



## The Democratic Republic of the Congo: Ravaged by conflict, human rights atrocities and impunity

In the four year period between 1998 and 2002, approximately 3.3 million people died in the Democratic Republic of the Congo (DRC) in a bloody conflict, largely ignored by the international community, in which all parties have shown little respect for human life and dignity.<sup>1</sup> Most of those who died were civilians, killed as a result of war, starvation or disease. Despite steps toward peace in the country, armed groups continue to launch violent attacks on civilians.

### Democratic Republic of the Congo<sup>2</sup>



### Brief background to the conflict and the current transition

Although the country has been actually at war since 1996, the causes have a longer history. After gaining independence from Belgium in 1960, the new state of Zaire (now named the DRC) progressively deteriorated under the brutal dictatorship of Mobutu Sese Seko. For more than 25 years, chaos and serious human rights violations prevailed. From 1994, the violence of the Rwandan genocide spilled over the border into eastern DRC. Two wars subsequently engulfed the whole of the country. The first began in 1996 and ended in the overthrow of Mobutu by Laurent Kabila in May 1997. The second broke out in 1998 and sporadic violence still continues despite the current peace agreement of December 2002. Taking advantage of DRC's weakness and of ethnic divisions, neighboring states and a variety of militias and national rebel groups have fostered instability in the country. Regional actors have been accused of aggression and "foreign adventurism" with regard to Congolese territory and natural resources. At least

<sup>1</sup> In a demographic study published in 2003, the International Rescue Committee estimated that approximately 3.3 million people died as a result of war. Many of these deaths were related to malnutrition, severe poverty, social dysfunction and diseases induced by displacement. (See [www.theirc.org](http://www.theirc.org)).

<sup>2</sup> Map found at: <http://www.graphicmaps.com/webimage/countrys/africa/cd.htm>.

seven foreign armies including those of Uganda, Rwanda, Burundi and Angola and a variety of armed groups have operated within the DRC as the central government lost control of large areas of the country. These forces have consistently sought to exploit the DRC's rich natural resources, including gold, diamonds and cobalt (used to make the chips in cell phones), encouraging inter-ethnic conflicts and violence in order to promote their economic interests either directly or through proxies. In October 2003, a special panel established by the United Nations Security Council to look into the plunder of the DRC's natural resources issued its final report, concluding that illegal exploitation remained one of the main sources of funding for groups involved in the conflict and was inextricably linked with the perpetuation of the conflict.<sup>3</sup>

During the second war, a series of unsuccessful ceasefire agreements were signed. The first was in 1999 in Lusaka, calling for a withdrawal of all foreign troops from the DRC and the disarmament of armed groups. The U.N. Mission in the DRC (MONUC) was established in November 1999 to help to implement the agreement. But the agreement was violated by all sides and human rights violations continued, with the perpetrators enjoying impunity. President Laurent Kabila was assassinated in January 2001, and was succeeded by his son Joseph Kabila.

Following Joseph Kabila's accession to power in 2001, attempts at ending the conflict had greater success. Bilateral agreements were signed in 2002 with both Rwanda and Uganda, providing for the withdrawal of those foreign troops. Meanwhile, MONUC, led by a Senegalese commander and with troops contributed mainly by France and other European nations, attempted to fill the power vacuum and prevent further bloodshed.

Finally, in December 2002, a comprehensive power sharing agreement was concluded in Pretoria, South Africa (the "Global and Inclusive Agreement on the Transition in DRC"). The Pretoria agreement provides for a two-year transition period, the establishment of "*institutions of the transition*" and an interim government which will rule for two years in the run up to national elections. Human rights and justice are addressed in the agreement, which provides for the establishment of a truth and reconciliation commission and of a national observatory on human rights, and specifically provides that there will be no amnesties for crimes against humanity, genocide and war crimes.

Implementation of the political transition provisions is ongoing. On April 4, 2003, a new constitution was promulgated, and agreement was reached on a roadmap for the integration of belligerent forces into a new reformed national army. In August 2003, a transitional Parliament was established and the vice presidents and members of Parliament were sworn in. Despite this progress, the DRC remains divided in practice, with the government in effective control of only part of the country.

MONUC, even though strengthened in its numbers and its mandate, still leaves civilians in certain areas unprotected.<sup>4</sup> It also is estimated that 3.4 million people remain internally displaced.<sup>5</sup>

While the new arrangements slowly take hold, the situation remains precarious. Reports of instability and mass killings persist in the east, particularly in Ituri, North and South Kivu, and Katanga. Neighboring states continue to try to maintain their influence through proxies. A particularly serious incident was a massacre in May 2002 in Kisangani in the northeast of DRC, in which one of the largest local rebel

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<sup>3</sup> Expert Panel on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo, final report of October 28, 2003.

<sup>4</sup> See Human Rights Watch, *Ituri: Covered in Blood, Ethnically Targeted Violence in Northeastern DR Congo*, July 2003, p. 2.

<sup>5</sup> Commission of Human Rights, Report on the situation of human rights in the Democratic Republic of the Congo, submitted by the Special Rapporteur, Ms. Iulia Motoc, March 10, 2004, E/CN.4/2004/34.

groups, Rassemblement Congolais pour la Democratie (RCD-Goma), reportedly with Rwandan support, killed a large number of civilians, raped hundreds of women and summarily executed soldiers.<sup>6</sup> In August 2003, Burundian rebels of the Forces Nationales de la Libération (FNL) were reported to have killed at least a dozen people in Rusabagi, South Kivu.<sup>7</sup> According to reports of a local human rights organization, “[t]he assailants used crude weapons, including garden hoes, machetes, knives and axes.”<sup>8</sup>

On May 26, 2004, fighting erupted in Bukavu, the capital of South Kivu, between soldiers loyal to Colonel Jules Mutebutsi, a commander from the RCD-Goma and pro-government forces of the newly created Tenth Military Region under the command of General Mbuza Mabe. On June 2, 2004, the rebels seized Bukavu after days of fighting, but then surrendered the town several days later. During the rebel occupation, civilians were subject to indiscriminate killings, looting, and humiliations.<sup>9</sup> A preliminary MONUC report indicates that there were 143 civilian casualties, 66 deaths, 31 rapes, and 147 homes pillaged.<sup>10</sup>

As calm returned to Bukavu, the second coup attempt since the transitional government took office was started by the presidential guard on June 11, 2004.<sup>11</sup> After a chaotic night of clashes around a military base, state media stations and the presidential mansion, President Joseph Kabila declared the attempt had ended in failure.<sup>12</sup>

## Serious human rights violations committed during the conflict

Widespread human rights abuses have been committed in the DRC in recent years. All parties to the conflict have been responsible for violations, either directly or through exercising control over groups that commit them. Among the worst violations are killings of civilians, forced recruitment of child soldiers, destruction of villages, internal displacement, cannibalism, rape and torture.

- **Killings and torture**

Thousands of civilians have been killed in ethnically targeted violence in eastern DRC, particularly in Kivu and Ituri, by various armed groups. Human Rights Watch estimates that at least 5,000 civilians died from the violence in Ituri between July 2002 and March 2003, in addition to the 50,000 civilians the U.N. estimates died there since 1999.<sup>13</sup> For instance, in April 2003, in Drodro and its surroundings, militias

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<sup>6</sup> 80 killings were reported by Human Rights Watch (see Human Rights Watch, *War crimes in Kisangani: The response of Rwandan-backed rebels to the May 2002 Mutiny*, August 2002, available at [www.hrw.org/reports/2002/drc2/index.htm](http://www.hrw.org/reports/2002/drc2/index.htm)); 200 killings were reported by RODHECIC, Info DH n.41/RODHECIC/RDC/2003, SCANDALE, *Les bourreaux de Kisangani gratifiés*.

<sup>7</sup> Provincial Vice Governor Jean-Pierre Mazangi reported this information to IRIN. (See IRIN, *Burundi-DRC: Killing of civilians confirmed in Rusabagi, South Kivu Province*, September 5, 2003).

<sup>8</sup> Héritiers de la Justice, *Les droits de l'homme a la croisée des chemins au sud Kivu*, February 2003.

<sup>9</sup> Human Rights Watch, *D.R. Congo: War Crimes in Bukavu*, June 2004, available at: <http://hrw.org/english/docs/2004/06/11/congo8803.htm>.

<sup>10</sup> IRIN, *DRC: UN preliminary report rules out genocide in Bukavu*, June 17, 2004, available at: <http://www.irinnews.org/print.asp?ReportID=41738>.

<sup>11</sup> The coup started as an officer identified as Major Eric Lengue abruptly appeared on state radio to declare his forces had “neutralized” the transitional government. Previously, in March, 2004, a few hundred soldiers attacked military installations in the capital. IRIN, *DRC: Coup attempt foiled in Kinshasa*, June 11, 2004, available at: <http://www.irinnews.org/print.asp?ReportID=41627>.

<sup>12</sup> Agence France Presse, *Congo's government chases renegade forces after coup attempt in capital*, June 12, 2004, available at: <http://www.monuc.org/News.aspx?newsID=2926>.

<sup>13</sup> Human Rights Watch, *supra*, note 7, p. 1.

allegedly massacred at least 300 civilians, both Lendu and Hema, with machetes, knives and guns.<sup>14</sup> The escalation of violence in Ituri in May 2003 prompted denunciations in the Security Council and the Security Council's decision to boost the existing MONUC presence, including dispatching a temporary French-led international emergency force to the town of Bunia to protect civilians and UN personnel there. Killings have also been attributed to the Congolese army or to government-backed militias, who are alleged to have committed massacres in Ituri, Kivu, North Katanga and Maniema. For instance in 2002, at least 68 persons were killed and 3,500 houses were burnt down at Ankoro by the government armed forces. Elsewhere in North Katanga, Mai Mai militias supported by the government are responsible for acts of cannibalism as well as looting and burning houses, and constantly harassing civilians.<sup>15</sup>

Security forces are also reported to have committed unlawful killings and beaten detainees to death. Torture and other forms of brutality have characterized the conflict on both sides.<sup>16</sup> On the government side, military, police and security services are reported to torture detainees. Common methods include being whipped, beaten with belts or metal tubes, burnt by cigarettes or otherwise assaulted. Allegations are not investigated and victims do not receive reparation. On the rebel side, women and girls are particularly exposed to sexual violence (mass rape, mutilation of sexual organs and sexual slavery). Women are abused by both sides, either by members of the Congolese armed forces and police who are alleged to rape women working in the fields, or by rebels. Sexual violence has been particularly widespread in eastern DRC.

- **Violation of fair trial rights and ineffectiveness of the justice system**

To date, very few human rights abuses have been prosecuted or even investigated. Impunity has become the norm, a situation which local human rights groups say has helped to fuel the conflict.

In parts of the country fully controlled by the government, the judiciary remains “*underfunded, inefficient, ineffective, and subject to corruption and executive influence.*”<sup>17</sup> A particular problem is the intermittent and very poor pay of officials in the justice system. According to reports, lawyers are often denied access to their clients and are given no time to prepare their defense. They are often threatened and sometimes kidnapped and tortured. Corruption remains pervasive in the courts and victims often have to bribe judges if they want the prosecution of a case to go ahead. In a positive step, the much criticized military court was abolished in March 2003 as a result of strong international pressure based on criticism that it should not be trying civilians and did not meet international fair trial standards. But while some unfinished trials have been dropped, concluded trials have not been reopened, including cases in which the death penalty was imposed following unfair trials.

In rebel held territory, the judicial system hardly functions. Most courts simply do not operate and the judges fled to government controlled territory during the war. Rebel groups reportedly carry out arbitrary arrests, detentions and executions and exhort property. In the East, the judicial system is hardly functioning at all, with rare exceptions such as the trial of a group of rebel officers belonging to Jean-Pierre Bemba's Movement for the Liberation of Congo (MLC), who are accused of atrocities against

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<sup>14</sup> MONUC put the number at closer to 900, though both sources stressed their figures may not be final.

<sup>15</sup> U.S. State Department Country Reports, 31 March 2003, and the reports of Congolese human rights organizations ASADHO, CDH, and CVDHO, *Nord Katanga, Attaques délibérées contre la population civile*, October 2003.

<sup>16</sup> FIDH, ASADHO, Ligue des électeurs and Groupe Lotus, *Violation Massive des Droits de l'Homme en République Démocratique de Congo sur fond de transition politique Septembre 2002 - Mai 2003*, May 2003, available at: <http://www.fidh.org/afriq/rapport/2003/rdc364f.pdf>.

<sup>17</sup> U.S. State Department, *Country Reports on Human Rights Practices - 2003*, February 25, 2004.

civilians, whose trial opened in February 2003 in the rebel-held northern town of Gbadolite.<sup>18</sup> The U.N. has accused the group of cannibalism but the MLC said it had found no evidence to support these allegations and no-one has been charged with cannibalism.

The enormous problems of the Congolese justice system, and the fact that is unlikely to be able to recover without substantial outside help, are acknowledged by the international community. Major aid packages, from the European Union and elsewhere, are expected.

## Dealing with Crimes of the Past

The atrocities faced by the DRC in the past decade clearly amount to serious crimes under international law, crimes that the international community as a whole has pledged to work together to prevent and punish. Delivering justice and truth for these crimes of the past are considered by all – including the parties to the conflict and the U.N. Security Council – to be essential components of a successful transition in the DRC. As part of the transitional arrangements, the parties agreed to establish a truth and reconciliation commission and already, a draft law is being developed. In June 2003, the U.N. Security Council sent a mission to the region led by French Ambassador, Jean-Marc de la Sablière. Afterwards, the mission deplored the reign of impunity accompanying human rights violations that had characterized the crises in the eastern DRC: *“The mission stressed to all its interlocutors that impunity would no longer be tolerated, and that those responsible for crimes should expect to be held accountable for them. This responsibility was considered to extend to the leaders of armed factions guilty of serious crimes.”*<sup>19</sup>

One possible avenue for dealing with accountability for the atrocities committed in the DRC is the newly established International Criminal Court (ICC). The ICC has jurisdiction over war crimes, crimes against humanity and genocide committed since July 1, 2002, where certain requirements as regards jurisdiction and admissibility are met. Since the DRC is a party to the ICC treaty, the Rome Statute, the Court would have jurisdiction. As regards admissibility, the Rome Statute provides that the ICC’s jurisdiction is complementary to national criminal jurisdictions. This means that before the Court can act, it must first determine that the national authorities concerned are unwilling or unable to investigate or prosecute the crimes. The weakened state of the justice system in the DRC due to the conflict, mentioned above, suggests there is a high probability the Court will rule that the state is currently unable to prosecute these crimes. In July 2003, the ICC’s Chief Prosecutor, Luis Moreno-Ocampo, announced that he had decided to *“follow closely the situation in Congo and especially in Ituri”* where he said up to 5,000 civilians had been killed in tribal wars since July 2002. He added that militias supported since 1998 by the governments of Uganda, Rwanda and by Congo itself are implicated in widespread torture, rape and occasional acts of cannibalism, according to reports being considered by the Court.<sup>20</sup> The DRC’s Human Rights Minister, Marie-Madeleine Kalala, subsequently noted that the ICC Prosecutor’s statement had a *“pronounced deterrent effect”* on armed groups active in the Northeast.<sup>21</sup>

Recent actions in Kinshasa and the Hague suggest that the ICC is likely to play a central role in accounting for human rights abuses in the DRC. In January 2004, the ICC Prosecutor announced that the Court hoped to launch an investigation into war crimes and other violations of international law in the DRC no later than October of this year. He specified that the probe would center on Ituri, the scene of

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<sup>18</sup> Africa on line, *DRC: MLC starts cannibalism trial, but without defence attorneys*, Kinshasa, 19 February 2003, available at: <http://www.africaonline.com/site/Articles/1,3,52157.jsp>.

<sup>19</sup> Report of the Security Council mission to Central Africa, 7 to 16 June 2003, available at: <http://ods-dds-ny.un.org/doc/UNDOC/GEN/N03/395/53/PDF/N0339553.pdf?OpenElement>.

<sup>20</sup> Guardian Unlimited, *Breaking News International*, July 16, 2003.

<sup>21</sup> DowJones/Newswire, *Congo Min: New Intl Criminal Crt Deters Tribal Warfare*, January 22, 2004.

many of the worst atrocities perpetrated during the conflict.<sup>22</sup> Many in the government of the DRC viewed this development as a positive step, and in April 2004, President Joseph Kabila issued an official request for an investigation, referring to the ICC all crimes falling within the jurisdiction of the Court.<sup>23</sup> On June 23, 2004, the ICC Prosecutor responded with an announcement of his decision to open an investigation into the serious crimes committed in the DRC, marking the Court's first prosecutorial action.<sup>24</sup>

However, since the ICC can only deal with crimes committed after July 2002, other solutions will need to be found to investigate and prosecute the serious crimes under international law that were committed in the DRC before that date. In September 2003, President Joseph Kabila asked the U.N. to establish an international tribunal for the DRC. In his speech before the General Assembly, he stated:

*"In the peace of process now underway, an area which is of critical importance and an imperative is that of independent justice, whose equitable administration would mark the end of impunity. On the domestic level, the Transition Government is working to conclude successfully the reform advocated here.... On the international level we believe that the major objective is the establishment, with the assistance of the United Nations, of an international criminal tribunal for the Democratic Republic of the Congo, to deal with crimes of genocide, crimes against humanity, including rape as a weapon of war, and mass violations of human rights...."*<sup>25</sup>

Congolese NGOs have made similar calls for international assistance to help the DRC deliver justice for serious violations committed during the conflict, as part of the country's transition to reconciliation and rule of law.<sup>26</sup> It seems unlikely that the U.N. will be willing to establish another international criminal tribunal modeled on those established for former Yugoslavia and Rwanda (the ICTY and ICTR). Another option might be to establish a more streamlined "mixed" tribunal such as the Special Court for Sierra Leone, which operates under a strict time-line and at less cost. The Special Court was set up on the basis of an agreement between the Sierra Leone government and the U.N., has Sierra Leonean as well as international judges and staff, and applies local as well as international law. It also has the advantage of being geographically close to the events it is trying and may be better placed to contribute to the rebuilding of the country's own legal system. Essential for the success of any tribunal, however, is that it is truly independent, pursues responsible persons from all sides, and is viewed as impartial and legitimate in the eyes of the population. In order to achieve this, a tribunal would need to have the broadest possible international support.

Human Rights First believes that in order to identify how best to ensure justice for victims of the terrible crimes suffered during the conflict in the DRC, and to garner appropriate international support for such efforts, the best way forward is the appointment of an international commission of experts. Such a commission would be charged with carrying out an assessment of the violations committed, consulting with local actors – including civil society – and advising on appropriate options for ensuring justice and accountability for the people of the DRC.

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<sup>22</sup> Reuters, *Congo World Court inquiry to start by Oct—official*, January, 27 2004.

<sup>23</sup> Agence France Presse, *DRCongo leader invokes international court on war crimes*, April 19, 2004.

<sup>24</sup> ICC, Office of the Prosecutor, Press Release, *The Office of the Prosecutor of the International Criminal Court Opens Its First Investigation*, June 23, 2004, No. ICC/OTP/2004.013-EN.

<sup>25</sup> 58<sup>th</sup> United Nations General Assembly, September 23, 2003, available at: <http://ods-dds-ny.un.org/doc/UNDOC/GEN/N03/530/11/PDF/N0353011.pdf?OpenElement>.

<sup>26</sup> African Association for the Defense of Human Rights in DRC (ASADHO) Annual Report 2002 – Special number, *March 2003* N.36.