

**Sexual Violence as a Catalyst for Judicial Reform  
in the Democratic Republic of Congo**

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Political Science Thesis Spring 2009  
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*Special thanks to Professor Susanna Wing, who opened my eyes to the political and social realities of African states, which have become a central part of my academic and personal life. I thank her for her wisdom and perspective. Also thank you to the Center for Peace and Global Citizenship, which funded three trips to Western and Central Africa, deeply influencing my perspective on representations of Africa. Finally, thank you to the Congolese individuals who shared their insights during my two month stay in Kinshasa, DRC.*

## **Introduction**

In this paper I explore the problem of widespread sexual violence in the Democratic Republic of Congo as well as the historical and current culture of impunity and disrespect for rule of law in this Central African nation. I argue that these two significant social and political problems, while individually complicated and seemingly independent of one another can be addressed in tandem. While it may seem intuitive that impunity for sexual violence crimes cannot be addressed until the judicial structure is reformed, I argue that the international interest and advocacy for victims of the violence can be directed toward judicial reform, and the issue of sexual violence can be catalyst for improvement of the judicial system. I urge international actors to focus their interest in sexual violence on the issue of judicial reform to address the crimes, and suggest that the international institutions present in DRC should use their leverage to pressure for improvement of the judicial system.

In part one I explain the problem of sexual violence. Sexual violence has become widespread in Eastern DRC since the civil wars began in 1998. It has since become a broader social issue as the profile of perpetrators expands beyond militants to include civilians. One of the factors that has allowed for the spread of sexual violence is the impunity for such crimes, which has granted perpetrators confidence that they will not be held accountable for their assaults. Since this has led to the spread of the violence I argue that one of the most applicable and significant ways to address the violence is to address the impunity, through judicial reform.

In part two I describe the international hype that now surrounds the issue of sexual violence. Rape in the Congo has become widely publicized, but much of the

outrage fits into negative stereotypes of African conflicts and does not offer compelling suggestions for change. It seems that many transnational activists fall into the trap of derogatory discourse representing African conflicts as “tribal” or “ethnic”, and deemphasizing the political sides of the war. Such descriptions undermine the possibility for solidarity in addressing the problems by distancing the concerned reader from those involved. I argue that a more productive method for distant concerned activists would be to portray the conflict in a straightforward and historically nuanced manner. Suggestions for change must then be specific to the problem and to the context. If such international activists publicized the sexual violence and pressured international institutions already involved in DRC to hold the government accountable for corruption reform they could potentially motivate change for the issue.

In part three I problematize, but end by defending the imposition of human-rights-based reforms and programs in DRC. As a Western scholar writing on the issue I feel the need to justify my suggestions for judicial accountability for human rights abuses in DRC, as this is a typically western view and could be portrayed as cultural neo-imperialism. In this section I explain how human rights is a western concept, but I end by validating using a human rights approach because parallel philosophies motivate local grassroots organizations pushing for social change. Because local actors, independent of international donors or influence are organizing their intervention in a way that easily fits with the intervention presented by international human rights organizations I argue that human rights is no longer a foreign concept. Furthermore, my human rights based suggestions are based not on an assumption that human rights are right in all situations, but are based on dialogue with local actors engaged with the issue of sexual violence and

corruption in their society. When these actors suggest reform based in human rights ideology I accept their locally informed opinion and so make the same suggestion. At times I use the term “organic” to describe specifically Congolese attitudes toward and interpretations of social problems. By organic I do not mean to imply an essentialist notion of stagnant culture, as I recognize the changing attitudes of Congolese. I simply emphasize the need for Congolese understanding and acceptance of any suggestions for change, as imposed suggestions are unlikely to take root if they do not resonate with the population affected by such decisions.

In part four I give historical background to explain the reasons for and depth of the culture of corruption and disrespect for rule of law in DRC. This is important context because without such a long-term understanding of the Congolese political culture it can seem to be inherently senseless and corrupt. However I argue that the history of exploitation through colonial leaders and dictatorships have framed the current lack of a functioning judiciary. It also explains the depth of distrust Congolese civilians have for their leaders and the state institutions including the judicial system. This is an important obstacle to overcome to enable Congolese citizens to participate in the justice system.

In part five I explain the importance of dealing with sexual violence cases locally, using Congolese courts instead of transferring the issue to an international body. This is because the two issues of sexual violence and judicial corruption at first seem independent of one another. However, I argue that the two can be dealt with together by using sexual violence cases, which are carefully monitored to avoid corruption, to reform the judicial system. To carry such cases through to completion, the institutions will need to be strengthened. As they are reformed and strengthened for these cases, they will

maintain the necessary structural changes, so the court system will end up a stronger institution. This will allow for improved confidence in the system, which will permit sexual violence victims to use the courts to hold their perpetrators accountable. Ending impunity in this manner will also dissuade some potential perpetrators from committing acts of sexual violence as there will be a system to hold them responsible for such acts. Sexual violence, therefore, can be a catalyst for judicial reform that will strengthen the judicial system in general, to allow for the imposition of the rule of law. The two seemingly hopeless, unrelated issues of sexual violence and judicial corruption can therefore be addressed in a cohesive, unified manner.

In part six I provide the comparative example of Uganda's constitution making process in the 1990's for techniques to promote broader citizen acceptance and participation in the judicial system. I argue that a significant issue with the judicial system is the lack of trust in the system which is in part based on the foreign inspired constitution and the history of disrespect for rule of law. It is too late to create a new legal framework, as Congolese activists are already engaged in legal reform to make the constitution more adequately meet their needs. Creating a new constitution would undermine these efforts unnecessarily. Instead I argue for broader civilian discussion about and awareness of their rights, and easier access to courts.

In part seven I argue that it is the local courts that must house the sexual violence cases for the dual improvement of the judicial system and the reduction of cases of sexual violence to occur, yet I place the responsibility for instituting such reforms in the hands of international institutions such as the European Union (EU) and United Nations (UN) which are already deeply implicated in DRC's domestic affairs. Because these

international organizations play such an important role in financing and training Congolese forces, and run intensive peacekeeping missions they are in a unique authoritative position over the government. I argue that they should impose anti-corruption reform by holding the Congolese government to strict conditionalities, and actually removing training and resources if the government fails to comply. While it is a potentially problematic situation for such international actors to participate so fully in domestic affairs, undermining sovereignty, I justify this by pointing to the invasive role these institutions already play in DRC's affairs. They will not be significantly increasing their involvement, only openly acknowledging their power if they use this involvement to force corruption reform. Furthermore, they will be meeting the needs expressed by Congolese activists and civilians. If the government respected its citizens' needs there would not be such urgency for undermining its sovereignty. As it is these international organizations have the power and the opportunity to meet the demands of Congolese civilians, promote anti-corruption judicial reform and make significant headway toward undermining the endemic sexual violence.

Finally in part eight I acknowledge the complication of the continuing war and the possibility of successful development projects during conflict. While it is understandable to question the utility of investing money to develop courts or prisons when they could be destroyed in the turmoil, I argue that promoting justice creates the possibility for alternative problem-solving besides armed conflict. Justice building is an essential part of creating peace in a weak society, it helps end conflict, deals with the trauma of conflict in a public sphere and helps prevent future conflict. Particularly in the case of DRC where sexual violence is linked to, but not exclusively a component of the war, it is

essential to create institutions to deal with this problem and prevent its continuation.

Thus it is not only acceptable to promote judicial reform simultaneous with the conflict, it can perhaps even help end this conflict.

Much of this paper focuses on questions of judicial corruption and possibilities to reform. Yet I frame these notions through the lens of sexual violence. Sexual violence is the pressing motivator for reforming the courts now. It is also an important awareness building issue, as international activists are perhaps more easily moved by stories of civilian consequences of conflict. However much of the technical parts of the paper move away from directly discussing sexual violence. This is because I see the proliferation of such violence as an opportunity for broader governmental change, but the changes I suggest are complicated and deserve precise explanations which I provide in several middle sections of the paper.

## **Part One**

### **The Problem of Sexual Violence in DRC**

The problem of sexual violence in DRC became widespread during the civil war in the East that began in 1998. The civil war involves many actors foreign and domestic including troops from Rwanda, Uganda, Zimbabwe, Angola, Namibia, and Burundi, rebel groups from these countries, the Congolese military and Mai-Mai (local militia) (BBCNews). Almost all the armed groups have participated in perpetrating rape and sexual assault, as well as pillaging and other human rights abuses, against the civilian population. Precise numbers of instances of sexual violence are incredibly hard to determine because “at the community level, survivors usually suffer in silence, fearing stigma and ostracism if their ordeal is made public” (Stop Rape Now). Many cases go unreported due to the stigmatization and isolation of victims who often cannot reach support services. Even when cases are reported to medical centers it is hard to compile the numbers as the actors attempting to deal with the problem are not unified or cohesive. However the plethora of cases is understood to have “reached pandemic proportions.” In just the province of Sud Kivu—one of several Eastern provinces housing the war, “local health centers report that an average of 40 women are raped daily.” (Stop Rape Now). It is unclear whether precise numbers of sexual attacks will ever be determined, but in any case the issue has permeated communities’ daily life and has become a broad social issue.

The sexual violence takes several forms. Oftentimes numbers of assaults increase following military clashes or flare-ups. Women are seen as representatives of their communities, and sexually abusing them is a heavy assault on the entire population connected to them. Militants “attacked women and girls as representatives of their

communities, intending through their injury and humiliation to terrorize the women themselves and many others” (Human Rights Watch 2002, 23). Militants respond to military defeats by terrorizing the population, or claim their newly gained territory by asserting their authority over the population. They also include rape in their war tactics, so attacks on villages include sexual assault. These cases tend to include multiple perpetrators as multiple militants take their turn with their victims. One rape victim in Masisi described her experience to a human rights watch interviewer:

Four [Tutsi soldiers] raped us together. They took cords and tied our arms behind us. They were in uniform. Many people were killed. I saw five bodies in the forest; they were men in civilian clothes...My lower abdomen hurts; my [arm] muscles are also tired from being tied (Human Rights Watch vol 17, no 9, 2005, 22).

Community rape during pillaging is a typical example of sexual violence during military uprisings.

Women are also targeted by smaller groups of militias when they are alone out in the open. Women typically do the farming and small enterprise work for their communities, traveling between villages to buy and sell goods. When they are traveling alone or in small groups of women they are vulnerable to attack. One example is the testimony of a victim from Kabare territory:

This was in June 2001. I left my house in the evening to buy food for my children. A soldier attacked me and pushed me off the road. He asked me in Kinyarwanda for my identity card. He wore a uniform and had a rifle. He threw me into the bushes. My baby, who was one week old, was on my back. He threw the baby off my back—the baby was on his stomach on the ground—and put a gun to my chest. When I reached to save my baby, he took off my clothes and raped me. It happened fast; he wasn’t there a long time. Afterwards, he took off (Human Rights Watch 2002, 35).

This is one typical example of women falling prey to sexual predators while performing normal daily tasks that require them to leave their homes and travel alone. While the example from the military ambush shows that having men around does not necessarily ensure women's safety, the isolated attacks in the open are even more unpredictable and frequent as they are not necessarily related to specific wartime events. As militias move through the forest they attack women from different villages they encounter. These events have had significant impact on the livelihood of communities, as after experiencing rape or sexual assault women are either forced to continue their activities for survival so often become repeat victims, or they are too afraid to continue their normal activities, so food and supplies become scarce.

While these examples show singular incidents that women have experienced, there is also a pattern of kidnapping women and keeping them for long periods of time as sex slaves required to perform services for a whole military group. These women are forced to do housework, cook and clean for the militias, as well as meet the sexual needs of the group. The lengths of their captivity range from several days to several years. Women are not informed of when or if they will be able to leave, and often when they are released the captors threaten that they will come back for them later. In Kabare one victim told her story:

I was on the road from Kalonge to Mudaka. I had money that my fiancé gave me to buy a wedding dress. A soldier attacked me on the road...He took me to a place in the forest where there were three other soldiers. They roughed me up. This was August 8 [2001] and they kept me until August 25 and each one of them raped me every day. There wasn't a house as such but a shelter under some plastic sheeting...I found out that they had another woman there before me and I was sleeping where she slept, and then later they would get another woman after me...They finally sent me away when they were tired of me...I didn't want to tell anyone about this, but I had to tell [my fiancé] because I was gone such a long

time. And because I was gone such a long time, people talk about this even though I haven't told anyone else what happened (Human Rights Watch 2002, 29).

All rapes, but particularly long term forced sexual relations have a chance of unwanted pregnancy and the transmission of STIs, including HIV, to the victim. Women generally do not have easy access to health care to deal with the medical repercussions of their assaults. Medical centers are few and far between, with inadequate services for rape victims, though health centers specializing in treatment for rape victims are becoming more prevalent as the issue becomes more public. Still, women often cannot find safe and affordable transportation to the services they need, and because of the taboo surrounding the issue they are unlikely to seek support accessing the necessary services. Abortions are also illegal in DRC even for rape victims, so many raped women have to deal with supporting an illegitimate child created through violence, which is both socially and psychologically difficult.

All of the examples cited above were women falling victim to attacks from armed perpetrators participating in the military conflict in one way or another. But sexual assault has become more normalized in the culture as a way of asserting authority over women, and now assault by police and civilians have become more prevalent. Prominent figures with some level of authority are especially likely to rape women and girls, but less prominent men in villages and local communities have also mirrored the practice. As sexual violence spread through society it also spread beyond the conflict region in the East. According to Mireille Ikoli, Director of the Gender Section of the United Nations Population Fund (UNFPA) whereas the profile of perpetrators from 2004-2008 was 77% people in uniform, in 2008 only 34% were (Mireille Ikoli, Director of UNFPA Gender

Division, interview by author, Kinshasa, DRC, 4 July 2008). In Kinshasa I met two local victims of sexual assault. One had been raped in a military camp south of the city. The other, a thirteen year old pre-pubescent girl, was raped in her neighborhood in Kinshasa by a military captain off duty.

Il l'a amené derriere la maison dans une parcelle à Boumba. Il y avait deux autres amis du capitaine qui étaient avec lui et qui la tenaient pour faciliter le viol. La Première fois elle n'a rien dit, mais la maman a vu du sang dans les sous vêtements. Elle a pensé que c'était la menstruation parce qu'elle n'avait pas eu ça avant. Alors elle a laissé les serviettes hygiénique pour elle. Le lendemain il a essayé encore mais cette fois ci pendant que les autres étaient occupés elle a crié et les autres jeunes du quartier ont crié "muyibi!" ("voleur") qui est comme une alarme dans le quartier et le gar était attrappé.

(He took her behind the house in a plot in Boumba. There were two other friends of the captain who were with him and held her to let him rape her. The first time she did not say anything, but the mom saw blood in her underwear. She thought it was menstruation because the girl hadn't had it before. So she left sanitary napkins for her. The next day the captain tried again, but this time while the others were busy she yelled and the other youth from the neighborhood cried "thief!" which is like an alarm in the area, and the man was caught) (Amis de Nelson Mandela/Friends of Nelson Mandela human rights NGO, interview by author, Kinshasa, DRC, 24 July 2008).

While this example does include a military figure, he was off duty living in Kinshasa at the time, and the event took place far from the war zone in Eastern DRC. Since the civil war, sexual violence has become typical practice and women and girls throughout DRC are living in fear and trying to protect themselves, while still going about their daily lives.

A significant reason the violence continues and is escalating is the impunity perpetrators face. If victims even bring their cases to court there is very little chance the trial and punishment for the accused assailant will be carried through, and women are vulnerable to additional retaliatory violence if their perpetrators think they are going to report the abuse. Until there is legitimate, dependable judicial follow-up available

following sexual violence, women will be wary to report their abuses and men will continue perpetrating their crimes without fear of arrest or legitimate conviction and imprisonment. As one woman in Bunia explained “Who will protect me if I say who it was who raped me? The men with guns still rule here. The UN only protects a small part of town and they will not help me if these men come to my door” (Human Rights Watch vol 17, no.1A, 2005, 42). Another example comes from Shabunda, Sud Kivu: “In April 2001 Lisa T. was raped by five men she called Mai-Mai when she went to her field to get manioc. She did not know them but said that they were ‘boys from the village.’ She said that she dared not accuse them because one day they could come after her if she did” (Human Rights Watch 2002, 45).

Even when women do attempt to bring their cases to court, they almost never succeed in attaining justice. Either their complaints are ignored, or the assailants cannot be identified or found, or if the perpetrators are tried the sentence is not carried out, or if he is jailed the unreliable prisons allow him to escape. The levels of potential failures for attaining justice are myriad, and the unlikelihood of succeeding with a case makes women feel too vulnerable to further violence to risk bringing their cases forward which could leave them vulnerable to angry responses from their attacker and public humiliation. One example comes from Bukavu.

Marianne L. was raped and shot by an RCD-Goma soldier in August 2003...Local people who had heard of the crime stopped the suspect as he was trying to flee to Bukavu and brought him back to the military camp. The commander interrogated him and the suspect confessed to the crimes. But he was not arrested at that time, apparently because he was protected by his superiors. It took pressure from the military prosecutor—and advocacy by local NGOs—to get the suspect arrested two months later. He escaped with others during the attack in Bukavu in June 2004 and has not been tried. (Human Rights Watch vol 17, no. 1A, 2005, 39)

This example highlights the myriad issues facing justice-seeking victims in DRC. The victim herself did not bring the perpetrator to court, but the community did. When the perpetrator admitted his crimes, he was not immediately arrested, even though as an admitted rapist he was clearly a danger to the community and his former victim. The quotation alludes to corruption interrupting the normal trial proceedings. When he finally was arrested he was able to escape due to instability and poor prison direction. And following his escape he has not been tried further. The fact that this perpetrator had the unlikely experience of being brought to trial and even with an arrest was able to escape shows the likelihood of perpetrators returning to their communities, making victims feel insecure. Dealing with the issue of impunity is necessary to make any real progress on reducing the number of cases of sexual violence in DRC.

## Part Two

### International Hype and Transnational Activism Around the Issue of Sexual Violence in DRC

In the past couple of years rape in the Congo has become a token issue for human rights activists and women's advocates. The widespread coverage has brought the issue into the western public's consciousness and moved people to wonder how they can help, who they can advocate to or where to donate money. Unfortunately the attention often does not have a specific direction. Presented in a sensational tone, it highlights the inhumane nature of the conflict without grounding the hype in any real potential for change. Furthermore, by highlighting the atrocities it otherizes the conflict, setting it in a distant, exotic world that has nothing to do with the civilized society of the reader. This is a consistent problem with western representations of African conflicts, when reporters, shocked by the violence they encounter, are unable to present the information in a respectful, logical or historically nuanced way. This leads to an impression of inevitability and adds to a broad sense of helplessness. However, this international focus could potentially be put to better use with the right frame, and with specific suggestions for what reader's can do with the information they receive.

An important first step for building a transnational advocacy network is gathering and spreading information. In their book *Activists Beyond Borders*, Margaret E Keck and Kathryn Sikkink study the transnational networks that advocate to address historically governmentally repressed or otherwise overlooked international issues. They emphasize the importance of the access to and spreading of information about human rights abuses as the first step towards making change (Keck and Sikkink, 1998). Rape in DRC has

made its way into the mainstream media through many exclamatory news articles and also through human rights reports specifically calling for a termination of the violence. Yet the manner in which the issue is presented is unproductive if it only sensationalizes the problem, encouraging emotional but not necessarily rational responses, while presenting negative images of Africans.

In January 2009 *The Christian Science Monitor* published an article called “Combat the Terror of Rape in Congo” (Sommers and Birch 2009). They describe the widespread use of rape by various militias, calling it “an organized campaign of sexual terrorism”. One anecdote highlights the other-izing tone of the piece. Three years ago “men and boys from one ethnic militia attacked the village of their ethnic rivals. Once there, the attackers didn't kill anyone. Instead, they raped, over a period of days, nearly everyone – males and females – in the enemy village, from infants to old people.” The description of ubiquitous raping is stirring, yet providing an anecdote without specifics, and emphasizing that this is an “ethnic” conflict places it outside the western understanding of legitimate war, into the distant realm of tribal conflict. The article calls on the new US president Barack Obama to pressure the international actors attempting to deal with the conflict, the UN peacekeepers, and those working on mediating a peace, to focus on the issue of rape in their intervention. Unfortunately neither of these institutions have made any significant headway towards bringing peace to Eastern Congo, so asking them to address rape specifically will likely have no effect. The suggestion is not likely to be effective, and is not based in an understanding of the broader issue and actual possibilities for improvement.

The New York Times has equally inflammatory informational articles about the conflict. In an article titled “Rape Epidemic Raises Trauma of Congo War”, Jeffrey Gettleman profiles the medical centers dealing with Rape in Bukavu, the capital of Sud-Kivu. The rapes are described in chilling brutal detail, “Many have been so sadistically attacked from the inside out, butchered by bayonets and assaulted with chunks of wood, that their reproductive and digestive systems are beyond repair.” The article closes with a quote from Dr Mukwege who works at Panzi, a hospital with a specific rape wing deeply engaged with healing sexual victims. Describing the region, he says, ““There used to be a lot of gorillas in there...But now they’ve been replaced by much more savage beasts””(Gettleman 2007). These images are problematic. While it is important to communicate the severity of the conflict, writing pieces sensationalizing the conflict make it seem hopeless and other worldly, beyond the realm of understandable human interaction, which distances the reader and spreads negative images and stereotypes.

The Congo—and Congo is easily expanded to include all of Africa—that we read about in these articles fits into a long-standing historical legacy of racist portrayals of the continent. While these articles have a humanitarian goal in mind, by portraying Congo’s conflicts in such exclamatory language, they are fitting into and building on the imperial history. “The colonial encounter between Europe and Africa has, over the span of the more than 500 years of common history that they now share, led...to the construction of racial and cultural stereotypes that have seen in Africans only the embodiment of primitivism, chaos and sexual lust, among other negative characterizations” (Mengara 2001, 1). Thus humanitarian descriptions that sensationalize conflicts and call on the US and the UN to repair these issues continue the dangerous and disrespectful tradition of

portraying Africans as savages in need of western civilizing missions. This attitude has been explored in African academic literature and is beginning to change. However, in the mainstream media such images continue to abound. While people may be moved by such dramatic descriptions there are more respectful ways to write about African conflicts that place them in context rather than focusing on random instances of violence. Many international activists have begun to dissociate themselves from racist portrayals of conflict, but they still use strong images of violence to rally support. Honest portrayals of the costs of war are important. But it is even more important to cultivate legitimate understanding instead of sensational derogatory constructions.

Advocacy networks have also engaged with the problem of rape in the Congo. Unfortunately their spread of information also shares some of the weaknesses of the media coverage, and they do not successfully propose responses based in a deeper understanding of the complex nature of the problem that could alter the ongoing violence. The National Holocaust Memorial Museum has a “Committee on Conscience” that follows contemporary genocidal situations. They have highlighted the Congo as one center of genocidal violence, with their concern focusing on five points; “Relationship of the crisis to the 1994 Rwandan genocide; Scale and effects of violence against civilians; Mass sexual violence against women; Continued fighting in the East; Role of ethnicity in the perpetration of violence”(United States Holocaust Memorial Museum). While they present a fairly even-handed account of the problems in DRC, their suggested responses are poorly formulated. On a flier titled “What Can I Do?” the five actions concerned citizens are encouraged to take are “Join our community of conscience; contact the media; communicate with decision makers; get engaged in your community; support

education and relief efforts”(United States Holocaust Memorial Museum). These actions will not impact the situation in DRC.

The suggestion most directly connecting to Congo is the promotion of more direct communication with authorities. Unfortunately this does not take into account the fact that the Congolese military, led by the authorities, is itself publicly participating in the war and the sexual violence, demonstrating the government’s disregard for negative public image. Furthermore the situation of impunity, lack of rule of law, and lack of accountability are ignored in this suggestion. It is useless to try to hold the authorities responsible for these actions without any leverage. Finally, the problem of sexual violence has expanded beyond the military, and even beyond the militias and rebel factions, to become a widespread civilian phenomenon as well. Simply communicating to authorities that western readers do not condone the widespread use of sexual violence has no power to bring about a resolution to the problem.

The other suggestions focus on raising public awareness. This could potentially be an important first step for garnering public support for a specific response to the problem. However, spreading information without specific, logical, attainable follow up goals will accomplish nothing beyond the spread of knowledge. And the manner in which information is typically presented (as seen in the New York Times and Christian Science Monitor Examples) can even undermine the quest for logical, sustainable progress if the situation is presented as intrinsically barbaric and isolated from advanced, civilized conflict.

Another high profile advocacy for victims of sexual violence in DRC is V-DAY, a women’s rights organization that focuses on ending violence against women around the

world. This year their focus is on sexual violence in DRC, and they are promoting a campaign called “Stop Raping our Greatest Resource, Power to Women and Girls of DRC” (V-day). This is a much more coherent advocacy campaign, that follows more closely the model outlined by Keck and Sikkink of historically successful transnational campaigns. As Keck and Sikkink explain, “activists identify a problem, specify a cause, and propose a solution, all with an eye toward producing procedural, substantive, and normative change in their area of concern” (Keck and Sikkink, 1998, 8). V-Day specifies the problem of sexual violence in DRC, and supports the cause of ending this sexual violence. The proposed solution is to “demand an end to the impunity with which these crimes are committed” (V-day) specifically by supporting local NGOs engaged with the issue. This is a much more coherent and organized campaign because while the images are aggressive, they are used to enflame emotions that are immediately given an outlet through proposed action. Using the language of Keck and Sikkink, V-Day has constructed an effective “frame” for the conflict. “An effective frame must show that a given state of affairs is neither natural nor accidental, identify the responsible party or parties, and propose credible solutions. These aims require clear, powerful messages that appeal to shared principles” (Keck and Sikkink, 1998 19). V-Day’s proposed action in this case is much more direct and thoughtful than the education suggested by the holocaust museum and they focus on a specific response to the problem—supporting women’s access to justice. V-Day’s proposals are potentially useful and sustainable.

This is a successful use of transnational advocacy networks because V-Day is a well known international NGO known for raising significant awareness and funds for specific cases of violence against women and it provides specific plans for its support. It

is therefore able to mobilize support. Eve Ensler, the head of V-Day also continues to have direct connections with local NGOs and so has access to first-hand accounts of the war and of the actions of peace-builders. So while she is representing the women of the Congo indirectly, and so there are the complications of losing the true, original voices, this is much less of a possibility due to the ongoing connections between the Congolese victims being represented, and the western women representing them.

### **Part Three**

#### **The Question of Using a Human Rights Framework to Address DRC's Violence and Corruption**

Many of the suggestions I make are tied to the notion of human rights and the need to make DRC's legal system more functional so human rights violations can be dealt with more effectively at a national level. Furthermore, my argument that victims of sexual violence deserve the opportunity to pursue justice is grounded in the discourse of women's rights. However, there is a contingent of primarily African scholars who argue against the implementation of human rights based actions in Africa due to the western-centric frame they were created out of and to the potential for neo-imperialistic attacks on African culture. In this section I describe the human rights statements relevant to the issue of women's rights and also explore the potentially degrading imperialistic side of basing intervention against rape in DRC in such a discourse. By exploring how grassroots local NGOs are dealing with these questions, I end by defending the legitimacy of suggestions influenced by the human rights discourse because there is significant overlap between the ideologies of international human rights organizations and the ideologies of grassroots, purely Congolese social-change organizations. This is important background justification for my later suggestions for bringing human rights abuses into the courts in DRC.

The UN declaration of human rights announces the equal rights of men and women "whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women..." (Declaration of Human Rights) In 1979 the UN

adopted the Convention on the Elimination of Discrimination Against Women (CEDAW). DRC signed and ratified the convention in 1986. Clearly women's rights to equality and freedom from violence have become significant parts of the international human rights discourse. These arguments for the fundamental nature of these rights have been used to justify the existence of and method for intervention to protect women's rights in DRC. These rights are promoted and defended by international institutions like the MONUC which has a specific section focusing on human rights in DRC. Generally the presence of these international actors are implicitly accepted as displayed through their continued presence in the region, or quickly justified by academics promoting their involvement. Yet there is also a broad academic discourse put forth primarily by African scholars questioning the presence of international actors promoting "universal" rights that are framed from a western perspective. Given my emphasis on the long term negative consequences of imperial and colonial powers in DRC, I must problematize the potential continuation of such western imperialism through the doctrine of human rights.

Other scholars studying the issue may acknowledge the danger of international actors addressing the local issue of sexual violence. Yet generally this conundrum is quickly overlooked or explained away. Janine De Vries, for example, in her masters thesis acknowledges that there are critiques of the presence of international organizations. But she claims that they are necessary for funding, so must be deemed acceptable.

It is clear that local Congolese organizations will not be able to give the level of assistance they provide at the moment without international financial support as well as support with respect to documentation and international legal knowledge...International NGO's...are essential in providing local NGO's with a measure of support and protection to do their job. (De Vries, 2007, 52)

It is true that currently local NGOs depend on international support, so must frame their funding proposals within the ideology of the larger organisms they depend on. However, for questioning the potential long-term changes from NGO actions, it is necessary to understand the problems of promoting socially foreign conceptions of rights.

Professor Makau Wa Mutua is a Dean and professor at State University of New York's Buffalo Law School. He has written extensively on the question of human rights in Africa. He criticizes human rights activists in Africa who blindly implement human rights doctrine without questioning its origins or full repercussions. He emphasizes the external development of human rights doctrine that did not include Africans. "It is important for us to understand that when the foundational documents of the corpus were codified, Africa did not participate in the international fora in which this corpus was produced. It is also important to realize that the corpus reflects a particular political tradition. The corpus grows out of a Western European liberal tradition" (Mutua, 1999, 110). He prods human rights activists to consider the tradition these rights grew out of and the broad implications for the restructuring of political and social rights that come from espousing these rights. He questions, "Is this the idea that Africans want to reproduce in their own countries?...I think that human rights actors in Africa quite often do not think about the philosophical basis for the corpus. They do not think about the implications of the corpus to the reconstruction of their own societies" (Mutua, 1999, 109). Opposing sexual violence in DRC is not as simple as condemning violence. It requires questioning the role of women as symbols of culture and community that can be undermined as an act of war. It requires questioning the ownership of women's sexuality. Are women being attacked as individuals or as mechanisms to weaken the

structure? And should they be defended as individuals with the right to freedom from violence and right to their own sexuality? Will this require a cultural shift and are human rights actors willing to push the changing status and role of women in general, or are they trying to isolate the extreme case of rape as their subject for change?

Many of the local Congolese actors are in fact aware of the breadth of the context of the issue of sexual violence. Bernadette Mashoka, head of the local NGO Femmes Pour le Developpement Economique et Social (Women for Economic and Social Development), emphasizes that both women and men are the subject of their intervention. They encourage local leaders to teach men that they should not assume they can take any woman they see. “On parle aux chefs que les garçons doivent être formé qu’ils ne prennent plus les filles par force, que les hommes prennent les femmes pour marier. On fait aussi des formations pour les policiers et les milices.” (We tell leaders that young men should be taught so they no longer take girls by force, that men take women just to marry. We also lead seminars for police and military personnel) (Bernadette Mashoka, interview by author, Kinshasa, DRC, 16 July 2008). Addressing the issue from a preventative standpoint instead of simply dealing with victims or teaching women how to protect themselves implies a recognition that the problem is a societal problem that must be addressed by changing the cultural attitude toward sexual violence. Mireille Ikoli, director of the gender division of the United Nations Population Fund (UNFPA) also recognizes the social level of the problem and the need for societal shift to address it. Of course she is employed by the UN, the very international actor that Mutua questions for its imperial tendencies. Yet she is Congolese and working not on the greater questions of

UN ideology or philosophy, but spends her energy addressing the social problems in DRC. She explains:

Le problème ne concerne pas seulement l'est, tout le pays est touché par ça. Dans Nord et Sud Kivu c'est lié à la guerre, mais d'autre part c'est lié à l'inégalité. UNFPA s'attaque au problème de l'inégalité de genre pour prévenir la violence sexuelle. Nous essayons de renforcer les acteurs, sensibiliser à propos des droits de femme, plaider à propos de meilleure application des lois, sensibiliser les autorités (policiers et armées), même qu'ils sont souvent les auteurs, maintenant ils sont parti de lutte." (The problem does not only concern the East, all of the country is touched by it. In North and South Kivu it is linked to the war, but elsewhere it's linked to inequality. UNFPA attacks the problem of gendered inequality to prevent sexual violence. We try to reinforce the actors, build awareness about Women's rights, lobby for better application of the laws, engage with the authorities (police and military), even though they are often perpetrators, they are now part of the struggle) (Mireille Ikoli, Director of UNFPA Gender Division, interview by author, Kinshasa, DRC, 4 July 2008).

The actors engaged with the issue of women's rights and sexual violence in DRC are in fact aware of the change in society that emphasizing human rights will bring about. They see the problem as a social problem that needs to be changed and are not put off by the potential cultural implications of employing this foreign-created rights discourse. In this way they do not fall prey to the dangerous unquestioning acceptance for which Mutua criticizes African Human Rights activists. These specific activists in DRC are aware both of the international human rights discourse and of the current issues plaguing Congolese society and they opt to address these issues in ways they see fit, which also merge with international norms. These are not thoughtless choices on their parts.

Other critiques Mutua presents against human rights organizations are their dependence on external funding which can then influence their actions, and the inorganic origins of some NGOs who seem not to fit with the contexts of their countries. Both of these are important criticisms, but NGOs I encountered in Kinshasa did not fall into these traps. Mutua asserts, "an externally funded movement cannot be legitimate. It will

not penetrate. NGOs must make Africans support the NGO's activities. If Africans support these organizations, they will have a stake in it" (Mutua, 1999, 112). Mutua suggest NGOs use entrepreneurial activities to fund their activities or seek state support instead of relying on international donors. With the level of corruption and poor management of funds by the Congolese government, relying solely on state funding would likely lead to paralysis for a local NGO. Furthermore the hyper-involvement of international organizations grants them a level of accepted contribution greater than would normally be legitimate given the assault on state sovereignty. These international actors (such as the EU and UN) have become so implicated in domestic affairs that I argue later they have become a strong force able to hold sway over the government, making them nearly government level power holders. Nonetheless some grassroots NGOs do combine minor state support with personal donations.

Reseau D'action Femmes (network for women's actions) is a network of NGOs trying to work together to address women's needs. They have focused on the issue of sexual violence through prevention and awareness seminars, social services for victims and judicial assistance. They have a walk-in judicial clinic with women lawyers available. They depend on donations from members and they had hoped to secure state funding for their judicial program, but were unable to. This has hindered their abilities to support women. "Le vrai problème d'accompagnement judiciaire est que les frais ne suffisent pas. RAF n'a pas les fonds pour faire tout parce qu'ici le justice marche avec les couts supplementaires pour les magistrats etc." (The real problem of judicial accompaniment is that the fees don't suffice. RAF does not have the funds to do it all because here justice works with supplementary costs for judges etc) (RAF, interview by

author, Kinshasa, DRC, 22 July 2008). Another NGO currently engaged in the issue of sexual violence and working independently without external funding is Femmes Solidaires Pour la Paix et le Developpement (Women in Solidarity for Peace and Development). Started and currently funded by the wife of a respected community leader Desiderata M. Furaha, FSPD has a safe house in the periphery of Kinshasa where women, typically widows, can stay with their children, take literacy classes and learn income-generating skills. When I visited they had a victim of military sexual violence staying and receiving support for psychological therapy. The NGO used to have a base in Furaha's apartment in central Kinshasa, but being a widow herself, she was vulnerable and fell victim to domestic destruction when she was forcibly, illegally removed from her house and her things were confiscated. Even though she attempted to use her connections to recover her property, she was unsuccessful and is currently living in the safe house she created. Furaha was motivated to start her support network for widows based on her own difficulties functioning in society unmarried, despite the fact that she was wealthy and so had more respect and access than impoverished widows (Desiderata M. Furaha, FSPD, interview By author, Kinshasa, DRC, 24 July 2008). Both of these NGOs function with the sole support of Congolese. Their engagement is based in women's experiences of the social problems they face and their manner of addressing these issues is not guided by outside intervention. These are important examples because while they are local, their philosophies could easily be described as promoting women's rights, and they certainly fit with those of the larger NGOs working on women's issues. Both of the NGOs have programs they wish to pursue but do not yet have access to sufficient funding, and would benefit from increased support.

Another important NGO to examine in the context of Mutua's critique on internalizing foreign human rights doctrine on a local level is Voix des Sans Voix (voice of the voiceless) (VSV). VSV is a general human rights NGO. What is interesting is that they began in 1983 during the reign of Mobutu. At that point "on ne pouvait pas travailler publiquement, mais en cachette." (we could not work publicly, only on the sly) (Dolly Ibero Mbunga, Executive Director of VSV, interview by author, Kinshasa, DRC, 23 July 2008). In the 1990s they began to work more publicly, and while they maintain their base in Kinshasa, they now also travel around the country. Their goals are to defend and monitor the state of human rights in DRC. Clearly their goals and actions are quite closely tied to the international model for human rights activism, and their reportage is similar to a local Human Rights Watch type of organization. So it seems they would be an easy target for criticism from Mutua. Yet Mutua's hope is that Africans focus their NGOs on local issues. "Africans must produce organizations which are informed by their own local experiences, which are fashioned by their own historical circumstances, which draw from the cultural milieu of Africa" (Mutua, 1999, 110). While VSV uses techniques employed internationally by western human rights NGOs, they started because they felt moved to act independently of the state to document the abuses of power they saw under Mobutu's regime. Even though they are using international, not African techniques, they were moved to begin their engagement because of their "own local experiences".

Finally Mutua says that organizations need to focus not just on human rights in general and in its complete form, but must fashion their organizations and declarations on rights to the specific problems and experiences of Africans. He argues "the NGOs in Africa must also build into their mandates a serious gender agenda, because of the history

of the exclusion and oppression of women by African social norms and because of a history reinforced by colonial rule of the exploitation of women” (Mutua , 1999, 111). This is precisely what the NGOs I have profiled are doing. Moved by the general oppression (VSV) or by the shocking spreading phenomenon of violence against women, local NGOs have asserted themselves and created programs with or without the support of external actors to address these needs. It is unquestionable that international human rights discourse has influenced the choice of engagement and the methods used. But it is a globalizing world, and it would be disrespectful and ignorant to think that Africa is outside of the international community. Africans were originally excluded from the creation of human rights philosophy, but there are active civil society networks that work with and contribute to the current debates on human rights. It is important to be aware of the possibility of imperialism in activism, but it is also important to notice how Congolese activists are internalizing and making their own formerly foreign ideas. The concept of a state in Congo is a foreign concept, originally, but DRC is certainly its own country now, and reform must work from this reality, regardless of the disgrace of the colonial origins. Similarly human rights in the form they are communicated in the international community was certainly a foreign concept. But they are a useful tool that is employed by activists to accomplish the agenda of social change that they organically identify is necessary for their communities.

## **Part Four**

### **Judicial Corruption in DRC in Historical Context**

The Democratic Republic of Congo has one of the most broadly corrupt legal systems in the world, with state and financial pressures affecting court decisions and general impunity. Freedom House, an international NGO that monitors levels of political rights and civil liberties grants DRC a 5 and 6 respectively, with 7 being the least free. This is an improvement from earlier ratings (7 and 6 in 1998 for example) based on the superficially fair elections that occurred in 2006 to elect the current leader Joseph Kabila. However the judiciary has not yet felt any improvements, and Freedom House describes, “Despite guarantees of independence, the judiciary remains subject to corruption and manipulation by both official and nonstate actors” (Puddington, 2008, 177).

The level of corruption is striking, but considering the political development of DR Congo, is not unexpected. The current turmoil in the justice system is deeply rooted in a legacy of colonial exploitation and disrespect for the dignity of Congolese civilians. The current situation in DRC can be understood by exploring this history and the reforms I suggest later must specifically address the precise ingrained weaknesses of the current system.

#### ***Colonial Legacy***

DRC was created out of the legacy of Belgian colonialism, widely accepted to be one of the most brutal colonial regimes with King Leopold II claiming the land as his personal possession for the extraction of resources, and exploiting the population with forced labor and killings broad enough to be comparable to genocide (Nzongola-Ntalaja,

2002, 22). At independence in 1960, the Congolese, who had been nearly entirely excluded from upper-level politics before, were given six months to take over all the government posts formerly held by Belgian colonists. This led to many early difficulties—struggles between new university graduates without experience and older Congolese who had held low-level positions under colonial rule, as well as the introduction of parochial politics as general Congolese masses pressured family or friends with new government power to share the wealth. The issues that emerged with the dawn of independence were never allowed to resolve themselves because any progress toward democracy was destroyed under Mobutu Sese Seko's (dictator of DRC from 1965-1997) long-lasting oppressive and deeply undemocratic regime, which the country is still recovering from.

Belgian Colonialism in Congo was deeply disrespectful and destructive towards Congolese nationals. The stated aim of Belgian colonialism was “essentially a civilizing one...on the economic plane...to achieve the development of the colony for the benefit of the natives, and...to work towards an increasingly complete organization of the country which will strengthen order and peace...” (Lumumba, 1962, 12) Yet this concept of “civilization” translated into complete disregard for existing cultures and societal structures, the imposition of rigid direct colonial government, and human destruction through forced labor and slavery. And though the aim claims to be development for the benefit of Congolese, in reality the Congolese were used as tools for the benefit of Leopold and Belgium, and were completely excluded from any personal development that could have prepared them to participate in politics at the end of the colonial period.

Because King Leopold was using the country for the purpose of supplying natural resources, he forced the civilians to work for him extracting the resources from the earth. Congolese intellectual and activist Georges Nzongola-Ntalaja describes, “it was the collection of wild rubber that resulted in the depopulation of entire villages and the perpetration of heinous crimes against humanity in the Congo” (Nzongola-Ntalaja, 2002, 22). This deeply weakened any potential attempts at claiming independence, as the whole organization of colonialism was impersonal with a distant ruler, as well as backbreaking and violent—weakening any morale Congolese may have had to struggle against the colonists. Nzongola-Ntalaja continues, “Here was a state where the inhabitants were not citizens with democratic rights, but enslaved subjects of a sovereign they never saw. During his 23-year tenure as the Congo’s king-sovereign, Leopold never put his foot on Congolese soil” (Nzongola-Ntalaja, 2002, 23). This distance between the king and the Congolese people was mirrored in the organization of the state.

### ***The Segregation of the Justice System in the Colonial Period***

During the colonial period, colonists and Congolese were subject to two different judicial systems: “d’une part, un système romano germanique inspiré du droit belge et d’autre part, des systèmes coutumiers.” (One part a Roman-Germanic system inspired by Belgian law, and the other part customary systems) (Lamy, 2004, 198). This system was deeply flawed. Emile Lamy, a professor at the Université Nationale du Congo and an advisor to the supreme court, cites four significant weaknesses. Firstly, the geographical placement of the judicial hierarchy was more effective for communication with Belgium, but ineffective for communication inside the Congo. “Le chef-lieu de la colonie se

trouve complètement excentré, à Boma, ce qui facilite peut-être les communications de la haute administration locale avec celle de la Métropole, mais pas avec l'intérieur du pays.” (The administrative center of the colony was completely off-centered, at Boma, which perhaps facilitated communications of the high local administration with that of the Métropole, but not with the interior of the country) Secondly, the demography made judicial coverage difficult since the population was sparse and widespread and so complicated to organize into courts. Thirdly there were inadequate funds. “Malgré les richesses de son sol et de son sous-sol, on ne peut dire que la Colonie ait jamais roulé sur l'or. Il ne pouvait donc être question que la part de son budget consacrée à la justice soit particulièrement substantielle.” (Despite the riches of her soil and subsoil, one cannot say that Congo was ever rich. It isn't even therefore a question whether the part of the budget devoted to justice would be particularly substantial). And fourthly the dual system led to issues with competing concepts of law. “D'un côté, celle des multiples et divers systèmes juridiques autochtones, se traduit le plus souvent dans ce que le colonisateur appelle la palabre; de l'autre, le système du colonisateur, largement inspiré du droit de la métropole, droit écrit et dogmatique, réclame un personnel de justice bien formé en droit.” (On the one hand the multiple and diverse judicial systems of the natives, translated most often into what the colonizers considered ongoing bickering; on the other hand, the colonists' system, largely inspired by the law of the Métropole, law written and dogmatic, calls for judicial personnel well-trained in law) (Lamy, 2004, 198-199).

There were many issues internal to the “traditional” courts as well. Historically, Congolese had courts organized in a three tiered system. Small disagreements were dealt

with under the authority of the head of the family and other important family members who served as advisors. The goal in these types of reconciliations was to maintain the peace so that issues need not become public knowledge (Gamanda, 2001, 74). If a disagreement concerned multiple families, the head of the village would take on the case. And if it could not be reconciled on this scale, it was taken to a court for the chiefdom or greater linking community of multiple villages. There is little research on the specifics of different groups' judicial approaches, since their decisions and actions were not written down. Nonetheless there is information on general philosophies and practices typical of pre-colonial judicial institutions. The overarching goal of traditional Congolese courts was to restore social harmony as opposed to seeking individual retribution. "Le rôle du juge...tout en ayant pour but de maintenir l'ordre en vue du bien général, ne consiste pas uniquement, ni même principalement, à infliger des amendes et des châtements." (The goal of the judge...while having as a goal maintaining order with an eye to public good, does not consist uniquely or even principally in inflicting fines or punishments.) instead, it serves, "à rétablir l'équilibre momentanément trouble ou rompu, par des solutions pratique qui concilient les intérêts en cause." (To reestablish the balance momentarily troubled or disrupted, by practical solutions that reconciled the interests at issue) (Gamanda, 2001, 78). Judges were community leaders who worked with advisors, never alone, and hearings and decision-making processes were public. Anyone who felt implicated in the case could come forward and defend the parties. There were different punishments for different crimes. Most typical were fines (which were paid by the family, not necessarily by the individual perpetrator), but there were also instances of capital and corporal punishment, slavery and banishment (Gamanda, 2001, 89). The

specific structures of communal courts were localized as can be seen by the hierarchy of familial, village and larger community level judicial systems. These divisions between groups were not respected during the colonial period.

During the colonial period, while the “traditional” courts were maintained, the Congolese were divided into sectors to allow different groups to employ their own practices. But if the groups were too small in a given area they were joined together with other groups to make a convenient organizational size. “Les secteurs sont des circonscriptions administratives dites indigènes. Ils sont définis territorialement par la réunion de groupements indigènes numériquement trop faibles pour pouvoir se développer dans tous les domaines.” (The sectors are administrative conscriptions called indigenous. They are territorially defined by the union of indigenous groups too weak to be able to develop themselves in all the necessary fields) (Gamanda, 2001, 119). When combining different groups under the same judicial structure, the “traditional” judicial authorities were uninformed about the judicial practices of other groups. Thus there was “almost complete ignorance of the particular traditions of each tribe...which form the basis for the sentences. They do not even take the trouble before settling a complicated dispute to seek information...from qualified persons in the Centre who are better acquainted with the traditions of a particular region” (Lumumba, 1962, 72). Furthermore, by cementing “customary” judicial practices there was no place for Congolese who had moved out of their traditional regions and into city centers and begun to meld their ideas of justice with nontraditional or European ideals.

Many Congolese *evolués* who have been strongly influenced by European standards are determined to order their lives according to new ideas; they also wish to be tried not according to tradition, but according to European written law. Unfortunately they are not able to do this, because the courts established in the

extra-traditional centers are organized in the same way as in the traditional areas (Lumumba, 1962, 70).

The most telling commentary about the dysfunction of the traditional courts was the corruption already built in due to lack of resources. Lumumba bemoans, “being paid very little—miserably paid if we may say so—they are easily corrupted; this explains their proverbial venality, for which the natives have various words; thus the judges can be bought and these bribes...ensure them a valuable addition to their modest fees” (Lumumba, 1962, 72). It is interesting that this lack of funding and resulting degeneration into bribery and corruption—an issue that still deeply plagues Congolese courts and must be at the forefront of any potential reform policies—was already present in colonially regimented “traditional” courts.

### ***The Congolese Judicial System at Independence***

At Independence DRC implemented *loi fondamentale*, a constitution and legal system closely linked to Belgium’s. It is interesting that while Congolese rejected colonialism, they still held Belgium’s political structure in high esteem, in part because they respected the power and legitimacy of Belgium, which had proved to be so established that it was able to export its political aims.

The political regime of Belgium has shown itself to be endowed with a rather surprising prestige...it is curious to note that the temptation to adopt the form of the metropolitan state is a constant phenomenon among young decolonized nations. The experiment is often disappointing, as the historical, economic and sociological conditions of the new nations are profoundly different from those of the former rulers (Young, 1965, 176).

The links between the colonial Belgian judicial structure and that of the newly independent Congo are striking. The courts for colonists consisted of police courts,

district courts, inferior courts (general trial courts), court of appeals, council of war, and court of appeals for war (Gamanda, 2001, 123). In 1959, reform for the colonial judiciary was introduced which attempted to consolidate the dual systems that had separated Congolese nationals from colonists. The local “traditional” courts were to be recognized by the corresponding local colonial courts, as lower tiered courts (Gamanda, 2001, 139). However, these reforms were not adequately implemented before the flight of the European functionaries at Independence in 1960. The slightly adjusted system proposed in the 1959 reforms was put in place in the newly independent Congo. The new Congolese system was broadly similar to that of colonial times with the minor change of incorporating traditional courts into one unified judiciary. At the local level were secondary courts (stemming from the colonially adopted traditional structures), principal courts of the chiefdoms, city and territorial courts and police courts. At the national level was a hierarchy of courts that built in gravity to the Supreme Court. These included the courts of peace, which were meant to deal with cases that could not be adequately reconciled in the local structures; the inferior court; the court of appeals, and the Supreme Court (Gamanda, 2001, 143). The newly independent state thus maintained the very repressive and inorganic judiciary system that had been imposed by their oppressors. This structure is still the basis for contemporary Congolese law courts, with only minor changes and fluctuations during different administrations, and no fundamental restructuring since independence. The inorganic nature of the Congolese judicial system also must be considered to reform the judicial system. With the continuing failure of the courts since independence, there has not yet been an opportunity for Congolese to develop an understanding or trust in the imposed structures.

### ***Issues with the Judiciary at Independence: Inexperienced Court Officials***

Beyond the logical difficulties of choosing to maintain the structure that had oppressed and excluded the Congolese, the problem with the adoption of *loi fondamentale* and the transfer of power from Belgian to Congolese hands was the colonial legacy of exclusion. “Only a tiny handful of Congolese has acceded to posts of responsibility within the administration” (Young, 1965, 400) so when it was time to transfer power to Congolese, there were almost no qualified applicants. Yet everyone wanted to join government because government held the financial power in the country. All the newly appointed governmental figures had to learn how to rule, and make the jump to leadership in a system that, due to the dual-judiciary of the colonial era, was still foreign. “The clerks were suddenly confronted with the entire burden of managing the country, with virtually no direction at the top in the early days of independence” (Young, 1965, 417). Also with the implementation of *loi fondamentale* jurists were now expected to be trained in European law. After having ruled in traditional courts during the colonial era, there were almost no qualified judges. “Virtually the entire corps of magistrates departed in the 1960 exodus. This skill proved to be especially difficult to replace, as not only the French language capability was necessary but also a legal training based upon the continental traditions of Roman law and the Code Bonaparte” (Young, 1965, 421). Furthermore, after years of exploitation and exclusion Congolese were eager to claim the power and resources of the state for themselves, which they did by attempting to co-opt the new authorities. “One cannot underestimate the enormous pressures placed upon the newly installed ministers. Each of them was confronted with a virtual army of political

and ethnic clientele, camped on his doorstep, who expected a reward for their support” (Young, 1965, 408). Such clientelism, or the granting of governmental favors to certain citizens due to a personal or ethnic connection is typical at many levels of Congolese government and continues to exacerbate tensions between groups, as groups in power benefit more from public services. This also drains the treasury as public funds are lost to nongovernmental expenses. The continuing issue of corruption and clientelism must be addressed in potential reforms of the system as such trends undermine citizens’ perceptions of the legitimacy of the courts.

### ***Legacy of Government Control of Courts***

Despite all the layered difficulties facing the new independent legal system, there was progress in the early 1960s with the establishment of a national school of law and administration, and a new constitution in 1964 that established a supreme court with a judiciary and administrative section. Unfortunately, “cette constitution n’a même pas eu le temps de vivre lorsqu’en 1965 un coup d’état survint et paralysa toutes les activités politiques à caractère démocratique que prévoyait la constitution.” (This constitution didn’t even have time to live since in 1965 a coup occurred and paralyzed all the democratic political activities planned for in the constitution) (Gamanda, 2001, 148). With the coup d’état of Mobutu Sese Seko, all notions of democracy were left by the wayside as he emphasized his version of nationalism based on personal rule and a construed return to “tradition”. “In political terms ‘nationalism’ was touted as an alternative to both ‘communism’ and ‘capitalism’...by 1971 nationalism had given way to ‘authenticity’ as the official party doctrine” (Leslie, 1993, 33). He called himself “the

father of the nation” and justified his omnipotence by framing himself as the village chief of the whole unified Zaire (as he renamed the country).

With such centralized and corrupt power it is not surprising that any idea of a judiciary system was undermined nearly to the point of extinction. Only in remote rural areas did courts maintain any autonomy from Mobutu’s influence since village or regional level courts need not bring their cases to higher levels unless there are complications, and the central government likely found no reason to intervene in such quotidian and remote affairs. “Local magistrates have been only partially integrated into the state’s hierarchy, and as a result, they feel they can operate relatively independently of the system” (Leslie, 1993, 90). But there the corruption of local officials continued. At the central level, Mobutu joined all government structures with his personal party, the Mouvement Populaire de la Révolution. At the completion of this fusion in 1974:

A major reshuffle of the Political Bureau was announced, and membership was expanded to include representatives from the military, judiciary, and the university. A new constitution gave Mobutu the leading position as chief of state and president-founder of the party with full and direct control of all major party and state institutions: the Political Bureau; and the Executive, Legislative and Judicial Councils...as such he has unlimited power and, being above the law, has no accountability (Leslie, 1993, 34).

The level of impunity and disrespect for legal procedure is seen in the tendency toward unjustified arrest and the influence of Mobutu directly or through the military and secret police in trials. “With corruptible and demoralized judges and court officers, the judicial system has a very low capacity for upholding the rule of law. In the face of senior military officers, it was totally impotent” (Nzongola-Ntalaja, 2002, 159). Unexpected and illegitimate arrest was also common. Human rights organizations “have detailed records of countless cases of arbitrary arrest and detention allegedly for political ‘crimes’

against the Mobutu regime” (Leslie, 1993, 90). A Congolese ex-patriot currently living in London recalls such aspects of the Mobutu era, explaining that he could never have such an openly critical discussion about the politics as we were having at that time because one never knew who was working for the government. And often he would see the authorities come and randomly take people into custody in the middle of the night in his neighborhood. Captives would either return later or disappear without explanation (Serge Kabasonga, interview by author, Kinshasa, DRC, 30 June 2008).

The disintegration of any validity of the legal system during the Mobutu years was followed by minor improvements in the 1990s with the introduction of some democratic reforms as Mobutu tried to hold on to power and then ended his regime. But this period of improvement was too short to fully repair the judicial system before the next weak era. “The democratic reforms of the early 1990s restated the importance of separation of powers and the judiciary showed significant signs of independence...however this demonstration of independence did not last long enough for the judiciary to fully recover from the damage during the Mobutu era” (Human Rights Watch, 2004). When Laurent Kabila came to power in 1997 he responded strongly to the Mobutu legacy, taking down all former Mobutu-ists, but in so doing implementing his own overly directed top-down rule. He created the *Conseil Supérieur de la Magistrature* (Superior Council of the Judiciary) (CSM) to oversee the courts. According to its design, the minister of justice assists the president who oversees the council. “The chairmanship of these executive officials over the CSM needs to remain only symbolic to avoid undue infringement of the independence of the judiciary. Nevertheless, the minister of justice assumed oversight functions, undermining the CSM’s authority and making clear the

government's will to exert tight control" (Human Rights Watch, 2004). Joseph Kabila's current regime continues to intervene inappropriately in judicial processes. Pierre Kanika is the manager of the Comité Mixte de Justice au RDC, an organization located downstairs from the central court in Kinshasa which was created in 2003 to oversee the dispersal of funds donated for the amelioration of the judicial system. He explained that corruption is still rampant in the courts, "Un grande problème est le dysfonctionnement de la justice...et l'implication des pouvoirs politiques et militaires qui interviennent souvent dans le système." (A big problem is the dysfunction of justice...and the implication of political and military powers who often intervene in the system) (Pierre Kanika, Manager of the Project for the Comité Mixte de Justice, interview by author, Kinshasa, DRC, July 24 2008). A separation of powers is a long-term fundamental issue undermining the legitimacy of DRC's courts, and must be addressed for effective reform.

### ***Corruption in the Courts***

The current issues with the judicial system have grown out of repeated trends of corruption and dysfunction throughout DRC's judicial history. Currently money continues to play a significant role in politics and judicial processes. Enough so that intellectuals quote phrases in Lingala (the dominant national language) about corruption in their scholarly works discussing the organization of the courts, and Congolese openly muse about their dreams of entering politics so they can earn enough to support themselves. Mbu Ne Latang, President of the Bar association in Congo, describes the popular expectation of corruption:

Le peuple dans son désarroi face à la justice et à l'injustice de tout genre a compris ou tend à comprendre que dans ce pays, rien ne peut être résolu sans un

intermédiaire; qu'il soit appelé 'avocat' ou encore 'madesu ya bana', le peuple veut dire que seule la corruption, c'est-à-dire l'argent sale peut l'aider à trouver la solution à son problème face à la justice. (The people in their distress about justice and injustice of all kinds, has understood or tends to understand that in this country, nothing can be resolved without an intermediary, whether it is called a 'lawyer' or 'madesu ya bana', the people want to say that only corruption, that is to say dirty money can help them find a solution to their problems of justice) (Latang, 1999, 37).

“Madesu ya bana” is a Lingala phrase to describe corruption. Literally translating to “beans for my children, the phrase demonstrates the extent to which, for many workers, daily bribes rather than sporadic wages provide the majority of their income.” (Gondola, 2002, 146). This view of corruption is the typical attitude Congolese give to their faltering judicial system.

### ***Oversized Government and Funding Issues for State Functionaries***

The Congolese government is exceedingly large and broad, with an excess of posts that drains public funds so that no development projects can move forward. The government cannot support all of its employees, so police officers, the military, judges, magistrates and many other positions are repeatedly unpaid, leading people to make money for themselves, often using their power positions to force lesser figures to pay to receive normal government services. This is a long running problem in DRC. Shortly after independence, as Crawford Young describes:

The salary problems for the top servants of the state are likewise creating a string of conundrums. When one adds to the civil service salaries those of the political sector, the army and the police, and the very well remunerated teachers, the total cost in 1962 came to over 15 billion francs, or nearly 90 percent of all public expenditure. The revenues of the state, excluding external aid, came to only 4 to 5 billion francs. The state is thus crippled by its own overwhelming payroll” (Young, 1965, 416).

In the 2007 budget the continuing issue of overstaffing is glaringly apparent. Fifty Three% of the planned budget is set aside for the central public administration. This compares to seven percent for defense, six percent for order and public security, and only three percent for health (Minister of the Budget 2007). This is scandalous in a country in which the population has the tenth shortest life expectancy rate in the world (Human Development Reports), and international and internal disputes produce hundreds of thousands of internally displaced people and casualties every year. Clearly there are too many functionaries employed by the state, and the government struggles to pay the salaries. In 2007 only 42 percent of budgeted funds were actually paid to the public administration (Minister of the Budget 2007). These numbers come from a published government report, so it is possible that further layers of corruption are not reported. The problem is that the plethora of underpaid government employees use their titles to coerce civilians through bribery so overstaffing governmental posts leads to the spread of corruption throughout all layers of government interaction with the citizens.

The inability of the state to cover the excessive expenses for the bloated government comes into play visibly in the judicial structure as well. Judges and magistrates do not have the basic resources or equipment they need to do their work or maintain the respectability and legitimate authority the position demands, so they are pushed to assert authority in illegal ways.

Il est certes vrai que le magistrat travaille dans des conditions quasiment difficiles. Les bureaux sont souvent dépouillés d'infrastructure pouvant lui permettre de bien travailler: pas de chaises, d'armoires pour garder les dossiers, des salaires qui ne permettent pas de nouer les deux bouts du mois...ils sont parfois butés aux difficultés de transport pour atteindre le poste de travail à temps. Cette mise en condition fait souvent dire à l'opinion que la situation modeste faite aux magistrates serait à la base de la perte de prestige du magistrat qui a pour

conséquence l'abaissement du pouvoir judiciaire.” (It is certainly true that the magistrate works under quite difficult conditions. The offices are often lacking in resources that could allow him to work well; no chairs, or cabinets to keep files, salaries that don't suffice to make it through the month...they often come against transportation problems to get to work on time. This conditioning leads to the often-expressed opinion that the modest situations of magistrates could be the base of the problem of the loss of prestige of the magistrate, which leads to the diminishing judicial power) (Ndumbi, 1999, 20).

The lack of salary is a serious issue across many avenues of Congolese politics. Because judges and magistrates do not make enough to sustain themselves through normal pay, they abuse their power and live off of bribes. Dolly Ibero Mbunga, the executive director of the NGO “Voice of the Voiceless”, one of the oldest human rights NGOs in DRC, dating to the time of Mobutu, explained, “puissance politique et puissance financière dirige le système judiciaire. C'est comme ça que la justice n'est pas accessible pour tout le monde parce que les gens ne peuvent pas payer un avocat ou des frais pour corrompre les magistrats.” (Political and financial power runs the judicial system. That is why justice is not accessible for everyone, because people can't pay for a lawyer or can't pay the fees to corrupt the magistrates) (Interview with Dolly Ibero Mbunga executive director of VSV, Kinshasa, DRC, July 23 2008). This very straightforward analysis of the power of money in Congolese courts is striking, but it is nonetheless fitting with the difficult financial situation magistrates find themselves in.

The level of corruption can be contextualized by comparing DRC with other African states. According to *Africa Development Indicators*, a comparative study produced by the World Bank, in 1996 Congo's control of corruption was at -2.1 on a scale with -2.5 signifying the weakest control. The next lowest countries were Sierra Leone, Somalia and Liberia who all scored -1.8, and all three countries were at the time in a state of war. In 2006 DRC's status had improved to -1.4, but the other countries had

improved as well. DRC was at the same level as Zimbabwe, a country in the midst of corruption scandals, and the only state lower was Equatorial Guinea (-1.5), a country with an incredibly brutal dictator, Teodoro Obiang Nguema Mbasogo repressing the population (Africa Development Indicators, 2007, 105).

### ***Broad Corruption***

But it is not only the judicial authorities who push for illegal fees to settle cases. Families of victims sometimes prefer to have the perpetrator pay damages rather than go through a full trial and try to seek full legal justice. Elisabeth Mbelu Munsense, director of the Association of Women Lawyers, explained that generally families prefer to take payment from perpetrators of sexual violence because they do not want to deal with the complex mess of the legal system and because they need the money. It is not only judges that are pushed to corruption by lack of resources. People in all sectors of Congolese society are struggling financially. Congo is the 168<sup>th</sup> richest of 177 countries according to the UN Human Development Index (HDI), meaning there are only 9 countries in which people are struggling more in their daily lives for economic sustenance. In such an environment people are prone to seek financial gain in any way they can. Lawyers participate in the corruption and exploitation as well. Abandoning their prescribed role of defending and aiding those they are representing, lawyers sometimes refuse to bring cases to court and instead settle them themselves, taking a chunk of the settlement for themselves.

“[Les avocats] s’attribuent presque le plein pouvoir d’appréciation de l’issue du procès pénal pour dire que telle infraction ne sera, même devant le juge, sanctionnée que par une amende. C’est ainsi que l’on voit des bourgmestres au

lieu même d'inviter (comme dit la loi), imposer carrément à l'auteur de l'infraction de verser au trésor—en réalité à eux-mêmes—des sommes dont ils déterminent le montant au mépris une fois de plus du maximum de l'amende prévue par la loi. Et l'affaire s'arrête là sans parfois même que procès verbaux de ces invitations et sommes perçus ne soient transmis à l'O.M.P.” (Lawyers grant themselves nearly the full power to evaluate the result of a criminal trial to say that such an infraction would only, even before a judge, be punished by a fine. It is thus that we see lawyers, instead of bringing the case to court (as the law says) imposing completely on the perpetrator to pay to the treasury—in fact to the lawyers themselves—the highest sum they can determine, regardless of the law. And the case ends there without even a verbal hearing of the invitations and the sums taken are not reported to the authorities) (Kumbu-ki Ngimbi, 1999, 32).

When cases actually are brought to trial, it is the magistrates that are permitting and promoting such arrangements allowing for impunity for crimes. Mme Munsense explains, “le magistrat est toujours tenté d'accepter les arrangements amiables...si l'auteur sort \$2000, ce n'est pas la famille qui reçoit tout. Le magistrat dit seulement voila votre parti, et il met le reste dans sa poche...les magistrats sont tenté parce qu'ils sont malheureusement payé par l'état alors ils se font payé eux-mêmes.” (The magistrate is always tempted to accept amiable arrangements...If the perpetrator pays \$2000, it's not the family that receives all of it. The magistrate just says 'here is your part' and puts the rest in his pocket...the magistrates are tempted because they are poorly paid by the state, so they pay themselves) (Elisabeth Mbelu Munsense, director of Association des femmes avocats, interview by author, Kinshasa, DRC, July 17 2008). Since salary issues are so entrenched in the organization of the state, since independence with the proliferation of government jobs, magistrates have become accustomed to having to pay themselves through the abuse of power, and corruption has become an integral part of the system.

Even before contact with lawyers and magistrates Congolese deal with corruption and dysfunction of structures through contact with the police, the supposed ambassadors for the law. Like everything else under Belgian rule, the police force during the colonial

period was composed of Belgians. The colonial police was forceful and repressive due to “the fear of popular revolts and the need to maintain a healthy and tranquil political atmosphere... police operations...involved putting down a rebellion and intimidating the population in order to keep it on its best behavior” (Nzongola- Ntalaja, 2002, 37). At the end of colonial rule, Congolese were quick to move into the police roles formerly held by Belgians, as the uniform brought power. Local authorities also saw the opportunities to fill the police with loyal followers. “Provincial leaders were quick to appreciate the political importance of having an armed force at their disposition; new police commissioners were named, with political reliability (as judged by the provincial authorities) a major criterion” (Young, 1965, 465). When Mobutu took power he ensured that he had police and security forces working for his protection and benefit. He organized several competing units to decentralize his power and make sure no group was strong enough to overtake him. This had devastating consequences for the daily lives of Congolese who had to deal with a police force that had no aim of protecting them, only deepening the power of their leader, which led to many human rights abuses. “Loyalty to the chief, at least at the higher echelons, was stronger than commitment to the people and respect for their deepest aspirations for democracy and development” (Nzongola-Ntalaja, 2002, 156). But even the police who remained outside of Mobutu’s control were equally disrespectful of human rights. “Up to 30,000 of the local police remained outside governmental control, acting on their own behalf or at the behest of military authorities. This encouraged brutality and corruption, for the gendarmes were rarely paid, and the state rarely punished those guilty of abuse” (Hills, 2000, 154). This lack of funding for police and the subsequent corruption as police use the authority of their uniforms to

coerce the population into bribes continues today. Police need adequate salaries to allow them to support themselves without corruption, and the structures funding them must hold them to better practices.

Police and military self-claimed authority goes beyond simple bribing. Officers, accustomed to asserting improper authority over the population through bribery, assume their superiority even when money is not involved. They consider themselves deserving of whatever they want from the population, and sexual violence has had significant ties to government forces. One of a plethora of examples is the case of a 13-year-old girl who was taken to a lot behind her house by an officer and some of his friends. The officer's friends held her down while he raped her. The following day he tried to do it again, but she fought and screamed, escaping with a deep gash on her upper thigh but no further incident. (Amis de Nelson Mandela/Friends of Nelson Mandela human rights NGO, interview by author, Kinshasa, DRC, 24 July 2008). Police abuse their authority as part of the broad range of corruption in DRC. Their disrespect for the population and tendency toward exploitation makes them unapproachable, so many Congolese are wary of taking their problems to the police, and are deterred from taking even the first step towards legal justice.

Even when people do manage to get through the bureaucratic mess that is dealings with the police, lawyers and courts, often crimes are not punished due to the poor structure of the prison system. While some prisons are full because authorities do not respect the sentences, and many people arbitrarily arrested languish in prison, others are empty due to lack of security permitting prisoners to escape. Additionally the political powers have had a tendency to arrest prominent members of the opposition who

are taken to prison and beaten. There are few functioning prisons in DRC, many in the countryside are dilapidated with no doors or windows and no funding to feed the prisoners, so they are allowed to leave during the day, and “Seulement eux qui n’ont pas de famille restent au prison” (only those without family stay at the prison) (Maitre Gaston Osango, interview by author, Kinshasa, DRC, 16 July 2008). While full information about all of the prisons in the country is hard to find, specific cases emphasize the ineffectiveness of the prison system. In the capital, Kinshasa, a city 9.5 million people, there is only “one official detention center under the authority of the courts and tribunals”(Ngadi, 2002, 3) though there are other military and police jails (not linked to the courts) that function at varying levels of efficacy. In Katanga province there are seven known prisons, but two of them are run by rebel groups (Ngadi, 2002, 16). With such an absence of proper facilities and control, prisoners sometimes are randomly freed and not forced to serve their sentences, allowing criminals the peace of mind of knowing their crimes will most likely go unpunished. Furthermore while there is a specific timeline for addressing crime, it is almost never respected. Magistrates rarely address the cases in the time allotted for temporary detention of the accused, so after two months if the case has not been brought to court the perpetrator is let free. “C’est ça la faiblesse, on le fait en moitié...on arrête le plus part des cas avec l’emprisonnement provisoire et après un peu de temps il est relâché.” (That’s the weakness, we only do half...they stop most cases with provisional confinement, and after a little while they are released.) (Elisabeth Mbelu Munsense, director of Association des Femmes Avocats, interview by author, Kinshasa, DRC, July 17 2008)

## *Conclusion*

Corruption is rampant and deep in the current organization of the justice system in DRC. But the current situation cannot be looked at in a vacuum. The last one hundred years of history has seen the deepening of the culture of corruption and exploitation. There are specific aspects of the judicial system that have historically been ineffectual and need to be addressed. For reform to be effective and lasting it must address the imposed and unnaturalized nature of the courts, and work to build confidence and connection with the court system for Congolese civilians. The issue of salaries and equipment for magistrates must be addressed, as must the history of clientelism, parochial politics, and government interference in court decisions. These are specific but broad issues that handicap the courts, but have spread out from the government to permeate daily social interactions. These weaknesses are precisely why victims of sexual violence do not feel comfortable bringing their cases to court. Yet these weaknesses can be overcome hand in hand with addressing the impunity for sexual violence. This will allow for an improved judicial system as well as provide a manner to alter the culture of sexual violence. Addressing judicial reform through carefully monitored and improved court cases of sexual violence will put an end to these two debilitating cycles in Congolese society. Reform must be holistic and address both the specific issues in the judicial system, the culture of distrust and corruption, and, I argue can simultaneously disrupt the continuation of sexual violence.

## **Part Five**

### **Addressing Corruption: Judicial Reform**

#### **Local Courts, International Pressure**

An important theme in critically addressing international intervention in civil society abroad (in the form of international NGOs and human rights organizations) is the question of continuing western imperialism through the imposition of western-originated ideologies. For example the Universal Declaration of Human Rights claims to be Universal, but its emphasis on individual instead of group rights is one instance of its western-centric bias. The presence of international NGOs is extremely high in DRC and with the government unable to meet its citizens' needs, these international NGOs (particularly UN programs) fill the hole created by the dysfunctional government. However this is complicated because such international actors do not originate from Congolese society, so it is a struggle to bring Congolese citizens to trust and participate in institutions set up by these outsiders, just as much as it is a struggle for Congolese to feel connected to their governmental structures that have long proven untrustworthy due to corruption and which are based on a colonial model. However the link between local and international NGOs is strong due to funding ties as well as ideological overlap, as discussed in the section on Human rights. Local actors are the most closely involved members of the broad community intervening in Congolese affairs. They have important information stemming from the grassroots about the experiences of Congolese and the specific problems Congolese are facing including issues of judicial corruption, impunity, and sexual violence. It is important for reform to include suggestions from these locally-connected actors, but also take advantage of the influence that international actors have

over the Congolese government because of their financial contributions. Together local and international actors can act to pressure the government using the financial tools available to the international actors, and the information available to those working on the ground. I am focusing here on international actors such as the UN and EU that have significant relationships with DRC. They have become such active participants through a multiplicity of programs that they can act with force on the domestic level. However it is incredibly valuable to keep reform local, even when using the power of international institutions. Local reform allows for a cessation of the culture of impunity and a strengthening of the court system that will have long term positive effects on the state of justice in DRC as well as immediate effects on the situation of sexual violence and providing justice to victims. These potentials for long and short-term domestic improvement through national reforms discourage me from focusing on international justice institutions such as the International Criminal Court for bringing long-term, broad-reaching justice following the war in DRC.

Furthermore the structure of the ICC makes it not ideal for addressing the broad scope of the cases of sexual violence in DRC. The ICC states that it was “established to help end impunity for the perpetrators of the most serious crimes of concern to the international community” (International Criminal Court). The cases brought to the court, dealing with the “perpetrators of the most serious crimes” are generally for leaders who have ordered the broad use of internationally illegal tactics. Fearing confrontation at the ICC, therefore, would only act as a potential deterrent to leaders. The cases in DRC as referenced earlier, have spread beyond just the military into the civilian realm, and are not always condoned by military or rebel leaders, sometimes perpetrated independently

by soldiers and civilians. In fact the changing profile of the perpetrators of sexual violence illustrates the impossibility of dealing with the problem at the international level, or even with special national war crimes tribunals. Mireille Ikoli, Director of the Gender Division of the UN in DRC described the changing profile of perpetrators of sexual violence (quoted earlier). She explained that in 2004 77% of perpetrators were militants, but by 2008 this percentage had dropped to 34% (Mireille Ikoli, Director of UNFPA Gender Division, interview by author, Kinshasa, DRC, 4 July 2008). I repeat this statistic because it emphasizes both the impossibility of dealing with the problem of sexual violence in DRC on an international level, but also underlines the importance of locally deterring sexual violence and disallowing the proliferation of the culture of impunity for such actions.

Localizing the response to this problem will also be mutually beneficial in the long run. To deal with gendered crimes on a local level will require improving the effectiveness of the court system and addressing the overarching culture of impunity. Equipping the courts to deal with these specific gendered crimes will leave them with the tools to deal with all the currently unpunished crimes more generally, thus helping to reverse the culture of corruption and impunity that permeates Congolese politics and currently hinders any pursuit of justice, gendered or not. Specifically equipping the courts to deal with gendered cases could even allow them to develop in advanced capacities for addressing gendered issues that generally are put aside until much later in the development of judicial systems. The issue of gender inequality in law and justice is often postponed and dealt with late in the development of a court system. But because of

the feminine quality of the widespread legal issue of sexual violence in DRC, there is the potential to purposefully develop courts that are conscious of women's needs.

Women who bring their cases to court are often uncomfortable working with male lawyers and judges due to the stigma attached to rape in Congolese society. Women generally prefer to explain their cases to women lawyers, so local NGOs are working to promote female lawyers and social workers, as they tend to be more successful in making victims comfortable bringing out their stories. "Victims are usually extremely uncomfortable having to tell their story in front of male judges and other officials. Being professionals, female lawyers also claim higher priority for sexual violence cases in the male dominated sectors of the police and judiciary. Having more female judicial staff, including judges and police officers, will also very likely help to put the issue higher on the agenda" (de Vries, 2007, 49).

By using the gendered sexual violence crimes as a catalyst for judicial reform, there is the possibility of not only improving the justice system in a general sense, but even making it more respectful of women's needs at its core. Since the justice system is in such extensive disrepair, it needs to be rebuilt nearly from the bottom up. This can be done by international actors monitoring the progress of cases as they move through the justice system to ensure that they are dealt with in a legal manner free from corruption. Ensuring that there are the structures in place to effectively deal with each step of the judicial process, will leave these improved structures in place for later cases, thus strengthening the judicial system in the long term. The plethora of sexual violence cases provide excellent material for such a process of reform through action. This has a dual beneficial effect. Using gendered cases to build legitimacy will allow this bottom up

development to address women's needs from the beginning, while it strengthens the judicial structures. The improved system will then both have the tools necessary to deal with all general cases, but will additionally have gender sensitive structures so equalizing access to courts for men and women will not need to be a later improvement, but instead will be a fundamental part of the initial improved court system in DRC.

This sounds like an extremely idealistic vision for Congolese judicial reform. However, activism on the ground has shown that this model is both possible, and organic, as it is precisely how Congolese nationals are attempting to deal with the problem. Before 2006 one of the important hindrances for women wanting to bring their cases to court was the layers of sexist laws, particularly in the civil code dealing with family law. With the laws against them, as well as the logistical difficulties of carrying a case through, it was almost hopeless to suggest that women try to seek justice through the courts. However Congolese activists pushed through a law in 2006 that made the legal consequences for sexual violence much more serious. Perpetrators now face five to twenty years in prison depending on the circumstances of the assault, as well as fine of at least 100,000 Congolese Francs (\$152). If the victim dies from the assault the perpetrator is imprisoned for life (*Lois Sur Les Violences Sexuelles: Mieux les Connaitre et les Appliquer*). Because it is a criminal law, none of the hindrances of the civil code keep women from independently bringing their case to court. As women begin to feel empowered and included and start to use the local courts, the improved confidence will strengthen the capacity of the courts. And the courts will continue to develop in more gender-equitable standpoint.

## **Part Six**

### **Uganda's Constitutional Legitimization as a Comparative Case Study for DRC's Judicial Legitimization Process**

Improving confidence in the judicial system is an important step to improving their efficacy, because people will not use the courts in the proper manner if they assume the only way to accomplish anything is through corruption. Confidence in the validity and transparency of the structure will encourage more Congolese to use the system correctly. But confidence building is a difficult process. In this section I explore the comparative example of Uganda's process of legitimizing its constitution to glean techniques that can be applied to DRC's legitimization process.

Uganda is a helpful case study to glean some positive examples of changes to implement in DR Congo's judicial structure because, like DRC, Uganda has a history of inter-group tensions, dictatorships and lack of rule of law, but in the 1990s Uganda reworked its constitution to make it more accepted and functional. Justice Benjamin J. Odoki was chair of a commission to draft a new constitution for Uganda. He explains Uganda's tumultuous background, the setting the new constitution would work with and aim to improve. Uganda "had more than its share of natural and man-made disasters...tyranny, violation of human rights, genocide, state terrorism, civil war...the issue involved in such internal conflicts were primarily questions of political power. They manifested themselves in ethnicity, minority or secessionist claims or demands for autonomy" (Odoki, 2005, 191). This laundry list of political and social conflicts is parallel to the context DRC is working in, as outlined earlier. Uganda has a history of rebels undermining central state authority, similar to DRC with the continuing rebel

struggles in the East. Dictators have also historically weakened legal structures by ignoring judicial authority and acting autonomously. Milton Obote was Uganda's prime minister from 1962-66 and led the transition from colonial rule to independence. He was then president from 1966-71, and 1980-85, with Idi Amin staging a coup and ruling as a strong-armed dictator from 1971-79. Both Obote's second regime and Amin's time in power were deeply repressive, with citizen's conditions and experiences of governmental power similar to the Congolese civilian perception of the personal politics of Mobutu. All of the dictators, both in DRC and Uganda, created an environment of distrust for the government and a sense of the necessity of seizing and consolidating political power to accomplish anything. "Obote also banned all other political parties in 1969, and hence Uganda became a de facto one party state. During Amin's military regime, the only ideological manifestation was primitive fascism" (Odoki, 2005, 197). Barongo summarizes this well in his piece "Ethnic Pluralism and Political Centralization: The Basis of Political Conflict". He says, "Political conflicts and violence in Uganda have tended to acquire ethnic dimensions because of the excessive centralization of power which has led the struggle to control the center to be very intense indeed among the elite members of the ethnic groups" (Barongo 1989, 70). This statement could just as easily have been written about DRC. Because of these historical and political similarities, Uganda's attempts in the 1990s to improve their constitution and implement rule of law will be helpful examples to study and perhaps implement in DRC.

An important aspect of the constitution making process was civic participation and education. Citizens across Uganda were consulted for their input on how they wanted the state organized, and conflicted parts of the constitution were closely studied to

find the best working solution that fit with the majority's view, while respecting and including minority dissent. "The challenge that faced Ugandans was to forget and forgive the past, learn from their past mistakes, embrace democratic values of tolerance of diverse views, cultivate the spirit of give and take compromise, and acceptance of majority views while respecting the views of the minority, and agree to make a fresh start." (Odoki, 2005, 198) These are the same challenges Congolese face, though the goal is not to create a new constitution, but to agree to respect the legal framework that is in place. Citizens and political power players all need to submit to the rule of law. In Uganda this required rewriting the constitution, but in DRC the constitution is not the problem, only the lack of implementation of the laws. Activists are already working on amending the constitution to have it more precisely fit with the current needs and conflicts in DRC, such as the amendment outlined above increasing the gravity of crimes of sexual violence. Creating a new constitution would undermine these efforts that are already underway. However using the legitimizing tools used to create a legitimate new constitution in Uganda can be used to legitimize the existing legal framework in DRC, and impose the rule of law.

In Uganda the commission's seeking of public input took two parts. "The first phase aimed at educating the people about the mandate of the commission and the issues on which it would lie public input. This was necessary to ensure that the public understood that the commission was not a policy advisory body, but charged with the task of drawing up the rules of the political game---that is, how relations between state and citizen should be structured" (Mugwanya, 2001, 166). The role of the commission in Uganda can be paralleled by the Comité Mixte de Justice in DRC. While the Comité Mixte

was created to oversee the dispersal of funds for the amelioration of the justice system, they can potentially use these funds for public acceptance of and participation in the judiciary, which according to the Uganda case can be an important aspect of legitimizing and improving the justice system. “The second phase centered on receiving opinions and viewpoints from the public. Commission members toured the country to listen to verbal statements and receive written submissions on specific issues of interest and concern to the people” (Mugwanya, 2001, 166). This could be a very important outreach opportunity in DRC.

Commissions sent out to listen to the public, endorsed by the central government to emphasize their new willing submission to the rule of law, and their commitment to representing the citizen’s needs could be a strong statement to improve public trust and participation in the process. Remote citizens could both learn about their rights and communicate frustrations or potential changes they would like to see implemented. It would be important to include the remote provinces into the legal framework, as often the rule of law does not extend to rural parts of the country. Listening to these populations with flexibility may also lead to the creation of amendments and changes in the constitution to make it more easily implemented and accepted by those who may feel that the heavy European influence does not represent their local interpretations of justice. While I do not suggest broad constitutional reform, but rather improved implementation of existing laws, one way for Congolese to feel more connected to their constitution would be if they understood that it was malleable and parts they disagree with can be changed through amendments. In Uganda the purpose of the discussions was direct creation of new laws. In DRC the commissions would have the dual purpose of

spreading inclusion and participation in the legal system, and opening doors to improvements and amendments in the system to make participation easier. Citizens will feel more connected to and more likely to utilize an improved legal system they know about and have participated in improving. Commissions would have to be paired with concrete improvements in access to law, such as the creation of more mobile courts or long-term courts throughout the country. And the functionality of these new courts would depend on the legitimate funding and training of magistrates to ensure rulings were based on law, not on corruption or funded conflicts of interest. Despite the broader context citizen commissions would have to fit in, they should not be overlooked as weak or useless because they are simply dialogues. One of the biggest problems hindering the improvements of the justice system is the lack of participation. People assume the justice system will not work so do not utilize it, so it never has the opportunity to perform correctly. Opening dialogue on this issue of stagnation will allow people to express their isolation from the judiciary and beginning to rebuild a connection and participation will pair hand in hand with improvements in corruption.

The participation of women in the constitution-making process in Uganda affirms the possibility that women's issues can be an integral part of judicial reform. Women were specifically contacted for their input in the creation of Uganda's 1995 constitution. "The Ministry of Women in Development, Culture and Youth, with the assistance of the Danish International Development Agency and some national women's organizations, embarked on a comprehensive education campaign for women on the constitution-making process. This campaign was undertaken to complement the efforts of the Constitutional Commission and it achieved tremendous results" (Asimwe, 2005, 53).

The participation of women in the constitution-making process, and the forthright addressing of women's issues of inequality and exclusion from power had successful results. According to article 78 of the 1995 constitution, parliament must consist of "One woman representative for every district" and currently there are 79 District Woman representatives (The Parliament of the Republic of Uganda). Furthermore, in the 1995 constitution it is specified that "women shall have the opportunity to equal treatment with men and that right shall include equal opportunities in political, economic and social activities.' The constitution further provides for the establishment of an Equal Opportunities Commission to ensure equality between women and men" (Musoke, 2005, 367). These are important political moves taken during the construction of the constitution that have had lingering positive effects for women in Uganda. This is relevant for the DRC case, because it demonstrates that gender issues do not necessarily have to be sidelined during the state-building process. Women's issues can be a central improvement to state reform. For the DRC case, this supports my argument that women's rights issues (specifically sexual violence) can be used as a catalyst for broader reform. Uganda's inclusion of women in political reform is a positive example of how women and women's issues can be included in initial reform. Of course Ugandan women activists feel there is still far for women to go before they are legitimate equal members of society and politics. "Women in top decision-making and management positions remain a tiny minority. Working women are limited to the so-called 'women's ghetto,' despite national and international declarations affirming the legal rights of women and equality of the sexes." (Musoke, 2005, 366). Nonetheless, despite the imperfections of the present state of women's rights in Uganda, their participation in

constitution-making and the inclusion of women in parliament legitimizes women's issues as an important part of a state's domestic issues.

## **Part Seven**

### **Possibilities for Anti-Corruption Initiatives**

Given my argument that sexual war crimes are a significant problem in DRC and that access to justice is an important step of the healing process for victims, but given also the state of disrepair of the justice system, and the necessity of intensive reform both for the improvement of governance generally in DRC and to facilitate justice seeking for victims, the significant question that arises is how can these various difficulties be addressed in a functional and holistic way beyond local techniques for legitimizing the laws as outlined above? Corruption is the major issue hindering the justice system in DRC, so in this section I will explore potentials for anti-corruption reform.

Corruption is a broad issue that takes many forms. Anti-corruption programs are similarly broad, and often historically ineffective. Many of the programs call for cultural change, but how can one initiate such changes in a culture of corruption? The circularity of such arguments make them difficult to implement.

Standard policy recommendations embrace the ‘strengthening’ of diverse legal foundations and procedural guidelines. They include the ‘promotion’ of integrity in various sectors, or they relate to ‘capacity building’ in the public administration...But...Integrity, strength and capacity are exactly what are in short supply, and the reader obtains little inspiration on how to escape the vicious circle (Lambsdorff, 2007, 27).

It is for this reason that many of the partial programs currently in place in DRC have not made significant change. Watchdog organizations such as Voix des Sans Voix (VSV) and Les Amis de Nelson Mandela (Friends of Nelson Mandela) use Amnesty International-like tactics to publicize human rights infringements, but in an environment where openly criticizing the government can lead to state sponsored imprisonment, it

seems insufficient to call for a cultural shift towards the rule of law. Though of course having this grassroots support is an important component to bigger, hopefully stronger and more robust reforms.

In her section on the Justice System in the book *Fighting Corruption in Developing Countries: Strategies and Analysis* Mary Noel Pepys outlines a long list of potential reform programs. First she emphasizes the importance of an independent judiciary and of Judicial Councils to manage the judiciary instead of leaving that power with the executive branch (Pepys, 2005, 20). These are absolutely the first steps towards any functioning legal system. But this is also incredibly difficult to implement, particularly in DRC where the written laws are generally fitting with international standards, and it is in the ignorance or manipulation of these laws that the corruption manifests itself. Dieu-Donné Wedi Djamba, a Congolese lawyer and activist explains the status of the lack of independence of the justice system.

La Constitution de la Troisième république à son article 149 consacre l'indépendance de la magistrature vis à vis de l'Exécutif et la loi relative au statut de magistrat est promulguée. Mais ces deux lois n'auront aucun impact sans la promulgation de la loi sur le Conseil supérieur de la magistrature et sa mise en place. En effet, le projet de loi portant le Conseil supérieur de la magistrature est en souffrance à l'Assemblée Nationale depuis le gouvernement de transition jusqu'à ce jour. Comme conséquence, aucun changement n'est observé au sein de la magistrature malgré la promulgation des ces deux lois précitées." (The Constitution of the third republic in article 149 consecrates the independence of the judiciary from the Executive and the law about the position of the magistrate is published. But these two laws will have no impact without the promulgation of the law of the Great Council of the Judiciary. And the legal project concerning a superior counsel of the judiciary has been delayed at the National Assembly since the transitional government to this day. Consequently, there is no observable change within the judiciary despite the promulgation of the two aforementioned laws) (Wedi Djamba, 2007).

While the laws are on the books, they are unable to be implemented without the oversight of a Grand Council of the Judiciary, but the creation of said council has been delayed for

years. This is a clear example of how lack of political will (or perhaps political will contrary to anti-corruption strategies) can impede even the published legal reforms in DRC. In fact contradictory written promises and actual actions is a typical form of corruption. “It should be noted that doublespeak reigns supreme in contemporary Africa. In other words the political elites are past masters in terms of their capacity to produce an official discourse that fulfills the expectations and conditions of their donors and is extremely far removed from the realities that remain largely inaccessible to donors” (Blundo and Olivier de Sardan, 2006, 7). This potential for deception is a problem for many of the superficial anti-corruption campaigns.

Other suggestions for reform include the strengthening of the capacity of the Public Prosecutor, because, Pepys explains “until the public observes that corrupt behavior by governmental leaders and private individuals is not tolerated within the judicial system, corruption in other sectors of society will continue” (Pepys, 2005, 20). Of course, in Congo there is an incredibly small number of trials that actually make it through the judiciary. With the level of dysfunction of the judiciary, it seems adding additional trials for cases of corruption is ambitious, as these trials would likely similarly get bogged down or remain uncompleted. Pepys also calls for transparent appointment, promotion and dismissal of judges (Pepys, 2005, 20). This is an important aspect that I will return to later in this section. While there are not enough judges to even fill all the courts in the country, and the lack of judges is a particular problem for rural courts, it seems that the government can not be particularly selective about the judges they appoint. Nonetheless, screening authorities for human rights abuses may be an important step

towards promoting civilian trust in the judicial system, and it is possible that nongovernmental organs can participate in the screening process.

Pepys also emphasizes the importance of strong legal education for judges to ensure that they are not taught corrupt practices from the beginning, and have enough training to maintain their positions even when they begin working in the less idealistic environment of the real court system (Pepys, 2005, 22, 25). Once certified, judges must have better working conditions than are currently standard, to make them less vulnerable to corruption (Pepys, 2005, 21). This was a suggestion that is repeated in almost all discussions on the judiciary in DRC. Salary payment is reliably unreliable, and judges can assume they will not be paid in full, so they augment their income through bribes. Increasing salaries to decrease corruption is an accepted principle for economists. “Low salaries force public servants to supplement their incomes illicitly. At the same time, high salaries are a premium that is lost if a public servant is caught and fired” (Lambsdorff, 2007, 37). Along with granting fair salaries for judges, Pepys suggests that judges should publicly declare their assets so that those living clearly outside the means of their salary can be further investigated for bribery (Pepys, 2005, 22). This is another helpful tactic that unfortunately falls into the trap of the culture of corruption. What outside source will examine the fairness of judges’ lifestyles, if most public servants are themselves forced to work with under the table agreements? A repeated issue that comes up with these reforms is the necessity of an uncorrupt higher power checking the judiciary. Unfortunately in a broadly corrupt system such as that in DRC, both the judiciary and the executive are independently and jointly corrupt. In a zero-sum system where people are motivated to enter politics to gain access to public wealth, and the

winner is expected to take all, it is hard to locate a center of just authority that can influence the rest of the corrupt system. Thus the circularity issue discussed above. One scholar suggests that improving corruption levels requires a “big bang” which is to say “a major shift in government priorities that reflects rising social tensions *together with* the emergence of bold leaders and new institutional designs, all at the same time” (Uslaner, 2008, 248). Depending on a “big bang” is a depressing and constraining view, as the likelihood of such an occurrence in DRC seems impossible, yet exploring the internal possibilities for reform can lead to such a pessimistic conclusion.

Pepys further suggests several programs for increasing public access to information about judicial actions. These include public codes of ethics, for which breaches can be publicized, so the unethical authorities are held publicly accountable even if not professionally so. Text of laws also should be made available to the public. Judicial decisions and the processes of the trials should be public information. The methods used in the courts, both administrative procedures and case assignment should similarly be transparent. Both civil society NGOs and the media have an important role to play for guaranteeing easy public access to available information (Pepys, 2005, 22-25). Civil society organizations are already working hard to promote the human rights laws on the books, and to publicize evidence of corruption. The newspapers follow important cases. The civil society in DRC is surprisingly strong, and this is an aspect that can be easily built on to improve the judiciary.

Despite the negative prospects for improvements I outlined above, there is in fact some potential for improvement in the justice system. DRC has several international development partners, including MONUC (the UN mission in DRC) and the European

Union. These partners provide significant material and technical support and have the potential to pressure the government to make reforms. Of course it is easy for programs to miss the actual situation and try to implement superficial reforms, such as public service campaigns about the importance of minimizing corruption. Using such moralizing or normative language tends to be ineffective, in fact “relatively full implementation of the anti-corruption governance package can be associated with varying, and often low, degrees of actual reform in practice” (Bracking and Ivanov, 2007, 295). But one important possibility is through significant and legitimate conditionalities imposed by international actors who have an important role in the country. The European Union has several programs for Security Sector Reform (SSR) in DRC. In her paper “Justice-Sensitive Security System Reform in the Democratic Republic of Congo”, Laura Davis emphasizes the role the EU can play in institution reform of the judicial system and the pursuit of justice through their SSR programs. She recognizes the influence the EU has in DRC. She explains,

Where possible, the EU should always seek to accompany Congolese endeavors. However, where the authorities fail to act in good faith, the EU should be prepared to apply conditionality on human rights grounds and further targeted sanctions if necessary. The EU is an important part of the international community in the DRC. Now is the time to increase pressure and support for justice-sensitive approaches to SSR in order to see better returns, and the EU is well-placed to take the lead on this (Davis, 2009, 32).

Foreign donors are expected to contribute to the countries they claim to be helping. But because the pressure on these organizations is to demonstrate that they are contributing to the countries, there is not always such a clear emphasis on implementing carefully designed programs that take into consideration all the potential pitfalls. In effect many foreign governments and aid organizations write blank checks to developing governments

that can then be misused, furthering the culture of corruption in these countries. This is possible with all international aid, but is particularly ironic and unfortunate with anti-corruption programs.

Developing nations enjoy a continuing influx of foreign aid, which can lead to a sense of entitlement that impedes the development of an actual functioning economy, according to Dambiso Moyo in her essay in the Wall Street Journal “Why Foreign Aid is Hurting Africa”. “The open-ended commitments...imbue governments with a sense of entitlement rather than encouraging innovation. And aid supporters spend little time addressing the mystery of why a country in good working order would seek aid rather than other, better forms of financing” (Moyo, 2009). This sense of entitlement and the unquestioning assumption that aid will continue to be there is precisely what the EU can undermine by imposing enforced conditionalities. Instead of loose conditionalities for which there are few consequences for noncompliance, the EU could threaten to and actually remove its material and training for the Congolese security forces if the conditions for improving justice are not met. They also can act as a higher power determining whether appointments are fair and appointees respect human rights and do not have a history of blatant corruption. One of Davis’ main suggestions is to have the EU participate in the vetting of the armed forces.

The EU should support a reflection and consultation process with the Congolese authorities, international community and relevant technical experts and other stakeholders, to examine in depth what options there may be for vetting processes, using the human rights records (including for sexual violence) of individuals as a criterion for selection for or exclusion from the police and army, and to make recommendations for the implementation of such a proposal. It will not be feasible to vet every member of the police or army, so strategic choices will need to be made. It may be most appropriate to vet only the most senior ranks, and/or members of internal disciplinary units (Davis, 2009, 33).

Because of the close role the EU has with the security forces in DRC, they are worthy candidates to participate in vetting potential members. This is an important opportunity for a less overtly corrupt, and external power to have influence over curbing internal corruption in DRC.

Of course, a significant issue that comes up with the question of international actors pressuring local decisions is the question of sovereignty. And Kabila along with his current Congolese government are very sensitive to impositions on their sovereignty.

The Congolese government prefers bilateral to multilateral partnerships. This enables the government to maintain greater control over individual relationships, and undermines attempts at international donor coordination and cohesion. Key figures, including the President and Ministers, respond angrily to any perceived conditionality on aid or intrusions on sovereignty, in particular in relation to security and human rights. Since the elections, President Kabila has reduced contact with the international community (Davis, 2009, 28).

Because of this sensitivity, it is important for aid donors to tread carefully. Of course it would be problematic if the Congolese government expelled the EU from DRC, as the EU is doing important work to improve the security in this currently highly insecure country. And DRC has some level of financial independence due to its resource wealth, and its building of trade partnerships with China. It does not necessarily need the EU and could potentially exclude them if they were sufficiently offensive in their promotion of accountability and anti-corruption. However Kabila is also concerned with his public international image. When he was elected the BBC proclaimed that Democracy had finally come to DRC, though they have since cooled their praises in light of the continuing war and inclusion of prominent human rights abusers in the military. DRC is also building fledgling ties with France which is important both financially and strategically, but would be undermined should DRC expel the EU. Sarkozy considers

France's communication with DRC to be part of the European connection. "We are ready, we French, we Europeans and we members of the World Bank to contribute to the reconstruction in the East. It's a formidable bet for the peace" (Xinhuanet 2009). Thus there are several factors that link DRC to the EU, which allow the EU to be stricter with their suggestions and conditionalities. Furthermore, the abuse of sovereignty through conditionality has become typical of anti-corruption campaigns. "Political conditionality and policy on anti-corruption have become central within good governance programming, with anti-corruption policy used to positively encourage greater accountability and democracy, and conditionality employed as a punitive driver to persuade recalcitrant governments into better governance practices" (Bracking, 2007, 16). While infringing on sovereignty is something to be aware of, it has become regular practice to do so through conditionalities. Unfortunately the response to violating conditions is often weak and ineffective, and I argue that the EU has enough stable power to impose stricter, and so hopefully more successful conditions to ameliorate the judicial corruption. I am not proposing more of an imposition of sovereignty than is already rhetorically in place, I am simply calling on international donors to actual carry out the functions they claim to be fulfilling through upholding already stated conditionalities.

International actors must recognize the importance of promoting judicial reform and anti-corruption measures to improve all of their programs in the country. Minimizing corruption is the most important way to make long-term improvements in governance and to provide a sustainable response to continuing sexual violence. Improving the judicial system will not only bring hope and justice to the current victims of sexual violence, but will bring long term change to build tools to deal with future domestic humans rights

abuses. Furthermore the improvement of the justice system, while it focuses currently on meeting the needs of victims of sexual violence will be a sustainable change that can be applied across the board, bringing a new era of trust and participation with the rule of law. Of course the reason there is such a level of corruption is that it is entrenched and difficult to resolve. But while many suggestions for improvement seem impossible due to the breadth of the culture of corruption internal to the country, there are possible inroads. The national civil society networks already exist and are pressing for justice, though of course their influence is undermined in a country where the majority of state money comes not from taxes but from outside sources which leads to an unhealthy situation where the government “doesn’t have to take account of its disgruntled citizens. No matter that its citizens are disenfranchised (as with no taxation there can be no representation). All the government really needs to do is to court and cater to its foreign donors to stay in power” (Moyo, 2009, 2). This is precisely where the international actors must recognize the power they have. While it is problematic for national decisions, such as vetting judicial authorities, to have outside intervention, these outside authorities are deeply involved in the country’s affairs and finances. They must recognize the power they do hold and instead of shying away from it and pretending to respect sovereignty, which is clearly false due to the breadth of intervention (MONUC has over 17,000 peace keepers in DRC (Monuc.org), they must impose rigid programs implementing long-term and strong actions against corruption. Should the Congolese government disrespect these programs there should be simultaneous international shaming paired with severe cuts in foreign financing of other programs. Corruption is recognized by local organizations to be impeding social change and the end of sexual

violence in DRC. Both local activists and international organizations recognize this is a problem, it is simply the government that refuses to address it, since they benefit from working without restrictions or transparency. While undermining sovereignty is problematic, I argue that it is necessary and is not contrary to local civilian needs. Were the government more in tune and respectful of its citizens such actions would be unnecessary, but given the current climate of impunity and disrespect for rule of law it is imperative that international actors take advantage of the authority they have in DRC and pressure the government to meet its citizens needs.

## **Part Eight**

### **Justice-Building During War**

In addition to the history of neglect and corruption in the judicial systems in DRC, the continuing conflict has also been an important part of the weakening of the court system. In unstable regions courts have been abandoned or destroyed, or cannot be staffed due to insecurity, thus heightening the sense of impunity. Members of militant groups who have been brought to trial have often not served their sentences, if trials are even able to take place. In many ways the justice system has been put on hold due to the conflict, as the culture of impunity increases and spreads. So it is reasonable to ask why I suggest using the currently dysfunctional courts to deal with crimes that are part of the war while the war is still going on. I do not use the term war-crimes because I am not discussing taking the military leaders to trial in a domestic court. I am focusing instead on individual cases of sexual violence, some of which take place in the armed conflict by militants, and some of which take place in the civilian sphere.

President Kabila himself suggests that justice must wait for peace in DRC. He justifies shielding Bosco Ntaganda, a former rebel leader who has defected and become part of the Congolese army, but who is accused of war crimes by the ICC. Kabila is quoted, “why do we choose to work with Mr Bosco, a person sought by the ICC?...Because we want peace now. In Congo, peace must come before justice” (Riddell, 2009). It is problematic that this is the attitude of DRC’s president since he clearly places peace above justice he will likely not by choice assert the political will necessary to make the changes I call for in the justice system. This statement affirms my argument that it is the well-integrated international actors such as the UN and the EU that

will have to sway the government to participate in instituting the rule of law. Despite Kabila's assertion that peace must come before justice, I believe with such a mindset justice will never be implemented. Congo has had an incredibly tumultuous history. Legitimate, widespread peace has long alluded the country, and likely will continue to do so, at least for the time being as the various conflicts with various rebel groups are resolved. Waiting for peace seems like an excuse to avoid the regulation and accountability that will come with the reparation of the justice system. And in fact, scholars of post-conflict justice find that the process of improving the justice system in a society can work simultaneously to build a culture of the rule of law and help heal a society of the trauma and fear that goes with conflict.

The fact that Kabila calls for peace before justice is problematic, because the fact that there is such an absence of accountability—such a high level of impunity in DRC—is part of what allows the continuation of hostilities as people feel free to act as they please without fear of retribution. “Accountability for violations of human rights underpins democratic society, and, if this is absent, it may threaten stability and reconciliation, at the same time emphasizing to the perpetrators the non-existence of rule of law” (Kerr and Mobbekk, 2007, 111). So an important step toward alleviating the conflict is in fact the war-time implementation of legal accountability for current crimes. Furthermore, “law is a prerequisite for peace, security and stability; a society without law will inevitably be a society without peace” (Mani, 1999, 146). So the idea of postponing justice building until peace has been achieved is contradictory. The only way for society to transform into functionality is through justice and building social trust in the relevance of the judicial system.

Oftentimes when wars have been as widespread and intense as DRC's have been, trials are undertaken by an international body. However, when the society is as severely weakened as DRC's has been, it is important to rebuild the social structures to preserve peace and work through minor conflicts before they get out of hand. This is why building a working judicial system is important. Not only will the process allow the development of a more capable peace-building society, it will also create the tools to maintain any small steps toward stability that is implemented, instead of having weak structures that can easily fall back into further conflict and wars. "Domestic prosecution can particularly enhance trust in a judicial system that has had limited or, in many cases, no trust during previous regimes...domestic trials can therefore have a positive effect on the rule of law, strengthening accountability and transparency, because civil society sees that their demands are met in a judicial forum" (Kerr and Mobekk, 2007, 120). Building trust in the judicial system is an essential step toward trusting alternative conflict resolution skills without the use of violence.

Of course, because of the violence, implementing justice may be more complicated. It is difficult to maintain courts in an unstable zone, and unlikely that judges will be convinced to move and work in conflict areas. But the courts can be strengthened in the more peaceful parts of the country, and in the unstable regions temporary, mobile courts are already being developed to move through the area conducting trials, bringing a sense of the end of impunity and the culture of the rule of law even where it is too tumultuous to settle (Maitre Gaston Osango, interview by author, Kinshasa, DRC, 16 July 2008). These temporary courts act as beacons of potential future stability, and also deal with the issue of impunity in the regions where

this is most important. The steps toward justice are small, and may not prevent massive wars from flaming up, but they can start to undermine the culture of impunity. “The deterrence effect of local trials may lie not in deterring future conflicts or wars on a massive scale, but in deterring further acts of violence in a in a transitional post-conflict society, by individuals and former combatants recognizing that there is a transition to another type of regime, where accountability is the rule not the exception” (Kerr and Mobbekk, 2007, 121).

In order to move on from the conflicts, citizens need the space to heal and deal with the past abuses, and need to build trust that it is possible to put the past behind. A functioning judiciary can deal with the past in a constructive way. Instead of trying to ignore past issues, the judiciary brings them forward and publicly demonstrates the extent of the damage of war. By acknowledging these truths people are more likely to be able to move on from the issues.

Accounting for the past gives a new dynamic to the rule of law by signaling that all guilty parties will be treated alike and that all are henceforth equal before the law. Dealing with past abuses can be seen in this respect as a first test for the rule of law in post-conflict societies. Though the process of addressing the past is distinct from the process of restoring the rule of law in the present and future, the two processes are interdependent, and can be mutually reinforcing if conducted concurrently. (Mani, 1999, 155)

Creating the mechanisms to deal with past abuses builds the trust necessary for people to participate in the judicial system as opposed to lashing out with further violence, including sexual violence, in response to past wrongs.

Building the justice system is therefore part of the peace building process, and peace will not be able to prevail without the development of a functioning judiciary. Justice-building helps end conflict, repairs the wounds of conflict, and prevents future

conflict. Justice for sexual violence is an excellent way to start this broadly influential process of healing, as the sexual crimes have hurt Congolese society at its core. Dealing with these issues will be important for repairing the social trust, and will be symbolic of the deep healing necessary to reinvigorate Congolese society.

## **Conclusion**

The situation of sexual violence in DRC is tragic and a huge social issue that must be dealt with. In this paper I argue that the plethora of sexual violence cases can be a catalyst for judicial reform. The problem of judicial corruption is widespread and historically entrenched. However there are multiple actors with the potential to change if they are properly engaged. The Congolese government is not motivated to end the corruption as they prioritize peace before justice and benefit from the culture of disrespect for law. However the international actors engaged in DRC are entrenched enough in domestic affairs to apply the pressure needed for change if they are willing to commit to legitimate conditions. International activists can urge international actors to use their leverage to make change, and local actors can also continue their valuable work documenting abuses and informing the international community. Widespread sexual violence in a culture of impunity can seem like a hopeless situation. However the two issues can be addressed together to make important positive changes in multiple aspects of Congolese society.

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