



COMPARATIVE STUDY OF TRANSITIONAL JUSTICE IN AFRICA

**TRANSITIONAL
JUSTICE PROCESSES IN
AFRICA:
THE CASE OF THE
DEMOCRATIC REPUBLIC OF
THE CONGO**

DR SHIRAMBERE PHILIPPE TUNAMSIFU
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TRANSITIONAL JUSTICE PROCESSES IN AFRICA: THE CASE OF THE DEMOCRATIC REPUBLIC OF THE CONGO

By Dr Shirambere Philippe Tunamsifu •

Abstract

This study analyses the mechanisms of transitional justice in dealing with the legacies of past abuses committed in the DRC. The aim of this study is to present the contexts of past abuses, to analyse these mechanisms since 1992, and assess their outcomes in term of achieving sustainable peace and preventing future abuses. To collect data, 14 key informants were interviewed. Findings reveal that serious and gross violations of human rights and of international humanitarian law were committed during the immediate postcolonial period, the Mobutu regime and the various armed conflicts.

In dealing with the abuses under the postcolonial period and during the Mobutu dictatorship regime, the reports of the Commissions of assassinations and human rights and of ill-gotten property of the CNS named President Mobutu and his collaborators as responsible and recommended lustrations measures, prosecutions and reparations. Unfortunately, both reports were blocked and not adopted as individuals named did not want to face justice.

In the aftermath of various armed conflicts, the *Barza Inter-Communautaire* dealing with conflicts at the grassroots in North-Kivu province succeeded to resolve disputes over land ownership between 1998 and 2004. Justice at the domestic level prosecuted few cases not related to armed conflicts due to the lack of capacity and political will. As the UNSC was unwilling to create an *ad hoc* tribunal for the DRC, the ICC complementing the Congolese judiciary prosecuted six cases in which two were convicted, two were acquitted, and two cases are still ongoing. The adoption of the TRC and the amnesty allowed ending the conflicts and the beginning of the transition. However, the TRC failed to investigate a single case due to the lack of political will. The amnesty granted was considered as a security measure and covered acts of war in excluding international crimes.

As the DRC had lost opportunity to deal adequately with widespread serious crimes and address the roots causes of conflicts, this study finds that there is still a need for victims who were left to their predicaments to know the truth about what happened to them and/or loved one and receive reparation as guarantees of non-repetition. That is why holding accountable people bearing the greatest responsibility, reconciliation and prevent further violence remain the main concern of stakeholders in the DRC.

• Dr TUNAMSIFU SP. is an Associate Professor of law and Deputy Dean in charge of research, the Faculty of law, Université Libre des Pays des Grands Lacs (ULPGL/DR Congo). In the meantime he is a Research Consultant in the Center for the Study of Violence and Reconciliation (CSVR) and Research fellow in the Institute for Dispute Resolution in Africa (IDRA) of the University of South Africa (UNISA). LL.D./Ph.D. (University of South Africa), MA (University for Peace), LLB (Licence) ULPGL. E-mail: tusphil@yahoo.fr

I. Introduction

The Democratic Republic of the Congo (DRC), formerly known as Republic of Zaire, is the second largest country in Africa by area after Algeria. It was colonised by the King Leopold II from 1885 to 1908 and by the Belgian State from 1908 to 30 June 1960 when it accessed to Independence. In the aftermath of a colonial brutal administration, the DRC went through three main periods of conflict¹ in which widespread (and often undocumented) atrocities were committed. Thus, the postcolonial regime (1960-1965) was confronted with internal political crisis in which the first elected Prime Minister Patrice Lumumba was assassinated. Following series of crises characterised by secessions and various mutinies, General Joseph Mobutu, then Chief Commander of the army, took political control of the country and declared himself president in a coup d'état on 24 November 1965.² Under the military dictatorship regime, President Mobutu established a system of absolute power and personal rule, banned all political parties, he renamed the country Republic of Zaire in 1971 and a system of mono-party State was instituted in 1974; a system of one-party one-person rule.

However, this situation was not unique in Africa because after the wave of independence in 1960, various countries were confronted with internal political crisis, military coup d'état and series of Cross-border conflicts in the horn of Africa, in Eastern Africa, in West Africa, etc. In the late 1980s and early 1990s, as a consequence of the *Perestroika* and *Glasnost*, dictatorship and oppressive regimes in Africa were increasingly challenged at national and international levels. Thus, the 1990s coincided with the wave of Sovereign National Conferences following the people's demands for democracy and institutional reform. As the result of popular pressures, many dictatorial regimes, including the Republic of Zaire (presently the DRC), convened Sovereign National Conferences³ with varied outcomes.⁴ The National Conference was the first step of transitional justice in the Republic of Zaire.

¹ The post-colonial regime from 1960 to 1965, the military dictatorship regime from 1965 to 1997, and the post dictatorship regime dominated various armed conflicts from August 1998.

² S.P. Tunamsifu, *A Comparative Study of Transitional Justice in the Republic of South Africa and the Democratic Republic of the Congo*, Ph.D. Thesis, College of Law, UNISA, Pretoria, 2016, pp. 146-147

³ It the case of the Benin National Conference from 19-28th February 1990; Gabon National Conference from 1st-19th April 1990; Congo (Brazza) National Conference from 25 February – 10th June 1991; Mali National Conference in August 1991; Togo National Conference from July to August 1991; Niger National Conference from 29th July to November 1991; Zaire National Conference from 7th August 1991 to 17th March 1993, and Chad National Conference from 15th January to March 1993

⁴ According to Pearl T. Robinson, "in some cases the incumbents retained control by manipulating the conference proceedings or by rigging multiparty elections. In other cases, the opposition prevailed—at least in the short run". See P.T. Robinson, "The National Conference Phenomenon in Francophone Africa" p. 576

Indeed, transitional justice offers practical mechanisms that can help nations to move from military regime or armed conflicts to democracy, from apartheid to democracy, ensure accountability of offenders, restore the victims' dignity, promote reconciliation and prevent further violence.⁵ In this regards, as analysed by the ICTJ, the scale and impact of violations require solutions that not only provide a meaningful measure of justice for very large numbers of victims but that also help reconstruct the basic element of trust between citizens and government institutions, which is necessary for the rule of law to function effectively.⁶

In the Republic of Zaire, as a precondition to move from military regime to establish good governance, rule of law and democracy, among Committees that were adopted by the National Conference to deal with Mobutu's rule included the *Commission Nationale des Assassinats et des Violations des droits de l'homme* (or National Commission dealing with cases of Assassinations and Human Rights violations) and the *Commission Nationale des biens mal acquis* (or National Commission of ill-gotten properties). Unfortunately, following various revelations about crimes committed, mismanagement, and violations of human rights, Mobutu decided to terminate the operations of the *Conférence Nationale Souveraine* (or the Sovereign National Conference).⁷ This decision had various consequences and plunged the country into a political crisis. After 32 years of authoritarian rule (1965-1997), the country entered into a vicious cycle of armed conflicts in which both Congolese and foreign State and non-State actors were involved. In the author's opinion, this period is the post dictatorship regime dominated by various armed conflicts from 1998 and the first multiparty elections 2006.

In order to deal with various human rights abuses and serious violations of international humanitarian law committed during different stages of all armed conflicts since 1996, following the Inter-Congolese Dialogue (ICD) held in Pretoria, a Global and Inclusive Agreement on Transition in the DRC was signed by all participants on 17 December 2002. Therefore, delegates opted to deal with the past through transitional justice mechanisms. Among mechanisms of transitional justice that were chosen to deal with the past was the Truth and Reconciliation Commission "TRC" (Resolution DIC/CPR/04) with the power to

⁵ S.P. Tunamsifu, *A Comparative Study of Transitional Justice (...)*, p. 36

⁶ ICTJ (International Center for Transitional Justice), *Transitional justice in the United Nations Human Rights Council*, 2011. Available from: <https://www.ictj.org/sites/default/files/ICTJ-Global-TJ-In-HRC-2011-English.pdf> [Accessed 24 April 2012] See also S.P. Tunamsifu, "Transitional justice and peacebuilding in the Democratic Republic of the Congo", in *African Journal on Conflict Resolution*, ACCORD, Durban, 2015(15/1), p. 72

⁷ S.P. Tunamsifu, *A Comparative Study of Transitional Justice (...)*, p. 152

propose amnesty⁸ for acts of war, political crimes and crimes of opinion, and they requested and recommended that an international criminal tribunal be established for the DRC (Resolution DIC/CPR/05). Unfortunately, by the end of the transitional period, the TRC had not opened a single enquiry due to a lack of political will and continuing insecurity in the country. About prosecution, as the UN was unwilling to establish an ad hoc tribunal to deal with widespread crimes committed since 1996, the situation of crimes committed anywhere in the territory of the DRC after the Rome Statute came into force on 1 July 2002 was referred to the ICC by the transitional government.⁹

In his analysis, SP. Tunamsifu finds that the establishment of the government of national unity and transition in June 2003 following the power sharing agreement did not prevent the emergence of new rebel groups (such as the CNDP, the M23) because of the failure to restore the State's authority, address adequately the roots causes of armed conflicts, and restore broken relationships.¹⁰ Different rebel movements that emerged since 2004 have seen peace agreements signed between warring parties that led to the end of the armed conflicts and in which mechanisms of transitional justice were adopted but were not implemented. It is the case of the *Acte d'Engagements* between the Government of the DRC and rebel groups such as the CNDP and the *Patriotes Résistants Congolais* (PARECO) at the Goma Conference on Peace and Development in 2008,¹¹ *Accord de Paix* between the Government of the DRC and rebel groups such as the CNDP (23 March 2009),¹² *Peace, Security and Cooperation Framework for the Democratic Republic of the Congo and the Region* (24 February 2013),¹³ *Rapport Général des Travaux des Concertations Nationales* between some political parties and civil society organisations that agreed to participate (05 October 2013),¹⁴ the *Joint ICGLR-SADC Final Communiqué* on Kampala Dialogue between the Government of the

⁸ Under Article 8(g) of the TRC law, the TRC of the DRC had the power to propose amnesty for acts of war, political crimes and crimes of opinion. In other words, the TRC of the DRC was not empowered to grant amnesty for crimes against humanity, war crimes or crimes of genocide. See S.P. Tunamsifu, *A Comparative Study of Transitional Justice (...)*, p. 199

⁹ S.P. Tunamsifu, "Transitional justice and peacebuilding in the DRC", p.72; S.P. Tunamsifu, *A Comparative Study of Transitional Justice (...)*, p. 287

¹⁰ S.P. Tunamsifu, *A Comparative Study of Transitional Justice (...)*, p. 150

¹¹ Parties agreed on the possibility of a new TRC

¹² Parties agreed to undertake a dynamic of reconciliation, of pacification of hearts and minds, as well as of good inter-cohabitation as a requirement essential for good governance

¹³ The government of the DRC renewed commitments to reform the security sector, consolidate state authority and further the agenda of reconciliation, tolerance and democratisation. Member states of the region also renewed their commitment not to interfere in the internal affairs of neighbouring countries, and to facilitate the administration of justice through judicial cooperation within the region.

¹⁴ Building monuments in memory of victims of different armed conflicts

DRC and M23¹⁵ (12 December 2013). On 18th October and 31st December 2016 political arrangements were signed between some political parties and civil society organisations that agreed to participate in order to organise elections beyond the end of the second and last terms of President Kabila. However, this study will be limited to transitional justice mechanisms that were adopted in the DRC between 1990 and 2010.

This research is structured into five sections. Section one comprises the introduction of the study. Section two presents a comprehensive brief overview of the context of past abuses that leads to the choice of transitional justice mechanisms. Section three analyses the choice of transitional justice dealing with the legacy of dictatorship and various armed conflicts. Section four presents the effectiveness of transitional justice in the RDC. Lastly, the fifth section presents a conclusion and recommendations.

Aim of the study, research methods and ethical considerations

The aim of this study is to present the contexts of past abuses and to analyse the mechanisms of transitional justice established in the DRC since 1991. This research is based on a literature study, legal analysis and empirical field research on the transitional justice mechanisms adopted in the eastern part of the DRC specifically in Goma town (Province of North Kivu). To collect data, 14 key informants were interviewed. Thus, it uses a non-probability sample, mainly; the purposive sample and participants were selected based on fulfilling one the following criteria. The first criterion was based on participants who signed the Lusaka Ceasefire Agreement signed in 1999. The second criterion was that participants should have attended the Inter-Congolese Dialogue in Sun City in 2002. The third criterion was based on participant's role as member of the Parliament (National Assembly and the Senate) during the transition from 2003-2006. The fourth criterion was that participants should have attended the Goma Conference on Peace and Development in 2008. The fifth criterion was that participant should be a representative of civil society organizations working in the areas of transitional justice. The sixth criterion was based on the participant's role as a representative of the *Auditeur Militaire Supérieur près la Cour militaire* or the Higher Military Auditor of North-Kivu and the seventh criterion was based on participant's role as the representative of the *Procureur Général près la Cour d'appel de Goma* or the Prosecutor General.

¹⁵ Parties agreed national reconciliation and justice

Regarding the ethical concerns, the protection of participants' right to confidentiality and anonymity was guaranteed. This means that the researcher decided not to reveal the identities of participants who desired anonymity in order to protect their privacy. As participation was voluntary, the right to withdraw at any stage of the research without giving any reason and without any penalty was guaranteed, and the researcher respectfully acknowledged and supported their right to do so.

II. Brief overview of the Contexts of Past abuses (1960 to 2010)

After a brutal colonial administration, the DRC gained independence on 30 June 1960. The shoddy preparation for the transition led the country into a series of internal political crises characterized by secessions, various mutinies, coup *d'états*, military dictatorship, and a vicious cycle of armed conflicts. In more than five decades since independence, the country has continued to witness large-scale violations of human rights and serious violations of international humanitarian law.

This section presents a brief overview of the context of past violations since the independence. The first sub-section presents the context of violence in the postcolonial regime (1960-1965). The second focuses on abuses under the military dictatorship regime (1965-1997). The third and last paragraph explores violations under different armed conflicts in which both Congolese and foreign State and non-State actors were involved (1996-2009).

II.1. Context of abuses in the postcolonial regime (1960-1965)

In the aftermath of the colonization, there was not a single Congolese leader who had acquired any skills and experience in any public domain. Therefore, Robert Cornevin points out that Congolese leaders who were elected or appointed in State institutions decided to appoint Belgian advisers for the apprenticeship of public life and the management of public affairs.¹⁶ Thirty five days after the Independence, during the military parade, the Belgian Chief of Staff of the Army, Lieutenant General Emile Janssens, wrote a provocative statement on the board saying that *avant l'indépendance = après l'indépendance*, boldly translated as before independence equals after¹⁷ This statement means the independence

¹⁶ R. Cornevin, *Histoire du Zaïre: des origines à nos jours*, 4^e ed., Hayez, Bruxelles, 1989, p. 392

¹⁷ *Idem.*, p. 395

would not bring any change in the *Force publique* (then the army) because before the colonisation Belgians officers were the commanding officers and after the independence they were still controlling the army. Following Janssens's declaration, Congolese soldiers started a mutiny demanding to dismiss all Belgians officers and attacking Belgian and European civilians who remained in the country. In reaction to the mutiny, the Government of Patrice Lumumba ordered¹⁸ the dismissal of the Belgian Chief of Staff of the Army and the promotion of all Congolese soldiers with one rank each. As the consequence of atrocities committed against Belgians and other Europeans, the Belgian government decided to intervene by sending soldiers into the Congo in order to protect and evacuate Europeans. Unfortunately, the Belgian soldiers supported the secession and the independence of Katanga led by Moïse Tshombe and therefore, the Kingdom of Belgium recognised the new 'State' of Katanga and its government.¹⁹ As a result of interference in sustaining the secessionist regime, diplomatic relations between Belgium and the Congo were broken off on 13 July.

Indeed, as Patrice Lumumba was against any sort of external interference, he was allegedly accused of 'being communist'²⁰. Therefore, the United States of America allegedly financed Lumumba's opponents to demonstrate against him while the Central Intelligence Agency (CIA) explored ways to eliminate him physically.²¹ In the same vein, William Mountz argues that 'the Kennedy administration continued to plot against him, the self-avowed nationalist and employed bribery, blackmail, and threats in order to have Cyrille Adoula elected as prime minister in August 1961'.²²

As the result of protests, a governmental crisis erupted in which President Kasavubu decided to dismiss the Prime Minister Lumumba and the latter dismissed as well President Kasavubu.

¹⁸ The order to dismiss the Belgian Chief of the Staff was as well the response of Lumumba promises before the Independence Day. In April 1960 he declared that "le Congo indépendant devrait avoir sa propre armée dirigée par ses propres fils". This means that the Congo independent should have its own army, led by its sons. See R. Cornevin, *Op. Cit.*, p. 395

¹⁹ *Idem.*, pp. 397-404

²⁰ J.H., Meriwether, *Proudly We Can Be Africans: Black Americans and Africa, 1935-1961*, The University of North Carolina Press, Carolina, 2002, p. 232; L. Zeilig, *Lumumba: Africa's Lost Leader*, Haus Publishing, 2015, [n.p]; C. Palma and R. Stafford, *Why did the US want to kill Prime Minister Lumumba of the Congo?*, National War College, Washington, 2002, p. 1. Available from <http://www.dtic.mil/dtic/tr/fulltext/u2/a442948.pdf> [Accessed 21 February 2018],

²¹ R. Dayal, *A Life of Our Times*, Orient Longman, Himayatnagar, 1998, p. 420; H. Jones, K. Östberg, N. Randerad, *Contemporary history on trial: Europe since 1989 and the role of the expert historian*, Manchester University Press, Manchester, 2007, p. 56; Assassination Planning and the Plots, p. 17. Available from https://www.aarclibrary.org/publib/church/reports/ir/pdf/ChurchIR_3A_Congo.pdf [Accessed 21 February 2018]

²² W. Mountz, "The Congo Crisis: A Reexamination (1960–1965)", in *The Journal of the Middle East and Africa*, vol. 5:2, 2014, p. 153

In that chaos, on 14 September Colonel Mobutu, the Chief of Staff of the Army, decided to neutralize the Prime Minister and Chambers of parliament until 31 December 1960.²³ By doing so, Mobutu attempted to make his first coup d'Etat. However, he called his action a 'simple, peaceful revolution' during which no soldier was supposed to take the power. Besides, his coup was as well an invitation for politicians to settle their dispute, agree to work together and serve the interests of the country.²⁴ Therefore, Lumumba was arrested and taken to the secessionist territory of Katanga. On 17 January 1961, Lumumba along with two of his supporters, Maurice Mpolo and Joseph Okito, were assassinated in the presence of the secessionist leader, Moïse Tshombe, and at least two Belgians - Police Commissioner Frans Verscheure and Captain Julien Gat.²⁵ In the same manner, Villa-Vicencio, Nantulya and Savage note that Patrice Lumumba was killed with the collusion of Belgian officers and on the authorization of the US President General Dwight David Eisenhower.²⁶

After the assassination of Patrice Lumumba, the secession struggle persisted and political crises as well as economic and social instabilities continued despite the appointments of successive prime ministers such as Adula in 1961 (the America's choice),²⁷ Moïse Tshombe in 1964, and Evariste Kimba in 1965. It was during this period that Lieutenant General Joseph-Désiré Mobutu, then Chief Commander of the national army, took political control of the country and declared himself head of the State in a *coup d'état* on 24 November 1965.²⁸

II.2. Mobutu military dictatorship regime (1965-1997)

Due to the Cold War context and his American support, Mobutu remained in power for almost thirty-two years (1965-1997). The reign of Mobutu can be divided into two periods: from 1965 to 1990 during which he intended to put an end to political disorder and restore central authority by establishing a military dictatorship and a system of absolute power or a

²³ R. Cornevin, *Histoire du Zaïre: des origines à nos jours*, 4^e ed., Hayez, Bruxelles, 1989, pp. 391-403 ; J. Brassinne, « La coopération belgo-zaïroise 1960-1985 », In *Courrier hebdomadaire du CRISP*, 34/1985 (n° 1099-1100). Available from : <http://www.cairn.info/revue-courrier-hebdomadaire-du-crisp-1985-34-page-1.htm> [Accessed 05 April 2017]

²⁴ Z.S. Gbotokuma, *A Pan-African Encyclopedia*, Vol. 2, Edwin Mellen Press, 2003; D. N'kupa Ntikala E-Benya, *Le Congo-Kinshasa, une République démocratique ?*, L'Harmattan, Paris, 2016, 23

²⁵ M. Deibert, *The Democratic Republic of Congo: Between Hope and Despair*, Zed Book, London, 2013, pp. 22-27

²⁶ C. Villa-Vicencio, P. Nantulya and T. Savage, *Building Nations: Transitional Justice in the Great Lakes Region*, Institute for Justice and Reconciliation, Cape Town, 2005, p. 42

²⁷ W. Mountz, , *Op. Cit.*, p. 158

²⁸ S.P. Tunamsifu, *A Comparative Study of Transitional Justice (...)*, pp. 146-147

system of one-party personalised rule. The second period from 1990 to 1997 is known as period characterized by the quest for institutional reform and of the transition to multiparty democracy.

II.2.1 Period of absolute power (1965-1990)

Soon after Mobutu took political power, he was committed to restore public order following series of political crises and instability.

In his quest for legitimacy and for consolidating power, Mobutu started with the security sector reforms. In this regard, Emizet F. Kisangani argues that in early 1966 Mobutu decided to integrate both the mercenaries and former Katanga soldiers who had fought the eastern rebellion in the national army. Even though, mutinies did not cease immediately, but were ultimately defeated in late 1967 resulting in between 2000 to 6000 deaths.²⁹ Considering the lack of senior Congolese officers in the army in the aftermath of colonialism, and the fact that the country was facing internal rebellions, Mobutu began accelerating the level of education and training of the officer corps by sending hundreds of military officers to the best military academies in West and providing new equipment to the army.³⁰ Referring to William and Bridget, Eric Nketiah argues that Mobutu's rule was greatly supported by the United States. The latter provided him over \$300 million in weapons and \$100 million in military training that allowed Mobutu to rule and stay longer in the office.³¹ Unfortunately, he had placed his tribesmen (Ngbandi tribe) into the higher positions of the army.³² In the context of the Cold War, according to Loso Kiteti Boya, Western intervention was carried out in order to make Mobutu the uncontested leader of the Democratic Republic of the Congo in order to eliminate the threat of a communist regime (supported by the USSR) gaining power in the country.³³

Due to several attempted secessions in the centre and southern parts of the country and the lack of national unity, Mobutu created a sense of nationhood of national pride and verve,³⁴

²⁹ E-F. Kisangani, *Civil Wars in the Democratic Republic of Congo, 1960-2010*, Lynne Rienner Publishers, London, 2012, p. 21; E.F. Kisangani and S.F. Bobb, *Historical Dictionary of the Democratic Republic of the Congo*, 3rd ed., The Scarecrow Press, Lanham, 2010, p. 82

³⁰ E-F. Kisangani, *Ibidem.*, pp. 21-22

³¹ E. Nketiah, *Distance Forum: A Multidisciplinary Book of Scholarly Articles*, Vol. 1, AuthorHouse, Bloomington, 2011, p. 128

³² See C. RIGAUD, 'RDC : armée congolaise, le problème et la solution'. Available from <http://afrikarabia.com/wordpress/rdc-armee-congolaise-le-probleme-et-la-solution/> [Accessed 22 February 2018]; 'Mobutu's Zaire'. Available from <https://politicalpathologies.wikispaces.com/Mobutu%27s+Zaire> [Accessed 22 February 2018]

³³ Loso Kiteti Boya, *D.R. Congo: The Darkness of the Heart. How the Congolese Have Survived Five Hundred Years of History*, Xlibris Corporation, 2010, p. 93

³⁴ J.F. Abbeloos, "Mobutu, Suharto, and the challenges of nation-building economic development, 1965-97" in E. Frankema and F. Buelens, *Colonial Exploitation and Economic Development: The Belgian Congo and the*

but also a strong State which did not survive because twenty years after his regime the State authority is not yet restored entirely. Thus, his first government was constituted by individuals from different ethno-political parties³⁵ in order to engender a sense of national unity. In the territorial administration, people were recruited in the Western part of the country to be appointed in the Eastern part and vice-versa. This policy had reduced the tensions of secessionist movements because belonging to one ethnic group was indexed as one of the secession criteria and thus considered one of the major obstacles to the functioning of society.³⁶ There was a hope for the new society in which people of all ethnic groups had opportunities to work everywhere in country and therefore solidify national unity. In addition to this, Emizet F. Kisangani states that the professional army that Mobutu intended to create was as well inclusive because it reflected the Congolese ethno-political constituencies but also capable of defending the nation.³⁷ According to Jean-Louis Peta Ikambana “[d]uring the period 1965 through 1970, Mobutu’s regime played a positive role in securing some political stability. Thanks to his regime and single-party political system, Zaire did regain its territorial integrity”.³⁸

Nevertheless, Mobutu established a military dictatorship regime and a system of personal rule with intolerance of the political opposition. In early 1967, a new Constitution was adopted and approved by referendum to inaugurate the second Republic. On 20 May 1967, Mobutu created the *Mouvement Populaire de la Revolution* (MPR) which progressively absorbed the State and therefore became *de facto party-state*. A special provision of the revolutionary constitution made the MPR the sole institution of the country, ‘the Zairian nation politically organized’.³⁹ Consequently, all citizens in Zaire, including the unborn, were all obliged to become members of MPR.

In order to show that the country was no longer a colony, Mobutu decided to rename the country and it became the Republic of Zaire in 1971 and the Congo River was renamed the

Netherlands Indies compared, Routledge, London, 2013, p. 260; E.F. Kisangani and S.F. Bobb, *Op. Cit.*, p. 111

³⁵ The government was constituted by member from different political parties and from different ethnic groups.

³⁶ See G. Aundu Matsanza, ‘La nouvelle édification de l’État à l’épreuve de l’ethnicité : esquisse de solutions pour la République Démocratique du Congo’. Available from <http://popups.ulg.ac.be/1374-3864/index.php?id=207#tocto1n6> [Accessed 10 November 2017]

³⁷ Loso Kiteti Boya, *Op. Cit.*, pp. 21-22

³⁸ J-L. Peta Ikambana, *Mobutu's Totalitarian Political System: An Afrocentric Analysis*, Routledge, New York, 2007, p. 37

³⁹ C. Young and T-E. Turner, *The Rise and Decline of the Zairian State*, The University of Wisconsin Press, Madison, 1985, p. 192; G. Nzongola-Ntalaja, *The Congo: From Leopold to Kabila: A People's History*, 3rd ed., Zeb Books, London, 2007, (n.p).

Zaire River. Therefore, all colonial names of cities and provinces were renamed. For example, the capital city that was named Leopoldville was renamed Kinshasa, Coquilatville became Kisangani, Elizabethville became Lubumbashi, etc. Indeed, as local communities had been dispossessed of their lands under the colonial administration, in 1966 Mobutu adopted the Bakajika Law by which the State nationalised all land and mineral rights in the country. This law provided that “all public land was the domain of the Zairian nation-state, and formally extinguished all land grants and concessionary powers delegated by the colonial state”.⁴⁰ This law paved the way of nationalization in which Mobutu embarked through the policy of *Zairianisation* and radicalization after adopting the land law on 20th July 1973.

Thus, it was decided that firms, farms, plantations, companies, etc. owned by foreigners should be returned to Zairian people, but most of those properties and business were distributed to people holding high positions in the State institutions, to those who had shown political loyalty, to military officers or to those with ethnic links.⁴¹ Unfortunately, most of the new owners were not sufficiently prepared to run businesses or to manage adequately properties acquired and consequently, *Zairianisation* policy had the negative effect of restricting foreign investment in Zaïre.⁴² The process pushed the Belgian government to react vigorously to protect the interests of Belgian capital. Thus, in its reaction, it imposed an embargo on copper exports to cripple the economy by seeking the cooperation of its European partners in imposing additional economic sanctions on Zaire.⁴³ Due to the failings of nationalisation, in 1976 Mobutu issued a decree on *retrocession* handing back companies to their former foreign owners. Between 1973 and 1977, according to Nzongola-Ntalaja, the economy began to deteriorate steadily due to the combined effect of the nationalization measures and the crash in copper prices. The poor and corrupt management of nationalized businesses resulted in food shortages, severe inflation, and popular discontent bordering on rebellion.⁴⁴

Indeed, to strengthen his totalitarian regime, Mobutu banned all political parties and their activities, widespread repressive methods on political opponents and serious large-scale human rights violations were committed. Crimes committed were politically motivated in

⁴⁰ C. Young and T-E. Turner, *Op. Cit.*, p. 288

⁴¹ For more, read J. Macgaffey, *Entrepreneurs and Parasites : The struggle for indigenous capitalism in Zaire*, Cambridge University Press, New York, 1987, pp. 96-98

⁴² See E.F. Kisangani and S.F. Bobb, *Op. Cit.*, p.48

⁴³ G. Nzongola-Ntalaja, *Op. Cit.*, (n.p); E-F. Kisangani, *Op. Cit.*, p. 21

⁴⁴ G. Nzongola-Ntalaja, *Idem*, (n.p)

absolute violation of domestic and international laws. Crimes committed under Mobutu's rule, according to Jean-Louis Peta Ikambana, were 'state crime'.⁴⁵ Thus, he argues that:

Mobutu's regime was capable of conserving power because of the very nature of the system, which eliminated any possibility of social opposition. The assassination of Zaire's political opposition members and students was strong evidence of Mobutu's totalitarian system and characteristic of his 32-year destructive reign. Zaire's state crime is more likely to be explained by the desire of Mobutu's regime to maintain control over every aspect of Zaire's national life and, therefore, to guarantee the continuity of his regime. Assassinations and slaughters committed by his government benefited only his regime and his allies.⁴⁶

As he could not tolerate opponents or anybody who could stand against him, four former Ministers⁴⁷ who allegedly plotted to kill President Mobutu in a *coup d'état* were sentenced to be hanged publicly in what was called the 'Pentecost Plot'. However, no legal defence was allowed, no single piece of evidence was offered that substantiated the charges against the defendants, and the bodies were never returned to the families of victims.⁴⁸ Besides, Dan Mou reports that in the province of Bandundu, military loyal to Mobutu gunned down more than 700 men and women while agitating for food.⁴⁹

From that point, widespread human rights violations continued, opposition politicians or high-ranking military officers opposed to President Mobutu were frequently detained without trial, tortured, imprisoned, exiled or killed and any property belonging to the convicted were confiscated under the autocratic policies with the support of the United-State of America and other Western powers.⁵⁰ As many politicians were scared to stand against Mobutu, they created opposition parties outside of the country. Dan Mou suggests that "thirteen opposition movements had created a government in exile, whose main objective was to overthrow the Zairian dictatorship by any means".⁵¹

Analysing the economic and socio-political situation in the country, thirteen Zairian senators wrote a letter to President Mobutu in 1980. According to Jean-Louis Peta Ikambana, those

⁴⁵ J-L Peta Ikambana defines a state crime "as a violation of the legitimate attributes of a state, which includes government, political power, and the political rights of citizens". J-L. Peta Ikambana, *Mobutu's Totalitarian Political System: An Afrocentric Analysis*, Routledge, New York, 2007, p. 54

⁴⁶ J-L. Peta Ikambana, *Op. Cit.*, p. 54

⁴⁷ It is the case of the following former ministers: Emmanuel Bamba of finance, Alexandre Mahamba of foreign affairs, Evarist Kimba former prime minister and Jerome Anany of defence.

⁴⁸ J-L. Peta Ikambana, *Op. Cit.*, p. 56

⁴⁹ Dan Mou, *Making of an African Giant: State, Politics and Public Policy in Nigeria*, Vol. 1, AuthorHouse, Bloomington, 2015, (n.p)

⁵⁰ Dan Mou, *Op. Cit.* (n.p); J-L. Peta Ikambana, *Op. Cit.*, p. 59

⁵¹ Dan Mou, *Op. Cit.* (n.p)

senators revealed that the situation of the country was worsening and in a state of likely collapse. In order to address that, they suggested a national forum, gathering representatives from every Zairian social class to discuss national issues, including freedom and democracy, as a necessary foundation for the nation's rebirth. Unfortunately, they were arrested, jailed and convicted to lose their political and civil rights for five years by the Supreme Court on 17th January 1981. Thanks to the international pressure, they were released, rehabilitated and authorized to create the first political opposition party under Mobutu's rule on 15th February 1982; the UDPS (*Union pour la Démocratie et le Progrès Social*). Nevertheless, a month later they were rearrested, jailed, tortured and sentenced to 15 years. One senator, Makanda Mpinga was executed.⁵²

When Soviet leadership changed in 1985 and the country embarked on a process of liberalisation and democratisation, this would have significant consequences for Africa in general, and the DRC in particular. In March of 1985, Archie Brown notes that "Gorbachev told the East European leaders whom he met individually to expect no more Soviet military interventions to keep them in power. It was up to them to maintain or win the trust of their own people".⁵³ According to Benjamin Neuberger, "the end of the Cold War led to the decline of geopolitical and geostrategic considerations in the African policy of the Great Powers. While Russia completely withdrew from Africa, the Western World showed greater readiness to apply pressure for Africa to democratize".⁵⁴ In the same perspective, France convened the biennial Franco-African summit in the Atlantic resort of La Baule that 22 African heads of State and 11 other delegations attended in June 1990. In his statement, President Mitterand indicated a slight shift in the traditional French policy arguing that 'French aid will be lukewarm towards authoritarian regimes and more enthusiastic for those initiating a democratic transition'.⁵⁵ Thus economic and political support for illiberal African regimes, such as that in Zaire, declined while pressure for institutional and political reform increased markedly. This is the changing global context in which the period of institutional reforms introduced in the 1990s (covered in the next section) must be understood.

⁵² J-L. Peta Ikambana, *Op. Cit.*, p. 59

⁵³ A. Brown, *Art. Cit.*, p. 3

⁵⁴ B. Neuberger, "Democracy and Democratization in Africa", in E. Ben Rafael and Y. Sternberg, *Identity, Culture and Globalization*, Vol. 8 *de Annals of the International Institute of Sociology*, International Institute of Sociology, Brill, 2001, p. 198

⁵⁵ Martin as cited by D. Kroslak, "France's Policy towards Africa: Continuity or Change?", in I. Taylor and P. Williams (eds.), *Africa in International Politics: External Involvement on the Continent*, Routledge, Oxon, 2005, p.68

To conclude this sub-section, between 1965 and 1990, hundreds of thousands people were detained, imprisoned and executed without trial. At the political level, people were subjected to arbitrary and personalised rule, while ill-treatment and corruption were institutionalised. During this period, many opponents to Mobutu's dictatorial regime were tortured and many millions more saw their fundamental human rights being violated. According to Emizet F Kisangani "institutionalized violence became common as state secret services and military were used as instruments of terror against opponents of the Mobutu regime".⁵⁶

II.2.2 Period of quest for institutional reform (1990-1996)

As the Cold War ended in the late 1980s, the 1990s ushered in a period of greater international pressure for democratisation and reform. This ended the western support to authoritarian regimes. As the reform decade began, Zaire was marked by substantial economic inequality between citizens and the politically-connected. Students protested in Kinshasa and Lubumbashi in February 1989, taking a stand against prevailing economic problems, high levels of poverty and continued political repression. The students started demonstrations that were viewed as a threat to the Mobutu's regime. The security forces were ordered to intervene and they arrested many students and fired live ammunition into the crowd of protesters. Many students were wounded and many others killed. In March 1989, the leader of UDPS, Etienne Tshisekedi wa Mulumba, was arrested for alleged involvement in the student disturbances that broke out in Kinshasa and Lubumbashi in which an estimated 37 people were killed.⁵⁷ A wave popular protest was triggered by professors and others demanding the removal of President Mobutu from power.⁵⁸

Weakened by the end of the Cold War during which President Mobutu benefited western support, it is noteworthy that on 24 April 1990 that he was forced to deliver to the National Assembly a historical speech proclaiming the reinstatement of the multiparty system, declaring the end of one party-state, and the rehabilitation of the executive, the legislature and the judiciary. In addition, Mobutu had announced "the imminent depoliticization of the armed forces, the gendarmerie, the civil guard, the security services and the administration in

⁵⁶ E-F. Kisangani, *Op. Cit.*, p. 22

⁵⁷ G. Mthembu-Salter, "Recent History", in Europa Publications, *Africa South of the Sahara 2004:Regional Surveys of the World*, 33rd Ed., Taylor & Francis Group, London, 2004, p. 263

⁵⁸ Idem

general. (...) As part of the continuing process of political reform, the Constitution was amended and a new transitional Government formed”.⁵⁹

Indeed, in response to political liberalization and the restoration of freedom of assembly as well of speech and free press, Emizet F Kisangani argues that from 11-12 May 1990, popular unrest rattled Mobutu and led to an overreaction in which soldiers killed 297 students on the campus of the University of Lubumbashi.⁶⁰ In December 1990, a protest against the deterioration of the quality of life was held in Kinshasa which was also viewed as a threat to the government. Again, the military was sent to the streets and fired live ammunition into the crowd causing hundreds of deaths and scores of wounded civilians. Jean-Louis Peta Ikambana notes that no charges were pressed against alleged military perpetrators neither for the government.⁶¹ As a consequence of the government’s reaction to the protest, Emizet F Kisangani observes that major donors such as Belgium, France, and the United States of America decided to suspend foreign aid, which dropped from 7 percent of GDP in 1990 to 2 percent of GDP in 1992. Economic growth also declined by 4.1 percent in 1991, with a major drop of 14 percent in 1993. This negative trend continued until 2001 and was exacerbated by the first and second Congo wars.⁶²

As President Mobutu tried to set up a constitutional conference in 1991, opposition parties were influenced by the wave of national conferences held in Africa. As the result of people’s demands for institutional reform and popular pressures, President Mobutu could not have another choice than holding a national conference in the country in order to reflect on the past and to chart the way forward. On these national conferences, Georges Nzongola-Ntalaja argues that

[t]hey were conceived as a combination of a truth and reconciliation commission and a constitutional commission to serve as both a forum for a national catharsis in the African tradition of conflict resolution through the palaver, and a modern rule of law mechanism for setting into motion a successful transition to democracy. They were also seen to be all the more critical in countries like Congo-Kinshasa, which lacked the minimum infrastructure. The conference, whose decisions are meant to be binding on all parties or groups, was therefore the most appropriate forum from which a transitional government could emerge to prepare the way for multiparty elections and progress towards democracy.⁶³

⁵⁹ G. Mthembu-Salter, *Op. Cit.*, p. 263

⁶⁰ E-F. Kisangani, *Op. Cit.*, pp. 25-26

⁶¹ J-L. Peta Ikambana, *Op. Cit.*, p. 60

⁶² E-F. Kisangani, *Op. Cit.*, p. 26

⁶³ G. Nzongola-Ntalaja, *From Zaire to the Democratic Republic of the Congo*, 2nd revised ed., Current AfricanIssues No. 28, Nordiska Afrikainstitutet, Uppsala 2004, pp. 8-9

Indeed, through the Ordinance No 91-097 and 91-098 of 11th April 1991, Mobutu established the national conference that opened officially on 7th August 1991. Unfortunately, it was suspended and reopened several times causing a rising sense of frustration among the general population. Therefore, Emizet F Kisangani and Scott F. Bobb note that a peaceful demonstration for the resumption of the National Conference was organized on 16th February 1992 by Roman Catholic Christians who attended holding Bibles and rosaries. In response to the protest, Mobutu's guards were deployed and they fired on the protestors. As a result, more than 50 people were killed and several hundred wounded. Ultimately, following both internal and external pressures with on top the United States of America and the Belgian, President Mobutu was forced to reopen the conference on 6 April 1992. On 17 April, it was renamed the *Conférence Nationale Souveraine* (CNS) with the intention to make legally binding decisions, but President Mobutu refused to acknowledge the conference's resolutions.⁶⁴ Comparing to other national conferences in Africa, Georges Nzongola-Ntalaja assesses that the CNS was the largest with 2 842 delegates, and the longest-running as it sat from April 1992 to 6th December 1992. The Roman archbishop Laurent Pasinya Monsengwo was appointed as Chairperson due to his respectful religious position as the president of the National Episcopal Conference and his commitment to the Church and the society. Francisco Carrera notes that the archbishop Monsengwo was accepted to play a key role from the long dictatorship regime to democratic system because of his "sense of responsibility and his commitment to the service of the people".⁶⁵ The CNS held 23 commissions and over 100 sub-commissions covering major aspects of the nation. The CNS had the task to study, investigate and debate the record of the past in order to make recommendations for the country's future.⁶⁶

For the majority of the Zairian population, the CNS was perceived as a great opportunity for institutional reform, democracy, regime change and rule of law, and the concretisation of the fight for human rights. That is why it had had the genuine support and any threat or decision to suspend its work, the population protested peacefully against it in order to eliminate the

⁶⁴ E-F. Kisangani and S-F. Bobb, *Op. Cit.*, p. lxxv

⁶⁵ F. Carrera, "D R Congo: Archbishop Monsengwo Pasinya: Commitment to Church and society" Available from: <http://www.africafiles.org/article.asp?ID=18556> [Accessed 18 October 2017]

⁶⁶ G. Nzongola-Ntalaja, *Art. Cit.*, p. 9

threat or to withdraw of the decision.⁶⁷ Unfortunately, none of President Mobutu's collaborators was held accountable for the crimes conducted during the Mobutu regime.

In the aftermath of the CNS, President Mobutu managed to torpedo the whole process by unilaterally amending the constitution and creating parallel institutions in order to control political power indefinitely, consolidate his power, pending elections. The protracted transition placed the country's politics in a state of permanent crisis.⁶⁸ This political paralysis in the country coincided with the 1994 genocide in Rwanda, perpetrated against Tutsi and moderate Hutu populations. When the Rwandan Patriotic Front (RPF) ended the genocide, the defeated Rwandan Army, political authorities and the millions of Hutu fled Rwanda for neighbouring countries. Rwandan Hutu refugees together with the former soldiers of the Rwandan Army and militias (many of whom were alleged perpetrators of the genocide) were accommodated in refugee camps established in the eastern Zairian cities along the borders with Burundi, Rwanda and Uganda.

Due to the proximity of the camps to Rwandan borders, former Hutu militias and members of the former Rwandan Army started using refugee camps for launching guerrilla raids into Rwanda.⁶⁹ When Mobutu's regime was unable or unwilling to stop such infiltrations of refugees into western Rwanda, in late 1996 a rebellion supported by neighbouring countries was created to oust Mobutu's regime. Roos Haer argues that due to the end of global hostilities, "Cold War allies Belgium and the United States declared that they would no longer come to Mobutu's rescue".⁷⁰ Mobutu was left to face the insurrection alone.

II.3 The end of Mobutu's regime the beginning of regional crisis (1996-2009)

This sub-section provides a brief overview of different armed conflicts that occurred from 1996 to 1997 (the First Congo War); from 1998 to 2003 (the Second Congo War), and from 2004 to 2009 (a period of sustained armed insurrections).

⁶⁷ See W. Moka-Mubelo, *Reconciling Law and Morality in Human Rights Discourse: Beyond the Habermasian Account of Human Rights*, Springer, Gewerbestrasse, 2017, p. 156

⁶⁸ EISA, *The 2005 Constitutional Referendum in the DRC: 18-19 December 2005*, EISA Observer Mission Report No 21, EISA, Johannesburg, 2006, p. 6

⁶⁹ S.J. Dixon and R.M. Sarkees, *A Guide to Intra-State Wars: An examination of Civil, Regional, and Intercommunal wars, 1816-2014*, SAGE, Los Angeles, 2016, p. 673; G. Nzongola-Ntalaja, "The International Dimensions of the Congo Crisis"

http://projectcongo.org/images/The_20International_20Dimensions_20of_20the_20Congo_20Crisis.pdf

[Accessed 29 April 2011]

⁷⁰ R. Haer, *Armed Goup Structure and Violence in Civil Wars: The Organizational dynamics of civilian killing*, Routledge, London, 2015, p. 125

II.3.1 The First Congo War and the rise of Kabila in the DRC (1996-1997)

In 1996 there was rising anti-Tutsi tension in the eastern part of the country which had resulted from Mobutu's discriminatory policies, on the one hand, and increased by the presence of Rwandan alleged perpetrators of acts of genocide in Rwanda on the other hand. This intensified the revolt of the Tutsi population of South-Kivu province (known as the *Banyamulenge*) who were struggling for the recognition of their citizenship.

Nationality and citizenship were exploited by powerful political actors as a key element in divide-and-rule strategies. The crisis around the citizenship remains a source of injustice, of marginalization and therefore a potential cause of conflict.⁷¹ Regarding the inter-ethnic conflict that occurred in North-Kivu province, the Report Mapping provides that it is impossible to determine the number of victims of the massacres between 1993 and June 1996. However, it is estimated that one thousand people have been killed in 1995 and more others have left their homes to become displaced people. In June 1996, there were also around 250.000 displaced people in the Kivu province.⁷² The Zairian soldiers as well as the Hunde and Nyanga Mayi-Mayi and the Nande Ngilima militia are reported as alleged perpetrators of these massacres.⁷³ According to Emizet F Kisangani and Scott F. Bobb,

On 6 October 1996, the deputy governor of Sud-Kivu asked all the Banyamulenge to leave, in accordance with the 1995 parliamentary resolution. He gave them six days to vacate the Mulenge area and go back to Rwanda. The Banyamulenge refused to leave and turned to the Rwandan Tutsi-dominated government for help. The Rwandan soldiers and the Banyamulenge began attacking Mobutu's army in October 1996, and several anti-Mobutu groups also joined the Banyamulenge-led rebellion by the creation of the Alliance des Forces Démocratiques pour la Libération du Congo (AFDL) whose spokesperson became Laurent Kabila.⁷⁴

The 1996 armed rebellion against President Mobutu was led by a coalition arranged by the Rwandan government in Kigali between the heads of several rebel movements.⁷⁵ Among the rebel leaders there were André Kisasa Ngandu who led the *Conseil National de la Résistance pour la Démocratie (CNRD)*, Déogratias Bugera who led the *Alliance Démocratique des*

⁷¹ S-P. Tunamsifu, 'Legacies of Colonization To Transitional Justice: The Experience of the Democratic Republic of the Congo (unpublished document) , pp. 7-8

⁷² OHCHR (Office of the High Commissioner for Human Rights), *Report Mapping Exercise* §166

⁷³ *Idem.*, §165

⁷⁴ E-F. Kisangani and S-F. Bobb, *Op. Cit.*, p. lxxv

⁷⁵ M. Deibert, *The Democratic Republic of Congo: Between hope and despair*, London, Zed Books, 2013, p. 55; OHCHR, *Report Mapping Exercise* §178

Peuples (ADP), a young or *Kadogo* former Rwandan Patriotic Force member called Anselme Masasu Nindaga, and Laurent-Désiré Kabila who led the *Parti de la Révolution du Peuple (PRP)*.⁷⁶ This rebellion constituted the first non-international⁷⁷ and internationalized armed conflict⁷⁸ as it was backed by several neighbouring countries such as Angola, Burundi, Rwanda, and Uganda against Mobutu.

The war began on the border of Rwanda and Burundi in a village called Lemera on 18 October 1996. The various rebel armies invaded the territory of Zaire. Due to the prevailing economic and social conditions, the deterioration of the quality of life of the majority of the population, and the weakness of the army due to the lack of payment, the AFDL enjoyed significant popular support. During the AFDL's advance, it is reported that children under the age of 15 years were recruited to participate actively in the conflicts, while the Rwandan, Burundian and Ugandan armies targeted and destroyed all the Rwandan and Burundian Hutu refugee camps systematically killing an unknown number of refugees inside.⁷⁹ Zairian civilians living near those camps and others who assisted refugees or collaborated with international NGOs were also killed. Besides, villages where Zairian Hutu civilians known as *Banyarwanda* are located were also targeted by AFDL's combatants and their allies. They killed indiscriminately an unknown number of men including women and children in Masisi and Rutshuru territories that allegedly assisted or collaborated with Rwandan Hutu

⁷⁶ S-P. Tunamsifu, « Transitional Justice and Peacebuilding in the Democratic Republic of the Congo » *African Journal on Conflict Resolution*, Vol 15, No1, 2015, p. 69

⁷⁷ According to art 1 of the Additional Protocol II, non-international armed conflicts are all armed conflicts which take place in the territory of a high contracting party between its armed forces and dissident armed forces or other organised armed groups fighting each other. See Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts (Protocol II). In this case, the regular army was fighting against rebel groups such as Rassemblement Congolais pour la Démocratie (RCD), Mouvement pour la Libération du Congo (MLC) and Congrès National pour la Défense du Peuple (CNDP), but those armed groups were also facing resistance by other domestic small armed groups of May-May that wanted to protect their territories against occupation.

⁷⁸ 'The term "internationalised armed conflict" describes internal hostilities that are rendered international.' The circumstances that can achieve this are numerous and often complex: The term includes war between two internal factions, both of which are backed by different states; direct hostilities between two foreign states that militarily intervene in an internal armed conflict in support of opposing sides; and war involving a foreign intervention in support of an insurgent group fighting against an established government. See JG. Steward 'Towards a single definition of armed conflict in international humanitarian law: A critique of internationalised armed conflict' (2003) 85 *International Review of the Red Cross* 315, citing D. Schindler 'International humanitarian law and internationalised internal armed conflicts' (1982) *IRRC* 255. In this case, internationalised armed conflicts occurred when foreign states such as Rwanda and Uganda supported domestic armed groups against the government of the DRC. For more, read SP. Tunamsifu, 'The right to justice: A challenge for survivors of conflict-related sexual violence in the Eastern Democratic Republic of the Congo' (2015) 15, *African Human Rights Law Journal*, p. 473

⁷⁹ See OHCHR, *Report Mapping Exercise* §§179, 213-223

refugees.⁸⁰ On the other side, during their fights and resistance, the Zairian soldiers and members of security services have also killed an unknown number of Tutsi civilians known as *Banyamulege* in South Kivu province who were accused of being part of the rebellion or to have facilitated the infiltration of Zairian territory.⁸¹

In sum, all parties to the conflict committed serious violations of human rights and of international humanitarian law in the DRC. Nevertheless, no mechanism of formal or informal justice was established in order to prosecute Congolese or foreign perpetrators who committed crimes during the conflict. However, regarding the effects of inter-ethnic violence in North Kivu that erupted in 1993, President Kabila, inspired by existing local practice, decided to “establish in Goma (North Kivu) the Pacification and Concord Commission (*Commission de Pacification et de Concorde*, CPC) in 1997 in order to allow people to live together peacefully because many conflicts were based on ethnic issues”.⁸² The CPC led to the creation of the *Barza Inter-communautaire* (see Section III.2.1 below) that helped to prevent and resolve low-level disputes before they escalate into violent conflicts.⁸³

After eight months (October 1996-May 1997), the AFDL’s coalition led by Laurent-Desire Kabila seized the capital city of Kinshasa on 17th May 1997. Laurent-Désiré Kabila, spokesperson for the coalition, came to power and changed the country’s name to the Democratic Republic of Congo (DRC). The swearing in took place on 29th May 1997 while President Mobutu fled to Morocco. Soon after bringing Laurent-Desiré Kabila to power, some of his allies such as Rwanda and Uganda began looting the country’s extensive mineral wealth (gold, diamonds and coltan). Consequently, shortly thereafter, in July 1998, President Kabila ordered the expulsion of foreign armies in the DRC. They refused, which greatly angered the president. The Rwandan and Ugandan armies responded belligerently and consequently, on 2 August 1998, they turned against Kabila and decided to back a new rebellion, or the second armed conflict in the DRC.⁸⁴ The other reasons for this conflict was for both Rwanda and Uganda not losing the DRC as their “zone of influence” from where they pretend to secure their respective borders.

⁸⁰ J. Stearns, *PARECO: Land, local strongmen and the roots of militia politics in North Kivu*, Rift Valley Institute, London, 2013, p. 15; OHCHR, *Report Mapping Exercise* §§273-278

⁸¹ See OHCHR, *Report Mapping Exercise* §§166-279

⁸² SP. Tunamsifu, *Culture of Peace I: Conflict Resolution, Peace and Law*, (curriculum development), University for Peace, Costa Rica, 2011, p. 171

⁸³ S-P. Tunamsifu, “Transitional Justice and Peacebuilding (...)”, p. 76

⁸⁴ *Idem.*, p. 69

II.3.2 The Second Congo War – or Africa’s World War (1998-2003)

This conflict is known variously as the Second Congo War or Africa’s World War as it involved 9 African countries and 20 non-state armed groups. It was single the deadliest conflict since the end of World War II, having caused 5.4 million deaths predominantly through conflict-related disease and starvation. Almost one year after President LD Kabila took over, his relationship with his Rwandan and Ugandan allies, and between his regime and western powers had deteriorated significantly. According to Adolphe Kilomba, it is reported that President LD Kabila had failed to respect his commitments in relation to acknowledged contracts that were signed between the AFDL and American and South African mining companies who had sponsored the rebellion. Besides, its foreign policy was also marked by the remoteness of the DRC from its traditional European Union and US partners.⁸⁵ Two months after foreign armies were sent back, on 2nd August 1998, a new political and military movement backed by the Rwandan and Ugandan armies was launched in Goma, the capital city of North-Kivu province, to overthrow President LD Kabila. The rebel movement was called the *Rassemblement Congolais pour la Démocratie* (RCD, or the Congolese Rally for Democracy).

Over the following months, the socio-political and military situations became more complex as the RCD rapidly occupied major cities in the eastern parts of the country. However, as the Ugandan army controlled the northern part of the county, in late 1998 two other rebel movements were created. It is the case in the Equateur province of the *Mouvement pour la Liberation du Congo* (MLC, or the Movement for the Liberation of Congo) led by Jean-Pierre Bemba with the support of the Ugandan army, and in the Ituri district of the *Union des Patriotes Congolais* (UPC, or the Union of Congolese Patriots) led by Thomas Lubanga supported by both Uganda and Rwanda.⁸⁶ Consequently, the country found itself divided into three main zones controlled respectively by the President LD Kabila, the RCD and the MLC and each zone was administered like a “State”.

Concerned by the growing humanitarian disaster due to the spread of the political and military movements as well local militias (Mai-Mai)⁸⁷ who mobilised against the presence of

⁸⁵ A. Kilomba Sumaili, *Op. Cit.*, pp. 247-248

⁸⁶ SP. Tunamsifu, *Culture of Peace I (...)*, p. 170

⁸⁷ These are communit-based militias which initially emerged as community-supported self-defence groups but which often rapidly deteriorated into predatory militias

foreign armies, and the security concern affecting other countries in the African Great Lakes Regions, under intense diplomatic pressure, the Lusaka ceasefire agreement was signed on 10th July 1999. Under Article III of the ceasefire agreement, parties agreed to the deployment of UN peacekeeping forces in the DRC to ensure the implementation of this agreement and to track down all armed groups (par 11), the withdrawal of all foreign forces from the national territory of the DRC (par 12), the organization of an open national dialogue between the Government of the DRC, the armed opposition as well as the unarmed opposition under a neutral facilitator (par 19), disarming of militias and armed groups including the genocidal forces (par 22), etc.⁸⁸ The Mapping Report provides that despite attempts to end the war, conflict continued as parties benefitted from the continued instability which facilitated their continued exploitation of the country's mineral resources. The war crimes involved mass violence against civilians, including the perpetration of mass sexual violence against women – especially in North and South Kivu, North Katanga and Orientale Province.⁸⁹

Following the outbreak of the second armed conflict, a hostile campaign against Tutsis and Banyamulenge people of Rwandan origin started in the area controlled by the Kabila Government. It is reported that an unknown number of people alleged suspected to provide support to rebels or Rwandan soldiers were subsequently executed. In the areas controlled by the RCD-Goma, Mayi-Mayi resistant are alleged to have killed Tutsi civilians of Rwandan origin.⁹⁰ Between 1998 and 2002, the RCD-Goma security services in Bukavu and Uvira arbitrarily arrested and tortured several traditional leaders along with administrative officials, political opponents and members of civil society for having asked the Rwandan soldiers to leave Congolese territory. In the meant period (from August 1998 to July 2002), RCD's combatants and their allies have killed an unknown number of Hutu population and other civilians in several areas in North and South Kivu provinces. From 5 to 10 June 2010, Rwandan and Ugandan armies fought in Kisangani where they committed indiscriminate crimes, killing almost 760 civilians, wounding over 1000 people and destroying over 400 private homes, which caused thousands of people to be displaced. In the city and territory of Beni, the Ugandan rebel group ADF/NALU reportedly killed and kidnapped an unknown

⁸⁸ See 'Democratic Republic of Congo: Lusaka Agreement, Ceasefire Agreement'. Available from: <http://www.ucd.ie/ibis/filestore/LUSAKA%20AGREEMENT%20CEASEFIRE%20AGREEMENT%20PREA%20MBLE.pdf> [Accessed 20 June 2017]

⁸⁹ OHCHR, *Report Mapping Exercise* §311

⁹⁰ See OHCHR, *Idem*, §§312-318 & 353

number of civilians, forced hundreds of civilians into slavery and forcibly recruited child soldiers on a large scale.⁹¹

As the situation became more explosive on the ground without any progress in the implementation of the Lusaka ceasefire agreement, former President of Botswana, Sir Ketumile Masire, was appointed as mediator in the Congo's political dialogue by the Secretary-General of the Organization of African Unity (OAU) in December 1999. On 16th January 2001, President LD Kabila was assassinated, leaving the country in total economic chaos and half-occupied by a proliferation of rebel movements backed by foreign armies. Laurent Kabila was succeeded by his son, Joseph Kabila, who was sworn in as president on 23 January 2001. In his inaugural speech, Joseph Kabila promised internal political liberalization and to restart dialogue with the DRC's neighbours and rebel groups to end the armed conflict. In late February 2002, the Inter-Congolese Dialogue was initiated in Pretoria where various elements/groups and entities involved signed on 16 December 2002 a Global and Inclusive Agreement on Transition in the DRC, commonly known as the Sun City Accord/Agreement. The peace agreement included political arrangement governing the transition, a power-sharing principle for the inclusive government, the integration of elements of armed groups within the unified Congolese national army, to set up, together with transitional institutions, the TRC (*Commission Vérité et Réconciliation*). Regrettably, Laurent Nkunda, former commanding officer of the RCD's rebel group, refused to report to Kinshasa following his nomination as the new general in charge of the 81st and 83rd Brigades of the integrated new army in Nord-Kivu. Instead, he withdrew with several of the integrated soldiers under his previous command to the mountains of Masisi territory in Nord-Kivu province claiming to provide more protection to his ethnic tribe, Tutsi people. A large number of others officers joined him and they created a new rebel group in June 2004, named the *Congrès National pour la Défense du Peuple* (CNDP), that began to fight against the transitional government. This marked the beginning of the third armed conflict with the Rwandan support.⁹²

⁹¹ OHCHR, *Report Mapping Exercise*, §§353, 342-349, 363, 350

⁹² E-F. Kisangani and S-F. Bobb, *Op. Cit.*, pp. lxxxii-lxxxiv; S-P. Tunamsifu, "Transitional Justice and Peacebuilding (...)", pp. 69-70

II.3.3 The third (subnational) armed conflict in the DRC (2004-2009)

From August 1998 to December 2002 when the Global and Inclusive Agreement on Transition in the DRC was signed, the political and military movement RCD had its headquarter in Goma. Following the arrangement on the integrated Congolese national army, all Parties to the Agreement and having armed forces agreed that their combatants would be deployed in other areas. That is why Laurent Nkunda was appointed Brigadier General and deployed to lead the military region of Kasai-Oriental. His refusal to leave the North and South Kivu provinces where he was active during the rebellion it claiming to provide a suitable protection to member of his ethic group, Tutsi, to neutralize the FDLR, to advocate for the return of Congolese refugees in neighbouring countries.

The Nkundan rebellion had committed various crimes in both North and South Kivu provinces. In June 2004, Laurent Nkunda and combatants loyal to him had embarked on a campaign of looting, rape and targeted mass killings, as well as the destruction of the Kadutu market in the city of Bukavu. From 2006 to 2008, Nkunda's forces committed numerous rapes, torture and summary executions; attack the camps of internally displaced persons, recruitment by force of child soldiers, looting and destruction of economic infrastructures, etc. in North Kivu.⁹³

In 2008, the CNDP together with other various rebel groups were convened to a dialogue in Goma (The *Conférence sur la Paix, la Sécurité et le Développement dans les Provinces du Nord-Kivu et du Sud-Kivu*) that led to the signing of the *Acte d'Engagement* between them and the Government of the DRC. Only warring Parties occupying a leadership position participated. From the government and various rebel groups, only one woman Sophie Bwiza from the National Congress of the Defence of People was among signatories. At the end, the parties agreed on a new truth and reconciliation commission, but because the CNDP violated the ceasefire, the initiative was not implemented.⁹⁴ Thereafter, the President Joseph Kabila and Paul Kagame scheduled a direct dialogue and negotiation in order to resolve the conflict. As result, the Rwandan government invited and decided in January 2009 to arrest Laurent Nkunda who had previously enjoyed his support.⁹⁵ According to Ernest Harsch, President Paul Kagame explained that the intransigence of Laurent Nkunda had turned him into an

⁹³ S-P. Tunamsifu, "International Humanitarian Law Violations in the Armed Conflict in Eastern part of DR Congo: the Case of the National Congress for the Defense of People", *A38 Journal of International Law*, Vol 2(1), 2013, pp. 246-250

⁹⁴ S-P. Tunamsifu, "Transitional Justice and Peacebuilding (...)", p. 72

⁹⁵ SP. Tunamsifu, *Culture of Peace I (...)*, p. 10

obstacle to peace.⁹⁶ Therefore, on 23 March 2009 the Government and the CNDP signed a peace Agreement called *Accord de Paix du 23 Mars 2009*. This agreement ended the CNDP's conflict and provided for mechanism of transitional justice on reconciliation and institutional reform (Article 4).

From 24 November 1965 to 17 May 1997, the DRC formerly the Republic of Zaire experience the military dictatorship regime and the beginning of a regional crisis. During this period serious violations of human rights were committed and the number of victims is estimated to be in the millions.⁹⁷ Nevertheless, under the system of one-party State, the judiciary was a council of the party and therefore was no judicial independence. In this regard, "President Mobutu had left the judiciary system in a derelict state, and judges were not adequately paid".⁹⁸ From October 1996, a series of internationalized conflicts started in which large-scale crimes were committed by both Congolese security forces, local militias, foreign armies and externally-supported non-state actors. It is argued that "the different armed conflicts severely affected the Congolese courts and tribunals some of which were destroyed, and at that time, judges were appointed through irregular processes and based on political considerations".⁹⁹ The persistence of conflicts is the result of huge profits generated by the illegal exploitation of natural resources. This way of accessing to the treasure of the DRC's subsoil is the root causes of the various violations of human rights and of the international humanitarian law.

III. Choice of Transitional Justice dealing with the legacy of dictatorship and various armed conflicts

In dealing with the legacy of Mobutu's military rule, in 1991 the Sovereign National Conference (CNS) constituted the first step of choosing transitional justice allowing to move from dictatorship regime to democracy and institutional reform in the Republic of Zaire. In 2002, the Global and Inclusive Agreement on Transition in the DRC led to the second step of choosing transitional justice in order to address widespread mass violations of human rights and of international humanitarian law committed during different armed conflicts. Divided

⁹⁶ E. Harsch, "Setting foreign fighters on the road home: Repatriation of ex-combatants vital to securing regional peace", *Africa Renewal*, Vol. 23(2), 2009, p. 6

⁹⁷ OHCHR, *Report Mapping Exercise* §127

⁹⁸ S.P. Tunamsifu, *A Comparative Study of Transitional Justice (...)*, pp. 151; see also OHCHR, *Report Mapping Exercise* §916-917, 939-941

⁹⁹ S.P. Tunamsifu, *A Comparative Study of Transitional Justice (...)*, pp. 151

into two sub-sections, this section analyses respectively mechanisms of transitional justice chosen to deal with the legacy of dictatorship regime (1) and mass crimes committed during different armed conflicts (2).

III.1. Transitional justice mechanisms dealing with the legacy of dictatorship regime; the CNS

The Cold War ended in the context where people were requesting democracy and institutional reform. As president Mobutu could no longer receive any support from his western patron, he was then obliged to hold a national conference following special arrangement in order to bring national reconciliation. Then the CNS was established by the Constitutional Act No 91-097 of 11th April 1991.¹⁰⁰ Under Article 2, the CNS pursued the following objectives:

- To discuss all matters of national interest with a view to the democratization of the fundamental options of the third Republic;
- Prepare a draft Constitution to be submitted to the popular referendum;
- Determine the content of the electoral law and develop an electoral calendar.

In dealing with the above enumerated points, Article 2,2 stipulates that CNS is independent and must lead the Zairian people to reconcile with themselves. The CNS was free to investigate any cases including those of important military figures and senior politicians. However, the CNS was warned not to transform itself into a people's court or a settlement court.¹⁰¹

Delegates to the CNS from the relevant social forces of the nation and political parties elected Bishop Laurent Monsengwo Pasinya as Chair with two deputy chairs: Joseph Ileo Songo Amba as the first deputy chairperson and Victor Mulongo Mukalay as the 2nd deputy chairperson. Félicien Tshibangu Kalala was elected the 1st Secretary rapporteur assisted by

¹⁰⁰ Acte Constitutif n° 91-097 du 11 avril 1991 portant création et composition de la Conférence nationale. Available from: <http://mjp.univ-perp.fr/constit/cd1991.htm#h> [Accessed 26 June 2017]

¹⁰¹ Article 2. La Conférence Nationale est chargée de :

- Discuter de toutes les questions d'intérêt national en vue de la démocratisation des options fondamentales de la Troisième République ;
- Elaborer un projet de constitution à soumettre au référendum populaire ;
- Déterminer le contenu de la loi électorale et élaborer un calendrier électoral.

La Conférence statue souverainement sur tous les points énumérés ci-dessus. Elle doit amener le peuple zaïrois à se réconcilier avec lui-même dans la globalité et éviter qu'elle se transforme inutilement en un tribunal populaire ou en une cour de règlement des comptes.

Kibandja Kamala as the 2nd secretary rapporteur and Bakatubingana Tshisuabantu as the 3rd Secretary rapporteur. In addition, 9 tellers or *controllers* representing all parties (the ruling party, the opposition and civil society organisation) were also elected. Each group was represented by three delegates.¹⁰² Officially the CNS began its work on 7th August 1991 to 29th November 1992 when some commissions had not finished and delivered their reports in the plenary. Martin Kalulambi Pongo argues that the CNS had experienced moments of blockages dictated either by the functioning of the office or by the decisions of the organizing power.¹⁰³ In this regard, Adolphe Kilomba finds that the CNS ended its work in disaster while some committees have not yet finished their reports.¹⁰⁴ The Mobutu regime had fear of the report's contents from two Commissions relative to transitional justice. Indeed, in order to move forward, the CNS was divided into various commissions and sub-commissions in which two were related to transitional justice. It is the case of the *Commission Nationale des Assassinats et des Violations des droits de l'homme* (or National Commission dealing with cases of Assassinations and Human Rights violations) and the *Commission Nationale des biens mal acquis* (or National Commission of ill-gotten property).

III.1.1 Commission of assassinations and human rights violations

This Commission was chaired by Mr. Kasusula Djuma Lokali and the Kabamba Mbwebwe was his rapporteur. Both were elected among delegates to the Conference.

Duties and period covered by the Commission

This Commission was tasked to investigate cases relative to assassination as well as serious violation of human rights alleged committed by the security services. The reason why the Commission did not cover abuses committed by non-state actors it because they were prosecuted by the judiciary while those committed by State actors were not prosecuted. In order to conduct its investigations in a precise and thorough manner and therefore achieve its goal, the commission had the mandate to investigate cases of assassinations and human rights violations and therefore decided to do so into two periods. The first covered the period between 1965 and 1971. This period was significant because it started on 24 November 1965

¹⁰² NDI (National Democratic Institute for International Affairs), *Les Leçons à tirer de la Conférence Nationale Souveraine et ses implications pour le Dialogue Intercongolais*, p. 27. Available from: https://www.ndi.org/sites/default/files/1296_cd_natconf2001_0.pdf [Accessed 28 June 2017]

¹⁰³ M. Kalulambi Pongo, *Transition et Conflits Politiques au Congo-Kinshasa*, Karthala, Paris, 2001, p. 31

¹⁰⁴ A. Kilomba Sumaili, *Op. Cit.*, p. 230

-when President Mobutu made his military *coup d'état*- to 1971 – when the country's name was changed to Republic of Zaire. The democratic process was abruptly stopped by the military coup d'état. Instead of handing over power to civilians after five years as he has promised, General Mobutu established a dictatorial regime for three decades. The second covered the period from 1971 to the beginning of the CNS in 1992. It is a misfortune that the colonial period and the immediate post-independence period during which the first elected prime Minister was assassinated were not included in the mandate of the Commission.

First period between 1965-1971

After twenty five years of absolute power without alternation, President Mobutu could no longer resist at the internal pressure for institutional reform and democratisation at the end of the Cold War. Thus, the first period covered by the mandate of the CNS was considered by the Commission of assassination and human rights violations as the cruellest and the most violent period of the Mobutu's regime during which President Mobutu intended to consolidate his power after the *coup d'état*.

Achievements of the Commission for the period between 1965-1971

Regarding the crimes considered, as the Commission would not be able to deal with all of them in details, it has investigated key cases such as the case of four former Ministers who were hanged publicly in what was called the 'Pentecost Plot', the case of the assassination of André Lubaya, the assassination of Pierre Mulele, the case of Moise Tshombe, and the massacre of Students of the University of Kinshasa. As the result of investigation, the Commission's report provided the list of victims and had named all persons involved from the conspiracy of facts to their execution. The Commission highlighted acts of torture, assassination and murder of freedom and democracy fighters or political opponents. Thus, after its investigation, due to the discretion of the Commission, it had documented in detail all the crimes committed in five main cases during that period and therefore, had named President Mobutu along with his collaborators as the principal perpetrators of these crimes. The findings of this commission were hard-hitting, actively criticising President Mobutu and his key deputies. A summary of the synthesis of findings is recorded in Appendix Ia.

Recommendations of the Commission for the period between 1965-1971

In order to address the situations of widespread human rights violations committed between 1965 and 1971, the Commission formulated progressive recommendations which are covered in detail in Appendix Ib.¹⁰⁵ The commission recommended that investigations continue to seek out the truth in key cases, that the bodies of certain victims be exhumed and reburied with dignity and the repatriation of key persons who were assassinated while abroad. The commission also recommended criminal prosecution and their lustration from key political and military institutions. If found guilty, the Commission recommended that these individuals be forbidden from holding State posts for a period of ten years. The Commission also recommended that memorial be erected to remember some of the victims of the Mobutu regime, and that the 4th of June be consecrated a national day of remembrance for the students killed in Kinshasa. Finally, the Commission recommended that compensation and reparations be paid to the families of some of the victims, while the assets stolen from victims were to be returned.

Unfortunately the final report of the Commission was not debated in plenary sessions of the CNS because the CNS President had unilaterally decided to block their hearing to spare President Mobutu any further embarrassment. Nevertheless, the report was released to make it known and for the population to know the job that the commission has done. According to Georges Nzongola, “[t]hroughout the conference and afterwards, Monsignor Monsengwo made it clear by his acts that he was prepared to go to any length to be accommodating to Mobutu. For him, any compromise was necessary if it were the only way of getting the dictator to implicate himself in the democratisation process”.¹⁰⁶

Second period from 1971 to 1992

This period was also characterized by widespread human right violations under Mobutu’s presidency. Among the serious human rights violations, the Commission included cases of torture; extortion; targeted assassinations; abductions; kidnappings and enforced disappearances; massacres of the population; extrajudicial executions; etc.¹⁰⁷ As the Commission could not be able to deal with all abuses in details, it has decided to investigate

¹⁰⁵ See CNS, *Rapport de la Commission des assassinats(...)*, pp. 13-14 ; 25-26 ; 37-37 ; 45-46 ; 57-58

¹⁰⁶ G. Nzongola-Ntalaja, *From Zaire (...)*, p. 9

¹⁰⁷ See A. Kilomba Sumaili, *Op. Cit.*, pp. 269-271

20 following cases: of an attempted coup d'état of 1975; of suspicious death of Lieutenant-colonel Tshibangu in 1977; of the massacre of Idiofa in January 1978; of the war of 80 days; of the trial of so called terrorists; of 13 member of the parliament; the massacre of Idjwi Island; of the massacre of Kabare; of the massacre of Kasa-Vubu Bridge on 17th January 1988; of popular uprising and the rise of price on 1st January 1990; of the massacres of 16th February and 1st March 1992; of the massacre of students of the University of Lubumbashi on 11-12th May 1990; of the massacre of Mbuji-Mayi from 13 to 17 April 1991; of the file of Bikeka Mafuila and others; of Syndicate of Medical Doctors (Synamed); of Lieutenant-colonel Mayolo; of the shooting in Matete in the case of Bindo and Masamuna; of the file of Jean-Marie Kazadi against Yesu Kitenge; of the family Solomogo Kandomba against the deputy Administrator in 1989, and of the medical doctor Kitimini.¹⁰⁸

Findings of the Commission for the period from 1971 to 1992

With regards to this second period, the Commission again provided hard-hitting findings and recommendations that challenged the government in power. These are discussed and summarised in Appendix II. The Commission found that the government and the Executive were ultimately responsible for the deaths of people in several massacres, while the army had been responsible for serious crimes against citizens. President Mobutu was held personally responsible for the arrests and murder of 80 people who were killed for being in the opposition, while the ruling party held a collective responsibility for the deaths of parliamentarians. In sum, the findings implicated the army, security services, the ruling party, the president, the prime minister, regional governors, and those governing the city of Kinshasa amongst others. There were few state organs that weren't implicated in the findings of the commission.

Recommendation of the Commission

In relation to the abuses investigated in 20 cases, the Commission formulated the following key recommendations which are covered in greater depth in Appendix II.¹⁰⁹ The Commission recommended prosecution of key state actors, the lustration of key members of the Mobutu

¹⁰⁸ CNS, *Rapport de la Commission des assassinats(...)*, p. 59

¹⁰⁹ CNS, *Rapport de la Commission des assassinats(...)*, pp. 68-69 ; 72-73; 80-81 ; 88 ; 101-102 ; 107-108 ; 112 ; 115-116 ; 124 ; 132 ; 134-135 ; 160-161 ; 174-178 ; 183 ; 188 ; 190 ; 192 ; 197 ; 200.

regime, the payment of reparations and restitution of seized assets as well as the exhumation and reburial of many victims. The Commission also recommended that memorials be erected to remember those who had been killed. Unfortunately, none of those recommendations were implemented.

III.1.2 Commission of ill-gotten property

Under Article 3 of Ordinance No. 91-010 of 6 March 1991 on the establishment and composition of the CNS, the former was preceded by a preparatory Committee which was tasked to draft the rules of procedure and agenda that were approved by the Plenary Assembly of the CNS. Thus, the Commission was established in accordance with Article 20 of the Rules of Procedure of the CNS. The Commission had started its work on 25 June 1992 and was constituted by 129 members appointed from delegates of civil society (55 members), political parties (36 members), public institutions (33 members) and 5 members invited by the CNS to join the Commission. Commissioners from civil society were many comparing to others because of the assumption to be neutral as they were not part of the political institutions. The Bureau of the Commission was constituted by three organs with two deputies for each (the chair, the rapporteur and the secretariat) and was divided into 7 sub-commissions dealing with acts relative to dishonesty (*détournements*); to spoliations; to property nationalized or *Zairianized*, radicalized and privatized; to unjust enrichment; to control gifts/donations and special contributions; to control foreign aids and development conventions; and to litigation.

With regard to Article 21 of the Rules of Procedure of the CNS, the member of Commission elected Mr Tshilengi wa Kabamba as a chair of the Commission and two deputy chairs namely Ombilingo Sabilo and Christian Badibanga. Mr Lambert Mende Omalanga¹¹⁰ was elected as the rapporteur of the Commission with two deputy rapporteurs respectively Dunia Mutimanwa and Kahungu Mbembe. Mr Masamba-ma-Kiese was elected as the secretariat of the Commission assisted by Kasumba Kahomba and Citondo Koni.¹¹¹

¹¹⁰ Mr Lambert Mende Omalanga is the current Minister of communication, Media and Government Spokesperson since 2008

¹¹¹ CNS (*Conférence Nationale Souveraine*), *Rapport de la Commission des Biens Mal Acquis*, 1992, pp. 1-6. Available from : <http://www.congoone.net/PDF/RapportbienmalacquisCNS.pdf> [Accessed 24 June 2017]

Mandate and challenges of the Commission

The Commission was tasked to investigate cases related to ill-gotten property and formulate practical recommendations allowing all victims including the State to recover their property that have been deprived following diversion, spoliation or unjust enrichment by whoever (official or private person). The process intended to meet the central goal of the CNS allowing alleged offenders to improve themselves and make reparation, repair and reconcile the nation (or, “*pour s’amender et réparer, réparer et se réconcilier*”).¹¹²

However, the Commission had faced some challenges such as the inadequate logistical support; the impossibility of carrying out the missions of investigation inside and abroad even these missions were covered by the CNS’s budget; the refusal of collaboration from State’s authorities, etc. The Prime Minister, Nguz a Karl-I-Bond, for example ordered all ministers and Officers in public services to avoid receiving or to close their doors to members of the Commission even though members of his own political party were among delegates at the CNS. Soon after, President Mobutu justified indirectly his refusal to meet the Commission arguing in a public statement that the Commission’s action was “an agitation of embittered to impoverish the dignitaries of the old regime”.¹¹³ Consequently, the Commission did not have access to official documentations in support to certain allegations regarding some cases in order to do the inventory of properties and identify their holders. Indeed, the Commission was guided by Article 32 of the Constitutional Act of the Transition decreeing sacred and inviolable public property on one hand, and the campaign for change, transparency, justice and fairness enacted by the CNS on the other hand.¹¹⁴

Achievements of the Commission

As result of the investigations, the Commission had found the following facts relative to political and economic crimes. It is the case of:¹¹⁵

1. Multiplication of bank accounts of public enterprises, embassies or certain public services or any other procedure on the implementation of the budget with a view to facilitating the diversion of public funds;

¹¹² CNS, *Rapport de la Commission des Biens Mal Acquis*, p. 7

¹¹³ CNS, *Rapport de la Commission des Biens Mal Acquis*, p. 9

¹¹⁴ *Idem.*, pp. 9-13

¹¹⁵ *Idem.*, p. 15

2. Institutionalization of extra-budgetary expenditure in a public service to the detriment of budget expenditure;
3. Establishment or approval of fake balance sheets or fictitious;
4. Responsibility in the poor organization of the Bank of Zaire or of tax collecting services, misappropriation of tax revenues;
5. Deliberate violation of financial agreements signed with foreigner partners; diversion of international aid;
6. Spoliation of property of the State or of individuals (in particular under the policy of *Zairianization*, radicalization or privatization);
7. Abuse of the state's foreign exchange resources;
8. Abuse of social assets (savings, credits, etc.);
9. Looting of mineralogical resources (gold, diamond, etc.), forestry, livestock, tourism or fisheries of the State;
10. Abuse by trading in influence or unlawful confiscation of property lands, forests and green spaces;
11. Bradage of the currency (action to make currency at low prices) ;
12. Non-repatriation of export currencies;
13. Capital evasion and tax evasion;
14. Free distribution or sale at low prices of buildings, vehicles and shares of State ;
15. Over-billing of projects and commissions increasing external debt.

Recommendations of the Commission

The Commission had provided a complete list of all alleged offenders liable with regards to ill-gotten properties. However, as the Commission did not have a judicial mandate and was not intended to transform itself into a special tribunal, it had suggested a procedure based on triple responsibility: criminal, civil and political. In the event of criminal liability, the Commission suggested to submit cases of people alleged offenders to the courts of law in order to hold them accountable and take measures for the restitution of the property ill-gotten to the benefit of the State or of any victim. For civil liability, the Commission provided that it will be submitted before the courts and tribunal that will have jurisdiction. However, regarding political responsibility, the Commission urged the CNS that it was under its jurisdiction to take the lustration measures against whoever it found guilty of appropriating

ill-gotten property. Under the Rules of Procedure, the CNS would have limited access to public offices or order the loss the civil and political rights to run or exercise any political mandate or political function. The sanction would apply for a period proportional to the damage caused by taking into account both the circumstances of time during which to the owner was disposed of his/her property, the repentance, the spirit of amendment and the will to repair.¹¹⁶

In order to eradicate the misconduct and bad habits of citizens characterized by pillage and ill-gotten of public properties as well private properties, the Commission suggested additional recommendations that include the following:¹¹⁷

1. To institutionalize and implement the principle consisting for the President, Ministers and public officials to declare their assets and income before taking office.
2. The reform of financial system to institutionalise prior administrative checks on the regularity and appropriateness of all expenditure including those of the presidency of the Republic.
3. To carry out an inquiry into any candidate for high public office, particularly in the case of persons who have exercised such office or function during the Mobutu's rule;
4. To consider the ill-gotten property as an economic crime that is imprescriptible or which are not subject to any limitations of time. In this connection, individual who had acquired assets and properties fraudulently must be held accountable without delay.
5. The government must institute legal proceedings allowing the restitution and reallocation of properties and assets looted or ill-gotten.

III.1.3 Institutional reform

Under Article 2 of the Constitutional Act No 91-097 of 11th April 1991, delegates to the CNS were requested to draft a new Constitution that would be submitted to popular referendum. Thus, in August 1991 the CNS adopted a Transitional Act to serve as an interim Constitution. The Act established a parliamentary system with a figurehead president, a 453-member transitional parliament called *Haut Conseil de la République*, a Prime Minister to serve as the head of government. President Mobutu and delegates to the CNS agreed to be binding by the

¹¹⁶ CNS, *Rapport de la Commission des Biens Mal Acquis*, p. 19

¹¹⁷ *Idem.*, pp. 200-204

Comprehensive Political Agreement (or *le Compromis Politique Global*), which included among principles that no transitional institution should use its constitutional powers to prevent any other from functioning, and a power-sharing principle. At the end of the work of the CNS, following several revelations, the report from the commissions of assassinations and ill-gotten property to economic policy, political structures and minority rights, including those of Pygmies and immigrants were discussed in the plenary and adopted, but the CNS adopted a new Constitution, Mobutu remained in power as President, delegates appointed members of the transitional parliament, and a Prime Minister from the opposition was appointed, Mr Etienne Tshisekedi.¹¹⁸ Nevertheless, President Mobutu refused to recognise the CNS's decisions. The delegates to the CNS elected the leader of UDPS, Mr Etienne Tshisekedi, as Prime Minister of the transitional government and member of the HCR elected the Archbishop Monsengwo as the speaker of the transitional parliament. Nevertheless, President Mobutu refused to accept the authority of the HCR, instead reconvening the former legislature.¹¹⁹ Then, in violation of the Transitional Act, on 1st April 1994 President Mobutu dismissed the government of the Prime Minister Tshisekedi and appointed Mr Faustin Birindwa who was the defector from UDPS to run a parallel government. This situation opened a series of political crises which were exacerbated by the outbreak of the 1996 armed conflict.

III.2. Transitional justice mechanisms dealing with the legacy of armed conflicts

This section analyses traditional mechanism of transitional justice (*Barza Inter-communautaire*) that was instituted in North-Kivu province in the aftermath of the 1996-1997 armed conflict. Thereafter, judicial and non-judicial mechanisms of transitional justice adopted at the Inter-Congolese Dialogue (ICD) held in Pretoria in December 2002 are analysed as well as different attempts to address the past following the 2008 Conference and the 2009 Peace Accord.

¹¹⁸ A. Kilomba Sumaili, *Op. Cit.*, p. 230

¹¹⁹ S-W. Meditz and T. Merrill (eds), *Zaire: A Country Study*, 4th ed., Federal Research Division, Library of Congress, 1993, pp. xlix-1

III.2.1 Barza Inter-communautaire

The *Barza inter-communautaire* is a community-level conflict mediation institution dealing with conflicts at the grassroots level in eastern part of the Democratic Republic of Congo, particularly in the Province of North-Kivu.¹²⁰ In this regard, *Barza* is a traditional dispute settlement systems or a traditional form of reconciliation part of non-judicial mechanism of transitional justice.

Indeed, the word *Barza* originated from the Swahili word, *Baraza*, which is a traditional structure of elders sitting together to discuss the various aspects of community life and to resolve intra- or inter-community problems in order to live together in harmony.¹²¹ In this regard, it is served as an informal justice system based on custom and led by the traditional authorities for each ethnic group regarding different areas. Such structures existed before the colonial period, but during colonization it was considered as a form of indigenous or traditional justice which was used to try native people while the formal Courts tried foreigners.¹²²

The Province of North-Kivu has nine major ethnic groups (Hunde, Hutu, Kano, Kumu, Nande, Nyanga, Tembo, Tutsi and Twa), and each one has its own *Barza communautaire* with different names in local languages. It is the case for example of *Kyaghanda* in the Nande community and *Bushenge* in the Hunde and Kumu communities. Considering that the period between March 1993 and early 1996, the Province of North-Kivu has experienced interethnic conflicts, in the aftermath of the AFDL's armed conflict the government of President Kabila was inspired by the *Barza* system to established in Goma the Pacification and Concord Commission (*Commission de Pacification et de Concorde*, CPC) in 1997 in order to allow people to live together peacefully.¹²³ After a year of operations, Phil Clark acknowledges that the CPC established a technical body to help coordinate peacebuilding and mediation processes across North Kivu. A month of negotiations led to the creation of *Barza inter-communautaire* to consolidate the CPC's operations and therefore become independent and

¹²⁰ S-P. Tunamsifu, *Culture of Peace I (...)*, p. 168

¹²¹ See S-P. Tunamsifu, *Culture of Peace I (...)*, p. 172; C. Villa-Vicencio, P. Nantulya and T. Savage, *Building Nations: Transitional Justice in the African Great Lakes Region*, Institute for Justice and Reconciliation, Cape Town, 2005, p. 58

¹²² S-P. Tunamsifu, *Culture of Peace I (...)*, p. 171

¹²³ See S-P. Tunamsifu, "Transitional Justice and Peacebuilding (...)", pp. 76-77 and S-P. Tunamsifu, *Culture of Peace I (...)*, pp. 170-171

non-partisan organ.¹²⁴ Thus, the *Barza inter-communautaire* is a combination of different *Barza communautaire* of different indigenous groups in a super-organ at the provincial level that helps to resolve low-level disputes between communities before they escalate into violent conflicts. Therefore, it is a traditional dispute resolution system part of non-judicial mechanism of transitional justice. The *Barza inter-communautaire* is composed of elected wise four men and one woman from the different communities who meet with the purpose of treating common problems: preventing and settling disputes between communities; healing the wounded after conflict; and promoting harmony in the society. It tends to deal with interethnic conflicts, and is encouraged by both traditional and political authorities the North-Kivu province.

Between 1998 and early 2004, the *Barza* structures at the community level generally succeeded in resolving ethnic disputes in North Kivu, particularly those over land ownership, ensuring there were few cases of ethnic violence in its sphere of influence. It was successful because people the disputes were tried by wised people from the community using local knowledges of disputes resolution. Evaluating the overall contribution of the Barza, a European Union mission to the DRC in 2001, as cited by Clark reported that:

Together with other complementary initiatives in North Kivu, the *Barza* [has] been able to find peaceful and sustainable solutions to some conflicts and to promote peaceful coexistence. There has been no ‘ethnic’ violence in the *Barza* sphere of influence since 1997, despite regular attempts by one or another authority or armed group to spark new clashes. Moreover, partly as a result of the *Barza*[’s] work, there is now a trend among the displaced people to settle in multi-ethnic rather than mono-ethnic villages in North Kivu. Despite repeated requests to donors, the *Barza* has not received any financial support.¹²⁵

During intensive armed conflicts in the eastern part of DRC in which the members of both armies of Rwanda and Uganda were involved in mass killings and lootings, the committee of the *Barza inter-communautaire* has gone beyond the borders of the DRC by sending delegates to meet the President of Rwanda in Kigali and of Uganda in Kampala for two reasons: both countries have occupied the eastern part of DRC by supporting militarily different rebellion movements, and the government of DRC could not meet those countries accused of aggression.¹²⁶ Both meetings succeeded in decreasing the attacks against civilian

¹²⁴ P. Clark, “Ethnicity, Leadership and Conflict Mediation in Eastern Democratic Republic of Congo: The Case of the Barza Inter-Communautaire”, *Journal of Eastern African Studies*, vol. 2(1), 2008, p.6

¹²⁵ P. Clark, Art. Cit., p. 7

¹²⁶ S-P. Tunamsifu, Culture of Peace I (...), p. 172

population in areas occupied by rebel movements supported by both countries in the eastern DRC.

III.2.2 Mechanisms of transitional justice adopted at the Inter-Congolese Dialogue

In 2002, delegates to the Inter-Congolese Dialogue held in Pretoria, South Africa were aware that during the different stages of various armed conflicts, rebel movements –local and foreign- engaged in widespread human rights violations and committed war crimes and crimes against humanity. Thus, in order to end the armed conflicts and put an end to cycle of violence delegates¹²⁷ opted to deal with the past through transitional justice mechanisms. Among mechanisms of transitional justice that were chosen to deal with the past was the Truth and Reconciliation Commission (Resolution No: ICD/CPR/04) and they requested and recommended that an international criminal tribunal be established for the DRC (Resolution No: ICD/CPR/05). Besides, for the purpose of achieving national reconciliation, delegates recommended that a partial amnesty shall be granted on the basis of a law adopted by the transitional national assembly and promulgated by presidential decree-law. From this perspective, Alison Bisset asserts that transitional justice ‘comprises 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’.¹²⁸

Indeed, fourteen key informants participated in this study.¹²⁹ During separate interviews held in Goma (capital city of North-Kivu province), they unanimously revealed that the adoption of transitional justice mechanisms was motivated by the fact that delegates to the Inter-Congolese Dialogue were in favour of any initiative that could put an end to the vicious circle of armed conflicts; bring peace; allow the reunification of the country or lead to the national

¹²⁷ Delegates to the Inter-Congolese Dialogue were constituted by various elements and entities such as the Government of the Democratic Republic of the Congo, the Congolese Rally for Democracy (RCD), the Movement for the Liberation of the Congo (MLC), the political opposition, civil society, the Congolese Rally for Democracy/Liberation Movement (RDC/ML), the Congolese Rally for Democracy/National (RCD/N), the Mai-Mai (see the Preamble of the Global and Inclusive Dialogue)

¹²⁸ A. Bisset, *Truth Commissions and Criminal Courts*, Cambridge, Cambridge University Press, 2012, p. 10 citing L. Bickford, *The Encyclopaedia of Genocide and Crimes against Humanity*, 3 vol., New York, Macmillan Reference, 2004, p. 1045

¹²⁹ A list of those interviewed for this study can be found in Appendix III

unity. In particular, three key informants¹³⁰ have revealed that the adoption of the transitional justice mechanisms (the case of amnesty and the reform of security sector allowing the integration of rebels) has put an end to armed conflicts; has facilitated the reunification of the country; the national unity; bring peace and allowed the process of the sharing of powers among the belligerents. Without the guarantee of granting partial amnesty, the integration rebels into the Army and the National Police and the principle of power sharing the armed conflict could not be ended. However, four key informants admitted that the mechanisms of transitional justice were preferred because of the scale of serious crimes committed. Regarding the state of courts and tribunals in the country, they were limited and unable to investigate and prosecute widespread crimes committed by different belligerents.¹³¹ At the national level, the judiciary was affected by various armed conflicts and therefore unable to deal with abuses committed.

Seven key informants revealed that the choice of transitional justice mechanisms was motivated by the fact that it could lead to the reconciliation and peace; allow victims to be heard and provide an opportunity to alleged perpetrators of serious crimes to tell their story and be the tool to fight against impunity.¹³² At the Inter-Congolese Dialogue, delegates were encouraged to adopt any mechanism that could lead to the end of the armed conflict in the country. For example, one key informant said that “the adoption of the mechanisms of transitional justice was motivated by the concern of reconciliation and peace”.¹³³ Besides, another key informant said that “only transitional justice mechanisms allow victims to be heard and alleged perpetrators to tell their versions of the facts and ask for forgiveness”.¹³⁴ In this opinion, participants referred to two mechanisms of transitional justice such as the Truth and reconciliation commission and the trials. Two others key informants declared that “the mechanisms of transitional justice were adopted in order to allow the different actors to speak

¹³⁰ The representative of the Higher Military Auditor interviewed in Goma on 28 June 2017; Adv. Félicien Hitimana interviewed in Goma on 04 July 2017, and the General Prosecutor, Mr André Mvunzu Luwau , interviewed in Goma on 12 July 2017

¹³¹ Mr Denis Masumbuko Ngwasi interviewed in Goma on 29 June 2017; Ms Chantal Kambibi interviewed in Goma on 03 July 2017; Mr Thomas d’Aquin Muiti Luanda Mustapha interviewed in Goma on 06 July 2017 and Mr Kleti Kakule Komela interviewed in Goma on 07 July 2017.

¹³² Mr Denis Masumbuko Ngwasi interviewed in Goma on 29 June 2017; Mr Théo Mpabuka interviewed in Goma on 29 June 2017; Ms Chantal Kambibi interviewed in Goma on 03 July 2017; Key informant #07 interviewed in Goma on 05 July 2017; Adv. Jean Paul Lumbu Lumbu Mutanana interviewed in Goma on 10 July 2017; Mr Emmanuel Kamanzi Runigi interviewed in Goma on 11 July 2017 and Mr Prince Kihangi Kyamwami interviewed in Goma on 13 July 2017.

¹³³ Adv. Jean Paul Lumbu Lumbu Mutanana interviewed in Goma on 10 July 2017

¹³⁴ Ms Chantal Kambibi interviewed in Goma on 03 July 2017

about the problems that were plaguing the country (sources of conflict), to deal with all the issues that divide the nation in order to find the solution”.¹³⁵

However, six key informants stated that these transitional justice mechanisms have been inspired by the South African model where South Africans reconciled themselves after severe atrocities that were committed during the Apartheid era.¹³⁶ For example, one key informant admitted that “it was the mediation team - President Thabo Mbeki and Sir Ketumile Masire - who had influenced the delegates to the Inter-Congolese Dialogue to adopt the transitional justice mechanisms in order to put an end to the vicious circle of armed conflicts”.¹³⁷ On the other hand, another key informant said that “international actors had influenced the adoption of transitional justice mechanisms to avoid prosecution against the members of the rebel groups they had supported and provided arms”.¹³⁸ Both explanations are true because delegates to the Inter-Congolese Dialogue were not aware and had not experienced, at that time, of the TRC or the amnesty process. That is why as none of commissioners that were appointed knew about the transitional justice mechanism travelled in South Africa to be trained and to learn from its model.

It is better to emphasized that the mechanisms of transitional justice in the DRC were adopted in a particular context of a vicious circle of armed conflicts in which serious crimes were committed. As none of warring parties could defeat others, a process of negotiation was convened in which representatives of all warring parties as well as those from unarmed civil opposition and from civil society organisations. Thus, any mechanism that could allow putting an end to the vicious circle of armed conflicts, to the withdrawal of foreign armies, to the reunification of the country, and to set up the transitional government was welcomed. That is why the mediation team suggested the adoption of the mechanisms of transitional justice in the DRC that would be helpful in order to end the circle of conflicts, reconcile the offenders and victims of atrocities in the DRC.

¹³⁵ Mr Emmanuel Kamanzi Runigi interviewed in Goma on 11 July 2017 and Mr Prince Kihangi Kyamwami interviewed in Goma on 13 July 2017

¹³⁶ Adv. Félicien Hitimana interviewed in Goma on 04 July 2017; Key informant #07 interviewed in Goma on 05 July 2017; Adv. Jean Paul Lumbu Lumbu Mutanana interviewed in Goma on 10 July 2017; Mr Emmanuel Kamanzi Runigi interviewed in Goma on 11 July 2017; the representative of the Higher Military Auditor interviewed in Goma on 28 June 2017, and Mr Denis Masumbuko Ngwasi interviewed in Goma on 29 June 2017

¹³⁷ Mr Denis Masumbuko Ngwasi interviewed in Goma on 29 June 2017

¹³⁸ The representative of the Higher Military Auditor interviewed in Goma on 28 June 2017

Regarding actors who called for the adoption of mechanisms of transitional justice, this study involves some individuals who attended the Inter-Congolese Dialogue as well as the Goma Peace Conference of 2008.

Nine key informants revealed that “the amnesty was requested by the delegates from the armed groups in order to escape prosecution”.¹³⁹ One key informant revealed that the delegates of rebel movements such as the RCD, the MLC and the RCD-KML had requested amnesty.¹⁴⁰ In addition, another key informant said that “all belligerents who had armed groups and armed forces needed the amnesty because they were directly and indirectly responsible for serious crimes. Curiously, in adopting these mechanisms, delegates to the inter-Congolese Dialogue did not specify to whom the amnesty would be granted”.¹⁴¹ However, another key informant said that “the rebels requested amnesty as security measure because the people who were fighting against the National Army could not trust and start working with the former government within the government of national unity during the transition without a guarantee that they will not be arrested upon arrival in the Capital city. Both the rebels and the former government needed amnesty because they were all alleged perpetrators of serious crimes and human rights violations”.¹⁴² During various armed conflicts both parties committed serious violations of human rights. Following those allegations, they did not want to face justice. That is why at to the Inter-Congolese Dialogue they pushed for the adoption of the amnesty.

About the TRC, seven key informants revealed that the TRC was requested by the delegates from civil society organisations so that the victims may know what happened to their loved ones and can reconcile with their offenders.¹⁴³ For example, one key informant revealed that “after the adoption of the amnesty, delegates representing civil society organisations had

¹³⁹ Mr Denis Masumbuko Ngwasi interviewed in Goma on 29 June 2017; Mr Théo Mpabuka interviewed in Goma on 29 June 2017; Key informant #04 interviewed in Goma on 30 June 2017; Adv. Félicien Hitimana interviewed in Goma on 04 July 2017; Mr Thomas d’Aquin Muiti Luanda Mustapha interviewed in Goma on 06 July 2017; Adv. Jean Paul Lumbu Lumbu Mutanana interviewed in Goma on 10 July 2017; Mr Emmanuel Kamanzi Runigi interviewed in Goma on 11 July 2017; General Prosecutor of the North Kivu, André Mvunzu Luwau, interviewed in Goma on 12 July 2017, and Adv. Fataki Luhindi Géorges interviewed in Goma on 12 July 2017.

¹⁴⁰ Mr Théo Mpabuka interviewed in Goma on 29 June 2017

¹⁴¹ Adv. Félicien Hitimana interviewed in Goma on 04 July 2017

¹⁴² Mr Emmanuel Kamanzi Runigi interviewed in Goma on 11 July 2017

¹⁴³ Mr Denis Masumbuko Ngwasi interviewed in Goma on 29 June 2017; Mr Theo Mpabuka interviewed in Goma on 29 June 2017; Key informant #04 interviewed in Goma on 30 June 2017; Mr Thomas d’Aquin Muiti Luanda Mustapha interviewed in Goma on 06 July 2017; Adv. Jean Paul Lumbu Lumbu Mutanana interviewed in Goma on 10 July 2017; Mr Emmanuel Kamanzi Runigi interviewed in Goma on 11 July 2017, and Adv. Fataki Luhindi Géorges interviewed in Goma on 12 July 2017.

wished that the amnesty could not be general because alleged perpetrators bearing the greatest responsibility of the crimes committed should tell the truth of what they had committed”.¹⁴⁴ Another key informant added that “the TRC was adopted because the delegates to the inter-Congolese Dialogue wished to solve the problems and to analyse the root causes of interethnic conflicts”.¹⁴⁵ However, another key informant argued that “politicians wanted to get rid of the atrocities of the past and restart on a new basis (forgetting the past and looking to the future). The international actors insisted on mutual forgiveness through the enactment of a special law”.¹⁴⁶

In the aftermath of conflicts or authoritarian regimes, States are often confronted by the dilemmas of transitional justice, which is, choosing whether to impose criminal sanctions against abusers or employ non-criminal sanctions to facilitate reconciliation and rebuild the nation. At the Inter-Congolese Dialogue, following the need for reconciliation and learning from South African model of reconciliation with the past, delegates adopted the TRC. About the amnesty process, there were two tendencies: delegates from non-armed groups were against a blanket amnesty while delegates having armed forces were in favour of amnesty arguing that it was a guarantee for their security. In this regard, the amnesty was considered as a tool to escape prosecutions.

Therefore, analysing different resolutions adopted in Lusaka Ceasefire Agreement and in the Global and Inclusive Agreement, it is clear that judicial mechanism and non-judicial mechanisms of transitional justice were adopted to deal with past atrocities in the DRC. For judicial mechanism, delegates adopted the prosecution through an international ad hoc tribunal; and for non-judicial mechanisms the truth and reconciliation commission and amnesty were adopted. Unfortunately, the United Nations was unwilling to establish an ad hoc tribunal to deal with past abuses in the DRC. Thus, this subsection analyses judicial mechanism and non-judicial mechanisms adopted by delegates in the Global and Inclusive Agreement on Transition in the DRC.

¹⁴⁴ Mr Denis Masumbuko Ngwasi interviewed in Goma on 29 June 2017

¹⁴⁵ Mr Emmanuel Kamanzi Runigi interviewed in Goma on 11 July 2017

¹⁴⁶ Mr Kleti Kakule Komela interviewed in Goma on 07 July 2017

Judicial mechanism

Judicial mechanisms of transitional justice include national judicial prosecution, if domestic courts and tribunals have the capacity, if they are independent, and if they have not been party to the conflict. However, it is rare to find a fair and impartial judicial system in post-conflict societies as crimes could have been committed against the political will of the perpetrator. Besides, courts and tribunal could have been destroyed as an effect of the armed conflict, or politicized under the previous regime.¹⁴⁷ That is why hybrid tribunals are also part of judicial mechanisms of transitional justice. They are composed of international and local judges created by a treaty or an agreement between the UN and the government concerned. To this list, it can be added the International Criminal Court (ICC) exercising its jurisdiction when States are unwilling or genuinely unable to carry out the investigation or prosecution.¹⁴⁸

Indeed, in the aftermath of a violent armed conflict in the DRC, delegates to the Inter-Congolese Dialogue recommended that crimes under international law that had been committed since 30 June 1960 and those committed during different armed conflicts of 1996 and 1998 that remained unpunished be prosecuted by an *ad hoc* criminal court (Resolution No: ICD/CPR/05). From this recommendation it can be noticed that delegates were aware that there was the lack of trust in the Congolese courts and tribunals by the population due to the level of corruption in which President Mobutu had left the judiciary system,¹⁴⁹ but also due to the fact that judicial infrastructures were almost destroyed due to the armed conflicts. Assessing the Congolese criminal justice system, Luzolo and Bayona assert that the Congolese judicial system had almost collapsed completely and could not meet the requirements of a fair trial of the crimes committed in the DRC under the jurisdiction of the ICC.¹⁵⁰

Soon after the government of the national and transition took office on 30 June 2003, President Kabila attended the 58th session of the United Nations General Assembly on 23 September 2003. Following the Resolution No ICD/CPR/05 the President requested the establishment of an *ad hoc* international criminal tribunal for the DRC to deal with widespread crimes committed. Nevertheless, argues Mpongola, the UN Security Council was

¹⁴⁷ S.P. Tunamsifu, *A Comparative Study of Transitional Justice (...)*, p. 47

¹⁴⁸ S-P. Tunamsifu, "Transitional Justice and Peacebuilding (...)", pp. 65

¹⁴⁹ L. Despouy, Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural, including the Right to Development : Mission to the Democratic Republic of the Congo,

¹⁵⁰ B-L-E. Luzolo and M-N-A. Bayona, *Manuel de Procédure Pénale*, PUC., Kinshsa, 2011, p. 763

unwilling to do so.¹⁵¹ Therefore, as it is provided by Articles 13(a) and 14 of the Rome Statute that a State Party may refer to the Prosecutor a situation of crimes within the jurisdiction of the Court that have been committed on its territory requesting their prosecution. Then, because the UNSC was not keen to create an *ad hoc* international criminal tribunal for the DRC and because the situation of widespread crimes committed in the DRC could not be left unaddressed, on 19 April 2004 the DRC decided formally to refer as the whole the situation to the ICC in order to work on the reform of the judicial sector as well as the previous legislation, to update magistrates in issues around international humanitarian law and mass violations of human rights. The government made this referral as a State Party that ratified the Rome Statute in April 2002 order to fight against impunity. Based on the referral, the ICC's Prosecutor announced his decision to open the first investigation on 23 June 2004. The ICC investigations have focused mainly on alleged crimes committed since 1st July 2002 (Court's jurisdiction) even alleged war crimes and crimes against humanity were reported since 1990's. Four cases of crimes perpetrated in Ituri (Thomas Lubanga Dyilo, Germain Katanga, Mathieu Ngudjolo Chui, and Bosco Ntaganda) and two cases of crimes committed in Kivu by Rwandan individuals (Callixte Mbarushimana and Sylvestre Mudacumura) were opened.¹⁵² The ICC convicted two cases: *The Prosecutor v. Thomas Lubanga Dyilo* and *The Prosecutor v. Germain Katanga*.¹⁵³ The case *The Prosecutor v. Ngudjolo Chui* was acquitted, however in *The Prosecutor v. Callixte Mbarushimana* the Pre-Trial Chamber I declined to confirm the charges.¹⁵⁴ The case *The Prosecutor v. Bosco Ntaganda* is still ongoing and *The*

¹⁵¹ Mpongola, Diku D. "Dealing with the past in the DRC: The path followed?" In: *Politorbis Dealing with the past*. Bern, Federal Department of Foreign Affairs, 2010, p. 182

¹⁵² See S.P. Tunamsifu, *A Comparative Study of Transitional Justice (...)*, pp. 157-158

¹⁵³ On 14th March 2012, Thomas Lubanga Dyilo was found guilty of the war crimes of enlisting and conscripting children under the age of 15 years and using them to participate actively in hostilities (child soldiers). Therefore, he was sentenced to a total of 14 years of imprisonment on 10 July 2012 and the Appeals Chamber confirmed the verdict and sentence on 1st December 2014. He was transferred to the *Prison Centrale de Makala* in Kinshasa (DRC) to serve his sentence of imprisonment.

On 7th March 2014, Katanga was found guilty as an accessory to one count of a crime against humanity (murder) and four counts of war crimes (murder, attacking a civilian population, destruction of property and pillaging). Thus, he was sentenced to a total of 12 years' imprisonment and on 25 June 2014, both the Defence and Prosecution withdrew their appeals. However, the time spent in detention at the ICC – between 18 September 2007 and 23 May 2014 – was deducted from the sentence. For more read ICC-01/04, 'Situation in the Democratic Republic of the Congo'. Available from: <https://www.icc-cpi.int/drc> [Last visiting 1st July 2017]

¹⁵⁴ On 18 December 2012, Mathieu Ngudjolo Chui was acquitted of the charges of war crimes and crimes against humanity and the Trial Chamber II ordered his immediate release. On 20 December 2012, the Prosecution appealed the verdict and on 27 February 2015, the verdict was upheld by the Appeals Chamber. For Callixte Mbarushimana the Pre-Trial Chamber I declined to confirm the charges and did not commit the case to trial. The Prosecution's appeal was dismissed. On 23 December 2011, Mr Mbarushimana was released from the ICC custody. The case is considered closed unless and until the Prosecutor submits new evidence.

Prosecutor v. Sylvestre Mudacumura, the latter is still at large.¹⁵⁵ Investigation and prosecution started in Ituri because the situation at that time was very critical and required urgent prosecution. It is a misfortune that any of the warlords from RCD, MLC, CNDP, Mai-Mai, etc. involved in widespread violations of human rights and international humanitarian law have not yet being prosecuted by the ICC. Instead of being prosecuted, most of them have been granted important positions in the security sector services and the government. As the ICC does not apply any distinction based on official capacity (Article 27 of the ICC's Statute), it remained unclear why the ICC is not prosecuting State and non-States actors bearing the greatest responsibility in the abuses committed in the eastern part of the DRC.

In the DRC, only military courts and tribunals had jurisdiction to try serious crimes under international law. But since 2013, civil courts and tribunals have the jurisdiction to investigate and try serious crimes if perpetrators acted without arms. Indeed, twelve key informants participating in this study said that the Congolese judicial system in the current context cannot do anything because the senior officials allegedly responsible for serious crimes and integrated into the security services or who become ministers and members of the parliament are part of the presidential majority and have become untouchables.¹⁵⁶ These key informants revealed that justice at the national level is being held in hostage by the current regime that protects alleged perpetrators embedded in security services and public institutions. The Kabila regime deprives the judiciary of the financial and material resources to pursue past abuses. This is why the judiciary at the national level is not independent and

¹⁵⁵ Ntaganda is prosecuted by the ICC as a former deputy chief of general staff for military operations in Lubanga's UPC/FPLC for his personal criminal responsibility in the alleged war crimes of conscripting, enlisting children under the age of fifteen and using them to participate actively in hostilities in Ituri. On 18 March 2013, he voluntarily surrender to the US Embassy in Rwanda where he requested a transfer to the ICC. On 22 March, he was transferred to the ICC. On 9 June 2014, Pre-Trial Chamber II unanimously confirmed charges consisting in 13 counts of war crimes, crimes against humanity allegedly committed in 2002-2003 in the Ituri. His case is still ongoing.

About Sylvestre Mudacumura a warrant of arrest was issued for on 13 July 2012. The suspect is still at large. Until Mr Mudacumura is arrested and transferred to the seat of the Court in The Hague, the case will remain in the Pre-Trial stage. The ICC does not try individuals unless they are present in the courtroom. For more read ICC-01/04, 'Situation in the Democratic Republic of the Congo' Available from: <https://www.icc-cpi.int/drc> [Last visiting 1st July 2017]

¹⁵⁶ Representative of the Higher Military Auditor interviewed in Goma on 28 June 2017; Mr Theo Mpabuka interviewed in Goma on 29 June 2017; Ms Chantal Kambibi interviewed in Goma on 03 July 2017; Key informant #04 interviewed in Goma on 30 June 2017; Adv. Félicien Hitimana interviewed in Goma on 04 July 2017; Key informant #07 interviewed in Goma on 05 July 2017; Mr Thomas d'Aquin Muiti Luanda Mustapha interviewed in Goma on 06 July 2017; Adv. Jean Paul Lumbu Lumbu Mutanana interviewed in Goma on 10 July 2017; Mr Emmanuel Kamanzi Runigi interviewed in Goma on 11 July 2017; General Prosecutor of the North Kivu, André Mvunzu Luwau, interviewed in Goma on 12 July 2017; Adv. Fataki Luhindi Géorges interviewed in Goma on 12 July 2017, and Mr Prince Kihangi Kyamwami interviewed in Goma on 13 July 2017.

any effort from military or civil prosecutors to investigate cases or to prosecute untouchable persons is stifled by the interference of the executive or senior military commanders.

For example, from the experience of one key informant “magistrates have the will but the interference of the executive and other senior military authorities do not allow the prosecution of suspected perpetrators integrated into public institutions. In addition to these interferences, the executive power deprives judicial institutions of the financial means to carry out investigations”.¹⁵⁷ That is why another key informant considered that “as the high-ranking officials responsible for serious crimes participate in political institutions and in the army, it is like we have already erased the picture (forgetting the past). These officials have become untouchable and the judiciary in the current context will not be able to worry them”.¹⁵⁸ In this regard, another key informant said that “we must formally forget the past in order to begin the national reconstruction of the country”.¹⁵⁹ Thus, another key informant argued that “in order to turn the page and move forward, the DRC needed to adopt the blanket amnesty as is it was the case in South Africa”.¹⁶⁰

For the judiciary to be able to fight against impunity at the national level, four key informants acknowledged that there is a need for the DRC to have a new leadership (head of the State) capable of assuming its responsibility; determined to promote the culture of accountability and the reform of the judicial system.¹⁶¹

Regarding the ICC, eight key informants believed that the ICC is an alternative to prosecution at the national level. The ICC must be encouraged because it ignores the official status of the alleged perpetrators of serious crimes.¹⁶² For example, one key informant stated that “the existence of the ICC is like a gold burden as a complementary body that has the means to carry out investigations and prosecute individual bearing the greatest responsibility

¹⁵⁷ Representative of the Higher Military Auditor interviewed in Goma on 28 June 2017

¹⁵⁸ Mr Theo Mpabuka interviewed in Goma on 29 June 2017

¹⁵⁹ Mr Denis Masumbuko Ngwasi interviewed in Goma on 29 June 2017

¹⁶⁰ Mr Emmanuel Kamanzi Runigi interviewed in Goma on 11 July 2017

¹⁶¹ Adv. Félicien Hitimana interviewed in Goma on 04 July 2017; Mr Emmanuel Kamanzi Runigi interviewed in Goma on 11 July 2017; Mr Prince Kihangi Kyamwami interviewed in Goma on 13 July 2017, and Mr Thomas d’Aquin Muiti Luanda Mustapha interviewed in Goma on 06 July 2017.

¹⁶² Representative of the Higher Military Auditor interviewed in Goma on 28 June 2017; Key informant #04 interviewed in Goma on 30 June 2017; Adv. Félicien Hitimana interviewed in Goma on 04 July 2017; Mr Kleti Kakule Komela interviewed in Goma on 07 July 2017; Adv. Jean Paul Lumbu Lumbu Mutanana interviewed in Goma on 10 July 2017; General Prosecutor of the North Kivu, André Mvunzu Luwau, interviewed in Goma on 12 July 2017; Adv. Fataki Luhindi Géorges interviewed in Goma on 12 July 2017, and Mr Prince Kihangi Kyamwami interviewed in Goma on 13 July 2017.

for serious crimes”.¹⁶³ Another key informant warned however, that “the ICC alone will not be able to investigate widespread serious crimes and prosecute all alleged perpetrators bearing responsibility because they are very numerous”.¹⁶⁴

From the above, that with regard to past abuses no warlord (especially from the major rebel movements such as AFDL, RDC, MLC, RCD-ML, RCD-N, CNDP and Mai-Mai or foreign non-State actors) has been tried at the national level. The lack of financial resources and the interference of the executive in judicial matters as well as of military hierarchical authorities testify the lack of political will of the current regime to prosecute past crimes. Some cases which are not related to armed conflicts were tried before the military courts. They include the Songo Mboyo, Lemera, Maniraguha, Walikale, Bunia and Minova cases.

For example, about the Songo Mboyo case¹⁶⁵ that refers to the crimes committed during the process of integrating the former MLC’s rebel forces into the National Army. Those crimes include looting rampage of movable property and raped women over 80% of whom were left with sexually transmitted infections. One of the rape victims also died. The case was submitted before the Military Garrison Tribunal in Mbandaka on the 12 September 2005. The alleged perpetrators were identified¹⁶⁶ and charged with crimes against humanity, military conspiracy, incitement of soldiers to arm themselves against the civilian population, insubordination, treasonable felony, diversion of arms, reckless discharge of firearm and looting. It should be noted however that investigations were carried out only after the intervention of the UN Mission and the Minister for Human Rights, which forced the military auditor or the military prosecutor to open and investigate the case file after two years of waiting on the part of the victims. However, the Songo Mboyo case was the first successful trial that convicted former MLC’s rebels. It has demonstrated a real commitment to fight impunity in terms of crimes committed during the transitional period. Unfortunately, crimes which were committed by the former rebel groups and by the soldiers of the Congolese Army during various internationalised armed conflicts were never prosecuted and Congolese are still waiting for justice.¹⁶⁷ Victims of serious human rights violations and international humanitarian law have the right to reparation, unfortunately, in all decisions in which the

¹⁶³ General Prosecutor of the North Kivu, André Mvunzu Luwau, interviewed in Goma on 12 July 2017

¹⁶⁴ Mr Denis Masumbuko Ngwasi interviewed in Goma on 29 June 2017

¹⁶⁵ TMG of Mbandaka, RP 084/05/ RMP154/PEN/SHOF/05 (Songo Mboyo case)

¹⁶⁶ The accused were Eliwo Ngoy, Bokila Lolemi, Vonga Wa Vonga, Mahombo Magbutu, Kalema Sekwalo, Yangbanda Dumba, Mambe Soyo, Bwazu Musambi, Motuta Alondo, Botonga Ilunga, Mombanya Nkoy, and Kombe Mombele.

¹⁶⁷ See S.P. Tunamsifu, *A Comparative Study of Transitional Justice (...)*, pp. 179-181

military courts and tribunals ruled that the State jointly with the accused are civilly liable to pay civil reparations to the victims none of them has seen the decisions on reparations carried out, either by the State or by the accused.

That is why, the ICC, which ignores the official capacity of alleged perpetrators, remains the only alternative to prosecute crimes committed after 1 July 2002. As the ICC cannot prosecute crimes committed before the entry into force of the Rome Statute, there is a hope that a new elected leader may wish to open prosecution because those crimes are imprescriptible; or are not subject to any limitations of time.

Non-Judicial mechanism

Non-judicial mechanisms of transitional justice adopted in the DRC include a Truth and Reconciliation Commission (TRC) and the granting of partial amnesty.

Truth and Reconciliation Commission ¹⁶⁸

The TRC was among five institutions that were set up to support democracy during the transitional period. The Global and Inclusive Agreement on Transition in the DRC, and the Transitional Constitution constituted the legal basis of the TRC in the DRC.

Duties of and period covered by the TRC

Delegates to the ICD, through Resolution No: DIC/COR/04, resolved to charge the TRC of the DRC “with the responsibility of re-establishing the truth, and promoting peace, justice, forgiveness and national reconciliation”. Thereafter, Article 155 of the Transitional Constitution states that the task of the TRC of the DRC would be to consolidate national unity among Congolese through a veritable reconciliation process. In order to consolidate national unity, the Commission was established to promote peace, justice, reparation, forgiveness and reconciliation based on Article 5 of the TRC law. The Commission was also charged to provide a space in which victims/survivors could express themselves and know the truth about what happened to them or their loved ones. The Commission equally received the mandate to prevent or manage conflicts by mediating between rival communities, to manage the healing of trauma and to re-establish mutual trust between Congolese people.

As a temporary institution, the mandate of the TRC of the DRC covered the period from 30 June 1960 to the end of the transition. In other words, the period includes the era of the

¹⁶⁸ S.P. Tunamsifu, *A Comparative Study of Transitional Justice (...)*, pp. 194-208

assassination of Patrice Lumumba and the Mobutu regime. This approach had made all the difference with previous commissions that omitted to deal with abuses committed between 1960 and 1965. The need to revisit the period covered by the previous commission was the limited cases investigated but also the fact the reports of the commission of assassinations and human rights violations and of the commission of ill-gotten property were not adopted. The first paragraph of Article 196 of the Transitional Constitution allowed 24 months for the transitional period, but it was extended for an additional 18-month period due to the election arrangements. This extension however violates the second paragraph of Article 196 that states that the transition period could be extended for six months and should be renewable only once. The TRC of the DRC had jurisdiction over any Congolese including the DRC State, the military, police officers, members of the security arm and persons bearing immunity (Article 6 of the TRC law).

Structures and composition

Structures of the TRC

Regarding its structure, Article 9 of the TRC law outlines the composition of the TRC - twenty-one members including eight officers. Based on the principle of inclusiveness, officers were appointed to represent elements and entities involved in the Inter-Congolese Dialogue (ICD) as provided by Article 157 of the Transitional Constitution and the Global and Inclusive Agreement. The other members included representatives of churches, the academic community, women's organisations and other associations with objectives similar to the TRC. Based on Article 11 of the TRC law, members of the TRC were presented to the National Assembly on 10 December 2004 for approval before they took the oath of office before the Supreme Court of Justice on 13 December of the same year.

As provided by Article 15 of the TRC law, the TRC had four units: plenary, bureau, special permanent committee, and provincial and local committee. Within the TRC, two special committees namely the permanent select truth committee and the permanent select reconciliation committee were formed. The first was supposed to deal with political crimes and massive violations of human rights, social and economic crimes, environmental and ill-gotten gains and violence against women and children. The second is composed of three sections dealing respectively with peaceful coexistence among different ethnic groups; restoration, reintegration, forgiveness and amnesty; and prevention, conflict mediation and education for a culture of peace (Article 25 of the TRC law). Provincial and local level

committees represented the TRC at the provincial and local level. They were charged with the task of implementing decisions and recommendations in their respective areas, and of collecting and transferring the complaints of the people to the relevant government bodies (Article 26).

Composition

Six members of the Bureau were male while two were female, and based on a power sharing principle, eight members of the Commission were appointed from units and entities of the ICD. The President/Chair, Bishop Dr Jean-Luc Kuye-Ndondo wa Mulemera was from the civil society, the first Deputy President, Mr Benjamin Serukiza, was from the RCD/Goma; the second Deputy President, Prof Ngoma Binda, represented the unarmed civil opposition, and the third Deputy President, Mr Yaya Swedy Kosco, represented the Mai-Mai. The chief reporter, Mr Claude Olenga Sumaili, was from the RCD-K/ML; the first assistant reporter, Mr Partiel Musimwa Bisharhwa, was a government official; the second assistant reporter, Mrs Vickie Buboyo Idey, was from the RCD/N; and the third assistant reporter was from the MLC.

From the above, it is clear that five of the eight members of the Commission were from rebel groups such RCD/Goma, Mai-Mai, RCD-K/ML, RCD/N and MLC which had allegedly committed international crimes. For instance, Mr Benjamin Serukiza was appointed by the RCD/Goma, a rebel group that was controlling the eastern DRC from 1998-2003. As of 24 August 1998 when the Kasika massacre was perpetrated by RCD troops in South Kivu, Mr Serukiza was the Deputy-Governor of the South Kivu Province under the administration of the RCD rebel group.

Powers and achievements

Powers

Under Article 8(g) of the TRC law, the TRC of the DRC had the power to propose amnesty for acts of war, political crimes and crimes of opinion. In other words, the TRC of the DRC was not empowered to grant amnesty for crimes against humanity, war crimes or crimes of genocide. The TRC also had the power to subpoena anyone (including those who bear immunity, Article 36) and if s/he declined to appear before the Commission for the third time, the TRC had the power to order the court that had jurisdiction to adjudicate crimes

allegedly committed by such a person (Article 35 of the TRC law). The Commission also had the power to conduct questioning under oath (Article 38 of the TRC law) and to hold public and private hearings (Article 39 of the TRC law), as well as the ability to grant confidentiality if required (Article 40 of the TRC law).

Under Article 32 of the TRC law, victims had the right to complain whether before the courts and tribunal or before the TRC. However, the consent of the direct victim was required for the TRC to transfer a case to the courts (*saisine d'office*). If the investigation required testimony outside the country or involved foreigners, Article 34 of the TRC law stipulates that the TRC had to request the help of the authorities or of the diplomatic corps. However, no prosecution could be undertaken regarding any testimony or opinion made before the TRC (Article 46 of the TRC law). The TRC of the DRC also had the right to access any official document needed for its investigation. In cases in which the TRC is found wanting, affected parties could bring such cases before the courts and the tribunals (Article 37 of the TRC law). As the Commission was composed of representatives of the different units and entities of the ICD (including warring parties), if in the course of reviewing a case, the neutrality of a member was in doubt or questioned, the member should declare his/her stance, but if the affected parties challenged the member, s/he should recuse himself or herself (Article 45 of the TRC law). Unfortunately, this did not happen as the TRC did not investigate a single case.

Achievements

Almost all the transitional institutions took office by 30 June 2003, but the Organic Law establishing the TRC of the DRC was adopted one year later by the National Assembly and the Senate and was promulgated into law by the President on 30 July 2004. The delay in the adoption of the TRC law meant that the TRC would not start its investigations after 30 June 2003 but after 30 July 2004 whereas the TRC was supposed to function during the transitional period and present its final report at the end of that period (Article 55 of the TRC law). In clear, the Commission ended its mission in December 2006 but presented its final report in February 2007. After their appointment, members of the TRC presented their schedule in August 2003 and this included the drafting of law and the rules of the TRC, organising seminars to train its members, and travelling to South Africa where members of the RSA's TRC could share their experiences with them.

Most of the activities were geared towards ensuring peace in the country and paving the way for the success of the approaching elections. In this regard, the Chairperson Bishop Dr Jean-Luc Kuye-Ndondo made the following statement:

We ourselves have to work with the political leaders to make the way for elections to take place, and prepare a solid arena where we can talk about peace. But until there is security, we cannot talk about truth, the truth of what happened. There are some villagers who were victims of crimes, and there are some among the authorities who committed crimes against humanity. There are even belligerents in the office of the TRC itself.¹⁶⁹

It appears that the Commission actually succeeded in mediation and conflict management, but not in establishing the truth. Thus, the main tasks of the TRC were not executed or enforced, that is, investigating past crimes and holding public hearings, establishing truth and healing of trauma caused by acts of war, making recommendations for reparations and restorations in cases of prejudice, and proposing amnesty as well as promoting peace and national reconciliation.

Constraints encountered and Recommendations of the TRC

Constraints

The TRC functioned in an unfavourable political, security and diplomatic context which made it difficult for the Commission to achieve its objectives. On the political level, the transitional government was composed of former belligerent officers some of who ruled the country during the Second Republic under Mobutu's regime and were accused of committing massive human rights violations and looting of public property. Many of them did not cooperate with the TRC as it was the case of ministers and officers in public services that Mobutu regime ordered to not receive members of the CNS investigating regime's abuses, making it difficult for the Commission to establish the truth desired by the Congolese nation. As many of alleged people bearing the greatest responsibility were candidates seeking re-election to their various offices, they believed that coming out with the truth might decrease their chances of being re-elected. That is there was lack of political to enable the TRC to investigate past abuses because the transitional government was composed of former belligerent officers some of who were alleged perpetrators.

¹⁶⁹ S. Baldauf "A Bishop Prepares Volatile Congo for Peace", The Christian Science Monitor: 14 November 2006. Available from: [http://www.csmonitor.com/2006/1114/p06s01-woaf.html/\(page\)/2](http://www.csmonitor.com/2006/1114/p06s01-woaf.html/(page)/2) [Accessed on 12 July 2013]

A number of factors prevented the Commission from achieving its objectives. The factors include the nature of the TRC's composition, lack of consultation process, dual mandate (truth-seeking and mediation), unrealistic mandate, lack of human and material resources, budget deficiencies, lack of financial support from the international community, absolute lack of political will to have independent and fair accountability mechanisms, and security issues (sporadic violence and continuing insecurity).¹⁷⁰

The TRC was initiated by delegates to the Inter Congolese Dialogue without a previous processes to consul the Congolese citizens regarding its nature or mission. Even though, it was not rejected, but Congolese citizens were chocked seeing most of the Commissioners being appointed by warring parties. The UN Mission in the DRC and the International Committee were supposed to support the transition and garner international aid for the TRC. Unfortunately, both bodies did not appreciate the establishment of the TRC during the transitional period due to the fragile peace and insecurity in the country as well as the composition of the TRC. Due to the power-sharing formula, the TRC was composed commissioners who were former belligerents. Thus, victims could not trust such institution in submitting their cases to people who were part of entities or groups that suppressed them.

Recommendations of TRC

The TRC was given a mixed mandate to establish the truth about past abuses that took place and to consolidate peace in order to prevent further violence. Therefore, at the end of the transitional period, it presented its recommendations to the Parliament and the government of the Third Republic on its double commission to establish the truth and foster reconciliation. On the issue of truth, the TRC recommended that after the 2006 elections, the Government should establish a National Commission for Truth and Reconciliation whose mandate would be for a specific period devoted exclusively to the establishment of the truth and would be backed by an appropriate edict. The Commission should establish a program to carry out reparations, financial compensation, restitution, rehabilitation, and redress, and guarantee non-repetition of past events. The government should also make available the necessary human and financial resources for the improved functioning of the new National Commission for Truth and Reconciliation to ensure its independence and financial autonomy.¹⁷¹

¹⁷⁰ S.P. Tunamsifu, *A Comparative Study of Transitional Justice (...)*, p. 20

¹⁷¹ RDC, *Rapport de la CVR*, p. 76

On the issue of reconciliation or pacification, the TRC recommended the creation of a National Commission of Pacification that would be exclusively in charge of consolidating peace and pursuing reconciliation and peaceful coexistence among the various ethnic groups, as well as of conflict prevention and management. If conflicts occur, the Commission would mediate peace, reconciliation and tolerance between rival groups or communities and educate them on the importance of cultivating a culture of peace.¹⁷² However, to succeed in mediation and reconciliation, Luzolo and Bayona argue that it is important to initiate a specific forum that would draw on local traditions and customs as well as the experiences of other people in similar circumstances.¹⁷³ In the same vein, Kazadi Mpiana argues that the Congolese could learn from the model of the Gacaca Court by setting up a forum led by representatives of the civil society which would promote national reconciliation, peace and peaceful coexistence.¹⁷⁴

Amnesty¹⁷⁵

In the case of a non-international armed conflict, when the national army fails to defeat a rebel movement, negotiating a peace agreement remains the final option. Even a third party may help parties to reach agreement; a warring party responsible for crimes under international law may be unwilling to cease hostilities without clear guarantee that an Act or an agreement barring any prosecution against them will be signed. That Act allowing warring parties to ceasefire and sign an agreement is referred to as the law of amnesty.¹⁷⁶ According to Darryl Robinson, citing Mahnoush H. Arsanjani, “amnesties might be regarded as ‘the price for getting rid of tyrants and their associates’, and they have therefore been considered ‘one of the techniques for ending civil wars or enabling transitions from authoritarian to democratic governments’”.¹⁷⁷ Amnesty laws frequently provide an individual with immunity from legal accountability, usually both criminal and civil liability. However, amnesties are

¹⁷² RDC, *Rapport de la CVR*, p. 77

¹⁷³ B-L-E. Luzolo and M-N-A. Bayona, *Manuel de Procédure Pénale*, PUC, Kinshasa, 2011, p. 760.

¹⁷⁴ K-J. Mpiana “La Cour Pénale Internationale et la République Démocratique du Congo : 10 Ans Après. Étude de l’Impact du Statut de Rome dans le Droit Interne Congolais” *Revue Québécoise de Droit International*, vol. 25(1), 2012, p. 86

¹⁷⁵ See S.P. Tunamsifu, *A Comparative Study of Transitional Justice (...)*, pp. 61-64

¹⁷⁶ *Idem.*, p. 61

¹⁷⁷ D. Robinson “Serving the Interests of Justice: Amnesties, Truth Commissions and the International Criminal Court” 2003 (14/3) *European Journal of International Law*, p. 495

irrelevant for crimes under international law because they are imprescriptible, or, they are not subject to any limitations of time for them to be prosecuted.¹⁷⁸

In the DRC, for disarming militias and armed groups, through Article III(22) of the Lusaka Peace Agreement of 1999, parties committed to take all the necessary steps to grant amnesty. However, such measures shall not apply in the case of suspects of the crime of genocide. In 2002, the Global and Inclusive Agreement on Transition, elements and entities involved in the Inter-Congolese Dialogue, acknowledged that in order to achieve national reconciliation, partial amnesty shall be granted for acts of war, political offences and opinion offences of the law. Thus, as the Agreement was adopted in accordance with universal principles and international law, it was against a blanket amnesty as it excluded amnesty for war crimes, genocide and crime against humanity (Article III(8)).

Indeed, in order to guarantee all delegates to the Inter-Congolese Dialogue that the Government had signed the Peace Agreement in good faith, based on Resolution No: DIC/CHSC/02 or Resolution No: ICD/CHSC/02 relative to the Emergency Humanitarian Programme for the DRC, President Kabila signed an Amnesty Decree Law (No: 03-001 of April 2003) to grant provisional amnesty even before the constitution of the government of national unity and transition. In 2005, after all transitional institutions took shape following the sharing of political power; the Amnesty Law No. 05/023 of 19 December was adopted by the National Assembly and promulgated by the President. The Amnesty Law No. 05/023 replaced the Amnesty Decree Law No. 03-001 of 15 April 2003. Those laws were adopted and promulgated in order to encourage warlords to disarm and transform their rebel movement into political party. However, both laws excluded international crimes committed during the armed conflicts.

Nevertheless, warlords who had allegedly committed international crimes and serious human rights violations and individuals with known records of human rights abuses were also integrated into the government and institutions supporting democracy as the result of peace agreement. Other perpetrators were promoted or offered important posts in the army, National Police, intelligence services and the diplomatic corps.¹⁷⁹ It is a misfortune that due to political interference, the judiciary was unable to prosecute cases in which individuals

¹⁷⁸ S-P. Tunamsifu, “Transitional Justice and Peacebuilding (...)”, pp. 68

¹⁷⁹ HRW, *Seductions of “Sequencing”: the Risks of Putting Justice Aside for Peace*, HRW, New York, 2011, p.

bearing the greatest responsibility for the serious crimes committed in various armed conflicts. Thus, justice for victims was sacrificed (put aside) for peace.

III.2.3 Different attempts to address the past following the 2008 Conference and the 2009 Peace Accord¹⁸⁰

The signing of the Global and Inclusive Agreement in which Parties agreed to establish a TRC and grant partial amnesty did not prevent the emergence of a new rebel group, the CNDP led by one of the former commanders of the armed wing of the RCD. As by the end of the transitional period, the TRC had not opened a single enquiry due to a lack of political will and continuing insecurity in the country, and considering that the spread of the CNDP constituted a serious threat to peace and security in the eastern DRC, the 2008 *Conférence sur la Paix, la Sécurité et le Développement dans les Provinces du Nord-Kivu et du Sud-Kivu* (or Goma Conference on Peace and Development) was convened in Goma. At the end of the Conference, the *Acte d'Engagement* was signed between the government of the DRC and rebel groups such as the CNDP and the *Patriotes Résistants Congolais* (PARECO). Among resolutions adopted, Parties agreed on the possibility of establishing a new TRC.

Indeed, in response to the Goma Peace Agreement of January 2008, the government developed the Amani Programme coordinated by the Roman catholic Reverend Apollinaire Malu Malu, former chairperson of the National Electoral Commission, who was mediating the Goma Conference. Thus, the Amani Programme was created to serve as framework for the disarmament, demobilization and reintegration of militias from 22 armed groups identified in North and South Kivu provinces. The ex-combatants who agreed to disarm were integrated into the security services (the army and police) and those who have chosen civilian life were reintegrated following programs financed by the international community. For the 28,375 combatants declared, 3,200 ex-combatants were demobilised.¹⁸¹

Unfortunately, because the CNDP (supported by Rwanda) violated the ceasefire, the resolution on the establishment of a new TRC was not implemented. Following a direct meeting between the President Joseph Kabila and Paul Kagame, the Rwandan government ended its military and political support to the CNDP rebel group and decided to arrest

¹⁸⁰ See S-P. Tunamsifu, "Transitional Justice and Peacebuilding (...)", pp. 72-73

¹⁸¹ MONUC, 'DR Congo: MONUC - The end of the Amani programme is a milestone in the peace process' Available from: <http://reliefweb.int/report/democratic-republic-congo/dr-congo-monuc-end-amani-programme-milestone-peace-process> [Accessed 12 August 2017]

Laurent Nkunda while crossing the Rwandan border. As the consequence of bilateral cooperation between both countries, another dialogue between the government of the DRC and the CNDP was convened in Goma that led to the peace Agreement called *Accord de Paix du 23 Mars 2009*. In this Accord, Parties focused as well their attention on the mechanism of transitional justice on reconciliation. Thus, it was agreed under Article 4(1) of *Accord de Paix du 23 Mars 2009* that “the Parties undertake to maintain a dynamic of reconciliation, of pacification of hearts and minds, as well as of good inter-cohabitation as a requirement essential for good governance”. Besides, combatants of the CNDP were promoted and granted important positions within the local government of the North-Kivu province as well as in the army and national police. It is the case of Bosco Ntaganda who was promoted to the rank of brigadier general.

In order to consolidate the security gained following the 2009 peace agreement, the government developed the Stabilization and Reconstruction Plan for War-Affected Areas (STAREC, *Plan de Stabilisation et de Restauration des Régions affectées par les Conflits*) to take over from the Amani Programme. STAREC is a governmental programme with the three components: security, humanitarian and economic. The security component tries to resolve the issue of insecurity by the deployment of the police, the army and the construction of the barracks. It assists in helping the government to restore State authority. The humanitarian aspect concerns the reintegration of displaced persons.¹⁸² The economic component is to involve in the fight against poverty and impunity regarding the numerous atrocities committed in the eastern DRC. It is also working towards inter-communal reconciliation and good governance.¹⁸³

IV. Effectiveness of Transitional Justice

It is very difficult measuring the effectiveness of transitional justice when the mechanisms adopted were not implemented fully or when the process was stopped before submitting the final report. In this section, two subsections are presented. The first presents the legacy of the first attempts dealing with the Mobutu’s authoritarian regime while the second presents the

¹⁸² RADIO OKAPI, ‘RDC : Starec prend la relève du Programme Amani’. Available from: <http://www.radiookapi.net/politique/2009/08/21/rdc-starec-prend-la-releve-du-programme-amani> [Accessed 12 August 2017]

¹⁸³ C. Padovan, ‘Capacity-building of the Stabilization and Reconstruction Plan (STAREC) in eastern DRC’. Available from: <https://monusco.unmissions.org/en/capacity-building-stabilization-and-reconstruction-plan-starec-eastern-drc> [Accessed 12 August 2017]

effect of the Global and inclusive dialogue that adopted mechanisms of transitional justice dealing with widespread atrocities committed during different armed conflicts.

IV.1. Legacy of the CNS

The final reports of both Commissions of Assassinations and Human Rights violations and of ill-gotten property were not presented in the plenary and adopted by the CNS due to the fact of having named President Mobutu and his collaborators. However, some of recommendations have been followed and inserted in different legal instruments. It is the case of the principle consisting for the President, Ministers and public officials to declare their assets and income before taking office. This principle was among recommendations of the Commission dealing with cases of ill-gotten property that was inserted in the Interim Constitution of 2003 (Article 90)¹⁸⁴ and in the Constitution of 18 February 2006 as amended by Law No. 11/2011 of 20 January 2011 (Article 99).

Thus, Article 99 of the Constitution of 18 February 2006 as amended stipulates that:

The President of the Republic and the members of the Government are required before the Constitutional Court to file a written declaration of their family patrimony prior to their taking up their duties and at the end of their term of office, enumerating their movable property, including shares, bonds, other securities, bank accounts, immovable property, including undeveloped land, forests, plantations and agricultural land, mines and all other immovable, together with the relevant titles.

The family patrimony includes the property of the spouse according to the matrimonial regime, minor children and children, even adults, in charge of the couple.

The Constitutional Court shall communicate this declaration to the tax authorities.

Failing such declaration, within thirty days, the person concerned shall be deemed to have resigned.

Within thirty days of the end of the functions, in the absence of this declaration, the Constitutional Court or the Court of Cassation shall be seized, as the case may be, in the event of fraudulent declaration or suspicion of unjust enrichment.

Even though the principle is guaranteed and provided by the Constitution, at date, it is rare for a Minister and public official to declare his assets and income before taking office or at the expiration. Thus, the researcher is of the opinion that Article 99 of the Constitution of 18 February 2006 as amended remains unobserved without pushing public servants who are

¹⁸⁴ During their functions, the members of the Government cannot buy or lease any property belonging to the State by themselves or by any intermediary. They are obliged to make a written declaration of all their possessions to the National Assembly upon taking office and at the expiration of the latter.

unwilling to declare their assets to resign. To this end, in accordance with the 2002 Code of conduct for public officials, the Congo Research Group, in his latest report formulated some recommendations to the Parliament as well as to the constitutional court of the DRC.

The Parliament should pass legislation requiring all asset declarations by public officials to be made public, as is required in other countries; pass a law on access to information, which would codify the right to information and increase transparency into the business dealings of the government and all public officials; pass a law requiring charitable foundations and non-profit organizations to publish statements of their finances, including their sources of funding. To the constitutional court should clarify the regulations in the constitution and legal code regarding conflicts of interest for public officials, including the president.¹⁸⁵

Regarding the individuals who were alleged perpetrators, co-perpetrators and accomplices of assassinations and human rights violations as well of ill-gotten property, both Commissions of Assassinations and Human Rights violations and of ill-gotten property recommended their prosecution. The lustration or vetting process was recommended for people found guilty. Indeed, the Lusaka Peace Agreement of 1999 and the Global and Inclusive Agreement on Transition of 2002 are aligned among instruments that avoid the consecration of impunity in the DRC because they had excluded blanket amnesty for serious crimes. This means that people bearing the greatest responsibility of serious crimes would be prosecuted because these crimes are imprescriptible. However, instead of prosecuting people alleged perpetrators of serious crimes during different stages of armed conflicts, they were integrated, promoted and grant important positions in the security services. Besides, following the principle of power sharing in the aftermath of armed conflicts, leaders of political wing of different rebel movements were nominated in the government and diplomacy. The explanatory statement (*exposé des motifs*) of the Constitution of 18 February 2006 as amended highlights the fight against impunity as one of the major concerns that govern the organization of the new institutions of the DRC. Nevertheless, due to the lack of political will none of the individuals integrated and promoted in the security services or the government have been prosecuted.

Besides, as the Mobutu's rule was characterized by the dictatorship of the Party-State, delegates to the CNS resolved to take the option of democracy, the rule of law, condemnation of the taking and exercise power by force, etc.¹⁸⁶ This option has been inserted in all

¹⁸⁵ Congo Research Group, *All the President's Wealth: The Kabila Family Business*, Center on International Cooperation, New York University, 2017, p. 3

¹⁸⁶ See National Democratic Institute for International Affairs (NDI), *Les leçons à tirer de la Conférence Nationale Souveraine et ses implications pour le Dialogue Intercongolais*, p. 67. Available from: https://www.ndi.org/sites/default/files/1296_cd_natconf2001_0.pdf [Accessed on 28 June 2017]

constitutions as it is the case of Article 1 and 64 of the Constitution of 18 February 2006 as amended. Thus, Article 1(1) provides that the DRC is a democratic State and a State of the rule of law (...). Then, in order to eradicate the practice of coup d'état, Article 64(1) stipulates that “[e]very Congolese has the duty to defeat any individual or group of individuals who takes power by force or exercises it in violation of the provisions of this Constitution”.

IV.2. Effect of the Global and Inclusive Agreement

The Global and Inclusive Agreement was the final act or peace agreement of the Inter-Congolese Dialogue in Sun City. In this Inclusive Agreement were adopted the following transitional justice mechanisms: the amnesty, the TRC and an ad hoc international tribunal.

The amnesty granted was the only option for warring parties to stop the hostilities, sign the peace agreement and share the political powers for the duration of the transition. This means that without such guarantee no peace agreement would be expected. However, even the Lusaka Peace Agreement of 1999 and the Global and Inclusive Agreement of 2002 excluded the blanket amnesty for war crimes, genocide and crime against humanity, none of the alleged perpetrators has been held accountable. Accordingly, victims of widespread atrocities committed during different armed conflicts still waiting for justice regarding past abuses, truth about what happened to their beloved ones, and for adequate reparation.

The TRC (July 2003- December 2006) had failed to investigate and open a single case for three major reasons. The first is that it had operated under fragile peace period during which any investigation against former warlords would lead to the reorganisation of former rebels integrated in the army and police resulting in the creation of another rebel group. The second reason is that many alleged perpetrators occupying important positions during the transition did not want the TRC to establish the truth desired by the Congolese nation because they believed that coming out with the truth might decrease their chances of being elected at the end of the transition. The third reason is that the TRC was deprived with financial means to operate due to the lack of political will, but also the lack of international support due to the nature of its composition constitute with more than 60% of former rebels alleged responsible of serious crimes.

Among participants in this study, five key informants¹⁸⁷ were unanimous that the adoption of transitional justice mechanisms had a significant impact in the country. Thus, these mechanisms had facilitated the signing of the Sun City Peace Agreement; allowed the end of hostilities; enabled the disengagement of the neighbouring countries involved in different armed conflicts and the withdrawal of foreign armies; the reunification of the country; the setting up of the transitional government of national unity; the beginning of the transition; the creation of a restructured and integrated national army and police; the reunification of public administration, the judiciary and financial sectors; the restoration of the State authority, and the organisation of free and democratic elections after the transition. In contrast, another key informant argued that, “despite being positive, the adoption of transitional justice mechanisms had a negative impact because these mechanisms allowed for a return of predators in public affairs and the integration of warlords alleged perpetrators into the army and the national police. This had led to the misappropriation of public funds, impunity and so on”.¹⁸⁸

However, four key informants declared that the adoption of amnesty reassured the rebels to lay down their weapons and was a guarantee that they will not be prosecuted.¹⁸⁹ That is why another key informant stated that “the amnesty has been much more beneficial to the Parties having armed forces. The amnesty had shocked the victims because the rebels integrated into the security services could be reassigned to the places where they had committed crimes and returned triumphantly while the victims had not finished their mourning”.¹⁹⁰ Besides, another key informant said that “the mechanisms of transitional justice have not solved anything because the victims remained victims and the problem remains”.¹⁹¹

About the TRC, five key informants declared that the TRC had not really functioned, whereas with its adoption delegates at the Inter-Congolese Dialogue had the assumption that the truth regarding past abuses would be known.¹⁹² Thus, one key informant revealed that “the TRC

¹⁸⁷ Representative of the Higher Military Auditor interviewed in Goma on 28 June 2017; Mr Théo Mpabuka interviewed in Goma on 29 June 2017; Ms Chantal Kambibi interviewed in Goma on 03 July 2017; Adv. Félicien Hitimana interviewed in Goma on 04 July 2017, and Mr Thomas d’Aquin Muiti Luanda Mustapha interviewed in Goma on 06 July 2017.

¹⁸⁸ Mr Kleti Kakule Komela interviewed in Goma on 07 July 2017

¹⁸⁹ Representative of the Higher Military Auditor interviewed in Goma on 28 June 2017; Mr Theo Mpabuka interviewed in Goma on 29 June 2017; Adv. Félicien Hitimana interviewed in Goma on 04 July 2017, and Key informant #04 interviewed in Goma on 30 June 2017

¹⁹⁰ Ms Chantal Kambibi interviewed in Goma on 03 July 2017

¹⁹¹ General Prosecutor of the North Kivu, André Mvunzu Luwau, interviewed in Goma on 12 July 2017

¹⁹² Key informant #04 interviewed in Goma on 30 June 2017; Ms Chantal Kambibi interviewed in Goma on 03 July 2017; Adv. Félicien Hitimana interviewed in Goma on 04 July 2017; Adv. Jean Paul Lumbu Lumbu

was a stillborn”;¹⁹³ another key informant argued that “the TRC failed to achieve its mission for not doing anything about reconciliation and revealing of past crimes”;¹⁹⁴ besides, another key informant maintained that “the TRC could formulate recommendation of lustration in order for people to trust public institutions, but nothing has been done”;¹⁹⁵ and another key informant said that “the TRC was set up in a context that was politically difficult in which seniors leaders appointed within the transitional institutions would not let it work freely. Thus, the victims have been ignored and abandoned without reparation and this may cause history to repeat itself”.¹⁹⁶ According to another key informant, the TRC was null and void for the following reasons:

- it did not have a qualified staff; lacked of financial resources and political will; it was not given priority by the political actors who avoided that the truth of their acts to be known before the elections held because the major concern was to be candidate;
- The TRC Commissioners represented their components and ensured that their members were not disturbed;
- To avoid creating incidents, the TRC had done nothing;
- Given the nature of the composition of the TRC, it had not received financial support from the international partners.¹⁹⁷

From the above, the researcher is of the opinion that the adoption of transitional justice mechanisms had a positive impact in allowing the end of hostilities and the beginning of the political transitional period in which all warring parties were integrated in different public institutions. However, the TRC did not investigate a single case regarding past abuses which has led to a lack of justice for victims and continuing impunity for perpetrators.

Conclusion and recommendations

This study has analysed the mechanisms of transitional justice adopted in the DRC dealing with the legacies of past abuses committed during the Mobutu’s dictatorship regime and during various armed conflicts. The aim of this study is to present the contexts of past abuses,

Mutanana interviewed in Goma on 10 July 2017, and Mr Emmanuel Kamanzi Runigi interviewed in Goma on 11 July 2017.

¹⁹³ Adv. Félicien Hitimana interviewed in Goma on 04 July 2017

¹⁹⁴ Key informant #04 interviewed in Goma on 30 June 2017

¹⁹⁵ Ms Chantal Kambibi interviewed in Goma on 03 July 2017

¹⁹⁶ Adv. Jean Paul Lumbu Lumbu Mutanana interviewed in Goma on 10 July 2017

¹⁹⁷ Mr Denis Masumbuko Ngwasi interviewed in Goma on 29 June 2017

to analyse the mechanisms of transitional justice established in the DRC since 1992, and assess their outcomes in term of achieving sustainable peace and preventing future abuses.

Data were collected through the literature and legal analysis as document analysis approach, along with empirical field research on transitional justice. Findings from the fieldwork were obtained through interviews of 14 key informants from judicial institutions, policy makers and participants to dialogue in which mechanisms of transitional justice where adopted.

This study has employed a non-probability sample, primarily the purposive sampling method to select research participants. A snowball sampling method was also used as an alternative recruitment strategy to reach unidentified participants.

In terms of findings, on one hand the analysis of the postcolonial period (1960-1965) and during the Mobutu dictatorship regime (1965-1997) showed that gross violations of human rights were committed. During various armed conflicts (1997-2009) serious violations of human rights and of international humanitarian law were committed. Under those periods, State and non-States actors (Congolese and foreigners) were involved in widespread atrocities. Those atrocities include violations of the right to life, the right to physical integrity, the right to liberty and security of person, and the right to property. Those violations are constitutive of crimes against humanity and war crimes.

On the other hand, analysing mechanisms of transitional justice that were chosen, the study finds that in 1992 the CNS through the Commission of assassinations and human rights and the Commission of ill-gotten property investigated more than 25 main cases from 1965 to 1992 under Mobutu's regime. The reports named President Mobutu and his collaborators as the main responsible and had recommended lustrations measures, prosecutions and reparation. Therefore, both reports were blocked and could not be presented in the plenary for discussion and their adoption because President Mobutu and his collaborators did not want to face justice. Nevertheless, both reports were released unofficially in order for the population to be aware of them, but also to know the job that both commissions have done.

Between 1998 and 2004, the Barza Inter-Communautaire succeeded to resolve low-level disputes between communities, particularly those over land ownership dealing with interethnic conflicts in North-Kivu province.

Regarding the various armed conflicts from 1996 to 2009, judicial and non-judicial mechanisms of transitional justice were adopted as the result of political negotiations. About the prosecution, the study finds that instead of prosecuting people bearing the greatest

responsibility of serious crimes, they were integrated, promoted and granted important positions in the government and the security services. Thus, the justice at the domestic level failed to prosecute alleged perpetrators who committed crimes during different armed conflicts due to the lack of political will. As the UNSC was unwilling to create an ad hoc tribunal for the DRC, the ICC, complementary to the Congolese judicial system, has prosecuted six cases. Two were convicted (Thomas Lubanga Dyilo and Germain Katanga); two were acquitted (Ngodjolo Chui and Callixte Mbarushimana); one case is still ongoing (Bosco Ntaganda), and the last one is still at large (Sylvestre Mudacumura). Regarding non-judicial mechanisms such as the TRC and the amnesty, the study finds that the adoption of both mechanisms allowed the ending of the conflicts and the beginning of the transitional period. However, the TRC (2003-2006) failed to investigate a single case and therefore the truth was not revealed due to the lack of political will, of fragile peace and lack of financial support. About the amnesty granted for acts of war, political crimes and crimes of opinion, it was considered by warring parties as the security measure and it covered acts of war in excluding international crimes.

Indeed, for transitional justice to contribute to nation-building, to the promotion of sustainable peace, reconciliation, accountability and social healing, key informants participating in this study formulated some recommendations.

Recommendations

Six key informants¹⁹⁸ admitted that the current regime and its leadership at the top level of the country has been the obstacle to national reconciliation; to accountability and prosecutions of high-ranking officials allegedly responsible for serious crimes. This regime protects alleged criminals and stifles any initiative to investigate past abuses. Thus, a renewal of leadership at the top level or the head of State through free and transparent elections can change things.

In this regard, two key informants argued that “there is a need for a new leadership at the top level of the State who will be able to promote good governance, prioritise the policy of

¹⁹⁸ Representative of the Higher Military Auditor interviewed in Goma on 28 June 2017; Mr Theo Mpabuka interviewed in Goma on 29 June 2017; Adv. Jean Paul Lumbu Lumbu Mutanana interviewed in Goma on 10 July 2017; Mr Emmanuel Kamanzi Runigi interviewed in Goma on 11 July 2017; Adv. Fataki Luhindi Géorges interviewed in Goma on 12 July 2017, and Mr Prince Kihangi Kyamwami interviewed in Goma on 13 July 2017.

fighting against impunity as well as of national reconciliation by involving all communities without discrimination under the theme ‘peace and harmony for all’..¹⁹⁹

With regard to justice, participants formulated the following recommendations:

There is a need for the reform of the justice sector; the training of magistrates in good morality and the good administration of justice in order to instil a culture of accountability for magistrates. Thereafter, in order to feel that justice exists, the judiciary should be truly independent and have the means for its policy or of its action. For the magistrates to be free from corruption and thus fight validly against impunity, they recommended that magistrates should have decent wages and housing.²⁰⁰ For example, based on his experience, one key informant proposed that there should be another mechanism for the appointment and the dismissal of magistrates in place of the head of State. According to his experience, courageous judges and prosecutors who dare to investigate certain high officials responsible for serious crimes or for misappropriation of public properties, the President has always decide to dismiss them or take steps to facilitate their early retirement.

With regard to national reconciliation, participants formulated the following recommendations:

There is an urgent need to create a national structure of reconciliation and to restart the process of national reconciliation allowing the alleged perpetrators to tell the truth about what they have done and request publicly for forgiveness.²⁰¹ Reconciliation must go hand in hand with good governance. Thus, the efforts of governance will bring people to reconcile and for that it will be necessary to consider that what has happened is past (to forget the past) so that

¹⁹⁹ Mr Thomas d’Aquin Muiti Luanda Mustapha Interviewed in Goma on 06 July 2017 and Mr Emmanuel Kamanzi Runigi interviewed in Goma on 11 July 2017

²⁰⁰ Representative of the Higher Military Auditor interviewed in Goma on 28 June 2017; Mr Theo Mpabuka interviewed in Goma on 29 June 2017; Adv. Félicien Hitimana interviewed in Goma on 04 July 2017; Mr Kleti Kakule Komela interviewed in Goma on 07 July 2017; Adv. Jean Paul Lumbu Lumbu Mutanana interviewed in Goma on 10 July 2017; General Prosecutor of the North Kivu, André Mvunzu Luwau, interviewed in Goma on 12 July 2017; Adv. Fataki Luhindi Géorges interviewed in Goma on 12 July 2017, and Mr Prince Kihangi Kyamwami interviewed in Goma on 13 July 2017.

²⁰¹ Mr Theo Mpabuka interviewed in Goma on 29 June 2017; Key informant #07 interviewed in Goma on 05 July 2017; Mr Kleti Kakule Komela interviewed in Goma on 07 July 2017; General Prosecutor of the North Kivu, André Mvunzu Luwau, interviewed in Goma on 12 July 2017; Adv. Fataki Luhindi Géorges interviewed in Goma on 12 July 2017, and Mr Prince Kihangi Kyamwami interviewed in Goma on 13 July 2017.

Congolese can join their efforts together in order to rebuild the country.²⁰² Besides, “Congolese must reconcile themselves by making use of the local custom (allowing disputants to engage one another through dialogue and ritual) according to which ‘let us forget the past in order to live together in harmony and conviviality’. This custom can help Congolese to reconcile with their past through local structures of reconciliation such as the *Barza inter communautaire* (veranda de sage)”.²⁰³ Finally, in order to reconcile the nation, everyone must have the right to the chapter and avoid tribalism in the public institutions and during the recruitments.²⁰⁴

With regard to reparation, participants formulated the following recommendations:

Any person who has committed a wrongful act is liable to make reparation for all damage caused by his or her acts. However, according to Jacques Mbokani, in all cases documented, Courts and Tribunals have awarded damages to victims with very large amounts while there is no doubt about the insolvency of individuals found guilty of crimes.²⁰⁵ That is why it is very difficult for victims to get reparation.

Indeed, it is very urgent to take into consideration victims of past abuses and to grant reparation²⁰⁶ following a reparation program for victims and the creation of a national fund with the support of the international community.²⁰⁷ However, as individual reparation would not be easy, the reparation at the community level through the development structures capable of supporting the victims would be prioritised.²⁰⁸ In order to build confidence between public institutions and the Congolese people,²⁰⁹ the alleged perpetrators of serious crimes should agree to put themselves out of the management of public affairs through the process of lustration.

²⁰² Mr Theo Mpabuka interviewed in Goma on 29 June 2017

²⁰³ Adv. Fataki Luhindi Géorges interviewed in Goma on 12 July 2017

²⁰⁴ General Prosecutor of the North Kivu, André Mvunzu Luwau, interviewed in Goma on 12 July 2017

²⁰⁵ J.B Mbakani, *La jurisprudence congolaise en matière de crimes de droit international : une analyse des décisions des juridictions militaires congolaises en application du Statut de Rome*, African Minds, New York, 2016, pp.377, 396

²⁰⁶ Representative of the Higher Military Auditor interviewed in Goma on 28 June 2017; Mr Denis Masumbuko Ngwasi interviewed in Goma on 29 June 2017; Mr Kleti Kakule Komela interviewed in Goma on 07 July 2017; Adv. Jean Paul Lumbu Lumbu Mutanana interviewed in Goma on 10 July 2017; General Prosecutor of the North Kivu, André Mvunzu Luwau, interviewed in Goma on 12 July 2017.

²⁰⁷ Mr Denis Masumbuko Ngwasi interviewed in Goma on 29 June 2017

²⁰⁸ General Prosecutor of the North Kivu, André Mvunzu Luwau, interviewed in Goma on 12 July 2017.

²⁰⁹ Mr Kleti Kakule Komela interviewed in Goma on 07 July 2017

Concluding remarks

In sum, since the Independence Day on 30 June 1960, the DRC went through internal political crisis and various armed conflicts in which foreign countries were involved. As the result of those crises, widespread violations of human rights and of international humanitarian law were committed. Unfortunately, regarding mechanisms of transitional justice that were adopted in 1992 and 2002, the DRC had lost opportunity to deal adequately with widespread serious crimes and address the roots causes of political crisis and of various armed conflicts. In other words, the choice of transitional justice mechanisms appears to serve the interest of the military elites especially those having armed groups. Consequently, instead of moving forward, contribute to the peacebuilding process and sustainable development, the past has been repeating itself in the DRC.

As the victims were left to their predicaments while leaders of warring parties shared political powers and occupied military positions, it is still a need for them to know the truth regarding what happened to their beloved ones and receive reparation in order to avoid revenge in the near future. That is why holding accountable people bearing the greatest responsibility and reconcile the nation had been the main recommendation of stakeholders attending different political negotiations in the DRC.

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APPENDIX

Appendix I.a

Detailed findings of the Commission of assassinations and human rights violations

- For example in the case of four Ministers hanged publicly, the Commission revealed that the primary responsibility lies on the sponsors of the political assassinations; the President Mobutu for having mounted a macabre scenario to scare politicians; to the late General Bobozo who coordinated the strategy leading to their arrest; to Colonel Efomi and General Bangala as well as the exception Military Court that implemented an illegal order and Machiavellian plan.²¹⁰
- In the case of the assassination of André Lubaya, the Commission established the responsibility of the following personalities: of President Mobutu for the assassination; of Mr Ilunga Dibwe to have provided false accusations against André Lubaya; of General Singa for his abduction; General Bumba Moasso is alleged responsible for his execution, and of Mr Jean Pierre Kasonga wa Tshindemba for the delivery of Lubaya to the secret services.²¹¹
- In the case of the assassination of Pierre Mulele, the Commission found that the Government of Congo-Brazzaville bears the responsibility for detaining Mulele in unworthy conditions and taking the initiative to transfer him to Kinshasa while he had not committed any offense against the law of Congo; the responsibility of the Military High Command's members animated by a spirit of vengeance in defiance of law and human dignity; the responsibility of President Mobutu and General Bobozo for having decided and assumed publicly the odious murder of Pierre Mulele; and the responsibility of Bomboko and Akafomo for negotiating and assuring the transfer of Mulele knowing the murderous intentions of Military Chiefs.²¹²
- In the case of Moise Tshombe, the Commission established the responsibility of President Mobutu for having convicted Tshombe for offenses covered by amnesty granted by President Kasa-Vubu; of Mr Mungul Diaka for the abduction and attempted extradition while he was not a prosecutor; and the responsibility of the Algerian Government for having unlawfully detained Mr Tshombe while he had not committed any offense under Algerian law.²¹³
- About the student's massacre, the Commission established the responsibility of President Mobutu whose intention was to eliminate political leaders opposed to him and all resistant movements in order to remain the solo leader; of Major Mika for

²¹⁰ CNS, *Rapport de la Commission des assassinats et violations des droits de l'homme*, pp. 12-13

²¹¹ Idem, p. 24

²¹² CNS, *Rapport de la Commission des assassinats(...)*, pp. 35-36

²¹³ Idem, pp. 45-46

being an accessory (as complicity) in heinous crimes against students, and of general Bobozo for engaging armed troops against unarmed demonstrators.²¹⁴

Appendix I.b

Recommendations made by the Commission of assassinations and human rights violations

- In the case of four Ministers hanged publicly and of Tshombe, the Commission recommended the revision of their trials. Besides, in the case of Tshombe it was recommended to continue with the investigation in order to establish the circumstances of his abduction and death.
- In the case of four former Ministers as well as of Pierre Mulele, the Commission recommended the exhumation and the reburial in dignity of the remains of their bodies; to return the remains of the bodies of André Lubaya and his friends to their families for the reburial in dignity; restitution of remaining of the bodies of students to their families in order to bury them and organise the mourning; the repatriation of the mortal remains of Tshombe in order to bury him with honour.
- In the case of four Ministers hanged; of André Lubaya; of Pierre Mulele; of students in Kinshasa, the Commission recommended the prosecution of alleged perpetrators, co-perpetrators and their accomplices. For people found guilty, it was recommended their removal from any political positions or temporal limitation to run or apply for any public position for two legislatures or ten years (lustration or vetting process). About the case of Moise Tshombe, the Commission recommended to hold accountable the Algerian government for having detaining him unlawfully.
- In the case of four Ministers hanged, of André Lubaya, the Commission recommended the building of monument in their memory while in the case of students in Kinshasa it was recommended the remembrance of the date of 4th June in memory of fallen students. About the Kamanyola Stadium where the four Ministers were sentenced and hanged, it was recommended to rename the place as Martyrs of Pentecost Stadium;
- In the case of four Ministers hanged, of André Lubaya and of students fallen in Kinshasa, the Commission recommended to grant a fair compensation or reparation to the family members of each of these victims. Besides, in the case of four Ministers, of Lubaya and of Tshombe, it was recommended the restitution of assets and properties that were dispossessed illegally.

Appendix II

Findings of the Commission for the period from 1971 to 1992:

- About the case relative to the attempted coup d'état of 1975, the Commission found that it was a conspiracy made by Zairian authorities that intended to expel some American diplomats and to remove certain Zairian officers from the army.²¹⁵

²¹⁴ Idem., pp. 56-57

- About the suspicious death of Lieutenant-colonel Tshibangu in 1977, the Commission has come to the conclusion that the death of this senior officer in charge of the third zone security of the Head of State is suspect because it was surrounded by guilty negligence.²¹⁶
- About the massacre of Idiofa in January 1978, the Commission established the responsibility of Mr Kasongo for perpetrating mass death in the Idiofa; of Mr. Shango together with soldiers for perpetrating summary executions without judgment following the order of Colonel Kapepa; the responsibility of the Presidency of the Republic for all acts committed by the units of the presidential guard in the territory of Idiofa and Mulembe, etc.²¹⁷
- About the war of 80 days, the Commission found that the Army had committed vile acts on the peaceful citizens while it had an obligation to protect them.²¹⁸
- About the trial of so called terrorists, the Commission found the political aspect of the trial that entered into the general plan to eliminate and fight against any opposition. Thus, the responsibility of President Mobutu was established for ordering the arrest, conviction and murder of more than 80 people.²¹⁹
- About the case of 13 members of the parliament, the Commission established the collective responsibilities of the MPR, Party-State, for adopting a totalitarian system restricting individual and collective freedoms guaranteed by the Constitution, and the individual responsibility of President Mobutu, guarantor of the Nation, for initiating and ordering the lifting of the parliamentary immunity of 13 member of the parliament, their arrests and relegations as well as moral torture, etc.²²⁰
- About the massacre of Idjwi Island, the commission established the responsibility of Yogo to have sent to death several innocent victims, and the collective responsibility of the Government was engaged in its civil responsibility for promoting impunity, the killings and other abuses committed by Yogo.²²¹
- About the massacre of Kabare, the Commission established the responsibility of the former State Commissioner for Territory Administration, Mr. Mozagba Ngbuka, who succeeded the late traditional Chief in violation of the Shi custom. The former Regional Governor, Mwando Nsimba, must also be held responsible for executing the illegal orders.²²²
- About the massacre of Kasa-Vubu Bridge on 17th January 1988, the Commission established the Collective responsibility of the Zairean State, represented at that time by the Party-State, of the city of Kinshasa for having requisitioned the security forces for using munitions of war against persons organizing a peaceful demonstration. The individual responsibility of President Mobutu for ordering the arrest of Mr Tshisekedi and initiating medical examinations in order to declare him mentally ill; of Mr. N'singa Udjuu for arresting and arbitrarily detaining Mr. Tshisekedi, Mr. Nkamba and Dr.

²¹⁵ CNS, *Rapport de la Commission des assassinats(...)*, p. 68

²¹⁶ Idem., p. 72

²¹⁷ Idem., pp. 79-80

²¹⁸ Idem., pp. 86-88

²¹⁹ Idem., pp. 97-99

²²⁰ Idem., p. 107

²²¹ CNS, *Rapport de la Commission des assassinats(...)*, p. 112

²²² Idem., p. 115

Loseke for having a false medical report prepared. The responsibility of generals Bolozi, Mahele and Baramoto for instructing their troops to use munitions of war against unarmed persons, and of general Bolozi for the murder of Ntumba Tshinyama, who died as a result of torture in the dungeon.²²³

- About popular uprising and the rise of price on 1st January 1990, the Commission had found that the repression was motivated by a summary execution rather than maintaining public order. Thus, the individual responsibility of the commander of the units was established for not preventing the summary execution of the population as well as of the elements of the units for having voluntarily killed the population. The collective responsibility of the government (Zaire State) was established for not having succeeded in giving the population decent living conditions.²²⁴
- About the massacres of 16th February and 1st March 1992, the commission had established the collective responsibility of the government for having ordered the soldiers, through the governor of the City of Kinshasa, to fire really bullets into the crowds of unarmed demonstrators. Individual responsibility was as well established to the Minister of home affairs Mr Mandungu Bula Nyati and to the governor of the City of Kinshasa Mr Kibabu Madiata Nzau for the massacres.²²⁵
- About the massacre of students of the University of Lubumbashi on 11-12th May 1990, the commission found that it was the consequence of the privatization of the State power by the Party-State. Thus, the Committee had established the collective responsibility of the Party-State for having opted to restrict individual and collective freedoms; of the head of State, President Mobutu, for not guaranteeing the security of the population, particularly the student population; of the National Assembly; of the Transitional Government led by the Prime Minister Lunda Bululu; the Security Service, etc.²²⁶
- About the massacre of Mbuji-Mayi from 13 to 17 April 1991, the commission concluded that the Governor of Region, Mr Kakule Bahingana, as well as the urban authority and the authority of the zone bear the first responsibility for the riots of Mbuji-Mayi for not having prevented the repression.²²⁷
- About the file of Bikeka Mafuila and others, the commission established the individual responsibility of both general Kikunda and Mavua, of the Prime Minister Mulumba Lukoji. However, an individual responsibility of general Kikunda was retained by the Commission.²²⁸
- About the case of Syndicate of Medical Doctors (Synamed), the commission retained the responsibility the Nguz Government as a whole for having encouraged and supported the arbitrary measures taken against all delegate of Synamed; of the CEO (DGA) Abulu was established for ill and inhuman treatment inflicted on medical doctor Kanku; the moral responsibility of Governor Kibabu and Minister Lufuma for having tolerated or covered the taking of unlawful decisions against union delegates; the responsibility of the head doctors, Falaki of the Kintambo Hospital and Sulu of the

²²³ Idem., p. 124

²²⁴ Idem., pp. 131-132

²²⁵ Idem., pp. 133-134

²²⁶ Idem., pp. 154-160

²²⁷ CNS, *Rapport de la Commission des assassinats(...)*, pp. 173-174

²²⁸ Idem., p. 183

NGALIEMA Clinic for the arbitrary and illegal decisions that have led to the confusion and anarchy that prevailed in their respective institutions.²²⁹

- About the case of Lieutenant-colonel Mayolo, the commission found that the colonel was falsely accused and arbitrarily detained of making a coup d'état.²³⁰
- About the shooting in Matete in the case of Bindo and Masamuna, the Commission established the responsibility of the Governor Mulumba Lukoji for not having taking sufficient precaution to protect the population; of Captain Eale for not having mastered its elements during the confrontations, and the moral responsibility of the Zone Commissioner.²³¹
- About the file of Jean-Marie Kazadi against Yesu Kitenge, the Commission established the responsibility of Yezu Kitenge, then Minister of Communication, for giving his weapon (calibre 12) to his guard who had attempted to assassinate Mr Jean-Marie Kazadi; of the guard Sebutu Gbadia for shooting at a quiet citizen a few meters from his workplace, and of the Captain Boyengo Mubamba for failing to keep the perpetrator of the crime after arrest and for failing to investigate the case according to the required procedure in this matter.²³²
- About the case of the family Solomogo Kandomba against the deputy Administrator in 1989, the Commission found that agents Charles Ngoto and others are liable for having trespassed without a search warrant and for administering voluntary assault causing death.²³³
- About the case of the medical doctor Kitimini, the Commission found that both Prime Ministers Lunda Bululu and Mulumba Lukoji bear the moral responsibility for not having responded to the request of medical evacuation abroad initiated by the family of medical doctor Kitimini after being violently struck by the elements of the army and abandoned almost dead lying on the ground.²³⁴

Recommendations of the Commission for the period from 1971-1992:

- Prosecution of perpetrators was recommended by the Commission in the following cases: of the death of Lieutenant-Colonel Tshibangu; of the massacre of Idiofa of 1978; of the war of 80 days; of the massacre of Mbuji-Mayi in 1991; of the file of Bikeka Mafuila and others (Kikunda); of the shooting in Matete in the case of Bindo and Masamuna. However, the revision of trials or the reopening of the trials in order to rehabilitate victims was recommended by the Commission in the case of the attempted coup d'état of 1975, of the so called terrorists and of the massacre of students in Lubumbashi.
- For people found guilty in the case of 13 member of the parliament; of the massacres of students in Lubumbashi in 1990; of the massacre of Mbuji-Mayi in 1991; of the file of Bikeka Mafuila and others, and of the family Solomogo Kandomba against the deputy Administrator in 1989, the Commission recommended the prohibition of exercising

²²⁹ Idem., pp. 187-188

²³⁰ Idem., p. 190

²³¹ Idem., p. 192

²³² Idem., pp. 193-194

²³³ Idem., pp. 196-197

²³⁴ CNS, *Rapport de la Commission des assassinats(...)*, p. 199

public functions for the duration of two legislatures. Particularly in the case of 13 members of parliament, the Commission named Mr Mobutu, Duga, Mazangu Mbwilu, Ngbanda, Mahele.

- Reparation or compensation for all damages suffered by victims and their families was recommended by the Commission in the following cases: of war of 80 days; of Lieutenant-Colonel Tshibangu; of so called terrorists; of 13 members of the parliament; of the massacre of Kasa-Vubu bridge in 1988; of massacres of 16th February and 1st March 1992; of massacres of students in Lubumbashi in 1990; of massacre of Mbuji-Mayi in 1991; of the file of Bikeka Mufuila and others; of Synamed; of Lieutenant-Mayolo; of the family Solomogo Kandomba against the deputy Administrator in 1989, and of medical doctor Kitimini.
- Restitution of asserts and properties seized or their equivalent in value was recommended by the Commission in two following cases: of attempted coup d'état and of Kabare.
- The exhumation of the bodies of victims and their reburial in dignity was recommended in the case of the trial of so called terrorists.
- Building of monuments to honour all victims and rehabilitation of the memory of victims were recommended for the victims in the case Lieutenant-Colonel Tshibangu; of the massacre of Idiofa in January 1978; of the file of Bikeka Mafuila and others, and of the shooting in Matete in the case of Bindo and Masamuna.
- Recognition as martyrs of Democracy and Freedom was recommended to the victims in the case of massacre of Idiofa in 1978, and of 13 Members of Parliament.

Appendix III

List of Interviews Conducted for the Study

Fourteen key informants participated in this study, but three of them requested the anonymity (the Representative of the Higher Military Auditor in North-Kivu province , #04 and #07).

- Representative of the Higher Military Auditor in North-Kivu province interviewed in Goma on 28 June 2017
- Mr Denis Masumbuko Ngwasi interviewed in Goma on 29 June 2017. He was a delegates of the civil society at the Inter-Congolese Dialogue in Sun City, Senator during the transition from 2003 to 2006 and participant at the Goma Peace Conference of 2008
- Mr Théo Mpabuka interviewed in Goma on 29 June 2017. He was one of the leaders of the former rebel group called the Congolese Rally for Democracy. He is among signatory of the Lusaka Ceasefire Agreement of 1999, Member of the Parliament during the transition from 2003 to 2006, participant at Goma Peace Conference of 2008 ;
- Key informant #04 interviewed in Goma on 30 June 2017 and requested the anonymity. He was interviewed in Goma on 30 June 2017, Member of the Parliament during the transition from 2003 to 2006, participant at Goma Peace Conference of 2008;
- Ms Chantal Kambibi interviewed in Goma on 03 July 2017. She was a Minister in the local government (Province) from 2009-2012 and Director of STAREC (Stabilization and Reconstruction of Outlying Areas of Armed Conflict) from 2012 to June 2017;

- Adv. Félicien Hitimana interviewed in Goma on 04 July 2017. He was one of the leaders of the former rebel group called the Congolese Rally for Democracy, signatory of the Lusaka Ceasefire Agreement of 1999, delegate of the RCD to the Inter-Congolese Dialogue in Sun City, Deputy Minister of home affairs during the transition from 2003 to 2006, and participant at Goma Peace Conference of 2008;
- Key informant #07 interviewed in Goma on 05 July 2017 and requested the anonymity. He was the RCD executive-rebel movement from 2005 to 2010, Member of the Parliament during the transition from 2003 to 2006, participant at Goma Peace Conference of 2008;
- Mr Thomas d'Aquin Muiti Luanda Mustapha Interviewed in Goma on 06 July 2017. He is the Coordinator of civil society organisations in North-Kivu, former chairperson of the TRC at the Provincial level from 2004 to 2006, participant at Goma Peace Conference of 2008;
- Mr Kleti Kakule Komela interviewed in Goma on 07 July 2017. He was the Member of the Parliament during the transition from 2003 to 2006 and participant at Goma Peace Conference of 2008 ;
- Adv. Jean Paul Lumbu Lumbu Mutanana interviewed in Goma on 10 July 2017. He is the National President of the Liberal Party for Development (PLD); opposition party. His father was assassinated by the elements of RCD-KML on 11 December 1999;
- Mr Emmanuel Kamanzi Runigi interviewed in Goma on 11 July 2017. He was the co-founder of the AFDL, RCD, signatory of the Lusaka Ceasefire Agreement of 1999, Member of the Parliament during the transition from 2003 to 2006 and participant at Goma Peace Conference of 2008;
- General Prosecutor of the North Kivu, André Mvunzu Luwau, interviewed in Goma on 12 July 2017;
- Adv. Fataki Luhindi Georges interviewed in Goma on 12 July 2017. He is the Chairperson of the Barza Inter Community of North-Kivu since 2014;
- Mr Prince Kihangi Kyamwami interviewed in Goma on 13 July 2017. He was participant at Goma Peace Conference of 2008 and consultant at STAREC.