

The UN Mapping Report Documenting Serious Crimes in the Democratic Republic of the Congo

By Cecile Aptel

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### Introduction

The United Nations Report of the Mapping Exercise Documenting the Most Serious Violations of Human Rights and International Humanitarian Law Committed Within the Territory of the Democratic Republic of the Congo (“DRC”) Between March 1993 and June 2003 (“Report”) is a dramatic reminder of both the scope and the gravity of the crimes committed by several state and non-state actors in the DRC.<sup>[1]</sup> It

meticulously documents 617 violent “incidents,” each pointing to the commission of gross human rights violations or international crimes. Most of these individual “incidents” targeted several unarmed civilians, often women and children. The 550-page report detailing killings, rapes, destruction, and other violent attacks is alarming, not least because similar crimes continue to be committed in the DRC, where impunity still reigns large.

### Background

The 2005 discovery of mass graves in eastern DRC prompted the UN Secretary-General, in 2007, to approve the terms of reference for a “mapping exercise” to:

- (1) Map the most serious violations of human rights and international humanitarian law committed in the DRC between March 1993 and June 2003;
- (2) Assess the existing capacities within the national justice system to deal appropriately with such violations; and
- (3) Identify appropriate transitional justice mechanisms to assist the DRC in addressing these violations.

The UN Security Council requested the full support of the Congolese authorities for this exercise in Resolution 1794.

The mapping exercise actually began a year later, in July 2008, under the leadership of Luc Cote, a Canadian attorney experienced in investigating and prosecuting international crimes. Between October 2008 and May 2009, his team interviewed over 1,280 witnesses and gathered more than 1,500 documents throughout the DRC.<sup>[2]</sup> The Report, submitted in June 2009 to the UN High Commissioner for Human Rights, was finalized in August 2010. After being leaked to the media, it was officially released two months later, in October 2010.

### Widespread and Systematic Violations: War Crimes, Crimes Against Humanity, and Possibly Genocide

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The information unearthed by the Report points to the perpetration of war crimes, crimes against humanity, and possible genocide within parts of the DRC at different periods. It documents atrocities, chronologically and by region, that were committed against a background – and sometimes in furtherance - of several conflated local, regional, and international conflicts.

The Report highlights many alleged crimes between 1996 and 1998 during the First Congo War and the start of Laurent-Désiré Kabila's presidency and, to a lesser extent, during the Second Congo War between 1998 and 2000. The Report also records almost 200 other incidents committed at other times between 1993 and 2003.

Overwhelmingly and throughout the decade under review, the victims of the incidents were unarmed civilians, including children. The methodology used during the mapping exercise emphasized the extent to which women and children were targeted by focusing specifically on violence inflicted against them. This is also reflected in the Report, which devotes a specific section to these crimes, highlighting “acts of violence against women and sexual violence,” “acts of violence committed against children,” as well as “acts of violence linked to natural resource exploitation.”<sup>[3]</sup> On this last point, the Report reiterates previous findings that the competition between different armed groups for control of natural resources sometimes directly caused crimes against civilians.<sup>[4]</sup>

### **The Alleged Responsibility of Foreigners in Some of These Crimes**

The Report refers to the possible responsibility of foreigners, including Rwandese, in several of the incidents. While such incidents constitute only a fraction of those reported, and are set within the context of other attacks on civilians, notably against Tutsis, these allegations have received significant media attention because they question the nature of Rwanda's involvement in the DRC. This question interests the media because following the genocide against Tutsis in Rwanda, 1.2 million Rwandan Hutus fled to the DRC. Among them were “genocidaires” (Interahamwe militia and former Rwandese armed forces), who used refugee camps as bases to launch attacks on Rwanda. In 1995, the new Rwandan authorities, supported by both Uganda and Tutsi Banyamulenge from the Kivus,<sup>[5]</sup> opted for the use of military force against them. The Report documents the period that followed this armed intervention as one

characterised by the apparently relentless pursuit and mass killing (104 reported incidents) of Hutu refugees, members of the former Armed Forces of Rwanda (“ex-FAR”) and militias implicated in the genocide of 1994 (Interahamwe), allegedly by the *Alliance des forces démocratiques pour la libération du Congo-Zaïre* (AFDL). A proportion of the AFDL's troops, arms and logistics were apparently supplied by the *Armée patriotique rwandaise* (APR), the Uganda People's Defence Force (UPDF) and by the *Forces armées burundaises* (FAB) throughout the Congolese territory.<sup>[6]</sup>

The Report describes how joint groups, composed of AFDL members and Rwandan troops and officers, allegedly killed or mutilated men, women, and children. These groups allegedly attacked women and children in churches, set fire to huts and houses with civilians locked inside, and decapitated children.<sup>[7]</sup> They are reported “to have frequently attacked camps that had already been deserted by the ex-FAR/Interahamwe and which contained the weak and the vulnerable – typically unaccompanied children, the elderly, women and the wounded.”<sup>[8]</sup> The Report documents how

massacres were staged on the basis of an almost identical plan, designed to kill as many victims as possible. Every time they spotted a large group of refugees, the AFDL/APR soldiers fired indiscriminately at them with heavy and light weapons. They would then promise to help the

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survivors return to Rwanda. After herding them up under a variety of pretexts, they most often killed them with hammers or hoes. Those who tried to escape were shot dead.[9]

Finally, the Report, while reserving any legal conclusion and repeatedly stating that only a court has jurisdiction to decide the appropriate legal conclusion, nevertheless refers to some of these incidents as possibly qualifying as acts of genocide.

The Government of Rwanda reacted very negatively to the leaked version of the Report, reportedly exerting considerable pressure on the United Nations, threatening to withdraw its peacekeeping troops from the Sudan.[10] Shortly thereafter, the UN Secretary-General paid an impromptu visit to Rwanda to speak with government officials about their concerns.[11]

## Fighting Impunity in the DRC

The mapping exercise and the resulting Report create a dilemma. They raise strong suspicions that crimes under international law, at least war crimes and crimes against humanity, have been committed in the DRC on a large scale.[12] These cannot simply be disregarded or ignored, especially as they concern the very crimes envisaged under the principle of the “responsibility to protect.” Yet the Report merely lists allegations, and more investigations would be needed before prosecuting any of these incidents. The Report identifies unproven claims—too numerous and too grave to ignore. This situation is unsatisfactory for all. For the victims, most of whom took risks to provide information and therefore expect redress, justice has been slow in coming. Meanwhile, the individuals allegedly responsible and their states face severe defamatory allegations without an opportunity to expose their positions and defend themselves.

Another issue is whether the Report will prompt new efforts to address the grave violations of international law committed in the DRC? Answering this question necessitates an assessment of the political will to seek justice, as well as the capacity and modalities to implement justice. It is unclear whether justice is a priority for the DRC government, which is preoccupied with making and preserving peace and, to a lesser extent, with addressing ongoing crimes rather than past ones. Is the “international community” ready to take up this cause, even if that would undermine relationships with the mineral-rich DRC and strategically central Rwanda?

Assuming there is sufficient political will, what would be the best mechanism(s) for achieving justice in the DRC. The mass atrocities listed in the Report raise a sobering question: which judicial system could render justice to every victim? One option is to concentrate on those bearing the greatest responsibility, but this is always the most difficult course of action, inflating the political costs and risks of interference. Additionally, if the involvement of external actors were proven, would they be within reach of Congolese jurisdiction? While the International Criminal Court is involved in the DRC,[13] it only has jurisdiction over crimes committed since July 2002, not the many prior violations.

Implementing his mandate, Cote considered different transitional justice options to address the documented violations. He assessed the capacity of the Congolese judiciary, including military courts, and deemed it ill-equipped to address the alleged crimes, citing frequent political interference and lack of independence. He ultimately suggested the creation of a hybrid judicial mechanism and a new truth and reconciliation commission, as well as reparation programs and reforms of the security sector and of the criminal justice system.

These suggestions may appear broad and far-reaching, yet the cost of implementation failure is high. In the DRC, the prevailing impunity for yesterday’s crimes often makes

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today's crimes possible, as those responsible are frequently the same perpetrators. In such circumstances, holding criminals accountable would help abate the cycle of violence. The establishment of hybrid chambers, composed of both Congolese and international experts, could play a critical role in launching the fight against impunity and act as the catalyst for further justice efforts.

#### **About the Author:**

Cecile Aptel is Jennings Randolph Senior Fellow at the United States Institute of Peace.

#### ENDNOTES

[1] United Nations Human Rights Office of the High Commissioner, Report of the Mapping Exercise Documenting the Most Serious Violations of Human Rights and International Humanitarian Law Committed Within the Territory of the Democratic Republic of the Congo Between March 1993 and June 2003 (Aug. 2010), *available at* [http://www.ohchr.org/Documents/Countries/ZR/DRC\\_MAPPING\\_REPORT\\_FINAL\\_EN.pdf](http://www.ohchr.org/Documents/Countries/ZR/DRC_MAPPING_REPORT_FINAL_EN.pdf) [hereinafter Report].

[2] The team was composed of thirty-three Congolese, international human rights investigators, and lawyers.

[3] Report, *supra* note 1, ¶¶ 525-782.

[4] One previous UN report is the Report of the UN Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth in the Democratic Republic of the Congo (Apr. 12, 2001), *available at* <http://www.un.org/News/dh/latest/drcongo.htm>.

[5] "Banyamulenge" is a term used to designate Zairian, Congolese, or sometimes Rwandan Tutsis. Banyamulenge were denied Zairian citizenship and had their own grievance against their government.

[6] Report, *supra* note 1, ¶ 18.

[7] *Id.* ¶ 659.

[8] *Id.* ¶ 667.

[9] *Id.* ¶ 229.

[10] Over 3,500 Rwandan troops serve in the Sudan. The Rwandese Minister of Foreign Affairs, Louise Mushikiwabo, argued that an army that is preventing a possible genocide in Darfur cannot be accused of doing the same elsewhere. *See* Edmund Kagire, *Rwanda: Ban Ki-Moon in the Country*, NEW TIMES (Sept. 8, 2010), *available at* <http://allafrica.com/stories/201009080416.html>.

[11] *Id.* Ban Ki-Moon visited Kigali, Rwanda, on September 8, 2010. The Rwandese Foreign Affairs Minister made a public statement indicating that the purpose of this visit was to conduct such talks. *Id.*

[12] The methodological section of the Report clarifies that, given the scale of the violations committed, it only lists the most serious crimes.

[13] Its first ongoing trial concerns Thomas Lubanga Dyilo, a Congolese, accused on the basis of three counts of war crimes for enlisting and conscripting children under the age of fifteen in the Ituri region of the DRC and using them to participate actively in hostilities. *See* Prosecutor v. Thomas Lubanga Dyilo, Case No. ICC-01/04-01/07, Pre-Trial Chamber I, Decision on the Confirmation of Charges (Sept. 30, 2008), *available at*

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