goma, I fear our community will suffer reprisals as the same soldiers are here.”

Above: former child soldier in Kivu, eastern DRC, March 2011.

Front cover: A 15-year-old rape victim, one of the countless victims of crimes under international law committed in the Democratic Republic of the Congo. Only a handful of perpetrators have ever been brought to justice.
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THE INTERNATIONAL CRIMINAL COURT

The International Criminal Court (ICC) has issued arrest warrants for five individuals suspected of war crimes and crimes against humanity since 2004. Three are now on trial, one is in pre-trial detention and the other one – Bosco Ntaganda – is at large. The DRC authorities continue to refuse to arrest Bosco Ntaganda, accused of recruiting children under the age of 15 and using them to participate actively in hostilities between 2002 and 2003 in Ituri. Bosco Ntaganda, who was formerly a leading armed group member, is currently a General in the Congolese army.

SYSTEM IN DISREPAIR

Millions of Congolese men, women and children have died as a direct result of the conflict or as a result of insecurity, displacement, hunger and disease. Health, education and justice services have been left in a state of disrepair.

A major obstacle to ensuring accountability and reparation for past and current violations is the weakness of the Congolese justice system and the lack of a comprehensive strategy to rebuild and reform it. The UN Mapping Report published in 2010 concluded that the Congolese justice system did not have the capability to address the serious violations of human rights and international humanitarian law committed between 1993 and 2003.

Few people have access to existing justice mechanisms and confidence in the justice system is low. Victims and witnesses are reluctant to come forward, as there is no national programme to protect them. Judicial staff – including judges and prosecutors – also face threats and intimidation. Legal aid services, though guaranteed by law, are scarce. This prevents many victims and their families from pursuing justice and limits defendants' access to lawyers. Most Congolese people know very little about their legal rights and the justice system, and outreach efforts to address this gap are inadequate.

The judiciary is far from independent and interference is common in both military and civilian courts. In the military justice system, officers protect soldiers under their command and the political and military hierarchy protects senior military figures. This is of particular concern in a country where the army is one of the main perpetrators of crimes under international law. Corruption is endemic and affects every level of the judicial chain. There are very few women employed within the judicial system.

Enforcement of court judgments is rare. Amnesty International was unable to identify a single case in which reparation



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for crimes under international law, in the form of compensation, has been paid by the state when held accountable.

Prison conditions are dire and a significant proportion of inmates are detained without charge or trial. Prison escapes and extractions (assisted escapes) are common.

JEAN-MARIE

Jean-Marie is a 45-year-old widower from Kitshanga who currently lives with his 12-year-old son, Frank, in Goma.

"It was in October 2008, I was at home with my family when we heard gun shots. We ran out of the house to try escape. Other people were running. I ran into the forest. I can't identify the perpetrators as they were as numerous as rain drops but I think it was the CNDP [Congrès National pour la Défense du Peuple, National Congress for the Defence of the People] who were based on two hills around Kichanga. It was not the first time they had descended into the village. When the armed men had gone back into the hills after about one day I returned to the village to find that my wife and three other

Furthermore, Congolese law, despite improvements since the passing of the 2006 Constitution, continues to fall short of international standards and is often inconsistent or unclear.

The DRC authorities have taken some measures at the policy level. They adopted

children had been shot dead. Frank was lying there seriously injured. Parts of his brain were showing. I buried my family members. Then I took Frank to a nearby dispensary a day's walk away as the nearest one had been emptied during the attack. After two months at the dispensary we moved to Goma for security reasons as other attacks took place in neighbouring areas."

The NGO based in Goma that dealt with Jean-Marie's case told Amnesty International that they had chosen not to pursue justice in this case, because the CNDP still controls the area and if they took up the case their own security would be at risk.



an Action Plan on the reform of the justice system in 2007 and a related Road Map in 2009 but those have not been implemented. A draft law has been submitted to Parliament to create a specialized judicial mechanism to address crimes under international law. At the practical level, there have been a handful of prosecutions, notably for sexual violence. For example, in a recent trial in Fizi-Baraka, seven members of the Congolese army, including a high-ranking officer, were convicted of crimes against humanity. However, overall progress in addressing impunity for crimes under international law has been extremely limited.

Left: The archives of the court house in Bukavu, eastern DRC, March 2011. Years of neglect have left the justice system critically short of resources.

Above: The Military Court in Goma, North Kivu, held its hearings in this building until June 2011.

THE JUSTICE SYSTEM

The DRC justice system is divided into the civilian jurisdiction, covering civil and criminal matters, and the military jurisdiction.

The military justice system has broad jurisdiction, including over civilians accused of crimes with “weapons of war”. It has exclusive jurisdiction over crimes of genocide, crimes against humanity and war crimes.

As part of the civilian justice structure, the criminal justice system has four tiers: the Supreme Court; Courts of Appeal; Civil Courts; and *Tribunaux de Paix*, which hear crimes punishable by less than five years’ imprisonment.

The military justice system is also divided into four tiers: the High Military Court; Military Courts; Military Garrison Tribunals (courts of first instance in the military justice system); and Police Military Tribunals.

In addition to the above courts and tribunals, Military Operational Courts, with the same status as Military Courts, may be established in war zones. These are non-permanent jurisdictions and offer no possibility of appeal. A Military Operational Court, established in 2008, is currently operating in the province of North Kivu.

The magistrates in the DRC civilian criminal justice system and in the military justice system include prosecutors (civilian and military) and judges. Military prosecutors are known as *auditeurs* and civilian prosecutors are known as *procureurs*.

Mobile courts, both civilian and military, have been organized to conduct trials in more remote areas. These are permanent courts that move temporarily to these areas. Most of the trials for crimes under international law in the DRC have taken place before mobile military courts.



Left: A court room in Bukavu, eastern DRC, March 2011.

Right: Military prosecutor's office before it was moved to a new building in June 2011, Goma, north Kivu.

SYSTEM IN NEED OF REFORM

Efforts to reform the national justice system will succeed only if they are part of a long-term and comprehensive strategy. The DRC government should develop such a strategy, in consultation with civil society, victims and other key participants.

This strategy should prioritize flaws within the current system which have to date been largely neglected and which impede the system's ability to deal with crimes under international law. It must also dismantle barriers to justice and equality before the law, such as gender-based discrimination. Without this, impunity will persist.

A variety of justice reform projects are currently being carried out in the DRC. Some are run by the UN, some by donors such as the EU or individual governments, some by NGOs, both international and Congolese. Despite their merits, taken together they fail to provide the long-term and comprehensive approach which is needed to ensure accountability and reparation for past and current violations.

MARIE

Marie is a 37-year-old mother of eight living in Masisi.

"One morning in September 2010 I left my house to go and cut bananas. Two soldiers arrived in the banana field. The soldiers arrested me and told me if I say anything I will be killed. I could hear gunfire in the background which made me think that my village was being attacked. I was raped by one of the soldiers six times. He insisted on being taken to my house. When I returned to the village I saw soldiers looting houses. The soldier then took a mattress, four goats and four chickens from my house. Then he left. The whole village was looted...."

Access to justice is not a priority for me. My first concern is to survive and to find medical attention – my children cannot go to school as I have lost everything."

CRIMINAL LAW REFORM

The criminal law in the DRC needs to be reformed to ensure that it is in line with the 2006 Constitution and with international standards. The DRC authorities should ensure that existing laws and regulations are harmonized. The death penalty should be abolished for all crimes, without exception, and all death sentences should be commuted. DRC law should provide that civilian courts have exclusive jurisdiction over all individuals, military or civilian, suspected of crimes under international law. Military courts should never have jurisdiction over civilians.

ACCESS TO JUSTICE

Fear of reprisals deter victims from seeking justice and inhibit witnesses from testifying. Threats and reprisals are common – before a complaint has been lodged, when survivors testify or following sentencing or prison escapes. Protection and support for victims and witnesses in the DRC is virtually non-existent.



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A national victim and witness protection programme with the capacity to provide protection and support to victims throughout the DRC should be established without delay. The obligation of courts to ensure the safety, well-being and privacy of victims and witnesses without discrimination should be enshrined in law and implemented in practice.

Specialized support strategies should be developed to assist those who face particular protection issues: human rights

defenders, women and children should be consulted to find out how best to provide security, so that they can seek justice and participate in the justice process. Support should be given to victims to help them form groups to seek accountability and reparation.

This victim and witness protection programme should be given the technical and financial support it needs to succeed. Properly trained female and male staff and sufficient resources should be allocated

to all courts to ensure effective protection and support, including psychological support. Training on the treatment and protection of victims and witnesses should be mandatory for all magistrates and court staff.

As well as the fear of reprisals, the costs of pursuing a case and the difficulties of accessing courts, especially outside the main urban centres, also deter victims from seeking justice. A properly funded and effective system of legal aid should be established to ensure that victims without means can seek justice before the courts without charge and with free legal representation. Information about the scheme should be widely distributed.

Over the course of four days in July/August 2010, more than 300 women, men, boys and girls were systematically raped in Walikale Territory, North Kivu. Investigations were undertaken by MONUSCO (the UN Mission in the DRC) and by a military prosecutor. Although perpetrators, notably Mayi Mayi and FDLR fighters, were still in the region, no significant measures were taken by the military prosecutor or MONUSCO to protect victims and witnesses. More than 150 victims were interviewed by the military prosecutor, primarily in Masisi Central.

They were taken openly in cars from their villages to meet the investigation team. A significant number received threats, both written and verbal, as a result of which the investigations stalled. In March 2011, 90 officers of the National Congolese Police were deployed to the area to protect the affected community but only for a three-month period and reportedly with inadequate training. The UN has also offered protection and support to victims.

LEGAL RIGHTS AWARENESS

Given the long-term weakness of the Congolese justice system, most victims and ordinary citizens – in particular in more remote areas of eastern DRC – have a very limited understanding of how they can seek justice and reparations. People's confidence in the justice system is low, as is its reputation.

The government should develop a nationwide outreach strategy to let people know how they can pursue justice.

Particular care should be taken to ensure that women in affected communities benefit from this strategy.

Every court should have adequate staff and effective procedures to keep victims informed about the progress of their case.

SOPHIE

Sophie, a 45-year-old mother of seven from the Masisi area, has been raped on two occasions. She was raped in 2005 by FDLR [armed group] fighters during an attack on Lwibo, and again in October 2009 during an FARDC attack that left her town deserted by its population.

"I would like to lodge a complaint but I do not know where to start. I saw some lawyers come in UN vehicles to discuss what happened. I do not know who they are. But there is no witness to what happened to me and I cannot identify the perpetrators. I wish there could be sanctions against perpetrators, this would encourage the rest of the population to denounce what happens to them."

IMPARTIAL AND COMPETENT COURTS

The lack of independence of the Congolese judiciary is one of the main obstacles to tackling impunity for crimes under international law.

Direct interference in the judicial process, notably by the army and the executive, attacks on procedural guarantees of independence and corruption all undermine the judiciary's independence.

In the east, the power of the army is a significant obstacle to effective investigations and prosecutions. The situation is complicated by the fact that the chain of military command is unclear, with former militia members now incorporated into the army retaining their old allegiances.

The Congolese national army, the FARDC, was established after a 2002 peace agreement. It brought together the former national army and the main armed groups that had fought against each other. Since March 2009 the DRC government has been integrating combatants from local armed groups in eastern DRC into the FARDC, using an accelerated integration process. This has allowed the CNDP, an armed group created in 2006 and integrated into the army, to expand its presence in strategic mining areas while largely maintaining its former chain of command and allegiances.

Politicians also appear to place "integration and stability" above justice. High-ranking commanders have been granted virtual

immunity from prosecution and well-known perpetrators of crimes under international law remain in positions of command. They include General Bosco Ntaganda, wanted under an ICC arrest warrant for enlisting and using child soldiers in Ituri.

On 31 December 2010, FARDC soldiers allegedly raped more than 30 women in Bushani, North Kivu province. The senior military prosecutor at the level of the Military Operational Court of North Kivu ordered the Zone Commander of the military zone to produce the Commander of the Brigade and the Commander of the Battalion. By May 2011, the Zone Commander had not fulfilled this request.

The Constitution and DRC laws protect the impartiality and independence of the courts – these guarantees should be respected in

On 12 August 2010, several dozen FARDC soldiers, former members of the CNDP militia, surrounded the Military Prosecutor's Office in Goma and succeeded in obtaining the release of Lt Colonel Yusef Mboneza, a former CNDP leader who became an FARDC Commander. He had been arrested a few hours earlier and faced various charges resulting from his failure to follow orders to redeploy his troops to areas under his command – areas where the August 2010 Walikale mass rapes would subsequently take place. The heavily armed soldiers cut off access and power in the neighbourhood and encircled the Military Prosecutor's Office for several hours.

practice. The justice system also needs sufficient financial, material and personnel resources. The DRC government should take steps to respect the security of tenure of magistrates, and should ensure that judicial personnel are paid regularly at a level sufficient to minimize the risks of corruption.

All judicial personnel should be qualified and properly trained, including in gender awareness and should have the highest ethical standards. Until jurisdiction over crimes under international law is transferred to civilian courts, steps should be taken to prevent interference by members of the armed forces in the work of the judiciary.

CHANTAL

Chantal, from Masisi, was raped by a group of policemen who were guarding a plot of land that her family had recently been evicted from. Following the rape, she went to a health centre one hour's walk away from their village. She was then transferred to a hospital. With the help of her brother-in-law she has lodged a complaint. Given the involvement of the police, the case comes under the jurisdiction of the military courts and the file is with the military prosecutor. An order for the alleged perpetrators to appear before the prosecutor was produced, but was blocked by the Police Colonel in control of their village. Chantal said that she would like the culprits to be arrested but she was concerned for her children who were suffering as she had had to leave them with her elderly mother when she came to Goma, where she was still receiving treatment, and she was worried for her security as the policemen were still in her village.

FAIR TRIAL GUARANTEES

Given the lack of resources and training within the judicial system, most investigations are rushed and incomplete, and decisions are often poorly drafted and not based on legal grounds or evidence.

Amnesty International's evidence suggests that arbitrary arrests, including of civilians by the military, are widespread.

In both military and civilian courts, there should be effective legal guarantees, implemented in practice, incorporating the right to fair trial in accordance with international law and standards. Effective legal assistance programmes for the defence are required as is training in international fair trial standards for all staff.

REPARATIONS

Under international law, victims of serious violations of human rights and international humanitarian law have the right to a remedy, including full and effective reparation to address the harm they have suffered to enable them to rebuild their lives. The right to reparation, including the rights to restitution, rehabilitation, compensation, satisfaction and guarantees of non-repetition, must be guaranteed by law.

Access to reparation for victims and their families before courts in the DRC is limited as a result of legal, financial and logistical obstacles.

Laws should be enacted or amended to ensure that all victims of crimes under

international law can seek reparation before courts in accordance with international standards. Victims should not be charged and should be provided with legal aid.

The government must enforce all existing reparation orders and should put in place effective procedures and mechanisms to ensure that this happens.

A comprehensive reparation programme should be developed to provide full and effective reparation to all victims of crimes under international law and other serious human rights violations in the DRC.



INADEQUATE, INSECURE PRISONS

Prisons in the DRC are grossly overcrowded. When Amnesty International visited the Central Prison in Goma on 10 March 2011, the prison, built for 150, had a population of 943. Many of those held are pre-trial detainees.

The overcrowding and disrepair of prison facilities mean that different categories of prisoners are not held separately: pre-trial detainees are mixed in with convicted prisoners, including prisoners on death row, civilians are held with military. Women and children are sometimes detained separately but not always, placing them at increased risk of violence.

The government has largely overlooked its responsibility to ensure basic standards of detention conditions. Prisons are insanitary and deaths from treatable illnesses, such as diarrhoea, malaria and malnutrition, are regularly reported.

Prison inmates in the DRC are widely referred to as “voluntary prisoners” given the ease with which they can escape.

As a result of prison escapes, few convicted prisoners serve their full sentences. It appears that most of those sentenced to prison by military courts for crimes under international law have since escaped, although the lack of statistics makes this difficult to confirm.

A SPECIALIZED COURT

Amnesty International recognizes the challenges that the Congolese justice system faces in combating impunity for crimes under international law. The reform of the justice system may require new justice mechanisms.

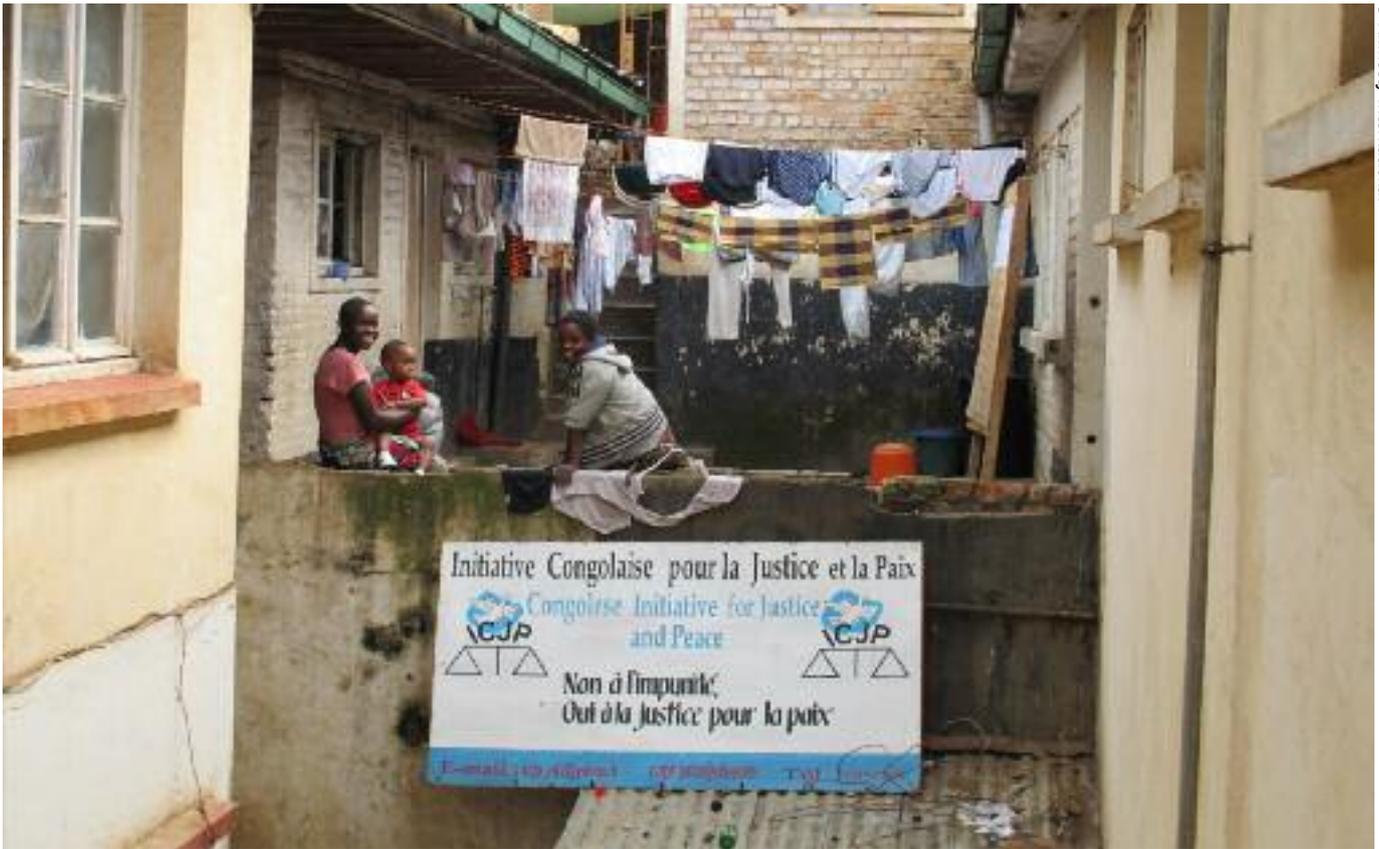
Transitional justice refers to processes and mechanisms used by societies recovering from armed conflicts to address the legacy of crimes under international law and to promote reform and reconciliation. It can involve individual prosecutions, reparation programmes, truth-seeking, institutional reform, vetting and dismissals. The level of international involvement varies. Transitional justice mechanisms are complementary to

efforts to build the capacity of the justice system in post-conflict countries.

The UN Mapping Report recommended the creation of a mixed judicial mechanism made up of national and international personnel as one of various transitional justice measures to be considered. In response, the DRC Minister of Justice initiated discussions on the establishment of a “hybrid” or mixed mechanism, with both international and Congolese judicial personnel, able to try crimes under international law. This would take the form of a separate Specialized Court as foreseen in a draft law submitted by the Minister of Justice to Parliament.

Amnesty International believes that any new mechanisms must contribute to improvements in the Congolese justice system if they are to have a long-term and

Above: Goma Central Prison (Munzenze), March 2011. The black board shows the number of inmates – 943 in a prison built for 150.



sustainable impact on accountability and reparation. Both the mandate of any new justice mechanism and the strategies developed around it should reflect this reality. Similarly, it is vital to integrate any new transitional mechanisms into a comprehensive justice strategy.

It is important that the judges and other personnel of the specialized mechanism are not isolated from the rest of the justice system – the investment in and experience gained in this jurisdiction must have a positive impact on the Congolese justice system as a whole.

The international component of a “hybrid” mechanism can build the capacity of local personnel to investigate and prosecute crimes under international law. There should be intensive capacity-building programmes and a training unit in charge of training local staff and ensuring transfer of skills and knowledge. The training should also allow the international personnel to benefit from the experiences of Congolese judicial personnel.

Due to the scale of crimes under international law committed in the DRC, the jurisdiction of any specialized mechanism must be seen as complementary to that of national courts and to that of the ICC.

There is also a need to develop a prosecution strategy, based on clear and objective criteria, to prioritize prosecutions of the huge number of people identified as suspected perpetrators of crimes under international law.

CONCLUSION

Amnesty International believes that the DRC government should prioritize the development of a comprehensive, long-term justice strategy aimed at reforming the criminal justice system. The strategy must ensure that those responsible for crimes under international law are brought to justice in fair trials and that victims and their families receive full reparations. This strategy should include any new justice mechanisms such as the proposed Specialized Court, to ensure that they have a sustainable impact on the national justice system.

This strategy should be developed through an extensive consultation process led by local participants, including members of the national justice system, civil society, women and women’s organizations, professional associations, community leaders and victims’ representatives.

Amnesty International is calling for an international conference as the first step to developing a comprehensive, long-term justice strategy under the auspices of the DRC government, to be followed by further, more focused consultations.

The success of this strategy requires significant material, personnel and financial resources, given the current level of underfunding of the justice system.

Above: Kivu, eastern DRC: one of the many Congolese NGOs seeking justice. The development of a comprehensive, long-term strategy to reform and rebuild the Congolese justice system must be led by local participants.



Bukavu (South Kivu), March 2011. The Congolese people have suffered decades of violence and abuses. They are entitled to see justice done.

RECOMMENDATIONS

To the DRC government

- Convene, with the assistance of the UN, an international conference to develop a comprehensive, long-term justice strategy aimed at reforming the criminal justice system.
- As part of this new justice strategy, develop a comprehensive reparation programme to provide full and effective reparation including compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition to victims of crimes under international law.
- Increase the budget for the justice system, and ensure that this budget is regularly disbursed.
- Ensure that the draft law and operational plan currently being developed for the Specialized Court include concrete measures to ensure that it has a long-term and sustainable impact on the national justice system.
- Develop a prosecution strategy to ensure that all efforts to tackle impunity are complementary and as comprehensive as possible.

To the DRC government and parliament

- Ensure that laws are reformed and harmonized, taking into account international standards.
- Ensure that DRC law provides for civilian courts to have exclusive jurisdiction over all those, military or civilian, suspected of crimes under international law.
- Abolish the death penalty without exception.
- Establish in law a national victim and witness protection programme with the capacity to provide protection and support to victims throughout the DRC.
- Adapt and enact legislation to implement the Rome Statute of the International Criminal Court.

To the United Nations

- Support the organization of an international conference to develop a comprehensive, long-term justice strategy.
- Offer financial and technical support to ensure that a comprehensive, long-term justice strategy and a prosecution strategy are developed.

- Support efforts to ensure that the draft law on the Specialized Court and its operational plan include concrete measures to ensure a long-term and sustainable impact on the national justice system.

To the international community

- Support the call for an international conference to develop a comprehensive, long-term justice strategy.
- Encourage and assist the government to undertake an inclusive country-wide consultation on the development a comprehensive, long-term justice strategy.
- Ensure a more concerted and comprehensive approach between donors to the reform of the justice system.
- Provide the necessary financial support for the reform of the criminal justice system in the DRC, including witness protection, nationwide outreach, the independence of the judiciary and reparation.
- Provide long-term and sustained resources to local organizations supporting victims and defending human rights.

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Amnesty International is a global movement of more than 3 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights.

Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.

Index: AFR 62/007/2011
English

August 2011

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