

Hague Court Considers Bolstering Local Judiciary

Author: [Lisa Clifford](#)

Legal experts say helping enhance Congo's legal capacity is one way ICC can ensure rapists end up in court.

The Democratic Republic of Congo, DRC, has been described as the worst place in the world to be a girl or woman. Women young and old, even babies, are raped by militiamen, soldiers, policemen and civilians every day. There are hundreds of thousands of victims, though exact numbers are unclear as most women don't ever report an assault. The near defunct judicial system means there's little point.

The arrival of the International Criminal Court, ICC, four years ago brought some hope for Congolese rape victims. But international justice has so far been unable to stop, or even slow, the violence against women.

Tasked only with prosecuting those most responsible for war crimes yet criticised for not doing more to fight general impunity, the ICC is now considering its options in North and South Kivu provinces where the rape epidemic is at its worst. One early option is working more closely with Congo's government.

ICC deputy prosecutor Fatou Bensouda told IWPR that the court is considering sharing information it has gathered on lower-level perpetrators – information it doesn't intend to use – with the national authorities. Congolese prosecutors and judges would then draw on the ICC information in preparing their own rape cases.

"The office of the prosecutor attaches a lot of importance to the investigation of sexual and gender crimes," said Bensouda. "One thing we are looking at is working very closely with the government of DRC. We are not in a position to do everything, but we could provide information to the government, and we could even work with government at a local level."

Cooperating with national judiciaries is prominent in the ICC's founding document. The Rome Statute says the ICC should complement local courts, allowing them to retain the jurisdiction to try genocide, crimes against humanity and war crimes.

But in Congo, where the legal system has collapsed, how realistic is the ICC's idea to hand over files of evidence to local prosecutors and judges?

Legal experts say Congo's lack of witness protection programmes and the frequent and pervasive political and military interference in court cases makes such close cooperation nearly impossible. Congo has yet to incorporate the Rome Statute into its domestic legislation – meaning civilian courts cannot try war crimes cases – and still retains the death penalty. Three soldiers and two civilians were sentenced to death in September for the July murder of Daniel Boteti, a Congolese opposition member of parliament.

"In principle we would be very excited about the court working more closely with the Congolese judicial system ... then we started thinking about how this would work and then you start thinking about all the problems," said Geraldine Mattioli, advocacy director at Human Rights Watch's international justice programme.

"At the moment it seems impossible ... investigators compiling information and handing over a dossier to

the national judicial system. At this moment in time I don't see how this could work."

Lawyers from a North Kivu group that offers legal assistance to rape victims – Dynamique des Femmes Juristes, DFJ – know all too well the failings of the country's court system.

Sindubaza Vumbi from Goma told IWPR that accused rapists often pay judges to grant them provisional release. They then vanish, having given a false address. Sometimes they join an armed group or flee into a neighbouring country.

"This makes our task more difficult and turns rape into a disgusting tradition in our province," said Vumbi.

Interference in the legal process by politicians as well as the police and military is common. DFJ lawyer Christine Mpinda says judges who refuse to go along are reassigned or otherwise humiliated.

"The only efficient military magistrate of Goma, a colonel from the FARDC [Congolese army], was recently transferred simply for having dared to say that from now on any military interference in a trial would be unacceptable," said Mpinda. "He received serious death threats."

The lawyers themselves are also intimidated. "Every time we defend our clients who are victims of rape we receive threats from army officers or from those who are on the side of the police," said Tulinabo Chirimwami, also from DFJ.

Bensouda said the ICC is aware of the failings of Congo's legal system.

The lack of victim and witness protection is particularly problematic, she said, adding the court would never hand over files of evidence to the national courts if Congo couldn't guarantee the safety of those who'd spoken to the ICC.

"We are looking at whether this is feasible," said Bensouda. "We would not do this knowing it would jeopardise anybody."

"It would not just be to give [evidence] over to them and leave them. It is to see how the ICC can work with them. We won't just hand everything over, wash our hands and turn our backs."

Though debate continues about the ICC's role in Congo, that something must be done is clear.

A recent survey by the International Centre for Transitional Justice, the University of California, Berkeley's Human Rights Center and Tulane University's Payson Center found that almost 16 per cent of those surveyed in North and South Kivu and Ituri had been sexually violated. Almost 12 per cent were raped multiple times.

Mirna Adjami, the ICTJ's chief of mission in Congo, said real figures are actually higher but are

underreported due to the stigma associated with rape and the fear of reprisals. But despite the many obstacles to prosecution, Congolese told the surveyors they wanted justice for those who had been raped.

“Seventy per cent of those surveyed believed that sexual violence crimes were the most important to seek accountability for,” said Adjami. “This underscores the population’s desire to combat impunity for rape and sexual violence.”

Legal experts say that helping to enhance Congo’s legal capacity is one way the ICC can ensure that rapists end up in court.

Mattioli suggested the ICC should support local prosecutors in areas where it is already investigating. A national prosecutor in Ituri, where the ICC issued its first four indictments, recently told Human Rights Watch staffers that he would like to talk to the ICC about how it builds a case on child soldier recruitment.

“The prosecutor has all these questions about how he could go around the fact that [recruitment of children] is not a crime under Congolese law but war crimes are, about how to build a case relying on the Rome Statute,” said Mattioli.

“He has all these questions, but I can’t help. The MONUC [United Nations Mission in the DRC] people can’t help. The NGOs can’t help. They haven’t done a case on recruitment of child soldiers.

“ICC prosecutors and investigators on their next trip there could spend an afternoon with this guy and talk the elements of the crimes through. This could go a long way to helping him to build a case.”

Thomas Lubanga, Germain Katanga, Mathieu Ngudjolo and Bosco Ntaganda are accused of recruiting children to fight in the Ituri conflict. Katanga and Ngudjolo are also charged with crimes of sexual violence.

Mattioli suggested the ICC set benchmarks – including the abolition of the death penalty and the setting up of a victim and witness protection programme – which must be met before the court can work more closely with Congo.

“This is not unprecedented. It is exactly what the International Criminal Tribunal for Rwanda did with Rwanda,” she said.

Groups like DFJ in the North Kivu capital say they would welcome the ICC’s help. Founded in 2007, DFJ operates legal clinics in the Masisi and Rutshuru regions that inform local residents of their options if they are raped.

The group also represents women in court and has won 56 convictions, mostly for the rape of minors like 16-year-old Jeannette. She was attacked by two soldiers in Rutshuru while returning from the fields.

“A friend of my family came to tell my parents there were women helping victims to press charges,” she said. “They went to see the Dynamique des Femmes Juristes, and fortunately we won the trial. At least that’s some comfort for me.”

The soldiers who raped Jeannette were jailed, though how long they'll stay there is unclear. Congo's prisons are notoriously porous and inmates escape, or buy their way out, on a regular basis.

In 2006, a military court sentenced seven soldiers from the Congolese army to life imprisonment for gang raping dozens of women in the northern town of Songo Mboyo. Judges cited the Rome Statute in their verdict, the first time in Congolese judicial history that a court had recognised rape and sexual violence as a crime against humanity. The men escaped several months later and remain at large.

Improving Congo's prison system may be well beyond the ICC's remit, but analysts say international justice does have another important role to play in Congo.

South African archbishop Desmond Tutu, in The Hague recently for a meeting of the board of the ICC's victim's trust fund of which he is a member, believes the court acts as an important deterrent.

Tutu points to the situation in another African country, Zimbabwe, as proof that international justice is working.

"Terrible crimes continue, that is true, but people are beginning to be scared," Tutu told IWPR. "Part of the [reason] why we can't get a resolution of [the] crisis in Zimbabwe is that a lot of people who were sidekicks of Mugabe, who perpetrated the violence, are scared.

"They are looking out for some kind of immunity, which does mean that people are aware that there is this court, and more and more as they know that there could be a sword of Damocles hanging over their head. That could deter them."

Mattioli, however, questions how much of a deterrent the ICC has actually been. She says Ituri militia leaders were afraid when Lubanga's indictment was first announced more than two years ago, but that was short lived.

"That [fear] lasts for a moment when the news [of an arrest warrant] is out and then everybody forgets about it," said Mattioli.

She thinks the court needs to do a better job explaining its work to the Congolese.

"I'm not sure their communications policy is the best it could be. Sexual violence charges are included in the Ngudjolo and Katanga cases, but I'm not sure that anyone in Congo knows these crimes are being prosecuted," she said.

Another major problem for the ICC in Congo, said Mattioli, is its failure to execute its arrest warrants. The court revealed an indictment against Ituri militia leader Bosco Ntaganda in April, but he continues to elude the court.

Ntaganda is accused of pressing children into military service while he was with the Patriotic Forces for the Liberation of Congo, FPLC, in 2002 and 2003. The FPLC is the military wing of Lubanga's Union of Congolese Patriots, UPC.

Lubanga's ICC trial is near collapse, and Ntaganda has left Ituri, the FPLC's stomping ground, for North Kivu. He joined the rebel force of Laurent Nkunda and is now second-in-command in the group that is accused of committing mass sexual violence in North Kivu.

"You are going to be more of a deterrent if you are seen to be strong," said Mattioli. "If I was someone out there committing sexual violence I wouldn't be too worried about the ICC right now."

Recent communiqués from prosecutors have deplored the "shocking brutality" of the sexual violence in the Kivus and warned Nkunda, the army and Rwandan Hutu rebels that the ICC is watching.

But concrete legal action against rapists in the Kivus still seems far away. ICC investigators are not yet on the ground there, but are instead speaking informally with locals and NGOs.

"What we thought was crucial was to get the true picture from the people who are on the ground," said Bensouda. "We need to be very cautious about how we approach sexual crimes, and we need to collect as much information as we can before deploying to the area."

But when that will be remains unclear. "A lot of issues need to be looked at," said Bensouda. "It is difficult to put a timeframe on it."

Lisa Clifford is an IWPR international justice reporter in The Hague. Charles Ntiriyica is an IWPR contributor in Goma.

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