



Justice for Women: Seeking accountability for sexual crimes DOSSIER

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Introduction

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Post-conflict and fragile States

In the last fifteen years, the International Community has repeatedly searched for the adequate answer to the devastating effects which conflict leaves in its wake. In the international order, the number of armed conflicts has decreased and the number of post-conflict situations has risen. Currently, around 50 States find themselves in a post-conflict reconstruction process. Each one of them requires special attention and international support, from investment and a military presence in order to guarantee stability, through to technical aspects, amongst which features the provision of an effective system of Justice.

These processes are very fragile and can be seriously attacked by groups interested in the failure of peace processes. The challenge is threefold: the need to consolidate peace is linked to the need for justice to be carried out and the prevention or punishment of crimes committed against a reconstruction process.¹

The different kinds of conflict which have taken place in recent decades have required different kinds of responses. Success has been relative. If on the one hand, important advances have been achieved, on the other, judicial systems have frequently seen themselves overwhelmed, without necessary resources and their failure has led, in part, to the resurgence of conflicts.

The necessary balance between Justice and Peace in these post-conflict processes is at the heart of the international debate. Both are essential, one needs the other and together they form part of the construction of a lasting peace and the reconstruction of the State.

Judicial systems, for their part, even though they are transitional and are only partially efficient, do allow the population to feel a certain amount of confidence in the security which the State and authorities provide. In general terms, in States with weak institutional systems, the judicial body is incomplete or inexistent and in situations of armed conflict, it tends to disappear or be canceled out. If, in addition, societies are

¹ Colette Rausch (Ed.), *Combating serious crimes in post- conflict situations*, United States Institute for Peace, Washington, 2006.

made up of groups with a strong identity or sense of community, Justice is usually perceived as being partial and aimed at bettering only one of the sides.

Impunity

Although the priority is for national Justice itself to make the perpetrators of massive Human Rights abuses in their territories go through an accountability process, it has been amply demonstrated that this is not always a practical answer. That is why additional measures and different kinds of responses have been used, such as ad hoc tribunals or mixed or hybrid courts. The rapid emergence of the principle of universal jurisdiction and its consequences in the international arena are also an important factor here. Other non-judicial instruments, such as truth and reconciliation commissions, have also been used to tackle the priority objective of the eradication of impunity, besides what they amount to in aiding popular reconciliation.

Transitional Justice is concerned with such aspects: accountability with regard to the past, reconciliation and the furnishing of the necessary instruments of justice in order to guarantee peace in the future in compliance at all times with fundamental guarantees and Human Rights.

The persecution of impunity has achieved positive results, with a twofold impact. First of all, in creating the perception that justice has been done in relation to the past. Secondly, as a deterrent against those actions being carried out again in the future, serving as a clear and stark warning to all authoritarian regimes which are still active in the present day.

Complementarity

The different methods tried out in post-conflict situations have led to multiple jurisdictions converging in certain cases. In such cases, the International Community has had to deal with the problem of coordinating various courts acting at different levels, complying with their corresponding standards.

The International Criminal Court (or ICC) itself has, since its creation, assumed a secondary role in relation to the ordinary jurisdiction of each State. What's more, it came into being with the vocation of strengthening the above mentioned jurisdiction. Only in cases when national courts do not act in an adequate way, either because the State lacks the will or the capacity, will the Court assume jurisdiction.²

Moreover, in those cases when various jurisdictions co-exist, a complex web of competencies has to be designed. In this sense, the case of Rwanda is paradigmatic. The normal activity of ordinary Rwandan jurisdiction takes place alongside legal procedures carried out by the International Criminal Tribunal for Rwanda (ICTR), traditional courts (*gacaca*) and the activities of other national judicial systems applying the principle of universal jurisdiction, such as the case of Belgium or, recently, Spain.

In this case, as in some others, the demarcation of jurisdiction between some of the various courts has not been perfectly established, bringing with it a situation of judicial insecurity and the consequent distrust of the population towards public powers.

Gender

Both during and after armed conflicts, certain sectors of society suffer the consequences of violence especially. Women, in particular, not only suffer the barbarity of war in the same way as men do, but are also subjected to specific abuses due to their condition.

Violence against women has been systematically repeated before, during and after conflicts. This violence has been progressively codified in various national laws and

² Article 1 the Rome Statute, where the "complementary nature" of the ICC is made apparent.

international treaties. In this way, the United Nations' (UN) Declaration for Elimination of Violence Against Women (or DEVAW, in its English initials) defines this kind of violence as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life".³

Sex Offences

The most serious aspect of gender based violence can be found in the sex offences perpetrated in a bellicose or post-bellicose context. In a situation where a general lack of protection of human rights prevails, the violation of women's human rights is characterized by a high level of impunity with reparation mechanisms for the victims scarcely existing. What's more, and paradoxically, sexual violence against women is a weapon of war which is used as a means of aggression between men on many occasions.

The Rome Statute 1998⁴ conferred an important legal recognition of these kinds of crimes and represents one of the major advances in this subject matter. For the first time, the category of War Crime was applied to rape and other forms of sexual violence used by the combatants of an armed conflict. When these kinds of abuses are carried out in systematic fashion against the civilian population, they are given the category of Crimes against Humanity and, on occasions, Genocide.

Justice for Women

Accountability takes on an essential dimension within the reconstruction of a State which has just come out of an armed conflict. There are many reasons why a population might lose confidence in the Justice system and one of those is the discrimination against one section of the population. In order to avoid the above mentioned discrimination against women, the UN agreed upon the Convention on the Elimination of All Forms of Discrimination against Women⁵, and amongst these forms the situation of women before Justice takes on special relevance.

Whilst it is true that the Court expanded the position of female gender in the matter of participation in trials, as either victims or witnesses, the question was later emphasized by UN Resolution 1325⁶ where, moreover, it is stated that, in the persecution of impunity, responsibility lies with States and those who have perpetrated sex offences or any other form of violence against women.

This Resolution offers a wider perspective for female participation, insisting upon it too in the resolution of conflicts and peace processes. In a similar way, the Windhoek Declaration⁷ calls for their participation as a real and essential part of society in post-conflict processes and, in consequence, their participation in social reconstruction in all of its spheres and each and every institution.

The future

In current post-conflict scenarios, women who have been victims of sexual violence are faced with personal and family situations which in many cases have not led to any reparation and typically suffer a wide range of impunity. Moreover, they are frequently marginalized within society.

³ Declaration on the Elimination of Violence Against Women, Resolution of the General Assembly 48/104 of the 20th of December 1993.

⁴ Articles 6, 7 & 8 of the Rome Statute.

⁵ Declaration of the Elimination of Discrimination against Women, 1981. In 1992, the Committee (or CEDAW in its English initials) adopted General Recommendation number 19, so that gender based violence could be included in reports related to the Women's Convention.

⁶ UN Resolution 1325, S/RES/1325 (2000). See the analysis for ACNUR by Jackie Kirk and Suzanne Taylor about the above mentioned Resolution <http://www.acnur.org/biblioteca/pdf/5287.pdf>

⁷ Windhoek Declaration, in Namibia, the 31st of May 2000. See http://www.un.org/womenwatch/osagi/wps/windhoek_declaration.pdf

Historically, the role of women has been relegated in many cases to the private sphere, to suffering and silence. Ten years after the signature of the Rome Statute the effective implementation of these international agreements and their correct application within national legislations bear an essential relevance in making possible the advancement of equal rights between men and women, peace, the reconstruction of societies and the reconciliation of nations.



Democratic Republic of Congo's Forgotten Crimes: The Price of the Peace Process

Worldcom-LolaMora

Sexual violence in the Democratic Republic of Congo (DR Congo) has reached levels never seen before: tens of thousands of women and girls have been raped, sexually assaulted, gang raped, attacked and abducted.

I. GENERAL INFORMATION

Geographical Situation: Great Lake Region-Central Africa.

Population: 60 million. The third largest population and the second largest land area in Sub-Saharan Africa. More than 200 African ethnic groups and approximately 700 local languages and dialects.

Literacy: male 80.9% - Female: 54.1%

Natural Resources: The DRC has great natural resource wealth: diamonds, gold, timber. Forests cover about 60% of the country. But recent wars contributed to patterns of illegal or inappropriate exploitation. In this regard, UN Resolution 1457 (2003) "*strongly condemned the illegal exploitation of the natural resources of the Democratic Republic of Congo*"

Peace Accords: Sun City Peace Agreements, 2002

Deaths during the war and regional conflicts: 1998-2004: more than 3 million. According to "Enough" the war in DR Congo is the deadliest war since World War II with over 5.4 million dead and counting.

Internal Displacement: Dropped from 3.3 million to 1.2 million since 2004.

Refugee: According to the UNHCR, DR Congo ranks third in the world among countries of origin for refugees, -462,000- just behind Sudan and Afghanistan.

Last General Elections: After 40 years, elections were held in July 2006. Joseph Kabila was sworn in as President on December 2006.

United Nations Peace Keeping presence: 17,000, the largest in the world.

Current authorized strength: 18,931 total uniformed personnel, including up to 17,030 military personnel, 760 military observers, 391 police personnel and 6 formed police units comprising of up to 125 personnel each.⁸

Internally Displaced Persons: Between January 2002 and December 2008 more than half a million people were reportedly displaced from their homes in Ituri, in the East of DR Congo.

Impunity: December 2003: more than a hundred women were massively raped in Songo Mboyo. MONUC identified (after an investigation in situ March and April 2004) 79 presumed perpetrators. Only 12 were prosecuted. Out of the 12, only 7 were sentenced. One was acquitted in an appeal and all the rest escaped from prison. This was the first sentence against the country's military personnel for crimes against humanity

⁸ <http://www.un.org/Depts/dpko/missions/monuc/facts.html>

- In 2005, the National Assembly adopted and promulgated the "Amnesty Law" which amnesties all Congolese, "for acts of war, political offences and crimes of opinion".

II. AFTER THE PEACE AGREEMENTS

Oct-Nov. 2007, John Holmes, the United Nations under Secretary General for Humanitarian Affairs and Emergency relief coordinator, stated: "The sheer numbers, the wholesale brutality, the culture of impunity -it's appalling". "Savage sexual violence is sweeping the troubled nation, demanding a global response".

- Panzi Hospital is housed in rambling quarters outside the city of Bukavu in South Kivu. According to their statistics, 15,000 victims of sexual violence have been treated there since 1999. An estimated one-third of the victims are children⁹.
- According to the United Nations, 27,000 sexual assaults were reported in 2006 in South Kivu Province alone, and that may be just a fraction of the total number across the country.
- 70% of the women reported being sexually assaulted in 2007 in Shabunda alone. According to victims, one of the newest groups to emerge is called the Rastas, a gang of dread-locked fugitives who live deep in the forest, and are notorious for burning babies, kidnapping women.
- According to Medicines Sans Frontiers, "the military operations linked to the peace process in the North-East of the DR Congo generates between 50 and 120 cases of rapes a month between the civil population". In Ituri, "the civilians keep on being the first victims", October 2007 Report.
- In mid 2007, The United Nations Peacekeepers initiated what they call "night flashes" in which three truckloads of peacekeepers drive into the bush and keep their headlights on all night as a signal to both civilians and armed groups that the peacekeepers are there. Sometimes, when morning comes, 3,000 villagers are curled up on the ground around them. But the problem seems bigger than the resources currently devoted to it. Panzi Hospital has 350 beds and although a new ward is being built specifically for rape victims, the hospital sends women back to their villages before they have fully recovered because it needs space for the never-ending stream of new arrivals.

III. PREVALENCE OF THE CONFLICT

The elections and the optimism for the new democracy have been overshadowed by several cases of violence against civilians, political repression, sexual crimes and impunity. Human Rights Watch (HRW) reports that the political agreements to integrate combatants loyal to renegade Laurent Nkunda have failed and war continues. All sides commit atrocities against civilians, especially women. 350,000 people joined the hundreds of thousands already displaced. Two journalists were killed and over 30 other critics of the government were detained, beaten or harassed during 2006, according to HRW.

The International Community have the enormous challenge of keeping the peace and putting pressure on the new Government in order to achieve a clear transition to democracy after the most costly investment for elections in the region: 500 millions dollars.

⁹ Malteser International, an European aid organization that runs health clinics in Eastern Congo.

IV. JUSTICE AND THE INTERNATIONAL CRIMINAL COURT (ICC) IN THE DR CONGO

National Level:

July 2006: A new law against sexual violence was passed in the Congolese Parliament.

International Criminal Court:

- The DR Congo has been a State Party since it ratified the Rome Statute on the 11th of April 2002. The ICC has had jurisdiction in the DR Congo since the entry into force of the Rome Statute on the 1st of July 2002.
- The Office of the Prosecutor (OTP) received numerous communications concerning alleged crimes from non-governmental organisations (NGOs) and international organisations, as well as other sources.
- In September 2003 the Prosecutor announced that he had selected the Ituri District as his first priority to investigate.
- In March 2004 the DR Congo Government referred the situation of the whole territory onto the Prosecutor.
- The OTP opened its investigation into crimes committed in the DR Congo in June 2004.
- The OTP intends to open another case in the DR Congo in the near future and is looking at various possibilities, including allegations of massive sexual violence, forced displacements and killings in the Kivus Provinces. Other options include the case of officials, whether from the DR Congo or from other countries, having financed and organized militia.

Three cases at The ICC:

1- The Court's first case in the DR Congo is against the former leader of Ituri **Thomas Lubanga Dyilo**, leader of the UPC (Union des Patriotes Congolais)-FPLC. Lubanga Dyilo was arrested in Kinshasa on the basis of the ICC arrest warrant, and formally charged by the Prosecutor in August 2006. The Court's Pre-Trial Chamber I, confirmed the charges on the 29th of January 2007: war crimes of enlisting and conscripting children under the age of 15 and using them to participate actively in hostilities in Ituri. He will be the first person to stand trial at the ICC.

2- On the 18th of October 2007, **Germain Katanga** (Commander of the Patriotic Resistance Force Ituri) was taken from the Kinshasa detention centre, where he was already in the custody of the DR Congo authorities. **Katanga** faces charges of crimes against humanity and war crimes, in relation to the attack on the civilian population of Bogoro village on the 24th of February 2003, including sexual enslavement of several women and girls.

3- On the 7th of February 2008, **Mathieu Ngudjolo Chui**, a Congolese National and leader of the National Integrationist Front and currently Colonel in the National Army of the Government of the RD Congo, was surrendered to the Court by the DR Congo authorities and transferred to the ICC detention centre in The Hague. Ngudjolo is accused by the OTP of having ordered the attack on Bogoro village together with Germain Katanga and thus of being criminally responsible for crimes carried out by the allied forces under their command. The counts include crimes against humanity and war crimes.

V. SEXUAL VIOLENCE AGAINST WOMEN: A CONTINUUM

For Congolese women there is no difference between war and peace. In both, they are the victims of crimes of sexual nature, rape, mass rape, enslavement, harassment, genital mutilation.

In Eastern Congo women have been systematically attacked on a scale never seen before. The rapes seemed to have started in the mid 90's, in moments where waves of Hutu militiamen escaped into Congo's forest after exterminating 800,000 Tutsis and moderate

Hutus during the Rwandan Genocide 13 years ago. Between 1998 and 2003 more than 40,000 women were raped (HRW Report 2005).

The sexual violence perpetrated for civilians also has increased in the last years in spite of the peace agreements and the laws. As some sources point out:¹⁰ "The men, on having heard so much about the impunity that reigns in the country, keep on raping".

But the work done by women's organizations has not stopped either during the war or after the cease fire. They have spoken loudly and clearly about the fact that all parties involved in the conflict have committed sexual crimes, proving that talking about sexual violence is not a taboo for women in the DR Congo. The victims want to speak about what happened and claim justice, protection, punishment and reparation. The Government, society and the international community are those who, with their indifference, relegate this specific crime against the woman and girls, and prevent thousands of victims from recovering and being a part of the process of reconciliation and reconstruction of the DR Congo.

¹⁰ Interview to Lyn Lusi of Doctors on Call Service (DOCS) in Goma, for the documentary *Nos corps, leur champ de bataille, violence sexuelle durant la guerre*, by Integrated Regional Information Network (IRIN) and UN Office for the Coordination of Humanitarian Affairs (OCHA)



Republic of Rwanda. Women victims of sexual violence during the Genocide: 14 years awaiting justice

Worldcom-LolaMora

I. GENERAL INFORMATION

Geography: Rwanda is a state located in the Great Lakes' region of Central Africa. It has borders with the Democratic Republic of Congo, Uganda, Tanzania and Burundi. It is a small country of 26,340 square kilometres, with many mountains and valleys - characteristics that have earned it the moniker "country of a thousand hills". The Kivu Lake, on the north-eastern border, is the lake with the highest altitude in Africa.

Population (2007 figures): 9,907,509.

Ethnic groups: Hutu, 84%; Tutsi, 15%; Twa (Pygmees), 1%.

Languages: Kinyarwanda, French and English (all three are official languages); in commercial areas Kiswahili is spoken.

Religions: Catholic, 56.5%; Protestant, 26%; Adventist, 11.1%; Islamic, 4.6%; indigenous beliefs, 0.1%; non-religious, 1.7%.

Literacy rate: 64% (Source: World Health Organisation).

Natural resources: gold, cassiterite, wolfram, methane, hydroelectric power, arable land.

Agriculture: coffee, tea, pyrethrum (insecticide extracted from chrysanthemums), bananas, lentils, grain sorghum, potato.

Working population: 4.6 million; agriculture (90%), industry and services (10%).

Industries: cement, agricultural products, soap, textiles, cigarettes, plastic.

Internal conflict: During the Rwandan genocide, in 1994, sexual violence was systematic and the number of female victims was estimated at 250,000.¹¹ Females suffered multiple rapes, sometimes with tree branches, bottles, weapons and other instruments; some were mutilated and today, 14 years later, still bear significant wounds and scars. Numerous victims contracted sexually transmitted diseases, like HIV-AIDS, as a consequence, while others fell pregnant from acts of sexual aggression.

II. AFTER THE GENOCIDE: JUSTICE AND THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (ICTR)

Since 2001, Rwandan authorities have created *Gacaca* tribunals, based upon the traditional system of communitarian justice and conceived as a participative justice system that would boost reconciliation. *Gacaca* tribunals have the authority to investigate all complaints lodged within their jurisdiction and to judge less serious crimes (those within Categories Two, Three and Four).

Gacaca tribunals had, and continue to have, many objectives:

¹¹ Human Rights Watch, *Shattered Lives: Sexual Violence during the Rwandan Genocide and Its Aftermath*. New York, NY: Human Rights Watch, 1996.

- To accelerate the judicial process, since more than 100,000 persons have been arrested, accused of having participated in the genocide;
- To establish the truth of what happened;
- To help with reconciliation through public sessions where the accused ask for forgiveness;
- To put an end to impunity.

Crimes of sexual violence classified within Category One are supposed to be judged by courts of first instance, behind closed doors, once the *Gacaca* forwards the case reports. The victim may lodge a complaint secretly and even choose the judge. Article 38 of Organic Law 16/2004 explicitly exempts such crimes from public scrutiny, in order to guarantee the victims' safety.

In 2004, certain international organisations noted the rarity of judgments in Rwanda with regard to sexual violence:

*An extraordinarily small number of cases of Genocide sexual violence have been prosecuted at the domestic level. From December 1996 to December 2003, the Tribunals of First Instance and military courts tried 9,728 persons accused of genocide, crimes against humanity, or related crimes. Human Rights Watch consulted numerous sources for information on genocide prosecutions and judgments and examined over 1,000 judgments covering a wide range of crimes. Of these cases, only thirty-two included charges of rape or sexual torture.*¹²

Legal, political, social and cultural obstacles, as well as those relating to the lack of preparation of institutions, have undermined attempts to deal with such an exceptionally brutal crime, which is considered secondary in society.

*[...] Soon after the genocide I told of how I had been raped. I spoke to police inspectors and judiciary inspectors. They listened to me and hurriedly prepared my case report, but it didn't go further than that. They did not help me to make things move forward, all the time telling me that I should wait for the Gacacas (tribunals). Every time I went to complain and ask for news about my case, they told me that they were waiting for the approval of my report. With time the Gacaca arrived, but still today, when I ask about it, I am told that my case is awaiting the green light. The truth is that nothing has happened since I lodged my complaint before Justice more than ten years ago [...] When women start to testify before the Gacaca tribunals, people start to laugh, they are mocked and called "women of a thousand problems". So often women end up shutting up and leaving the Gacaca assemblies in tears! In order for that not to happen again, we female victims would need the media, but they do not come too close to us, nor do lawyers. Our problem continues to exist [...]*¹³

The inadequate care for and protection of victims is also visible in the group of cases tried by the International Criminal Tribunal for Rwanda. The women that displaced themselves to Arusha to testify against Mr. Akayesu later had to leave their town of Taba

¹² Human Rights Watch, "Struggling to Survive: Barriers to Justice for Rape Victims in Rwanda", September 2004: <http://hrw.org/reports/2004/rwanda0904/>. French version: "Toujours en lutte: la justice, un parcours semé d'obstacles pour les victimes de viol au Rwanda". <http://www.hrw.org/french/reports/2004/rwanda0904/index>

¹³ Testimony gathered by Worldcom-LolaMora in Rwanda, November 2007.

for safety reasons; and they have expressed their frustration – the Tribunal never followed up or monitored their situation or cases after their testimonies.

The ICTR has passed just over 30 judgments since its conception; Mr. Jean Paul Akayesu's being the most well-known. On 2 October 1998, the International Criminal Tribunal for Rwanda sentenced the former mayor of Taba to three prison sentences for genocide, war crimes and crimes against humanity. Moreover, the Tribunal sentenced him to 80 years' imprisonment for rape and other crimes, including having abetted the perpetration of rapes and other acts of sexual violence.

III. THE CURRENT SITUATION OF SEXUAL VIOLENCE

The current government has adopted a series of measures to avoid the repetition of such acts and has instituted unprecedented policies of promotion and defence of women's rights. This has led Rwanda to become one of very few countries in the world to have quasi-parity in Parliament, where 48% of seats are occupied by women.

The international community and the Government of Rwanda are making efforts to grant reparations to the victims of sexual violence. However, among the thousands of women victims, many still feel the effects of psychological and physical trauma. A great number of them do not receive treatment for HIV-AIDS or still suffer from fistulae. To this must be added the social marginalisation that they endure, which exposes them to poverty and desolation.

To speak only of justice, and not of monitoring, counselling, reparation and compensation of victims, is to speak out of context and senselessly. It is necessary that all three aspects be treated together. Monitoring, justice and reparation. Sometimes genocidal rapists attend court with a lawyer, whilst the victims are so poor that they do not have a lawyer to represent them. How can we compare or speak of a just process? How can we help these women? Justice has forgotten them.¹⁴

¹⁴ Godelieve Mukasarasi, founder of SEVOTA, a Rwandan organisation that works with victims of sexual violence and children born as a result of rapes. Interviewed by Worldcom-Lolamora.



The Case of Darfur

Medina Haeri and David Lanz*

I. GENERAL INFORMATION

Geography: Darfur is located in the west of Sudan in northeastern Africa and its surface measures 500,000 square kilometers (the size of France). It is situated on a vast plain approximately 900 meters above sea level, marking the divide between the basins of the Nile and of Lake Chad.

Population: An estimated 6 to 7 million people live in Darfur, almost all of them Muslims. Darfur consists of approximately 140 different Arab and non Arab tribes, who co-existed in relative peace for centuries. While there is a myriad of different languages, Arabic is Darfur's *lingua franca*.

Conflict in a nutshell: The most marginalized of Sudan's peripheral regions, Darfur in the 1980s became the terrain for a regional proxy conflict between Libya, Sudan, and Chad, infusing the region with radical ideology and militarizing local conflicts. Population and livestock growth as well as decreasing rainfall and desertification have increased competition for resources and aggravated intertribal conflict. In early 2003 an insurgency broke out, which triggered an extremely brutal response by the government. Aimed at destroying the support base of the insurgents, the government armed Arab tribal militia from Darfur – infamously known as the *Janjaweed* – and supported their “scorched earth” campaigns, which in 2003 and 2004 led to the death and displacement of hundreds of thousands of Darfurians, mostly from non-Arab tribes. The intensity of the conflict has since been reduced, but the humanitarian crisis persists.

Deaths and displacement: The total number of deaths of the combined effects of the war in Darfur has been estimated at 200,000. John Holmes, the UN head of humanitarian affairs, recently (April 2008) stated that up to 300,000 people may have died in the Darfur conflict since 2003. An estimated 2.5 million Darfurians are internally displaced, and a further 250,000 live in refugee camps in Eastern Chad.

Peacemaking: In April 2004, the Sudanese government and different rebel movements signed the N'Djamena Ceasefire Agreement, which failed to be implemented. The same is true for the Darfur Peace Agreement of May 2006, which grew out of two years of negotiations in Abuja, Nigeria. The UN and the African Union (AU) have re-launched the Darfur peace process in summer 2007, without achieving significant progress thus far.

Peacekeeping: The AU Mission in Sudan (AMIS) was deployed in July 2004 and eventually consisted of 7,000 soldiers. Due to a lack of funding, deficient organization, and security threats, AMIS gradually lost credibility and was replaced in January 2008 by

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the hybrid UN-AU Mission in Darfur (UNAMID). Currently, approximately 9,000 of a planned 26,000 UNAMID peacekeepers are on the ground.

II. GENDER DIMENSION OF THE DARFUR CONFLICT

Rape and other forms of sexual violence have featured prominently in the government's "ethnic cleansing" campaign, both during and following displacement. The UN International Commission of Inquiry in January 2005 concluded that rape and sexual violence were used by government forces and Janjaweed militias as a "deliberate strategy with the aim of...terrorizing the population, ensuring control of the movement of the IDP population and perpetuating its displacement."¹⁵ The first mass rapes were part of the broader pattern of attacks on villages. However, with the forced displacement of hundreds of thousands of civilians, most reported cases of sexual violence now occur around the peripheries of IDP camps, where armed men, often in military uniforms, harass and attack women and girls who are in the process of collecting firewood or grass or those who are farming. The displacement has also led to a breakdown in Darfur's traditional social structure, making women more susceptible to domestic violence and rape within the camps. The Government's response has been outright denial that rape is a problem in Darfur combined with half measures to address sexual violence that have had little to no appreciable impact. The Government also routinely harasses and undermines NGOs working on issues of sexual violence, curtailing the access of many survivors to important medical, legal, and psychosocial services.¹⁶

Obstacles to justice for sexual violence survivors exist on several levels:

- **Costs of reporting sexual violence:** Many women do not admit to being sexually abused because they fear social stigmatization and do not trust the authorities to take action, especially given the perception among the displaced that the Government is behind the attacks. Additionally, the lack of security in Darfur means that women not only expose themselves to further sexual violence, but that they also incur additional financial costs just to travel to the nearest police station to file a claim.
- **Investigative and documentation challenges:** Police are only present in principle towns and government outposts and they lack both the basic tools as well as the political will to respond to sexual violence crimes and conduct investigations. Other forensic problems include confusion surrounding the use of Form 8, the form to be filled out by a doctor for use as evidence in legal proceedings. The form itself provides very little relevant information and women with very little education often receive no assistance in filing a claim with the police.
- **Legal impediments to prosecuting sexual violence:**¹⁷
 - Rape laws are intertwined with adultery laws. This means that a woman who admits to being raped can be charged with adultery or *zina* if she is unable to prove that she did not consent to sexual intercourse outside of marriage. In cases where the woman is unmarried and pregnant, this may be viewed as *prima facie* evidence of guilt. In persecutions for rape, some judges impose strict *sharia* evidentiary rules requiring the testimony of four competent male witnesses.

¹⁵ United Nations, Report of the International Commission of Inquiry on Darfur to the United Nations Secretary General, January 25, 2005, para. 353. Available from http://www.un.org/news/dh/sudan/com_inq_darfur.pdf.

¹⁶ See *Human Rights Watch* "Five Years On: No Justice for Sexual Violence in Darfur," April 2008. Available from <http://hrw.org/reports/2008/darfur0408/>.

¹⁷ For more on flaws in Sudan's rape laws, see *Refugees International* "Laws without Justice," June 2007. Available from <http://www.refugeesinternational.org/content/publication/detail/10070>.

- Sudanese law grants effective immunity from prosecution to soldiers and militia committing acts of sexual violence. This immunity can only be waived by the alleged perpetrator's superior officer, who rarely consents to a waiver. Since the majority of sexual violence occurring in Darfur is perpetuated by members of the armed forces, this provision creates an insurmountable obstacle to meaningful prosecution.

III. JUSTICE IN DARFUR: THE ICC AND BEYOND

Catalyzed by the 10th anniversary of the Rwandan genocide in April 2004, the war in Darfur triggered a significant advocacy campaign. From the outset, one of the rallying cries for human rights advocates was to involve the International Criminal Court (ICC) in order to hold those responsible for the horrific crimes committed in the conflict in Darfur accountable. A recommendation to this effect by the UN Commission of Inquiry generated further momentum. Given that Sudan is not a party to the Rome Statute, the referral of the situation in Darfur to the ICC had to come from the UN Security Council. The U.S. initially blocked such a referral and suggested the creation of an *ad hoc* tribunal, but eventually gave in to domestic and international pressure. The following are the milestones of the ICC's engagement in Darfur:

- On 31 March 2005, the Security Council adopted Resolution 1593, which referred the situation in Darfur since 1 July 2002 to the Prosecutor of the ICC, Luis Moreno Ocampo.
- On 1 June 2005, Moreno Ocampo officially opened the ICC's investigations of the situation in Darfur.
- On 27 April 2007, the ICC's Pre-Trial Chamber released arrest warrants for two men, who allegedly bear particular responsibility for crimes committed in Darfur: one is Ahmed Mohamed Haroun, who was the Sudanese Minister of State for the Interior during 2003 and 2004 and currently serves as Minister of State for Humanitarian Affairs; the other one is Ali Mohamed Abdel Rahman 'Kushayb', a senior *Janjaweed* leader. Counts of rape were included among the 51 counts of war crimes and crimes against humanity against the two indictees.

The ICC's Darfur case is currently blocked, raising doubts about whether the two accused will be tried in The Hague. For obvious reasons, the Sudanese government refuses to cooperate with the ICC. Indeed, the ICC seems to heighten the government's intransigence, which potentially has negative effects on the deployment of UNAMID, the pursuit of humanitarian operations, and the progress of peace negotiations. As a result, the international community does not currently give priority to the ICC in Darfur.¹⁸

Although the ICC is an important step towards promoting accountability at the highest levels of government, justice for victims of sexual violence will also require more local solutions:

- Emphasize the need for legal reform of Sudan's criminal code as well as its judicial processes that currently preclude any form of meaningful redress for victims of sexually violent crimes.
- Ensure that UNAMID has the appropriate equipment and personnel to provide protection from as well as to investigate claims of sexual violence in a gender sensitive and confidential manner.
- Explore the potential of local justice mechanisms to address the stigma and psychosocial trauma of sexual violence. Since rape in Darfur has been used as a means of destroying not only a woman, but also her entire tribe, recovery from

¹⁸ See Alex de Waal, "Darfur, the Court and Khartoum: The Politics of State Non-Cooperation" in Nicholas Waddell and Phil Clark, eds., *Courting Conflict? Justice, Peace and the ICC in Africa* (London: Royal African Society, March 2008). Available from <http://www.crisisstates.com/download/others/ICC%20in%20Africa.pdf>.

rape needs to be a community-wide process. This will mean reaching out to community elders and religious leaders not only to dispel fears of reporting sexual violence in the first place, but also to help communities and families cope with the long-term effects of the use of rape as a weapon of war.