

**YEARBOOK OF INTERNATIONAL HUMANITARIAN LAW - VOLUME 14, 2011**  
**CORRESPONDENTS' REPORTS**

DEMOCRATIC REPUBLIC OF THE CONGO<sup>1</sup>

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*Cases — Lt. Col. Kibibi Mutware Guilty of Mass Rape — Mobile Gender Courts*

On 21 February 2011, a mobile gender court, temporarily operating in Baraka, a small town in South Kivu province of DRC, as a DRC military court and applying the *Congolese Military Code*, entered guilty verdicts against nine defendants including four senior army officers, among them Lieutenant Colonel Kibibi Mutware and five lower-level soldiers for crimes against humanity. They were convicted of rape and terrorism committed on New Year's day in Fizi which involved the mass rape of over 60 women. Mutware and the senior officers were sentenced to 20 years while the other soldiers were given sentences between 10 and 15 years. Another soldier was acquitted of the charges and a further soldier was held to be a minor and his case was transferred to a juvenile court.<sup>2</sup>

The prosecution and conviction of these soldiers sends a powerful message countering strong traditions of impunity in DRC for the commission of international crimes.

The Open Society Initiative for Southern Africa (OSISA)-funded and American Bar Association/Rule of Law Initiative-operated mobile gender courts have been operating in South Kivu province since 2009. The Open Society Justice Initiative reports that from its establishment in 2009 until May 2011, the mobile gender courts have achieved the following successes on a budget of US\$950,000 per year: 250 cases heard; 195 convictions, the majority of which are sexual violence offences; prison sentences ranging from 3 to 20 years; training of 260 judicial officers.<sup>3</sup>

*Cases — Eleven Guilty Verdicts for Rapes in Katasomwa*

On 9 March 2011, 11 FARDC officers were found guilty of the rapes of 24 women in Katasomwa, South Kivu province by the military tribunal of South Kivu in Kalehe. They had been charged with rape, pillaging, destruction of schools, abduction of children and other violations of physical integrity. The two top ranking officers, Lieutenant-Colonel Balumisa aka Dix mille, and Major Elia were both sentenced to life imprisonment. Another officer, Captain

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<sup>1</sup> Information and commentaries by James Ellis, BA/LLB (Melb) and Lt Colonel Dr. Dan Kuwali, Post Doctoral Research Fellow, Centre for Human Rights, University of Pretoria and Deputy Director of Legal Services, Malawi Defence Force, Malawi.

<sup>2</sup> Kelly Askin, 'Fizi mobile court: rape verdicts' (2011) 123 *International Justice Tribune* 1 <<http://sites.mnw.nl/pdf/ijt/ijt123.pdf>>.

<sup>3</sup> Open Society Justice Initiative, 'Fact Sheet: DRC Mobile Gender Courts' (2011) <<http://www.opensocietyfoundations.org/sites/default/files/mobile-court-20110725.pdf>>.

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Mukanyaka Kirungu Kilalo, was sentenced to 15 years in prison. The eight others were tried *in absentia* as they had not been arrested at the time of the trial. They were also sentenced to life imprisonment. In addition to the prison sentences, the convicted persons were ordered to pay compensation to the victims. The State was also ordered pay compensation as it was found to be jointly responsible for the crimes.<sup>4</sup>

*Legislation — Senate Rejection of Specialised Mixed Court Bill*

• *Specialised Mixed Court Bill 2011*

On 22 August 2011, the DRC Senate rejected a bill submitted by the government to create a Specialised Mixed Court to try international crimes committed in the DRC since 1990 by establishing new criminal courts composed of national and international members. Apparently, the Senate cited the threat to DRC sovereignty posed by the presence of international personnel in the judicial system as well as budgetary issues as reasons to refuse the bill.<sup>5</sup>

Had the bill been accepted, it would have served two important purposes. First, it would have responded to the serious and widespread allegations of human rights abuses contained in the Office of the UN High Commissioner for Human Rights' 'Mapping Report' released in 2010, which recognized the serious shortcomings of the existing judicial system to respond to the atrocities identified. Second, it would have filled a lacuna in the DRC *Penal Code* which does not provide civilian courts with jurisdiction over war crimes or crimes against humanity for non-DRC military personnel.<sup>6</sup>

There is no indication as to whether the government will amend the bill and resubmit to the senate for approval.

*Legislation — Conflict of Jurisdiction between Civil and Military Courts for International Crimes*

This new law will enable the transfer of serious international crimes to the exclusive jurisdiction of civil courts. Until the entry into force of this law, the *Military Penal Code of 2002* gave jurisdiction such crimes to military courts. The courts of law could not therefore try these crimes. However, this transfer of exclusive jurisdiction over the *Rome Statute* crimes would not necessarily exclude the participation of military judges in trials of international crimes before ordinary courts.

This law will enable the DRC justice system to perform its primary role to prosecute international crimes while the ICC would only play the role of a court of last resort when the State is unable or unwilling to do so.<sup>7</sup>

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<sup>4</sup> 'Verdicts in latest DR Congo rape trial show justice is possible, says UN envoy' (11 March 2011) <<http://unicwash.org/Media.aspx?date=2011-03-11>>.

<sup>5</sup> See FIDH, 'RDC : Les sénateurs torpillent le projet de loi sur la Cour spécialisée mixte' (23 August 2011) <<http://www.coalitionfortheicc.org/documents/rdcseateurs.pdf>>.

<sup>6</sup> See Pascale Kambale, 'Mix and Match: Is a hybrid court the best way for Congo to prosecute international crimes?' <[http://www.osisa.org/sites/default/files/plans\\_for\\_hybrid\\_courts\\_in\\_congo\\_-\\_pascal\\_kambale.pdf](http://www.osisa.org/sites/default/files/plans_for_hybrid_courts_in_congo_-_pascal_kambale.pdf)>.

<sup>7</sup> Coalition Nationale pour la Cour Pénale Internationale, *La CN-CPI-RDC invite la RDC à accélérer le processus d'adoption de la loi de la mise en œuvre du statut de la CPI à l'occasion de la Journée de la justice internationale* (14 July 2011) <[http://www.coalitionfortheicc.org/documents/message\\_de\\_la\\_Coalition\\_de\\_la\\_RDC\\_pour\\_la\\_CPI\\_le\\_17\\_juliet\\_2011%5B1%5D.pdf](http://www.coalitionfortheicc.org/documents/message_de_la_Coalition_de_la_RDC_pour_la_CPI_le_17_juliet_2011%5B1%5D.pdf)>.

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