



Congo: The UN Mapping Report and the Responsibility to Justice

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Next steps toward justice

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On 1 October 2010, the UN Office of the High Commissioner for Human Rights (UNOHCHR) published a report mapping the most serious violations of human rights and international humanitarian law committed in the Democratic Republic of Congo (DRC) between March 1993 and June 2003. Months ahead of its official publication, leaks of the report produced diplomatic tensions between some States in the region and the United Nations. UN Secretary-General flew to Kigali to appease the Rwandan government. Officially released in

October, the report implicates Congolese and foreign parties responsible for abuses – including state or non-state armed groups from Rwanda, Uganda, Burundi, and Angola.

The UN Mapping Report

This report is very significant for the DRC. While most findings are not new, the report brings them together in a comprehensive way, and with an authority that previous accounts have not been able to establish. Publishing all these materials in an official UN document was important. Rather than a full-fledged investigation, the report is a thorough inventory of the most important events in the 10-year period. As it stands, the report is not a basis for prosecution. The mapping may be seen as a preliminary exercise – a first step towards criminal investigation and, subsequently, prosecution. The finding that has attracted the most attention is the killing of Hutu refugees from Rwanda, but this perception is simplistic. It is important to acknowledge that the report covers the whole country, not only the Eastern region. Many “sophisticated entrepreneurs of violence” have instrumentalized the use of violence in Eastern DRC and throughout the country. The report accurately demonstrates that there are more than individual cases.

‘Genocide’

The report says that some elements “if proven before a competent court, could be characterized as crimes of genocide.” The detailed descriptions of crimes, paired with the decision to label some of them as genocide or potential genocide opens a door for justice where there has been none. However, the use of the term genocide in the report is very serious. Genocide is a heavy word with significant implications for policy and peacebuilding in the Great Lakes Region. The use of the word genocide has angered Rwanda so much that the peacebuilding processes in the region is likely to face setbacks. The Rwandan Government released a strong condemnation of the entire report the day it was officially released, making conversation about the report and the effort to find justice for the victims more difficult.

Justice Mechanisms

The DRC government has been very supportive of the report, which gives rise to optimism regarding the possibilities for justice. Past trials motivated civilians and demonstrated the usefulness of courts when judges can do their jobs, suggesting that the population will support future trials. However, there are several barriers to bringing perpetrators to trial, not the least of which is the kind of court where trials could take place. Panelists discussed several alternatives for bringing the crimes detailed in the report to trial. The International Criminal Court (ICC) may only investigate events that took place after 2002 and the International Criminal Tribunal for Rwanda only has jurisdiction for crime committed inside Rwanda. A separate international tribunal would probably be the ideal model, but there is little appetite for this at the international level. A more likely option is the establishment of mixed chambers, similar to those in Bosnia-Herzegovina. Congolese and international personal would constitute such chambers, which would be part of the Congolese system and subject to Congolese law. Such a solution adds credibility to the criminal proceedings and signals international concern. Mixed chambers could also have jurisdiction over current crimes. Universal jurisdiction could be applied to compliment mixed chambers and guarantee justice in some of the more difficult cases to bring to trial.

Although the report does not generally provide the names of individual perpetrators, the mapping team most likely collected or at least encountered them and the names of major perpetrators are known. Nonetheless, bringing perpetrators to justice will be difficult. It is not realistic to expect locally based courts to prosecute the big cases. Too many politicians and politically important individuals in DRC and its neighbors do not want to see certain people, such as General Laurent Nkunda, on trial. The worst of the perpetrators know too much about government involvement in atrocities. A report by the UN group of experts shows that in North Kivu during the

first half of 2010 more than one third of the crimes were attributable to the Congolese army. Several individuals associated with these crimes are part of state leadership in the DRC and surrounding countries.

The Role of Rwanda

The Rwandan government vehemently denies Rwandan responsibilities for the crimes committed in the DRC and has tried to put pressure on the United Nation not to publish the report in its present form. The Rwandan response to the report has, to some extent, overshadowed the report itself. The Rwandan government has criticized the report's methods and attempted to discredit the UN's record in the region. The UN's failure to intervene during the 1994 genocide has left a shameful legacy in Rwanda. However, this should not be used to dismiss the totality of the report. Accusations that the mapping methods used for the report are problematic appear to be without merit.

The Rwandan Army is accused of purposefully massacring Hutu refugees in the DRC. The government argues that its troops only pursued the Hutu *genocidaires* who had escaped into the DRC. Rwanda acted to defend its security and disarm militias. Moreover, the government maintains that corridors were created for Hutu refugees to return peacefully to Rwanda. Nevertheless, the data supporting that the Rwandan Army was responsible for massacres of Hutus in the DRC is unquestionable. The Rwandan military was tracking refugees, the vast majority of whom were civilians. Mass graves have been found with the remains of women and children. "Three-year old children are not Interahamwe." The Rwandan government has systematically denied any internal or external investigations on its army's conduct in the Congo. However, the historical record of human rights violations is clear. The Rwandan army's failure to investigate and prosecute violations demonstrates its lack of commitment to justice and cannot be remedied by blanket denial. An official response of the Rwandan government on the report has been made widely available. However, only parts of the comprehensive report implicate Rwanda.

Implications for U.S. Foreign Policy

Until recently the United States had a very friendly attitude towards Kigali, overlooking human rights concerns and the closing of political space. Over the last months the Obama administration's policy has become more nuanced. After president Kagame apparently won 93% of the vote during the last elections, the United States issued a statement in which it congratulated the people, but not the president. Moreover, the statement declared that democracy was about more than elections and required open space for political opposition. Such phrases illustrate the dramatic shift in U.S. policy towards Rwanda. An important element of US policy should be to reinforce the enlightened self-interest factors in Rwanda. With the help of the U.S., the fractions within the Rwandan government that are interested in a more stable Congo can be strengthened. "We need a balanced perspective, not only blaming Rwanda but also not defending Rwanda."

The United States can also support the pursuance of justice in the DRC. With over half of the Congolese state budget coming from donors, the international community should make use of its leverage to bring about justice. MONUSCO needs to provide as much protection as possible. MONUSCO's mandate requires it to take protection much more seriously than the UN's preceding operation in the DRC, including the provision of support to Congolese justice officials – civilian and military, and the execution of some high-level action against impunity.

Conclusion

While the mapping report has been a very significant exercise, it is important that the appropriate follow-up is guaranteed. The victims deserve justice. Nevertheless, it is important to recognize that the humanitarian tragedies are only ramifications of the political problems. For example, the problems of sexual violence in Eastern Congo are important, but they are peripheral. At the core of the problems is the political crisis – and this

crisis is present in the whole country. The many US-based campaigns in favor of the DRC need to be adjusted in a way that is really helpful for the local population. In addition to a political solution and justice for the victims of violence, truth and reconciliation are important for the state to heal.

Documents

United Nations: Report of the Mapping Exercise:

http://www.ohchr.org/Documents/Countries/ZR/DRC_MAPPING_REPORT_FINAL_EN.pdf

Human Rights Watch: Q & A on the United Nations Human Rights Mapping Report:

<http://www.hrw.org/en/news/2010/10/01/dr-congo-q-united-nations-human-rights-mapping-report>

Official Government of Rwanda Comments of the on the Draft Mapping report on the DRC:

http://gov.rw/IMG/pdf/DRC_Report_Comments_Rwanda.pdf

United Nations: final report of the Group of Experts on the Democratic Republic of the Congo:

http://www.un.org/ga/search/view_doc.asp?symbol=S/2010/596