

Roving Courts in Eastern Congo

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Public hearings strengthen local judiciary, but some experts say they don't reflect full range of crimes.

In the remote town of Walungu in the eastern Democratic Republic of Congo, DRC, local residents looked on as four soldiers from the national armed forces were tried and found guilty of committing war crimes.

Members of the Congolese armed forces or FARDC were accused of committing crimes against civilians during an attack on a market in the town of Ninja in January 2010. The incident occurred while the army was fighting a rebel militia, the Democratic Forces for the Liberation of Rwanda, FDLR.

At the hearing last October, judges sentenced one of the soldiers to 20 years in jail while three others received life terms for the rape, murder, and torture of civilians.

Only one of the four defendants was present in court. He was the individual given 20 years for rape, torture and plunder. The other three have not been arrested, and are now believed to be part of the M23 rebel group, formed by army defectors in early 2012.

Walungu is a remote, farming community deep in the lush green hills of eastern DRC's South Kivu province.

To hear the case, magistrates and lawyers travelled some 40 kilometres along a muddy road from the provincial capital Bukavu. Residents of Ninja, about 80 kilometres from Walungu, also arrived to see justice served for acts of brutality against their relatives and neighbours.

The Walungu hearing took place in a small courtroom which seated no more than 50 people. It was presided over by six Congolese judges, who heard arguments from a military prosecutor, defence lawyers, and legal representatives of the victims from Ninja.

This is one of several mobile courts which have operated in eastern DRC since 2010, backed by international and local organisations.

The mobile court programme has a strong focus on crimes involving sexual violence, but its remit also covers other offences. It includes both civilian and military courts and has been broadly welcomed by local communities in South Kivu as well as by international experts on justice.

SEEING JUSTICE DONE

Since the latest round of conflict started in eastern Congo in 1996, levels of sexual violence and rape have risen to unprecedented levels. The United Nations estimates that 500,000 people have suffered rape or other forms of sexual violence since then.

After Goma, the main town in North Kivu, was taken over by M23 rebels at the end of 2012, the New York advocacy group Human Rights Watch spoke of scores of attacks both by rebels and by members of the regular armed forces.

The judicial system in DRC is underdeveloped, and the government has little or no authority in large parts of the east. As a result, very few perpetrators of crimes are brought to book. The mobile courts are designed to address this.

Hearings have been conducted across South Kivu in the towns of Bukavu and Baraka, and in remoter locations like Kamituga and Kalima - exactly the kind of places where scarce resources and lack of governance previously deprived victims of access to justice.

In the Walungu case, the court heard from 32 female witnesses how pregnant women, children and elderly men were raped in the attack.

In the courtroom, a woman identified only by a pseudonym took the witness stand. She wore a long black dress and headscarf and dark-tinted glasses to protect her identity.

She described the events of the day in January 2010 when Congolese soldiers moved in as she was on her way from church to the market where she works.

"Suddenly I heard gunshots that dispersed us," she told judges. "Some FARDC soldiers came. They made us carry bags and brought us with them. There were three of us. As we got into the forest, they raped us,

and let us go afterwards," she said with tears in her eyes.

Another witness testified that she was seven months pregnant when she was repeatedly raped by FARDC members.

"Three soldiers raped me," she told judges, in obvious distress. "A week [later] I started to feel like I was about to lose my baby, and I lost it."

Following the verdict, victims told IWPR that they felt justice had been done.

"These soldiers looted our property, we were really violated and [they] destroyed our lives," one said. "I am very glad they were [convicted]."

The director of Walungu's prison, Safari Sylvestre, told IWPR, "We are very proud of the way the circuit court hearings are organised here in Walungu. We found that many people are now afraid to do bad things and be tried in public after that."

Organisations including the American Bar Association, ABA (see note, below), the United Nations Development Programme, UNDP, and Lawyers Without Borders, ASF, channel funding into local bar associations to allow them to run the trials. They also pay for transport and accommodation so that judges, lawyers and support staff can work in remote areas.

They are also providing in-depth training in legal ethics and fair trial rights to Congolese judges, lawyers and investigators. Some also assist victims of sexual violence by encouraging them to go to the police and then supporting them in the subsequent legal process.

Local human rights groups have welcomed the programme.

"The circuit court helps us know our rights and enables us to denounce various abuses of women's rights in the east of the DRC," said Victorine Mwashikubira from the Women's Network for the Protection of Rights and Peace in Walungu.

BUILDING RULE OF LAW

International experts say the courts serve a broader aim by building legal expertise and developing the rule of law in this part of Congo.

The mobile courts and associated institutions such as prisons and police are staffed entirely by Congolese nationals, giving the process local ownership.

The mobile courts complement the work of the International Criminal Court, ICC, in The Hague, which has convicted one Congolese militia leader and is trying two more for war crimes and crimes against humanity, while a fourth has been indicted but remains at large.

In parallel with its own investigations, the ICC has a policy of encouraging local judicial systems to develop their ability to try cases of this kind.

Unlike regional neighbours Uganda and Kenya, the DRC has not incorporated the law underpinning the ICC – the Rome Statute – into its domestic code. However, courts in the DRC are still able to draw on international laws to prosecute crimes locally.

According to Mary McGowan Davis, a former American Supreme Court judge who conducted an assessment of the mobile courts in 2011, the legal capacity being developed there is "a very valuable aspect" of the project.

While the Congolese government and its military are resistant to adopting formal laws like the Rome Statute to pursue international crimes, analysts say the mobile courts have found a way of doing so in practice, at least on a limited scale.

Phil Clark, an expert on justice processes in the Great Lakes region at London University's School of Oriental and African Studies, says the judiciary in DRC "has been able to cooperate with ABA and other external actors to try and help reform the domestic system in the way some senior juristic officials would have wanted to anyway – but in such a way as not to rock the boat in Kinshasa".

Clark said members of the judiciary in South Kivu were playing "quite a savvy game" by embracing mobile courts but not pressing a reluctant central government to embark on reforms.

For him, the strength of the programme is that it is positioned not as a large institution like the ICC, but as one that is far more appropriate to the local level. This has enabled it to work through smaller structures and develop cooperation with local authorities in South Kivu.

"What [the mobile courts] have shown is that it is possible to combine the best of international

involvement with the best of domestic expertise,” Clark said. “From a domestic point of view, it is quite palatable because it is not seen as undue interference in domestic judiciaries.”

FAIRNESS OF TRIALS QUESTIONED

But while the mobile courts have had a positive impact, certainly in terms of prosecutions, they still face a number of challenges.

One pitfall of the process is the selectivity with which the Congolese police and judicial system decide which cases will go to court.

According to researchers who have looked at the mobile court system, political connections and military rank play a large part in deciding whether a given case is brought to trial.

“There is an incredible amount of political interference in who gets tried and who doesn’t,” Milli Lake, a doctoral researcher on justice mechanisms in eastern DRC, told IWPR. “On the other hand, there is no question that none [of the trials] would take place without the support of international organisations.”

Other aspects of the trial process have also come in for criticism, including the kind of legal support that is available to defendants. There are concerns that legal assistance is heavily weighted towards victims rather than those accused of committing crimes.

If defendants cannot afford their own lawyers, the Congolese state provides legal representation. But a 2012 report on local justice mechanisms in the Kivus, authored by Dutch researchers Nynke Douma and Thea Hilhorst, found that the state provides defendants with a pro bono lawyer at very short notice, which means there is not much time to prepare a case. Sometimes NGOs bring their cases at short notice, again giving the defence little time.

The defence lawyers themselves are assigned by the state, and their payment can be erratic.

“There are many known cases in which the risk exists that [defence lawyers] are weaker in capacity and lack motivation to work in the interest of an accused, because they won’t get paid,” Douma said in an interview with IWPR.

Others say international efforts are excessively focused on helping victims to the exclusion of the rights of suspects.

Femke Van Velzen, a filmmaker in The Netherlands whose 2012 film “Justice for Sale” looks at the mobile courts, believes the assistance given to local NGOs is focused heavily on the victims.

Her film follows one lawyer’s investigation of the case of a soldier convicted of rape by a mobile court, despite highly conflicting evidence.

In the film, one representative of an NGO working in the justice sector said, “They support the victims of sexual violence, but the suspects are not supported.

“The perpetrator doesn’t get the same quality of assistance as the victim,” another NGO representative said. “There really is inequality. That should be recognised.”

The ABA acknowledges that it is a challenge to assign suspects a defence lawyer in a way that allows them sufficient time to prepare a case. It says it actively encourages local bar associations to provide defence lawyers well in advance of trial.

“We are aware of this situation,” Charles-Guy Makongo, ABA’s country director in DRC, said. “We do our best to make sure that the bar association receives the letter from the prosecutor as early as possible, and that the lawyer is designated as early as possible, and that they have the possibility to know about the case.”

At the same time, Makongo says, “there is no problem to pay defence lawyers”.

“We support the bar association, and the bar association will bring a lawyer who will support the defendant,” he said.

Makongo says the ABA is working hard to uphold the rights of defendants, and has a special programme aimed at reducing the amount of time suspects spend in prison awaiting trial.

“We make sure both parties receive lawyers who can follow the process from beginning to the end,” he added.

Once cases reach court, some experts see problems in the way judges arrive at a verdict. The research by Douma and Hilhorst unearthed a number of weaknesses which could lead to unfair convictions.

In three-quarters of the 40 sexual violence cases they studied, legally-required documents were missing from case files. These included medical reports, birth certificates and identity cards.

“Half of the documents in the file were insufficient to hand down a conviction,” Douma told IWPR.

When asked about the missing evidence, Makongo agreed that some decisions were legally unsound, but he said it would defeat the purpose of the mobile courts if ABA were to intervene.

“Some decisions we know are really bad,” he said. “What we recommend to the lawyer is to appeal the decision. I would never go to the judge to ask him to explain why he took this or that decision. We would make sure that the independence of judges from ABA prevails.”

Douma argues that the legal system is “so weak” that even if judges and lawyers have the requisite skills and knowledge, they are sometimes not able to conduct a complete analysis of a case before handing down a verdict.

One problem is shortage of time for judges to hear the evidence, in cases that last between three and ten days.

According to Douma and Hilhorst, trying sexual violence offences is inherently complex, so this limited timeframe “may compromise the correct follow-up procedures and lead to hurried investigations”.

As well as logistical support, international organisations also provide training for lawyers and judges as part of the process of building up legal expertise.

At the same time, Makongo stressed the importance of maintaining a distance between the programme and the actual legal proceedings, which are in the hands of the Congolese judiciary.

“We don’t want to create a parallel system [to the state system]; we don’t want to do things that are not sustainable,” he said. “We know that the system is weak, and it is because the system is weak that we are there.”

TOO MUCH EMPHASIS ON SEXUAL CRIMES?

The international community has funded various efforts to reduce levels of sexual violence in eastern DRC, including public awareness campaigns, female empowerment, and legal support. Since international organisations are also paying for mobile court trials, some experts warn of a potential conflict of interest, if the emphasis on reducing sexual violence colours the way judges come to their decisions on cases.

“It doesn’t concern all judges – some stay perfectly neutral – but others feel indirectly influenced by the support, and this might compromise an objective decision,” said Douma. “In a situation where support is given from a background of countering impunity for sexual violence, it is to be expected that in some cases there would be a tendency to be more severe or to convict.”

Makongo acknowledges this risk, but says the professional training that ABA has given judges has helped them remain impartial and reach verdicts based solely on the evidence.

“What we want to bring to them is tools that will allow them to conduct their activities without outside interference,” he said. “A judge can be influenced, but [this situation exists] no more in Congo now, because they have been trained and now they know their responsibility is to do their work.”

Van Velzen is among those who worry that because crimes of sexual violence – which are undoubtedly numerous – feature so often in the mobile courts, this may be limiting the scope for prosecuting other serious crimes that occur in conflict, and in the land disputes that are widespread in the region.

“You have to be careful that not everything is around sexual violence,” she said.

Cornelia Schneider, head of the UNDP justice programme in Goma, recognises this as a problem. But she believes international attitudes are changing in a way that is already being reflected in projects with a broader scope on the ground.

“I can detect a change in the rhetoric with [the international community] saying ‘we mustn’t only do sexual violence’,” she said.

At the same time, Schneider says the focus on sexual violence should be seen not as a negative, but rather as a result of the need to prioritise international support.

“It is a huge problem, it is so egregious, and it has not been addressed effectively, so we do have to focus on it,” she said.

[Note: IWPR works closely with the American Bar Association on other projects in the eastern DRC.]

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