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Transitional Justice in Democratic Republic of Congo (DRC):

Context and Prospects

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ABOUT AFRICA TRANSITIONAL JUSTICE LEGACY FUND

Established in 2019, the Africa Transitional Justice Legacy Fund (ATJLF) is an intermediary funder of transformative transitional justice in Africa, part of a broader continental strategy supported by the MacArthur Foundation and the WellSpring Philanthropic Fund. Created following the adoption of the AU Transitional Justice Policy (AUTJP) in 2019, the Fund aims to advance sustainable peace, justice, reconciliation, social cohesion, and healing in African communities and countries affected by mass atrocities. ATJLF supports innovative transitional justice initiatives, including community-based and survivor-led projects in Cote D'Ivoire, The Gambia, Guinea, Liberia, Mali, North-eastern Nigeria, and Sierra Leone. Additionally, through the EU-AU Initiative for Transitional Justice in Africa, the Fund provides financial and technical assistance to organizations across the continent.

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Historical background and conflicts leading to the need for transitional justice.

In the Democratic Republic of Congo, conflicts and struggles over resources have played a significant role in the need for transitional justice processes. The country has experienced a long history of violence and instability, fuelled in part by political crises and competition for control over valuable minerals and other natural resources. The East African Country is divided by decades of civil wars. These conflicts have led to widespread human rights violations, including acts of sexual violence, forced displacement, and arbitrary killings. The instability and political crises that led to the mass atrocities in DRC can be traced to the mutiny and political turmoil that followed the country's 1960 independence from Belgium and the subsequent three decades of oppression by President Mobutu Sese Seko. Mobutu's rule was characterized by oppression, a single-party system, a culture of corruption and economic mismanagement until he was overthrown in 1996¹.

The First Congo War (1996-1997) emerged in the aftermath of the 1994 Rwandan Genocide, where ethnic Hutus killed around one million Tutsis and Hutus perceived to be supporting the Tutsis in Rwanda. Following the genocide, nearly two million Hutu refugees crossed into the Democratic Republic of the Congo (DRC), settling mostly in camps in North Kivu and South Kivu. Some of these refugees, including Hutu extremists, began organizing militias within the Congo. Tensions with Rwanda and Uganda sparked the Second Congo War in 1998 which was identical to the first Congo War. Although peace talks ensued in 2002, conflicts persisted.² Rwanda and Uganda persistently provided financial support to diverse rebel factions opposing the self-declared leader of the Democratic Republic of Congo (DRC). Internal conflicts among different ethnic groups and militias unfolded across the nation. Although the Second Congo War formally ended in 2003, its lingering effects resulted in a staggering death toll exceeding five million by 2008. Consequently, the DRC evolved into a contested arena where numerous nations engaged in direct or indirect struggles for control over resources and authority.³

The end of the Second Congo War provided only limited relief to ongoing tensions. Millions of individuals continued to be internally displaced because of ethnic clashes which resulted in the Kivu and the Ituri conflict. These conflicts, closely linked to the hostilities in the First and Second Wars, featured ethnic militias that received armament and backing from various African nations. While the Lord's Resistance Army has been less active in Uganda since the peace talks of 2008, it still engages in a low-level conflict within the DRC⁴. To date, the Democratic Republic of Congo continues to witness a surge in violence, marked by clashes among militant groups vying for territory and natural resources, extrajudicial killings by security forces, political unrest, and escalating tensions with neighbouring nations. This tumultuous environment has led to a significant increase in civilian casualties, gross human rights violations and displacement.

¹ Usanov, A., de Ridder, M., Auping, W., Lingemann, S., Espinoza, L. T., Ericsson, M., Farooki, M., Sievers, H., & Liedtke, M. (2013). The Democratic Republic of Congo. In *Coltan, Congo & Conflict: POLINARES CASE STUDY* (pp. 29–41). Hague Centre for Strategic Studies. <http://www.jstor.org/stable/resrep12571.6>

² Global Conflict Tracker. 2023. Conflict in the democratic republic of Congo. Centre for Preventive Action.

³ U.S. Department of State Trafficking in Persons Report. <http://www.tipheroes.org/blog/a-brief-history-of-the-democratic-republic-of-the-congo-the-conflict-that-has-resulted-in-the-exploitation-of-children-and-one-man-gilbert-munda-who-is-doing-something-about-it/>

⁴ Ibid.



In response to the years of protests calling for the expulsion of peacekeeping forces, accused of mistreating civilians, and deemed ineffective, Kinshasa issued orders for international and regional contingents to exit the country starting in late 2023. Congolese authorities have long insisted that the peacekeeping endeavours, present in various forms for nearly 25 years in the DR Congo, proved ineffective in managing rebellions, addressing armed conflicts, and safeguarding civilian populations and that the DR Congo must now take full control of the country's road to stability. While calling for the early withdrawal of the UN peacekeepers in 2023, President Tshisekedi called the UN Security Council to impose sanctions on individuals and entities involved in war crimes, crimes against humanity, and violations of human rights and international humanitarian law on Congolese territory, whether as perpetrators, sponsors, or accomplices, in accordance with the UN Charter.⁵ This so-called withdrawal of international peacekeepers was originally stipulated to take place by the end of 2024 but authorities in Congo decided it was better for an early withdrawal to begin in late 2023.

The initial stage involves the withdrawal of peacekeepers from South Kivu province by April 2024. Starting in May 2024, MONUSCO's presence will be confined to North Kivu and Ituri. By July 1, approximately 2,350 personnel will be subtracted from its maximum authorized strength of around 13,800 military and police personnel. Subsequent withdrawals will be contingent upon an evaluation report for the first phase, anticipated by the Council by the close of June 2024.⁶ Meanwhile, violence in the resource-rich eastern provinces of the Congo persists, with no signs of abating as the conflict dynamics rapidly evolve. In October, the UN envoy to the Great Lakes region expressed concerns about a potential direct confrontation between the DRC and Rwanda, citing a military buildup along their shared border—a development that raises alarms. Alongside reports of increasing civilian casualties in eastern Congo, the UN declared a record-high number of internally displaced people, reaching 6.9 million, as ongoing fighting renders a growing part of the country unsafe for civilians.⁷

Transitional Justice Mechanisms in the DRC so far, Challenges Successes and Opportunities.

A range of transitional justice processes have been implemented in the Democratic Republic of Congo to deal with the protracted conflict ravaging the country since pre- and post-independence. These processes include the Truth and Reconciliation Commission that operated from 2002 to 2006, the Property Commission-, prosecution by the International Criminal Court ICC, and more recently the reparations and victims' protection law.

Past Transitional Justice Efforts

Conférence Nationale Souveraine (CNS) and Property Commission (1991-1992): The Conférence Nationale Souveraine (CNS) was established between August 1991 and November 1992 to build a new constitutional and political order as well as address past injustices. It focused on human rights violations committed by state security services from 1965 to 1992. The CNS sighted the causes of human rights violations, named perpetrators including President Mobutu and recommended reforms. Mobutu's refusal to acknowledge these outcomes of the CNS led to limited implementation and no accountability. President Mobutu rendered the entire CNS process obsolete when he amended the constitution to consolidate his power, plunging

⁵ UN news: DR Congo President sets early withdrawal of UN peacekeepers; the country will take reins of its destiny.

⁶ VOA news. UN Security Council Agrees to Early Withdrawal of Peacekeepers From DR Cong

⁷ Ibid.



the DRC into a crisis⁸. Similarly, **the Commission of Ill-Gotten Property**, formed in March 1991 to investigate property cases, faced challenges such as underfunding and lack of collaboration, hindering its efforts to recover unjustly taken property. The commission presented several findings and recommendations, identifying offenders by name. However, it lacked judicial authority, leading to the absence of criminal prosecutions. DRC has also implemented additional transitional justice mechanisms, such as the Barza Inter-Communaire. This community-driven conflict resolution mechanism which engaged traditional reconciliation procedures among diverse ethnic groups.⁹

La Commission National de Verite et de Reconciliation (CNVR): The Sun City Accords signed by Congolese actors made provisions for the establishment of a Truth and Reconciliation Commission as well as an International Criminal Tribunal for the DRC. The CNVR was established in 2003 and tasked with the mandate of investigating human rights violations, supporting the prevention and resolution of inter-communal conflicts, acting as a platform for peacebuilding, justice, and reconciliation, and contributing to healing and trust-building among the Congolese. Due to factors such as the politicized composition of the CNVR, the complexity of its mandate, security obstacles lack of resources, and mismanagement, the commission faced challenges in successfully fulfilling its mandate. Despite these issues, it was said to have played a role in resolving some local conflicts between rival communities in eastern DRC. Despite the shortcomings of the CNVR, recommendations for the establishment of a new truth and reconciliation commission have been made in various instances to deal with the varying issues of truth, justice, accountability, reparations etc. in the Democratic Republic of Congo¹⁰. The TRC's final report was presented in 2007, urging the establishment of another truth commission.

Some more recent transitional Justice Processes in the DRC

Accountability and the International Criminal Court (ICC - 2004-present): The pursuit of accountability by the International Criminal Court is one TJ mechanism that has been consistent in the DRC. The Inter-Congolese Dialogue called for the ICC's establishment in the DRC, leading to its first investigation in 2004. The prosecutor's investigations have since focused on alleged war crimes and crimes against humanity in eastern Congo, Ituri as well as North and South Kivu. In the last two decades, the ICC investigated and issued arrest warrants, including for Thomas Lubanga, who was later convicted in 2012.¹¹

On 23 May 2023, the International Criminal Court's (ICC) Office of the Prosecutor received a second request from the Democratic Republic of the Congo (DRC) government under Article 14 of the Rome Statute, in line with the DRC's status as a State Party to the Statute. DR Congo's government urged the Prosecutor to commence an investigation into alleged crimes falling under the Court's jurisdiction, occurring in North Kivu, DRC, from 1 January 2022 to the present day. Following the referral, the Office will conduct a preliminary examination of the information received, adhering strictly to the Statute's requirements. The situation in the Democratic Republic of the Congo II has since been assigned it to Pre-Trial Chamber I.¹²

⁸ Kristin Brandt and Rachel Morley. 2020. Transitional Justice processes in the Democratic Republic of Congo. CSVR

⁹ Ibid.

¹⁰ Mutoy Mubiala. 2021. Towards a renewed transitional justice in the D.R Congo. Africa Policy Brief the University of Pittsburgh.

¹¹ International Criminal Court. Situation in the Democratic Republic of Congo. <https://www.icc-cpi.int/drc>

¹² International Criminal Court. Preliminary Examination. Democratic Republic of Congo.



On the first of June 2023, the government of the Democratic Republic of Congo (DRC) and the International Criminal Court (ICC) prosecutor signed a memorandum of understanding to enhance their collaboration, aiming to combat impunity for war crimes and crimes against humanity. The ICC chief prosecutor, Karim Khan emphasized the need for a new approach to deliver tangible results. It is important to note that the long-standing involvement of the ICC in the DRC has so far seen the conviction of three persons (Prosecutor vs Thomas Lubanga Dyilo, Prosecutor vs Germain Katanga, and Prosecutor vs Bosco Ntaganda)¹³ and many perpetrators continue to walk free with some of them occupying public offices.

Military Tribunals in the DRC: More recent Justice and accountability mechanisms include the Military tribunals which apply both formal and informal mechanisms¹⁴. The tribunal which operates mostly in Eastern DRC is responsible for trying international crimes including war crimes and crimes against humanity. It is important to note that only these Military courts and tribunals are authorized to deal with international crimes in the DRC. The Military tribunals face severe challenges including interference and the lack of independence from the other arms of government especially the executive. This military is said to be prone to corruption and political interference and has been able to try only a few cases involving serious crimes.¹⁵ The capacity of the tribunal to deal with a plethora of justice and accountability issues in the country has been questioned time and again. The tribunal has also been accused of corruption as perpetrators, including high-ranking officials, often escape justice or still occupy senior positions within the army and in other institutions.¹⁶ Reparations efforts emanating from the rulings of this court also face political challenges, with only limited progress. Sexual violence remains pervasive as judicial failures hinder accountability for these crimes.

Reparations and Victims Protection Law: In December 2022, a new law was enacted focusing on the protection and reparation of victims affected by conflict-related sexual violence, crimes against peace, and threats to humanity. Crucially, the nation has established two public institutions tasked with providing reparations to victims of severe crimes: FRIVAO, the Special Reparations Fund for victims of Uganda's illicit activities in the Democratic Republic of Congo (DRC), and FONAREV, the Reparations Fund for victims of conflict-related sexual violence and crimes against peace and security. FRIVAO, formed in May 2023, specifically addresses victims of the six-day war in Kisangani (northeast DRC) in 2000, involving Ugandan forces. In contrast, FONAREV focuses on victims of other serious crimes committed since 1993. Despite Uganda paying the first instalment of \$65 million in reparations in September 2022, in accordance with an International Court of Justice ruling on the bilateral dispute, no disbursements of funds to victims occurred almost a year later. Although FRIVAO is intended to be based in Kisangani, it currently operates from a small office at the Kinshasa courthouse, raising concerns. FRIVAO's lack of response to inquiries has also raised questions. There are speculations that the institution lacks funds for its operations. The fund remains non-operational due to the absence of budgetary allocation in the 2023 financial year, but efforts are said to be underway to operationalize this fund. An August 18 cabinet meeting indicated that the "allocation has just been activated" for the first Ugandan payment made in September

¹³ Africa News. 2023. DRC, ICC to strengthen cooperation in the fight against war crimes Impunity. Africa News.

¹⁴ Ibid

¹⁵ Office of the High Commissioner for Human Rights. Info Note 7 on the Democratic Republic of Congo

¹⁶ Ibid.



2022, which had been placed in a "transitional account"¹⁷ even though there have not been additional updates to the victims.

Successes, opportunities, and challenges in DRC's transitional justice journey

Transitional justice mechanisms in the DRC face significant hurdles, particularly the fact that TJ processes are ongoing without a transition from an active conflict. The situation in the country is still volatile with ongoing tensions between armed groups. There has reportedly been a heightened potential for a "direct military clash" between the Democratic Republic of Congo (DRC) and Rwanda in recent times as well as claims of external military backing of armed groups within DRC¹⁸. More so, the withdrawal of the UN peacekeepers also raises questions about whether the DRC armed forces are ready or capable of not only taking over from the UN peacekeeping troops but also ensuring security and protection for civilians in the country. The already volatile situation could further be worsened if the withdrawal is badly implemented, and the Congolese military is not fully ready to assume responsibility for the safety or protection of its citizenry. Incessant fighting in the DRC since independence till date has led to the general breakdown of many institutions in the country and has specifically affected the Judiciary. Many of these institutions are dysfunctional and continue to operate ineffectively. The breakdown or the ineffectiveness of these institutions poses significant challenges for transitional justice processes in the country as institutions are a crucial part of any successful and effective transitional justice process. Civil society while calling for justice, reparations etc. also needs to pay serious attention to the rebuilding and reforming of institutions, especially the judiciary.

Additionally, several individuals accused of being perpetrators of gross human rights violations reportedly still occupy roles within the government and the military. The increasing impunity can be attributed to the fact that military courts in DRC have the exclusive power to handle crimes under international law. This is evident in the small number of investigations and prosecutions for war crimes and crimes against humanity, despite the high number of committed offences. Despite the increasing demand for justice and an end to the widespread culture of impunity, millions of victims find themselves without recourse and without the chance to make their voices heard.¹⁹ These issues present an opportunity for civil society actors and community-based organisations to embark on advocacies calling for justice, accountability, and complete reparations including compensation for victims as well as inclusivity of different stakeholders in these processes. Particular attention needs to be paid to cases related to UN peacekeepers who have been accused of perpetrating human rights violations as they prepare for the troops' imminent withdrawal from the DRC. Other challenges include the political resistance or lack of political will to implement TJ processes as apparent in the CNS and processes from the ICC, lack of resources, and challenges in holding high-ranking officials accountable.

¹⁷ Caleb Kazadi. 2023. When will Congolese "Genecost" victims receive reparations? Justiceinfo.net.

¹⁸ Ibid. Voa

¹⁹ Ibid



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