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RIGHTS & DEMOCRACY'S NEWSLETTER

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THINK TANK

DEMOCRATIC REPUBLIC OF THE CONGO:

DEMOCRATIC TRANSITION AND THE CAMPAIGN AGAINST IMPUNITY

BY PHILIPPE TREMBLAY

ON JUNE 10, 2004, the annual Think Tank of the Board of Directors of Rights & Democracy meets at the Department of Foreign Affairs in Ottawa. This year's day-long session is devoted to the political transition that has been under way in the Democratic Republic of the Congo (DRC) for almost a year. Having examined, in previous years, such cross-cutting thematic issues as *Promoting Human Rights and Democracy in the Context of Terrorism and Investment and Human Rights*, the Think Tank will focus on a specific country in 2004. As a result of fruitful inter-Congolese negotiations and a more peace-oriented regional dynamic, the people of the Congo are now experiencing democracy for the first time in their history. This exciting yet perilous transition merits close scrutiny.

The scene for several years of bloody battles between government forces, rebel movements and the armies of their respective foreign allies, the DRC has been governed since June 30, 2003 by a National Unity Government and a Transitional Parliament. These institutions bring together former belligerents as well as civil society representatives who were involved in the peace talks. This is a very significant development for the DRC where, since the arrival of the Belgian colonizers and even after the country gained independence in 1960, the Congolese people have not often played a role in defining public policy. Despite the hope it has inspired in the DRC and elsewhere, the current institutional

AS A RESULT OF FRUITFUL INTER-CONGOLESE NEGOTIATIONS AND A MORE PEACE-ORIENTED REGIONAL DYNAMIC, THE PEOPLE OF THE CONGO ARE NOW EXPERIENCING DEMOCRACY FOR THE FIRST TIME IN THEIR HISTORY. THIS EXCITING YET PERILOUS TRANSITION MERITS CLOSE SCRUTINY.

framework, which is supposed to prepare the country for the promised free and open elections to be held by summer 2005 at the latest, remains very fragile.

The restoration of public services, which are currently in complete disrepair, will require unwavering public will as well as sustained and significant support from international donors, including Canada. The central objective of this meeting is thus to place the success of the political transition in the DRC at the heart of the concerns of Canadians and their government, with regard to foreign policy and official development assistance. Given its size, population and economic potential, the DRC must be included in all initiatives designed to promote the integral development of central Africa.

With this in mind, Congolese political and civil society actors, Canadian experts and government officials as well as representatives from multilateral institutions that are very active in the DRC (UN, EU) will meet to discuss the major challenges currently facing the Congolese people.

We will first examine the "roadmap" of **political transition** as presented by the transitional government, which is designed to guide the actions of institutions during the run-up to the 2005 elections. We will pay particular attention to the role that civilian institutions supporting democratization, including the Independent Electoral Commission, are expected to play and the role that women will play in the political future of the DRC.

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Rights & Democracy
International Centre for Human Rights
and Democratic Development

RIGHTS & DEMOCRACY (International Centre for Human Rights and Democratic Development) is a Canadian institution with an international mandate. It is an independent organization, which promotes, advocates and defends the democratic and human rights set out in the *International Bill of Human Rights*. In cooperation with civil society and governments in Canada and abroad, Rights & Democracy initiates and supports programmes to strengthen laws and democratic institutions, principally in developing countries.



Jean-Louis Roy,
President of Rights & Democracy

RIGHTS & DEMOCRACY'S WORK IN THE DRC

BY AKOUÉTÉ AKAKPO-VIDAH

RIGHTS & DEMOCRACY'S interest in the DRC (formerly Zaire) dates back to 1992, the year in which it contributed to the participation of Congolese civil society in the Sovereign National Conference through the National Council of Development NGOs. Partnerships were also established with human rights organizations such as AZADHO (which later became ASADHO). When the war began in the Congo in October 1996, Rights & Democracy played a role in the campaign for a peaceful resolution by organizing the International Conference in Support of Democratic Opportunities in the African Great Lakes Region. Held in Montreal in January 1997, the conference brought together civil society leaders from three countries as well as of African regional NGOs.

In June 1998, jointly with ASADHO, Rights & Democracy published the findings of the International Non-Governmental Commission of Inquiry on the Massive Violations of Human Rights Committed in the DRC during the war waged by the AFDL in 1996-1997.

In reaction to the resumption of war in the DRC in August 1998, we organized the Montreal Conference for Durable Peace and Democratic Development in the Congo in January 1999, and contributed to the launching of an international campaign for a national dialogue and inclusive political negotiations. Three years later, we witnessed the fruits of this campaign with the opening of the Inter-Congolese Dialogue in Addis Ababa in October 2001, and its continuation in Sun City from February to April 2002, culminating in the signing of a global, inclusive agreement, the adoption of a new transitional constitution and the implementation of new institutions in 2003.

Throughout this period, Rights & Democracy has also helped reinforce the advocacy role of several of its partners in Congolese civil society, including promoting the participation of women in the Inter-Congolese Dialogue. *ℓ*

PRESIDENT'S MESSAGE

A DAY WILL COME when it will be necessary to proclaim the immense responsibility of the colonial power and of the supporters of Mobutu's regime in this dirty war that has ravaged the Democratic Republic of the Congo and plunged central Africa into a painful abyss.

Today, however, the essential task we face is to create and consolidate the conditions for peace, to contain the countries (eight) and factions (innumerable) that have waged this war, and to put an end to the looting of resources in the former Zaire. But first and foremost, we must halt the massacre of the Congolese people (nearly 3.5 million), the torture, the enslavement of women and children for war-related objectives, and we must restore civility, justice, law, and human rights.

Rights & Democracy's 2004 Think Tank focuses on these objectives. It also signals our support for the survivors of this brutal period, for our partners and for so many others who have succeeded in keeping alive the faith in human dignity and solidarity. *ℓ*

Jean-Louis Roy.

RIGHTS & DEMOCRACY'S ANNUAL THINK TANK

EACH YEAR since 1999, Rights & Democracy's Board of Directors has hosted a Think Tank in Canada to profile international human rights issues and to encourage effective policy dialogue between government officials, parliamentarians and NGOs from around the world.

Rights & Democracy held its first Think Tank in June 1999 to consult the human rights constituency on potential directions for the institution at the dawn of the 21st century. The second Think Tank, held in June 2000, focused on learning from the experiences of international human rights organizations in urgent action initiatives. The third, held in Ottawa in 2001, addressed the challenges of strengthening and financing the United Nations' human rights mechanisms.

In response to the September 11, 2001 attacks in the US and the subsequent war on terrorism, the fourth Think Tank examined the impact of the war on terrorism in various countries around the world and recommended strategies to ensure that the need for security measures did not become a pretext for the suppression of basic human rights. Last year's Think Tank examined the effects of international investment on human rights in the developing world and the ways in which international investment rules and practices can serve, rather than undermine, the cause of human rights.

For reports of Rights & Democracy's previous Think Tanks, please visit www.ichrdd.ca. *ℓ*



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DEMOCRATIC REPUBLIC OF THE CONGO: DEMOCRATIC TRANSITION AND THE CAMPAIGN AGAINST IMPUNITY

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The critical issue of **security** must also be addressed, with consideration to the particular realities of the women

and girls involved in combat. Although most armed groups signed the All-Inclusive Agreement of December 18, 2002, and are involved in the transition, there are still

major pockets of instability in the DRC. The Ituri region (northeast), wracked by fierce fighting and horrific human rights violations against the civilian population in May-June 2003, remains largely under the control of armed militias hostile to peace. The Kivus, Maniéma and North Katanga also remain unstable. Furthermore, there are several immense and essential challenges such as the implementation of a new national army, including rebel elements, the creation of a civilian police force, and the demobilization and disarmament of irregular forces that will not be absorbed by the new Congolese army. If they are not met, the country could lapse once more into violence.

The repatriation of foreign combatants from the Congolese territory is a related challenge. Since repatriation must be voluntary, many rebels, fearing trial and imprisonment for their participation in grave human rights violations, are unwilling to return to their country of origin.

It will be interesting to see how the developing situation in the DRC fits within the broader regional context. The United Nations and the African Union are overseeing a far-reaching process aimed at stabilizing the highly volatile African Great Lakes region. Preparations are well under way for an international conference on the Great Lakes region. Canada is co-chairing the Group of Friends of the Great Lakes region and, in this capacity, coordinates the political, technical and financial support for the conference.

THE RESTORATION OF PUBLIC SERVICES, WHICH ARE CURRENTLY IN COMPLETE DISREPAIR, WILL REQUIRE UNWAVERING PUBLIC WILL AS WELL AS SUSTAINED AND SIGNIFICANT SUPPORT FROM INTERNATIONAL DONORS, INCLUDING CANADA.



Sabin Banza, Vice President of La ligue des électeurs, a local NGO, Philippe Tremblay and Akouété Akakpo-Vidah of Rights & Democracy, as well as four members of the Observatoire national des droits de l'homme, one of the five institutions established in June 2003 to support democracy.

Lastly, the Think Tank will address the **grave human rights violations** committed in recent years and the mechanisms for dealing with them. The raging war that began in 1998 caused hundreds of thousands of deaths among the civilian population and led to scenes of extraordinary violence, often targeting women and girls. The International Criminal Court has announced that it will formally take up the Congolese case, but it will be unable to prosecute more than a few of the key figures responsible for the crimes committed. The Truth and Reconciliation Commission, one of the civilian institutions that emerged from the peace talks, is a different kind of instrument that focuses on forgiveness rather than punishment. It remains to be seen how it will function and interact with the courts. *ℓ*

THE INTERNATIONAL CRIMINAL COURT (ICC) AGREES TO TAKE UP THE CONGOLESE CASE

BY PHILIPPE TREMBLAY

ON APRIL 19 OF THIS YEAR, the ICC officially agreed to investigate atrocities committed in the Democratic Republic of the Congo (DRC), thereby responding favourably to the request made by its Chief Prosecutor, Luis Moreno Ocampo. This is only the second case, after Uganda, that the ICC has agreed to handle since its inception.

This step would not have been possible had the DRC not first acknowledged the ICC's jurisdiction by ratifying the Rome Statute, the founding treaty of the ICC. As such, it is important to salute the courage and foresight of the Congolese government for having referred the situation within its territory to the ICC on April 11, 2002, at a time when political negotiations were still being held in South Africa. This initiative constitutes an important step forward in the shift currently underway in the DRC toward the establishment of a constitutional state.

The ratification of the Rome Statute alone is not sufficient, however, and will only become fully significant once the DRC's national laws have been amended to conform with the Rome Statute. Implementing legislation for this Statute (the *Projet de loi de mise en œuvre du Statut de la Cour pénale internationale*) was drafted in July 2003 by the *Commission permanente de réforme du droit congolais*, but it

remains under review. The Congo's current penal code does not recognize war crimes, genocide or crimes against humanity, while the definitions of these crimes in the Military Penal Code are not consistent with the definitions set out in the Rome Statute. The ICC implementing legislation should rectify these shortcomings, while also describing the manner in which Congolese authorities will cooperate with the ICC to prosecute the perpetrators of crimes falling under this Court's jurisdiction.

However, even once the harmonization of Congolese internal law with international penal law has been completed, the ICC will only have the power to try people accused of the gravest rights violations – including war crimes and crimes against humanity – committed after July 1, 2002, the date the Rome Statute took effect. As a result of these inherent limits on the ICC's jurisdiction, only a small number of individuals responsible for the atrocities committed will be judged by this Court. For the most serious crimes committed prior to July 1, 2002, one of the options envisaged is to set up an ad hoc tribunal modelled on precedents in Rwanda and Sierra Leone. But regardless of whether these initiatives are implemented, ultimately, it is a reformed, rehabilitated and well-funded Congolese legal system that will have to take over and carry on the work that has been started. *ℓ*



THE BEST WAY TO APPRECIATE the progress made in the preparations for the International Conference on the Great Lakes Region of Africa is to examine the preparatory process at two levels: the official level, which encompasses the participating governments and the United Nations, and the independent level, which includes civil society, notably representatives of Church, women's and youth groups.

Significant advances have been made at the official level. In February 2004, the Congolese government organized a preparatory workshop to launch the process country-wide. Since then, the pace of events has picked up, with debates being held in the Council of Ministers, followed by the signing in March 2004 of a decree providing for the creation and organization of the National Preparatory Committee (NPC). Then, on April 8, 2004, a decree was signed for the designation of a National Coordinator and an Alternate National Coordinator of the NPC. Meetings of the Office of the Preparatory Committee have already been held and a plenary meeting is scheduled for May 27, 2004. Consultations at the provincial level are slated to begin in early June 2004.

However, the official process has also run up against problems related to a lack of adequate work tools (infrastructures and office material). These obstacles have hampered the ability of participants to carry out their work and caused delays in

INTERNATIONAL CONFERENCE ON THE GREAT LAKES REGION OF AFRICA: A PROGRESS REPORT

BY BAUDOIN HAMULI, DIRECTOR, CENTRE NATIONAL D'APPUI AU DÉVELOPPEMENT ET À LA PARTICIPATION POPULAIRE, AND DRC NATIONAL COORDINATOR FOR THE INTERNATIONAL CONFERENCE FOR THE GREAT LAKES

relation to the initial timetable established by the United Nations and the African Union. We hope that the government, with the support of the international community, will take the necessary steps to overcome these obstacles.

As far as the independent process is concerned, civil society groups have also made significant progress, starting with the launching in November 2003 of meetings of civil society organizations that culminated in the establishment of a working group for the International Conference. Encouraging initiatives were observed across the country, particularly in the provinces of Kivu and Katanga, where a strong momentum can be felt. Civil society groups have set up a technical secretariat to oversee the independent process, leading up to the formulation of a list of civil society's priorities that will be presented at both the national and regional levels.

This process has encouraged the appropriation of the Conference by the populations concerned. Civil society is working to ensure that the aspirations of the people living in the Great Lakes region are taken into account. Given the particular realities of women and children as victims of the region's conflicts, provision has specifically been made to ensure that these sectors are consulted and that they formulate concrete proposals to help eliminate instability and turbulence in the region. Expectations are particularly high with regard to the contribution of women in influencing the decisions made by the Summit of Heads of State.

Our desire is that this process be a participative one. However, given the difficulties encountered by civil society in the DRC in terms of the available work tools, the support of partners is essential to the success of the process. *ℓ*

IMMACULÉE BIRHAHEKA,

PRESIDENT OF PROMOTION AND SUPPORT FOR WOMEN'S INITIATIVES (PAIF)
BASED IN GOMA, DEMOCRATIC REPUBLIC OF THE CONGO (DRC)



ℓ: Ms. Birhaheka, what is the state of women's rights in the DRC?

I. B.: During the successive wars that have been waged in the DRC since 1996, there has been an exacerbation of the underlying culture of violence against women already existing in mentalities and reinforced by education. Women, regardless of their age or health, have been a prime target of the belligerents. Women have been subjected to cruel and inhuman treatment by parties on all sides of the conflict.

ℓ: What form has the violence against women taken during the conflict?

I. B.: We have gathered testimony about women who have been buried alive, beaten to death or fatally burned, while others reported being arrested, stripped naked and then beaten by RCD/Goma soldiers and police officers, who accused them of collaborating with the opposing side or even of being witches.¹ Women and young girls have been systematically raped, and in many cases gang raped, by soldiers or militiamen belonging to the various warring parties. Some of these women have been carried off into the bush or taken to military barracks to serve as sex slaves, domestic workers on the battlefields or to transport the possessions stolen from their own homes. Many women, particularly those who resisted their captors, have been killed or mutilated after being raped, in order to prevent them from giving testimony or as an example to others who resist. Once in detention, women arbitrarily arrested on suspicion of "witchcraft" have been raped by police officers, guards or other inmates. The zones where rapes have been committed on a massive scale are those where the opposing forces have set up their positions. Women and the general population in these zones thus find themselves caught in the middle of several rival factions. Some families have been unable to locate their loved ones, because they are either dead or being detained in an unknown location.

ℓ: What are the consequences of this violence for women and their community?

I. B.: At the physical level, aside from the deaths resulting immediately from the atrocities suffered by women, it is important to underline the numerous deaths resulting from a lack of appropriate medical care, in addition to consequences such as disability, sexually transmitted diseases, including AIDS, and unwanted pregnancy. In the latter case, some girls who attempted self-induced abortions after being raped have been harshly punished by being arrested and charged with homicide. At the psychological and social level, in addition to the trauma of having been raped, women and girl victims of rape – and the children conceived from rape – are often rejected by their parents, spouses or fiancés, leading to the breakdown of family ties. In Shabunda in South Kivu, nearly 800 children conceived from rape live under the threat of being killed, ostracized from their communities or sent back to Rwanda (to their fathers) so that their mothers can reintegrate into society. In some cases, particularly in rural areas, girls who have been raped have also been evicted from school and forced by their parents or the police to wed their tormentor.

ℓ: What are the specific obstacles facing victims of sexual violence and the organizations devoted to assisting them in the current situation in the DRC?

I. B.: First of all, the dysfunction and weakness of the Congolese judicial system has contributed to a prevailing culture of impunity. For example, during a conference on rape and other crimes against women organized by the PAIF in Goma in February 2003, the officer in charge of the special police unit for the protection of women and children declared that, out of a total of 60 cases of rape reported to the police in 2002, only 14 were investigated and only two made it as far as the "Parquet de grande instance" (public prosecutor's office). Moreover, as long as those in charge of punishing such crimes are the same people committing the crimes, civilians will continue to imitate the conduct of so-called officers of "law and order" in the expectation of enjoying the same impunity. There is an urgent need for an education campaign around the issue of rape, particularly its definition. Indeed, rape is widely perceived by the community as a sort of "short-cut to marriage," which explains the leniency with which this crime is treated. In fact, crimes of rape are often referred to traditional courts, despite the relevant provisions set out in the Congolese Penal Code. In addition, the families of victims, already hard-pressed to pay for the cost of post-rape medical care, are not always able to pay for the medical requisition that is the only proof accepted by local jurisdictions, apart from an admission of guilt by the perpetrator. Additional difficulties include the inexistence of a health system equipped to deal with rape and other gender-specific trauma, and the fact that victims' families are often prepared to reject the victims and pardon the perpetrators.

ℓ: What role does the PAIF play in Goma to support women living in this situation?

I. B.: The PAIF offers women victims of rape medical accompaniment services, including information on the appropriate health services available and support during the AIDS testing process for those who ask for it. We also offer a legal accompaniment service for rape victims who wish to take their aggressors to court. We are extremely active in the fight to bring changes to the justice system in favour of women victims of rape. In this regard, we hold monthly conferences for social actors, particularly the police, aimed at raising awareness of this issue. Recently, we took advantage of the International Women's Day celebrations of March 8, 2004, to organize a round table discussion attended by the Attorney General of North Kivu, at which we addressed the impunity that perpetrators of rape continue to enjoy. Unfortunately, the results of our efforts in this area are slow in coming. The PAIF also works to combat the marginalization, stigmatization and ostracization experienced by rape victims. We have set up a counselling clinic for victims, their families and perpetrators, and we visit the families of ostracized victims to help them reintegrate their family. Thanks to these projects, we have achieved numerous unimaginable successes. We also organize popular plays dealing with the issue of rape and social perceptions of rape in an effort to educate the community.

¹ IT SHOULD BE NOTED THAT ACCUSATIONS OF WITCHCRAFT ARE GENERALLY LINKED TO THE SOCIAL STATUS OF THE WOMAN. AS SUCH, THE TYPICAL VICTIM OF SUCH ACCUSATIONS LIVES IN CONDITIONS OF EXTREME POVERTY, COMES FROM A FAMILY AT THE LOWEST END OF THE SOCIAL HIERARCHY, OR HAS NO FAMILY AT ALL.

FUELLING WAR: RESOURCE PILLAGE, CORPORATIONS AND CONFLICT IN THE DRC

BY TAMARA HERMAN

IT IS IMPOSSIBLE TO DISCUSS the atrocities of the deadliest war since WWII without examining the central role of resource pillage. The interests of foreign governments and corporations in the DRC's wealth of natural resources are entangled in a long history of conflict. Meanwhile, the Congolese people have been the first to suffer and the last to benefit from the exploitation of lucrative resources such as diamonds, coltan, gold and timber.

In 2000, the UN Security Council established an Expert Panel on the Illegal Exploitation of Natural Resources and Other forms of Wealth of the DRC.¹ The Panel presented clear evidence that business activities contributed directly and indirectly to the conflict in a self-perpetuating cycle, where resources fuelled war and war was instigated to control resources. Its reports documented the elite networks of the corporations, Congolese parties and foreign governments that profited from the pillage and the lack of regulatory frameworks governing investment.

The Panel's reports also included lists of companies – several of which were Canadian – that violated the *OECD Guidelines for Multinational Enterprises*.² The Panel's Final Report, however, was widely criticized for omitting key information and re-categorizing the vast majority of cases as

THE CONGOLESE PEOPLE HAVE BEEN THE FIRST TO SUFFER AND THE LAST TO BENEFIT FROM THE EXPLOITATION OF LUCRATIVE RESOURCES SUCH AS DIAMONDS, COLTAN, GOLD AND TIMBER. ■

"resolved" without providing any evidence to that effect.³ This was viewed as the result of intense lobbying by governments and corporations at the UN Security Council.

Ultimately, the responsibility to implement the *OECD Guidelines* falls into the hands of the governments of those countries where corporations who profited from the war are based. The importance of a coordinated, international effort to address the pillage of resources at this critical phase in the DRC peace process cannot be underestimated. If we are to ensure that human rights

are fulfilled in the DRC, we cannot ignore the issue of corporate impunity, despite the challenges and obstacles it presents. ℓ

¹ SEE WWW.UN.ORG/DOCS/JOURNAL/ASP/WS.ASP?M=S/2003/1027 FOR THE FINAL REPORT OF THE UN PANEL OF EXPERTS ON THE ILLEGAL EXPLOITATION OF NATURAL RESOURCES AND OTHER FORMS OF WEALTH OF THE DEMOCRATIC REPUBLIC OF CONGO (DRC).

² SEE WWW.OECD.ORG/DATAOECD/56/36/1922428.PDF FOR THE FULL TEXT.

³ FOR MORE INFORMATION, SEE UNANSWERED QUESTIONS: COMPANIES, CONFLICT AND THE DEMOCRATIC REPUBLIC OF CONGO [HTTP://WWW.MEDICO.DE/KAMPAGNE/FATAL/DRC_UNANSWERED_QUESTIONS.PDF](http://WWW.MEDICO.DE/KAMPAGNE/FATAL/DRC_UNANSWERED_QUESTIONS.PDF).



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Human Rights Watch: www.hrw.org/doc?t=africa&c=congo

Observatoire de l'Afrique centrale: www.obsac.com/

Digital Congo.net: www.digitalcongo.net/