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Transitional Justice and Peacebuilding in the DRC

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Introduction



- **Seventeen years now**, the DRC is confronted to vicious circle of armed conflicts in which more than **ten millions people are estimated to have been killed**.
- Dealing with the past, **many efforts have been undertaken**, but **unfortunately**, the DRC had lost **opportunities** to establish the truth, promote peace, reparations, reconciliation, and prevent further violence.
- Consequently, **the resumption of conflicts is the result of the top-down state building instead of the bottom-up approach**.

- For the current conflict, there is a hope that warring parties will negotiate a settlement, commit not to re-engage in armed conflicts, prevent future conflicts and involve in reconstruction efforts.
- As conflicts have created hatred among people, in order to move on, various activities can help transforming the conflict in the direction of peace described as peacebuilding (PB).

- PB is the set of initiatives by diverse actors in government and civil society to address the root causes of violence and protect civilians before, during, and after violent conflict (Chic Dambach).
- PB refers also to **rebuilding relationships** that have **broken down between conflicting parties** (Amr A.).
- Our aim is to analyse the application of PB as an approach to dealing with the past abuses through TJ mechanisms because the situation “requires a clean break from the past injustices so as to prevent their recurrence” (Buckley-Zistel and Zolkos).

- In order to rebuild the country and keep a sustainable peace it is important for people to talk about what happened to them or their beloved ones in order for victims to know the truth.
- Hence, TJ seeks to restore the dignity of victims and to establish trust among citizens and between citizens and the state (Borello).
- Thus, the aim of TJ is to contribute to sustainable peace and the rebuilding of a society based on the rule of law (Kerr and Mobekk).
- ***The guiding question is how TJ dealing with the past can contribute to sustainable PB process in the DRC?***

Contents



- We begin this paper by approaching the challenges to deal with the past.
- We then analyse different attempts to address the past as the peacebuilding process.
- Next, we analyse transitional justice in a peacebuilding context in the DRC.
- Finally, we present a concluding remark.

1. Challenges to deal with the past

- The population of the DRC continue to suffer from massive violations due to the cycles of armed conflicts.
- To move from such situation to a peaceful future, the country will be confronted to the **dilemmas of whether to undertake criminal sanctions against abusers or whether non-criminal sanctions** in order to rebuild and reconcile the nation.

Challenges ..

- In stable country, prosecution and punishment of individuals accused to have committed any single crime in the territory of every State is the best way to promote the rule of law.
- In this way, the art 2 of the Congolese Criminal Code (2004) provides that transgression committed on the territory of the DRC be punished in accordance with the law.
- Besides, A. Boraine argues that “prosecutions are guard against impunity and the risk of future violations”.

Challenges ..

- However, **retributive justice in the DRC could not be the only way to respond to crimes committed** as there is the need for the past to be officially recognized, publicly revealed, reconcile with the past, rehabilitate and compensate victims.
- In this way, “(...) **punishment is one instrument, but not the sole** or even the most important one, for forming the collective moral conscience” (Raoul Alfonsin).

Challenges ..

- To address widespread mass violations of HR and gross violations of IHL **alternative mechanisms to criminal law could be a suitable means** for the DRC in order to re-establish peace and **promote reconciliation** between divided people in the eastern DRC **for a shared and common future**.
- In a deeply divided society, **punishment cannot be the final word if healing and reconciliation are to be achieved** (A. Boraine).
- Around the world, many attempts to prosecute and punish those responsible for severe abuses under a prior regime have seen little success (Hayner).
- What is the case of the DRC?

2. Attempts to address the past as the peacebuilding process in the DRC

- The scale and impact of violations require solutions that not only provide a meaningful measure of justice for very large numbers of victims but also which help reconstruct the basic elements of **trust between citizens and the government institutions** that are necessary for the rule of law to function effectively (ICTJ).
- In the DRC, the following attempts have been tried dealing with the past:

Attempts to address the past ..

- In 1991, the **National Sovereign Conference** was established to deal with the issue of justice, accountability and good governance. Unfortunately, it was boycotted because the collaborators of the President Mobutu did not want to face the truth and account for crimes, mismanagement, and all kinds of violations against the Zairian (now Congolese) people.
- In 2002, the **Global and Inclusive Dialogue** on transition opted for the creation of the TRC, established by the law in 2004. Unfortunately, at the end of the transitional period it had not opened a single enquiry due to lack of political will and continuing insecurity.

Attempts to address the past ..

- In 2004, was the **referral of the situation** of crimes within the jurisdiction of the ICC committed anywhere in the DRC by the transitional Government. Up to date, the court has so far limited its activities to the Ituri District by prosecuting a handful of perpetrators of thousands, if not millions.
- In 2008, the **Conference on Peace, security and development of the NK and SK** Provinces allowed the signature of the Engagement Act between the Government and rebels groups such as CNDP, PARECO, etc. Also, agreed the possibility of a new TRC, but the CNDP has violated the cease-fire, consequently, the initiative was not implemented.

Attempts to address the past ...

- In 2009, the **Peace agreement between the Government and the CNDP** allowed the integration of rebels in the Army and Police. Parties committed to maintain a dynamic reconciliation, pacification of hearts and minds, cohabitation as a requirement essential for good governance.
- In July 2012 the **ICC's decision** that found Thomas Lubanga guilty of war crimes changed the situation on the ground.
- As there was an arrest warrant of the ICC against Bosco Ntaganda who was officer of the armed wing of Thomas Lubanga's movement, integrated in the army with the rank of general, **due to international pressure** President Kabila issued an instruction for arresting Bosco.

Attempts to address the past ...

- Consequently, in April 2012 Ntaganda deserted from the army claiming that the DRC's Government has failed to fully implement the peace agreement of 23 March 2009; (M23)
- February 2013, was signed the **Peace, Security and Cooperation Framework for the DRC and the region**. In this framework, the Government of the DRC renewed among commitments to reform the security sector, to consolidate State authority, to further the agenda of reconciliation, tolerance and democratization, etc.
- Member States of the region renewed among commitment not to interfere in the internal affairs of neighbouring countries, and **to facilitate the administration of justice through judicial cooperation** within the region.

Attempts to address the past ...

- On 24/7/2013 the General Auditor of the FADRC issued three **international arrest warrants** requesting the extradition of former M23 rebels for insurrectional movement, war crimes and crimes against humanity.
- However, on 8/8/ 2013 Rwanda refused to extradite those warlords due to the death penalty in the DRC.
- **From the above, it can be deduced that the need for the past to be officially recognized and publicly revealed is crucial**
- The reactivation of the TRC remain a need, however by the mid-September 2013 political will to do so have still not been engaged and the current conflict not yet resolved.

3. Transitional justice and peacebuilding process in the DRC

- Former UNSG, Kofi Annan, in the report on “the rule of law and transitional justice in conflict and post-conflict societies” defines TJ as:
- *The full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof.*

TJ and peacebuilding processes

- Dealing with the past abuses, holistic approach of judicial and non-judicial mechanisms are measures that societies in transition may adopt or combine.
- Following measures of TJ are often opted: **criminal prosecutions, TRC, reparations, institutional reform, vetting or lustration process, memorialization, amnesty and traditional dispute settlement system.**
- In the DRC, the combination of judicial and non-judicial mechanisms of TJ can respond to the past abuses and contribute to the peacebuilding process.

Judicial mechanisms

- Among judicial mechanisms, we endorse, in addition to the ICC (2002-), the establishment of a hybrid international tribunal (1996-2002) that is crucial in order to hold accountable those who bear the greatest responsibility.
- The national judicial system will be avoided to deal with the past because they are unable to investigate large-scale of serious crimes and prosecute a huge numbers of perpetrators due to the lack of capacity.
- Also, since immemorial the Congolese judiciary has effective functioned at the pleasure of the executive; there is a need to be reformed.

Non-judicial mechanisms

- We endorse the indigenous local mechanism **Barza intercommunautaire** helping to resolve low-level disputes and the **TRC** with different task to promote reconciliation, formulate recommendation on the institutional reform, identify criteria of lustration and vetting process, and identify victims and recommend reparations.
- The **Barza intercommunautaire** being prioritized, promoted and re-structured will sensitize affected ethnic groups for pacification and reconciliation.
- For the **TRC** to make difference with the previous one, before its implementation, conflict must be resolved, security restored, capacity and resources available and the rulers engaged with political will;
 - For this to happen, the country needs a new leadership

4. Concluding remarks

- Since 1996, affected population by various armed conflicts still waiting to know the reason behind those atrocities, to know the truth about what happened to them or their beloved ones and to be restored.
- Instead of holding accountable perpetrators for past abuses, promote the national reconciliation and prevent future violence; those perpetrators have been promoted and granted important positions within the government as well as the army and police.

Concluding ...

- **The enforcement of the national development plans requires a minimum of trust within the public institutions.** To respond to the past abuses, TJ measures may help to address the root causes of various armed conflict that continue to bereaved Congolese population.
- Finally, in order to address the root causes of various armed conflict and to put an end to the persistent HR and IHL violations, it is better for international, regional and national actors to understand that political solutions between warring parties or **top-down state building had shown their limitation.**
- Therefore, **it is time** that the root causes of armed conflicts be addressed from the local level by involving affected population or the **bottom-up approach.**

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