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HAS JUSTICE FINALLY ARRIVED FOR THE DRC?

LINDSAY RASKIN[†]

The conflict in the Democratic Republic of the Congo (DRC) now ranks as the world's deadliest conflict since World War II. Since its outbreak in August 1998, fighting between the factions has led to the deaths of approximately 5.4 million people and created a refugee crisis with more than 1.5 million displaced.¹ A profound product of this violence, fueled by intrinsic cultural norms in the DRC, is rape. The international community considers the DRC the rape capital of the world. Current studies estimate that 1.8 million women in the DRC are raped during their lifetime at a rate of 48 rapes every hour.²

On August 12, 2011, the DRC's parliament finally took action by adopting legislation creating a specialized court to hear cases of war crimes, crimes against humanity and genocide committed in the DRC since 1990.³ While many human rights advocates consider the action taken by parliament a triumph, it is unclear whether a specialized tribunal is the most effective forum for victims of these humanitarian crises. The international community tends to favor specialized tribunals, which have been seen in East Timor and Cambodia, because the country where the conflict occurs bears the burden of providing the majority of funding for the tribunal as well as the majority of the tribunal's staff.⁴

Despite recent action, rape continues to be one of the most common crimes committed in the DRC, and reporting its commission is still taboo in Congolese society.⁵ Women who are raped are viewed as "dirty" and are often forced to "weigh [their] desire for justice against the social consequences."⁶ Thus, despite the strides

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¹ See Anup Shah, *The Democratic Republic of the Congo*, GLOBAL ISSUES, <http://www.globalissues.org/article/87/the-democratic-republic-of-congo> (last updated Aug. 21, 2010). The instability caused by the warring parties has contributed to the overwhelming majority of deaths—not by weapons—but by preventable diseases, including malaria, diarrhea, pneumonia, and malnutrition.

² See *New Laws Have Little Impact on Sexual Violence in DRC*, SAFE WORLD FOR WOMEN (JUNE 7, 2011), <http://www.asafeworldforwomen.org/war-zones/drcongo/746-dr-congo-new-laws-against-rape-have-little-impact.html>. See also *UN Official Calls DR Congo 'Rape Capital of the World'*, BBC, <http://news.bbc.co.uk/2/hi/8650112.stm> (last updated April 28, 2010, 17:50 BST).

³ See Emmanuel Chaco, *Congo-Kinshasa: Specialised Court for Serious Human Rights Abuses*, ALLAFRICA (Sept. 14, 2011), <http://allafrica.com/stories/201109140606.html>.

⁴ See generally Ben Kiernan, *The Demography of Genocide in Southeast Asia: The Death Tolls in Cambodia, 1975-79 and East Timor, 1975-80*, 35 *Critical Asian Stud.* 585 (2003), available at <http://www.yale.edu/gsp/publications/KiernanRevised1.pdf>.

⁵ See *Case Study: Women Find Support in Survival*, USAID, http://www.usaid.gov/stories/drc/cs_drc_rape.html (last updated May 6, 2009).

⁶ See SAFE WORLD FOR WOMEN, *supra* note 2.

the DRC has made in recent years, the country currently lacks the infrastructure and support programs for the victims of these crimes. If women are unwilling to come forward, how can they ever receive justice? Furthermore, not even the ICC is a suitable forum for justice for the victims of rape. While the Lubanga case is the first case in which the ICC allowed victims to participate, the names of those who participate in trials at the ICC are widely known.⁷ Thus, the victims of rape who testify will face the same social consequences—namely the risk of being ostracized from their community—that they would have faced if they participated in a case in the DRC. Rather than rushing to appease the international community, the DRC, as well as the international community as a whole, should take the time to create an effective forum, such as an ad hoc tribunal, which can protect the identity of rape victims who testify in court and focus on building a system of support and acceptance to aid these victims.

⁷ Christine H. Chung, *Victims' Participation at the International Criminal Court: Are Concessions of the Court Clouding the Promise?*, 6 NW. J. INT'L HUM. RTS., 459, 500 (2008), available at <http://www.law.northwestern.edu/journals/jhr/v6/n3/4/Chung.pdf>.