Subsaharan Africa
Democratic Republic of the Congo: Holding FDLR Leaders Accountable for War Crimes

Following the 1994 Rwandan Genocide, Rwandan Hutus fled the country and many settled in neighboring Democratic Republic of the Congo (DRC). The rebel group Democratic Forces for the Liberation of Rwanda (FDLR) formed from this displaced population. Human Rights Watch reports that since 2000, the group has targeted civilians and is responsible for ethnic massacres, summary executions, abductions, mass rapes, and forced recruitment of children.

The Armed Forces of the Democratic Republic of the Congo (FARDC), in conjunction with the United Nations (UN) Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO), launched a joint military mission against the FDLR in 2009. Since then, the FDLR has progressively lost control of many eastern DRC villages, according to the Secretary General of the United Nations. As membership has decreased, the rebel group has migrated out of villages and into more remote areas. Yet nearly 2000 fighters remain active, and HRW reports that FDLR fighters continue to commit human rights abuses. On November 9, 2015, the UN Security Council called for resumption of joint military efforts, voicing concern about the FDLR’s “persistently high levels of violence and human rights abuses.”

As the Congolese government and MONUSCO have worked together to eliminate the FDLR threat through military action, the International Criminal Court (ICC) has separately sought to hold FDLR leaders accountable for war crimes through the Court. The ICC’s Office of the Prosecutor (OTP) opened an investigation into the situation in the DRC in June of 2004 after the Government of the DRC referred the situation to the Court pursuant to its rights and responsibilities under the Rome Statute, which the DRC ratified in 2002. Since the initial investigation, OTP has brought six DRC cases before the ICC, two of which involved FDLR members. Although other groups have assumed prominence recently in the ongoing violent conflicts in the country, officials still consider the FDLR “one of the most important hindrances of peace in eastern DRC.”

The international community may be hopeful that the judicial process will effectively prosecute FDLR leaders, but the ICC continues to face challenges in its attempt to hold these leaders accountable for their actions in the DRC. In September 2010, the ICC issued an arrest warrant for FDLR Executive Secretary Callixte Mbarushimana, the first issued by the ICC for an FDLR leader. French authorities arrested Mbarushimana a month later and transferred him to The Hague. But, in December 2011, the Pre-Trial Chamber of the ICC decided not to confirm the charges. The Prosecutor’s case failed in large part for lack of direct evidence and questionable interview techniques. The Pre-Trial Chamber found the case’s investigator did not conduct interviews with impartiality and instead asked leading questions and expressed disappointment and impatience with witnesses when their answers did not conform to his hypothesis. Some international commentators have gone so far as to allege the OTP’s evidence was an “almost wholesale copying of Human Rights Watch’s work and other international organizations’ field reports.” The OTP’s second warrant for an FDLR leader, Supreme Commander Sylvestre Mudacumura, faced similar setbacks when the Court initially rejected the application because the allegations were too vague. After amending the request, the Court issued a warrant for Mudacumura’s arrest in July of 2012. Mudacumura is sought for nine counts of war crimes but remains at large.

International support for holding FDLR leaders accountable for war crimes appears strong and unified. The DRC, UN, ICC, HRW,
and countries such as the United States and Germany, have all demonstrated a commitment to the effort. While the ICC has not fared well in its attempt to hold FDLR leaders accountable for war crimes, other nations have had more success. On September 28, 2015, a German court sentenced the President and Vice President of the FDLR to thirteen and eight years in a German prison, respectively.

Yet, much work remains, and the arrest of Mudacumura is a top priority. HRW and other commentators have criticized the DRC and MONUSCO for their failure to arrest and turn over Mudacumura to the ICC, who is said to be hiding in a remote area of the DRC. One human rights organization believes the most imperative and immediate need is improved dialogue between the DRC and the ICC stating “[O]nly together can they facilitate the difficult process of bringing the indicted to light.” From there, Human Rights Watch asserts, “the ICC prosecutor has a key role to play in ending this impunity and making sure the cases proceed efficiently.” The OTP will need to build a strong case against him and avoid the evidentiary and investigative mistakes of the Mbarushimana case.

By Laura Collins, staff writer

47 YEARS OF SWAZILAND INDEPENDENCE REVEALS
CONTINUING HUMAN RIGHTS ABUSE

“[T]he true and real enemies of Swaziland, and its people, are those who are opposed to democracy...those who undermine the rule of law... and [those who] abuse the fundamental human rights, basic freedoms, and civil liberties of... our people.” –From the prison letter of Swazi Human Rights Lawyer Thulani Rudolf Maseko.

In March 2014, the government of Swaziland charged Thulani Maseko and Bheki Makhubu with contempt of court after publishing two articles in The Nation magazine criticizing Swaziland’s Chief Justice Michael Ramodibedi for judicial misconduct and financial corruption. On May 1, 2014, police arrested and detained Maxwell Dlamini of the Swaziland Youth Congress (SWAYO) and Mario Masuku, President of the pro-democracy People’s United Democratic Movement (PUDEMO), after allegedly attempting to instigate an unlawful protest at a Labor Day rally in Manzini, Swaziland. In another controversial incident on August 6, 2014, Swaziland’s Prime Minister, Sibusiso Barnabas Dlamini, hurled threats at human rights defenders Sipho Gumede, a member of Lawyers for Human Rights (Swaziland) and Vincent Ncongwane, the Secretary General of the Trade Union Congress of Swaziland (TUCOSWA), for their role in highlighting obstacles to freedom of expression in Swaziland during a human rights rally in Washington, DC.

While Swaziland celebrated its forty-seventh independence anniversary on September 6, 2015, stories like those detailed above seem to demonstrate the country’s ongoing struggle to ensure basic human rights and protect the freedoms of its citizens. Rights groups argue that repressive laws such as the 1938 Sedition and Subversive Activities Act and the 2008 Suppression of Terrorism Act allow the Swazi Government to continue to stifle any opposition or criticism of King Mswati III and his regime. Critics contend that the two acts are not only unconstitutional, but they also infringe on the right to free expression, association, and peaceful assembly as enshrined by the Universal Declaration of Human Rights (UDHR).

The British colonial government, which ruled the country from 1903 through 1963, passed the Sedition and Subversive Activities Act in 1938. The act criminalized any criticism of the monarchy by making it illegal to “excite disaffection,” therefore silencing any political opposition who advocate for multi-party democracy. King Mswati’s father, King Sobhuza, banned public protests and political parties in 1973 after declaring a “state of emergency,” which remains in effect today. “It is ironic that as Swaziland celebrates 47 years of independence from Britain... it continues to use legislation to shut down dissenting voices used by...
the colonial regime for the same purpose” said Amnesty International’s Director for Southern Africa, Deprose Muchena.

Amnesty International argues that King Mswati III, who took power at the age of 18, has further rooted the country in oppressive rule. In 2008, Mswati passed the Suppression of Terrorism Act, drawing inspiration from the United States Patriot Act, which critics say “suppress[es] freedom of expression . . . often violently and with absolute impunity.” Critics argue the definitions of “sedition” and “terrorism” are vague and overbroad.

Nevertheless, Jeffrey Smith of Robert F. Kennedy Human Rights, who played a large part in advocating for the release of Maseko and Makhubu, says the majority of Swazis support and revere the institution of the monarchy, and it is only a small segment of the country that calls for its removal. Still, he clarifies that Swazis are yearning for democratic rights like that of nearby Lesotho, which is a constitutional monarchy that guarantees the freedom to assemble in public and freedom of expression. According to Smith, the rights enshrined in Swaziland’s constitution exist on paper only. He describes two systems of power that prevail in the kingdom: one that looks like a democracy with elections and a seemingly functioning legal system, and the other he calls the “true system of power,” in which the king issues unilateral orders that keep him and his advisors rich and powerful through fear and intimidation. “Despite Swaziland’s outward veneer as a peaceful enclave of traditional African values,” Smith wrote, “the kingdom is home to widespread culture of fear that pervades every conceivable facet of society.”

While the Swaziland’s High Court was set to hear challenges to the Sedition and Subversive Activities Act and the Suppression of Terrorism Act in early September, the Court adjourned the case to October 8th—a date that came and went resulting in yet another adjournment. According to The International Commission of Jurists (ICJ), a group of sixty judges and lawyers from around the world, any meaningful change within Swaziland’s judicia-

ry can only take place through reexamining the procedure of appointing members of the Judicial Service Commission, since it is ultimately the judiciary who will decide whether the two acts are constitutional. Either way, Swaziland faces pressure from the international community. It is one of only three countries to have its African Growth and Opportunity Act eligibility withdrawn because of ongoing human rights concerns.

Ultimately, Smith remains skeptical that any positive legal changes will take place, and he believes that only through pressure from the international community will Swaziland find a way to both respect the country’s rich traditions, as well as the inherent human rights of the people. According to Smith, the King “banks on the presumption that the world will not notice, or make a fuss about, the widespread human rights abuses taking place under his direction.” Smith hopes that with an increasingly brighter spotlight on the country, King Mswati will ultimately be compelled to uphold and duly respect the basic human rights of all his people, regardless of political affiliation or the views they may hold.

By Andrea Flynn-Schneider, staff writer

**Pervasive Violence Against Kenya’s LGBTQ Community**

Human Rights Watch (HRW) has recently reported on neighborhood mobs in Kenya’s coastal region attacking community members they suspect of being homosexual. Accusations of homosexuality have resulted in brutal attacks, sexual assault, arbitrary arrests, and degrading tests such as anal exams. HRW recounted the stories of victims such as Adam, who was walking home when a group of men attacked him with a broken glass bottle, slicing open his neck, collarbone, and chest. Think Progress reported on an incident where a group of police officers attacked Marion, a female sex worker, forcing her to a secluded area where they beat and raped her. Marion’s attackers did not use condoms. Neither Adam nor Marion filed a police report. Human Rights
Watch recently released an extensive report on violence against the LGBTQ community in Kenya. The report highlighted these pervasive acts of violence and human rights abuses as well as Kenya’s failure to uphold its obligations under both international and domestic law to protect these individuals and prosecute their offenders.

Prejudice against the LGBTQ community is embedded within Kenya’s Penal Code, which characterizes homosexuality as an offense against morality. The Code considers anal sex “carnal knowledge against the order of nature,” a crime punishable by up to fourteen years in prison. Individuals who are victims of violence based on their sexual orientation fear reporting will lead to retaliation and punishment under the Penal Code, according to HRW. As violence against the LGBTQ community increases, the discussion surrounding these issues has become more public. Several NGOs and international actors are pushing the national dialogue and highlighting human rights abuses. In July of this year, U.S. President Barack Obama visited Kenya, forcefully speaking out against the inequality present in Kenya’s legal system. “I believe in the principle of treating people equally under the law,” President Obama stated, “and [members of the LGBTQ community] are deserving of equal protection under the law.” Kenya’s President Kenyatta responded, “the issue of gay rights [in Kenya] is really a non-issue.”

Various mechanisms of international law require Kenya to protect individuals against violence and torture, as well as to ensure the rights to equality, non-discrimination, and privacy. According to the HRW report, both the African Commission on Human and Peoples’ Rights (ACHPR) and the International Covenant on Civil and Political Rights (ICCPR) obligate member nations to protect citizens generally from arbitrary violence based on discrimination. Resolution 275 passed by the ACHPR explicitly calls on member states to provide the LGBTQ community legal protection from violence. The resolution requires implementation of laws that effectively investigate and prosecute perpetrators who target individuals based on their sexual orientation or gender identity. Similarly, the ICCPR obligates member states to “protect all persons . . . including members of marginalized groups, from violence, in upholding their rights to life and to security and freedom from cruel, inhuman, or degrading treatment.” The United Nations (UN) Committee Against Torture considers anal exams degrading treatment prohibited under the Convention against Torture and the ICCPR. Further, the ACHPR and the ICCPR prohibit discrimination and inequality before the law, specifically on the basis of sexual orientation.

HRW reports Kenya is bound as well through its constitution: Article 29 provides the right to freedom and security of the person and specifically prohibits “torture and cruel, inhuman, or degrading treatment”; Article 27 establishes the right to equality and non-discrimination; Article 28 protects the right to dignity; Article 31 provides the right to privacy; Article 33 provides the right of expression; and Article 56 “extends specific protections to ‘minorities and marginalized groups.’”

The Kenyan government has a responsibility to do more for the LGBTQ community to prevent and punish violence, according to HRW. However, victims of mob violence have expressed concern over taking their complaints to police, fearing that reporting could worsen matters. After attacking Adam in the street, police later arrested him under Kenyan Penal Code §162 and §165; both prohibit “unnatural offenses” including “carnal knowledge against the order of nature” and the act of “gross indecency” between males. Thereafter, a Kenyan court approved an order to have Adam subjected to a forced anal exam. The Kenyan government has not arrested or charged any of Adam’s attackers.

The mob attacks in Kenya’s coastal region seem indicative of both the injustices and inadequacies of Kenya’s current judicial system. Reports indicate that LGBTQ individuals face attacks without recourse, discriminatory prosecution, torture at the hands of police, and
constant fear, simply because of their sexual preferences. Repealing the Penal Code laws that criminalize same-sex relations may be the first step in preventing injustice.

**Hurdles to Accessing Education for Children with Disabilities in South Africa**

South Africa has a reputation for having one of the most progressive and nondiscriminatory constitutions in the world. Ratified in 1996 after the fall of Apartheid, the Constitution seemed to promise an end to a dark era of discrimination in South Africa. However, twenty years later, rights groups claim its promises have failed to protect certain vulnerable populations. A recent report by Human Rights Watch estimates that the government is neglecting 500,000 children with disabilities, turning them away from public schools and denying them their right to education. The report claims that South Africa's refusal to educate these children has the long-term effect of denying them full integration into society, keeping them from socializing with their peers and learning necessary life skills.

South Africa's Constitution promises equal protection under the law regardless of disability, and it includes the right to basic education. The United Nations (UN) Conventions on the Rights of the Child (CRC), ratified by South Africa in 1995, and the UN Convention on the Rights of Persons with Disabilities (CRPD), ratified by South Africa in 2007, require children with disabilities have access to an “inclusive, quality, and free” public education. Both call upon states to take necessary measures to ensure the preservation of this right. Under Article 24 of the CRPD, states are responsible for providing education through employing teachers who understand disability issues and by training educational staff in disability awareness and alternative methods of communication and teaching. Articles 8, 19, and 24 of the CRPD hold states accountable for raising public awareness and acceptance of disability, ensuring people with disabilities can participate within their communities, and facilitating learning environments that foster the development children with disabilities' talents and abilities to their maximum potential.

According to Human Rights Watch, South Africa's government is failing to meet its obligations under the CRC and CRPD. Public schools often reject children with disabilities or force their parents to pay extra school fees, consequently making a quality education inaccessible for the country's poorest children. These children are not learning the fundamental skill sets they will need to become independent, productive members of society. They often remain dependent on caretakers and become isolated from their communities due to lack of access to opportunities to learn social and life skills.

The South African educational system also lacks the resources to include children with disabilities in educational settings appropriate to their special needs. Even when children with disabilities are accepted into mainstream schools, the state usually does not provide teachers enough training to be sensitive to their disabilities and to use alternative teaching methods in order to include them in the classroom. Therefore, many children suffer neglect and sometimes even abuse in their schools, resulting from a combination of reduced ability to communicate when others mistreat them and frustration on the part of teachers who lack the tools needed to properly address their needs.

Sometimes these students, after mainstream schools have mistreated them, are unable to enter new schools for several years due to lack of options provided by the state. Consequently, children with disabilities fall behind. These children lose out on more than an education; they lose out on the ability to develop socially because they are isolated from their peers, they lack the life skills that a child normally learns in an educational environment, and they are unable to participate in the community. In the long run, this can lead to lack of preparedness for standard work environments, leaving people with disabilities largely dependent upon...
their families, other caretakers, or the state.

Despite the many hurdles to receiving an education, the plight of children with disabilities in South Africa is not hopeless. Human Rights Watch's report and other coverage has brought attention to the human rights violations children with disabilities experience and could potentially prompt the South African government to consider focusing its resources on training teachers to adequately address disability and education rights. The South African government has already responded to the report by stating that its education department is working to “improve data-gathering and screening” in order to better understand the obstacles in accessing education and to place children in educational settings appropriate to their needs. Furthermore, HRW has recommended solutions to the government such as “[r]etrofitting existing mainstream schools” to accommodate children with special needs as opposed to building new schools that would segregate them from their peers. In addition to being more cost-effective, retrofitting would free up funds to train teachers and foster a more inclusive learning environment. While the obstacles to education remain great for children with disabilities, South Africa has many options to remedy the situation in choosing to acknowledge the problem the nation’s children face.

**Rwandan Rehabilitation Center May Detain Society’s Most Vulnerable Without Due Process**

According to The Telegraph, Rwanda is known for its immaculately clean streets. However, clean streets come at a high price for the country’s poorest and most vulnerable. A Human Rights Watch (HRW) report from April 2015 revealed the practices Rwandan police use to keep the nation’s capital, Kigali, clean. The report detailed the forced removal of the homeless, sex workers, and other members of society’s “undesirable” populations and their detainment at the Gikondo Transit Center, alternately known as the Gikondo Rehabilitation Center. Rwanda’s Justice Minister explained that the government founded the center to provide emergency assistance to the nation’s poor as an alternative to incarceration. However, HRW researchers who interviewed fifty-seven of the Center’s former residents found that the Center does anything but “rehabilitate.” HRW explained that the police held all of the former detainees interviewed at the Center without charging them with any legally recognizable crimes. Detainees held there also described horrific conditions within the Center.

The conditions and treatment of the detainees at Gikondo may violate both Rwandan and international law. Article 2 of the African Charter on Human and People’s Rights, which Rwanda ratified in 1983, prohibits discrimination based on social origin, fortune, and status and guarantees all citizens equal protection under the law. Articles 5 and 6 guarantee freedom from degrading treatment and arbitrary arrest and detention, while Article 7 protects the right to due process, stating that a person cannot face punishment for something not legally recognized as a crime. Article 15 of the Rwandan Constitution also recognizes the right to bodily integrity and freedom from physical abuse and degrading treatment. Article 18 guarantees further due process, requiring police officers to inform arrested persons of the charges against them and to provide them a chance to defend themselves against those charges.

Before many detainees even reach the Center, arresting officers may have already violated their rights against discrimination based on the detainees’ social and economic status. Police arrest many detainees for behaviors and characteristics associated with their poverty. The Rwandan Penal Code defines homeless people, beggars, or “vagrants,” as people who do not have homes or regular employment, and who, as a result, “impair public order.” According to the Penal Code’s definition, the detainees’ poverty is criminal, which seems to contradict the Article 2 nondiscrimination guarantee of the African Charter. Former detainees have explained to HRW that police arrested them for prostitution or vagrancy, despite the fact
that many of the women were not sex workers. HRW suspects that many women face arrest based on the assumption that they are sex workers.

After the police arrest detainees without charging them with legally recognizable crimes, in possible violation of their right to due process under the Rwandan Constitution and the African Charter, the government places detainees in crowded cells with little space, food, water, or sanitation facilities. The police assign certain inmates as “counselors,” but the government requires the counselors to beat their fellow inmates as a way of “maintaining order.” Some former female detainees stated their counselors beat them when their children defecated on the floor, even though the detainees were allowed use the toilet only twice a day. Similarly, many detainees reported the toilets were filthy and did not have doors, forcing many to relieve themselves on the floor in front of others after guards prohibited them from using the bathroom facilities. Beatings and deprivation of basic necessities may violate detainees’ rights to bodily integrity and freedom from physical punishment and degrading treatment under the African Charter and the Constitution. Lack of food and proper sanitation may violate rights by withholding necessary sustenance for physical wellbeing and subjecting inmates to disease.

In response to the Rwandan government’s denial that Gikondo is anything but a rehabilitation center, HRW stands by its conviction that grave human rights abuses continue to occur there. HRW recommends the government shut the Center down, investigate detainees’ allegations of abuse, stop the police from arbitrarily discriminating against the poor and arresting people who have not committed any crimes, and prosecute the workers committing these abuses.

By Chloe Canetti, staff writer