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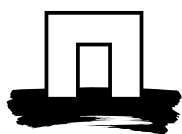


Fond de commerce?

Sexual violence assistance in
the Democratic Republic of Congo

Nynke Douma and Dorothea Hilhorst

2012



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Table of contents

Executive summary	7
1 Introduction	15
2 The research approach	17
2.1 Methodology	17
3 Understanding sexual violence in DR Congo	21
3.1 General perceptions on sexual violence	21
3.2 Sexual violence in the context of conflict	22
3.3 Legislation on sexual violence	23
3.4 Sexual violence as a civil problem	23
4 Statistics and the framing of sexual violence	27
4.1 Data collection on the basis of identified cases	28
4.2 Data on the basis of population statistics	29
4.3 International visits and media	30
4.4 Reacting to statistics	31
5 Actors, funding and coordination	33
5.1 Actors involved in sexual violence assistance	33
5.2 Available funding	35
5.3 Coordination of initiatives	38
6 Types and characteristics of assistance	41
6.1 A holistic approach covering multiple sectors	41
6.2 Victim-oriented relief at the expense of a broader strategy	43
6.3 Humanitarian approach to sexual violence	44
7 From rape victims to programme beneficiaries	47
7.1 Management by numbers	47
7.2 Ceasing opportunities	47
7.3 Increasing the likelihood of generating would-be victims	49
8 The legal domain of combatting sexual violence	51
8.1 Dealing with and interpreting the law on sexual violence	51
8.2 NGO support to legal reform and legal assistance	54
8.3 Sexual violence cases analysed	55
8.4 Disregarding legal principles	59

9	Conclusion	61
	Annex 1: Bibliography	67
	Annex 2: Resource persons	71
	Annex 3: Data collection tools	73
	Biographies	75
	Acronyms	77

Executive summary

This report explores the unintended side-effects of sexual violence assistance in the Democratic Republic of Congo. While the high prevalence of sexual violence in Congo and the need to eradicate it is unquestioned, this research was initiated to address the growing discomfort about the effectiveness of programmes against sexual violence among staff members of involved agencies and Congolese actors more generally. The report concerns the unintended consequences of responses to sexual violence. These consequences risk undermining progress in addressing sexual violence, including the work to stop impunity, to raise awareness of sexual violence and to provide services offered to raped women and girls in DRC. An increasing number of people begin to refer to sexual violence assistance as a *fond de commerce* (business). As this might erode the Congolese constituency for combatting sexual violence, it is argued that sexual violence assistance needs to be reformed to become more effective within the Congolese context.

The research focuses on how actors that provide sexual violence assistance interpret the problem, how this translates into interventions, and the negative side-effects that are observed. The judicial component of sexual violence assistance receives particular attention. The research was conducted by one Dutch and two Congolese researchers under the auspices of the Disaster Studies Programme of Wageningen University. It took place in North and South Kivu in September-November 2011. It is based on 58 semi-structured interviews with UN agencies, International NGOs, state actors and representatives of the legal system, and an analysis of 40 legal cases of sexual violence from six jurisdictions in South Kivu.

The conclusions are based on research focusing on North and South Kivu, where most of the funds for sexual violence are made available. They do not apply to other provinces of the DRC. The research relates to the ensemble of interventions and examines perceptions and societal responses to these interventions. The substantiation of the trends observed and the recognition of diversity in objectives and quality of individual programmes require additional research at programme level. The research has been limited to the DRC and can therefore not be understood as valid for other countries. Additional research would be required in other countries where (war-related) sexual violence has triggered international responses, such as Northern Uganda.

The objective of the research is to understand how actors in the field of sexual violence assistance interpret the problem and define intervention strategies, and how these programmes trigger certain adverse societal responses.

These questions have been examined in four areas:

1. The framing of sexual violence in DR Congo.
2. The ways the understanding of violence is translated into programmes; identification of the activities; ways in which beneficiaries are identified; identification of the collaboration mechanisms and funding schemes.
3. The accumulated and unintended effects of medical, social and economic assistance to victims of sexual violence.
4. The accumulated and unintended effects of judicial sexual violence assistance.

Understanding sexual violence

International attention of sexual violence in Congo was generated during the 1996-2002 wars when Congolese human rights activists brought out the news of brutal mass rapes by (foreign) armed factions. Instances of armed violence continue until today and the 'rape as war crime' discourse continues to some extent to be relevant. However, it dominates perceptions of sexual violence, even though sexual violence currently mainly concerns acts between citizens. While sexual violence by civilians may be related to the legacy of war, it has additional causes in the 'normality' of gender relations in the DRC where women's positions in social, political and cultural domains are highly restricted.

In 2006, Congo adopted a law on sexual violence. The law on sexual violence does not recognise rape as a war crime and excludes cases against foreign armed factions. Legal attention has therefore mostly been geared towards the Congolese army, and more recently civilians, as important perpetrators. The law recognises a variety of sexual violence crimes. In practice, there is little or no attention paid to crimes other than rape, partly because a number of these crimes constitute socially accepted customary practices around sexual relationships and marriage. It also fails to acknowledge that men have also been abused and raped, in particular during conflict by armed groups.

Statistics and its role in problem definition

Interpretations of sexual violence trends rely on an overemphasis on statistics which are mostly based on case reporting. They are - largely on demand of donors - used for analysing the problem, raising awareness, project preparation, fundraising and reporting results. The limitations and shortcomings in data collection, analysis and interpretation are pervasive. Whereas the taboo on sexual violence was considered so stringent that this would lead to under-reporting of sexual violence, we also find the opposite in current practices. Among the factors contributing to inflated statistics are deliberate exaggeration for fund-raising, double counts for lack of transparency, medical treatment of non-victims in need of care, counting of would-be victims, and multiple registrations by beneficiaries of programmes. Unwarranted extrapolation of numbers derived from highly violent areas to wider geographical areas also contributes to over-representation, as well as a lack of specificity about when cases have occurred. A number of recent research projects have investigated sexual violence through wider population research. The use of data with extrapolations and one-liner media representations reinforces the stereotypical notion of war-related brutal rape. The subsequent representation of the DRC as 'the rape capital of the world' undermines the constituency among DRC actors for the combat of sexual violence.

This image is further consolidated by international delegations that rely on a limited number of sources including famous spokes-persons, a selected number of health facilities, and interviews with victims that represent the most atrocious cases, often committed several years ago. Statistics should be approached with much more care, which is hampered by the strong prevailing images in which they are understood.

Actors, coordination and funding

Assistance for sexual violence survivors has in recent years mushroomed to incorporate an estimated 300-400 Congolese and international professional organisation and community-based organisations in North and South Kivu. Coordination proves to be a challenge. It lacks transparency about 'what, where and with whom' and reflection on strategic orientation of programming hardly occurs. Agenda setting and coordination is heavily dominated by the international community. As a result the motivation and engagement for coordination is fragmented, and local organisations feel overruled by international organisations. Government institutes hardly participate because of weak capacity and mutual distrust between them and international organisations. Coordination is also challenged by the presence of many organisations that are considered 'opportunistic'. They lack concrete expertise and mainly have an interest in securing funding.

From 2010 onwards, sexual-violence labelled budgets of Multi-Donor Trust-Funds (SRFF, Pooled Fund) and some of the biggest bilateral donor projects (for example USAID, SIDA, Netherlands, DFID) stand at USD 86.4 million. This figure does not include contributions from INGOs and private funds. Without a clear needs analysis, it is difficult to assess whether available funds are high or low. In comparison with other sectors, attention to sexual violence is high, which leads to frequent comments that the attention to sexual violence by the international community leads to the neglect of other problems. In comparison to other Multi-Donor Trust Fund themes, the SRFF sexual violence budget over a 24-month period (2010-2011) (USD 8.14 million) almost equals the budget for healthcare under the Pooled Fund (USD 10.4 million). Also, it is nearly twice the size of the budget for security sector reform (SSR trust fund) and education. The international contributions stand in contrast to the USD 7.9 million budget for the Ministry of Gender charged with sexual violence activities on behalf of the government (2011). Of this amount only 40% was actually paid out, and less than USD 1 million went into research on the status of women and coordination of sexual violence activities.

Types and characteristics of assistance

In the DRC, sexual violence assistance follows a multi-sectoral approach, related to the following activities: medical (physical rehabilitation, anti-HIV transmission treatment), psycho-social (de-traumatisation, family mediation to reduce rejection), economic (distribution of food/utensils in the form of a 'kit', skill-based training such as sewing, agricultural credits) and judicial assistance (supporting the victim during the legal procedure, mostly in NGO-supported mobile courts). Multi-sectoral assistance is hampered by a lack of effective cross-referencing between organisations. Some want to offer 'the whole package' themselves (without specific expertise) and others do not accept victims that do not fall under 'their' donor-programme. A large number of victims drop out at a certain stage, as medical and economic assistance is a priority for most. A lot of attention has also been given to raising awareness, mostly on the 2006 law on sexual violence. Socio-cultural dimensions of sexual violence are little addressed by awareness raising.

Overall, activities are of a curative nature and largely geared towards female victims. Working on some of the root causes requires interaction with (military) perpetrators, which falls

outside most mandates. The earmarking of medical and socio-economic services for victims of sexual violence, for example for fistula operations, causes victims with other health problems or non-victims with childbirth-related fistulas to fall outside of the assistance framework. As a consequence, women that are operated for a fistula from child-birth may add to the statistics on sexual violence. The Panzi Hospital affirms that of last year's 350 fistula operations, only 1 had a direct, reported link with rape. Heal Africa reports that less than 3% of its fistula operations have a link with sexual violence. Underlying problems with reproductive health care are not recognised and addressed. Reserving services for victims of sexual violence and the related assumption that assistance seekers are all victims of sexual violence clouds the analysis and results in lack of attention to preventing birth-related fistulas and addressing problems resulting from teenage pregnancies.

The curative approach to sexual violence can be understood in relation to the continuing dominance of short-term humanitarian funding frameworks and approaches based on post-conflict relief and early recovery imperatives. Only recently, development-sensitive funding for sexual violence with attention to socio-cultural dimensions of sexual violence and gender dynamics have started to receive attention.

Identifying rape victims as beneficiaries

Performance-based funding modalities put pressure on organisations to assist a certain number of victims. Most agencies work in relatively accessible areas in North and South Kivu that have become 'assistance-hubs' at the expense of other, underserved areas. Inter-agency competition leads to the 'appropriation' of victims and closed-circle referencing where victims are only referred to services funded by the same donor. In areas where reports of mass-rape occur, an influx of organisations competes over the registration of victims outbidding each other with promises of assistance. Such practices, combined with the common knowledge that funds for sexual violence are widely available, increasingly trigger a response among women to act as sexual violence victims. Vulnerable women in extremely poor conditions feel their only way to access aid is to claim rape. Most organisations turn a blind eye to this reality, because they assume that the social stigma associated with rape will deter women from reporting fake cases. None of the Congolese respondents to the research sustains this view, as they maintain that poor women in search of assistance see no other choice. Potentially, community-based approaches instead of victim-centred aid could reduce the number of fake reports.

The legal domain of sexual violence assistance

Impunity is an important stumbling block to eradicating sexual violence, hence the growing number of programmes focusing on legal assistance and justice sector reform. Impunity is characterised by a lack of legal operating budgets disbursed by the government, tedious and costly procedures, a lack of knowledge on procedures, illegally-granted temporary bail, prison breakouts, and practices around corruption and political influence. As a result, many perpetrators of sexual violence never end up behind bars.

Under pressure to combat impunity, however, an increasing number of suspects are (sometimes innocently) convicted on the basis of flawed proof. A growing number of people misuse the law to settle other types of (family) conflicts. Framing somebody for rape has become an effective way to 'get somebody out of the way' or to claim financial compensation. This is, for example, the case with teenage love affairs that result in pregnancy. When the families cannot agree on marriage or compensation for the costs of the child, sexual violence accusations may result. Legal awareness raising has created 'public opinion intolerance' regarding sexual violence and, combined with pressure from NGOs and the government to strictly apply the law, the legal system has the tendency to punish severely.

As part of legal assistance programmes, NGOs fund mobile courts (*chambres foraines*). These are humanitarian mechanisms to bring justice to communities where no physical legal infrastructure exists. Although mobile courts should see all kinds of cases, they are almost uniquely organised around sexual violence cases and, linked with the predominant perception that sexual violence is caused by armed perpetrators, they are mostly targeting military justice. Mobile courts are set in limited timeframes (3-10 days) which compromises the correct follow-up of procedures. Since NGOs present the cases the court should deal with, they are buying in on the independence of the justice system. By consequence, judges face a moral obligation to convict, thus compromising the basic principle 'innocent until proven guilty'. This is exacerbated because legal personnel receive compensation (*primes*) during mobile hearings from the NGOs. NGOs pay for lawyers on the side of victims, while suspects are usually left with unpaid, and hence unmotivated, public defenders. This enhances the possibility for suspects to be convicted regardless of the evidence that is presented.

The research examined the files of 40 legal cases. With over 40% of the accusing parties falling in the age-group of 14-18 years, and half of the suspects being under 25, and 25% of the cases involving pregnancy, the profile of a number of the cases fits with the trend identified by respondents of rape cases that are forwarded to court after teenage love affairs result in pregnancy. Thirty of the cases were brought before the court, and 19 of these resulted in conviction. More than half of the files only contained procedural notes, such as police reports, including eight out of the 19 cases that led to conviction. None of the 19 conviction files contained the legally required medical report as evidence. Only one file made mention of the presence of physical proof. The legal examination of the cases resulted in the conclusion that 50% of the convictions lacked sufficient evidence. The cases concluded in acquittal are well argued, possibly out of fear on the side of judges to be criticised by public opinion. The convictions (19 out of 30 cases) all concern lower-class suspects and are much less motivated.. Nine cases received between 5 and 10 years in prison and five cases the full 20 years. The 10 military cases all resulted in conviction in a mobile court.

While the culture of impunity is effectively changing, it has resulted in a system that is biased towards producing rape convictions while the rights of suspects are severely breached.

Judicial actors feel pressured by the zero-tolerance policy of the government, the advocacy of NGOs, and public opinion to convict suspects. As a result they disregard actual evidence to support cases and become biased and subjective in their rulings. This is even more the case when NGOs pay for organising the mobile court hearings and select the cases to be heard.

Conclusion and recommendations

The different processes that we have observed are strongly inter-related and have set into motion a negative spiral in which sexual violence accounts evoke responses that are prone to abuse by organisations and misuse by victims and non-victims of sexual violence. This, in turn, leads to exaggerated figures that add to the statistics evoking responses. The negative spiral results in the increasing commercialisation of sexual violence, where sexual violence is considered a business for agencies and individuals. The consequences are grave. It erodes the Congolese constituency for combatting sexual violence. It directs attention away from the socio-cultural gender relations in which much sexual violence is rooted. It leads to an increasing cynicism towards the problem with the result that real victims of sexual violence are not heard anymore. It leads to biased problem statements, policies and programmes that fail to address the domestic character of sexual violence, the lack of reproductive healthcare, the prevention of teenage pregnancies and child abuse, the malfunctioning of justice and the dire poverty underlying requests for assistance. To break through this negative spiral, and live up to the intentions of the responses to sexual abuse to prevent impunity, assist victims and reduce sexual violence, the response system needs to be evaluated and reformed. This leads to the following recommendations to international and Congolese actors concerned with sexual violence:

- There is a need to move away from the predominant ‘rape as a result of conflict’ discourse. Instead, efforts need to be made to understand sexual violence in its context, with particular attention to its socio-cultural gender dimensions.
- As most of the assistance has focused on the relief of the consequences for victims, assistance programmes need to be more strongly embedded in longer-term development approaches that deal with root causes (while continuing to address remaining humanitarian needs). This involves addressing gender relations, strengthening the position of women, fostering women’s leadership, increasing respect for human rights, intensifying security, justice and reform measures, and seeking community-based responses to sexual violence.
- To address the problem of would-be victims and its negative consequences, it is important to recognise the underlying factors of poverty and lack of healthcare. The mandate of medical care must be broadened to incorporate reproductive health, especially to cater to and prevent women with fistulas from child-birth. Socio-economic interventions should be community-based and take into account the lessons learnt from programmes for ex-combatants.
- Interventions in the justice sector need to ensure the independent functioning of Congolese legal actors and should guarantee fair and equal procedures for all parties involved. Promoting convictions for sexual violence, especially through ‘quick-fix’ procedures in funded mobile courts, leads to severe biases in the justice system and the breach of the rights of suspects.
- The coordination of sexual violence programmes needs to be improved and made more integral to overall development planning. Parallel health and legal services

targeting sexual violence victims should be avoided. The communication and coordination between international actors, Congolese government and civil society needs to be improved. The political and financial commitment of the Congolese government to reform measures necessary to combat sexual violence need to be concretised.

1

Introduction

In the course of the war in DRC, the world has increasingly been shocked by stories of sexual violence in the country, where women were in large numbers subjected to violent, often multiple, rape and sexual mutilation. Women subjected to these atrocities often find their lives destroyed, suffering grave physical and mental consequences, and risk being socially rejected by their families and communities. Terms like ‘endemic’, ‘sexual terrorism’, and ‘the war within the war’ have been used to describe these acts.¹ While initially, reports concerned crimes committed by non-Congolese armed forces, in later years these were followed by reports of sexual abuse by the Congolese army or rebel groups and, more recently, by civilians. Sexual violence continues to have a high prevalence in the country.

Since the 2002/2003 peace agreements, a large and growing number of programmes have been implemented that aim to put a stop to sexual violence in DRC and provide services to its victims. While the need for such programmes is undisputed, a growing number of people engaged in these programmes and among the DRC population are raising questions about current programmes and practices against sexual violence. These questions concern the way the problem is framed, the focus of the programmes, the gaps in coordination and the forms of abuse addressed by these programmes at all levels. It is often heard that sexual violence has become a ‘*fond de commerce*’ (business).

Critical notes on the programmes against sexual violence are predominant in personal conversations yet rarely find official recognition and debate. Staff members of programmes often realise the problematic aspects of their interventions, but find no opportunity to deal with them in the hectic round of implementation because their managers are worried about the repercussions of critique, because of numerous other challenges in their programmes, or because they develop blind spots for these ‘other realities’. A number of women’s rights activists from Congo have attempted to raise these concerns during coordination meetings but they encountered resistance and felt that they were seen as a ‘troublemaker’. A Congolese activist trying to flag her concerns felt that ‘the others looked upon us as if we wanted to minimise the problem of sexual violence.’² Indeed, there is the risk that analysing programmes against sexual violence critically may be interpreted as a denial of the gravity of sexual violence.

This report reviews the response to sexual violence in DRC and opens up a debate concerning its unwanted and negative side effects. The point of departure is that precisely because the problem of sexual violence in DRC is real and important, response programmes

1 RFDA 2005 quoted in Bastick et al (2007, p.41).

2 Interview CNGO-F-1

and their impact should be critically assessed in order to provide proper services, to bring about change for the people affected by sexual violence, and to address the societal processes and politico-military challenges that form its breeding ground. Our interviews have brought out a number of negative effects of programmes against sexual violence that are related to the complexity of the problem, the political, social and cultural context in DRC, and the false assumptions and biases in the interventions.

This report is based on in-depth interviews with 58 staff members of agencies, and people working in the legal domain. We have also examined the court files of 40 rape cases in order to analyse the profile of the cases, the level of evidence used in court, and the outcomes of the cases. The research was initiated by Wageningen Disaster Studies after some exploratory interviews the authors conducted in Bukavu, South Kivu, in August 2010. These initial interviews indicated that a number of problems had arisen in relation to responses to sexual violence. The research focuses on two provinces in DRC: North and South Kivu. The choice of these provinces was dictated by the fact that the vast majority of programmes to combat sexual violence are concentrated in these provinces. The report does not cover other provinces of DRC, nor does it explore other areas where programmes on sexual violence are being implemented on a large scale, such as, for example, Northern Uganda.

The report concerns the perceptions and experiences of people with the *ensemble* of interventions in North and South Kivu. There is a large diversity in the quality of programmes around sexual violence, and many programmes are effective and achieve their objectives. Observations made are thus not based on a description or evaluation of specific programmes, and cannot be read as a specific finding for any single programme. We are interested in the accumulated effects that are mostly unintended and outside the immediate control of any single organisation. Further research would be required at programme level to substantiate the trends our respondents signal in this report and to gain insight into the diversity of programmatic approaches of different types of agencies. In addition, research in other areas or countries, such as, for example, Northern Uganda, which are affected by high levels of sexual violence could further advance our insights. We are currently writing an academic journal paper on our findings. This report aims to bring our findings to the attention of agencies working on sexual violence in order to contribute to a discussion on improving the coordination and reform the interventions to become more effective in combatting sexual violence in the Congolese context. For this reason, the report provides a number of recommendations in the final chapter.

Following the Introduction, Chapter 2 presents the objectives, research questions and methodology of the research. Chapter 3 provides insight in how the problem of sexual violence is understood and framed, generally and in relation to Congo. Chapter 4 discusses some of the difficulties in the use of statistics on sexual violence in Congo. Chapter 5 deals with the actors and budgets involved, as well as coordination mechanisms and its shortcomings. It is followed by an analysis of the types of assistance in Chapter 6. Chapter 7 treats the ways in which beneficiaries are selected. Chapter 8 provides an analysis of court cases and Chapter 9 draws together the observations into Conclusions and Recommendations.

2

The research approach

The objective of the research is to understand how actors in the field of sexual violence assistance interpret the problem and define intervention strategies, and how these programmes trigger certain adverse societal responses.

These questions have been examined in four areas:

- 1 The framing of sexual violence in DR Congo.
- 2 The ways the understanding of violence is translated in programmes; identification of the activities; ways in which beneficiaries are identified; Identification of the collaboration mechanisms and funding schemes.
- 3 The accumulated and unintended effects of medical, social and economic assistance to victims of sexual violence.
- 4 The accumulated and unintended effects of judicial sexual violence assistance.

2.1 Methodology

The report builds on qualitative interviews with staff members working for (inter)national organisations, state institutes and judicial actors responding to sexual violence. It documents the experiences and opinions as related by these people, coupled with general observations collected over years of experience working in Congo by the research team.

Basing an analysis on individual opinions expressed during the interviews presents the risk of generalising isolated opinions, or making some opinions more important than others. To address this risk, we have only incorporated those viewpoints that were shared by multiple informants, even though we often present a single quote expressing the point of view. Interviewed persons often stressed that their statements were personal and did not reflect the viewpoint of the organisation. We therefore do not attribute quotes to organisations and have instead used a codification of respondents. GOV, UN, CNGO and INGO refers respectively to representatives of the government, United Nations agencies, Congolese NGOs and International NGOs. F and M refers to female and male respondents. To allow cross-referencing of quotes, we have numbered the respondents of each category. UN-M-3 thus represents number 3 of our male UN representatives.

Data were collected in Goma (North Kivu) and Bukavu (South Kivu) during a 25-day period from September to November 2011. In total, 58 semi-structured interviews were carried out of which 38 interviews were with representatives of organisations responding to sexual

violence: 11 with UN agencies, 9 with international NGOs, 10 with Congolese NGOs, and 9 with relevant political and administrative institutions. In addition, 19 interviews were held with representatives of the legal system (judges, court clerks, public prosecutors and court presidents) and legal NGOs. The research has focused on North and South Kivu provinces of Eastern DRC where most response programmes operate, and where the main activities of Congo's National Strategy to put a halt to sexual violence are focused, as part of the government's stabilisation programme (STAREC).³ The respondents were selected in such a way that the major sectors and organisations were included. The informants were mainly programme directors or programme officers responsible for specific programmes on sexual violence. The interview questions focused on the representation/interpretation of sexual violence, the focus of the organisation's activities, coordination, the use of statistics, juridical assistance, unwanted side-effects, consequences of those side effects and recommendations proposed by the informants.⁴

Interviews have been complemented with literature study of policy documents on sexual violence that were considered strategic by respondents or that we found referenced in literature as key reports. In addition, legal documents, research reports and media coverage were incorporated. All interviewed actors were asked to share relevant documentation, such as project proposals, strategic plans, thematic analyses and narrative project reports. Much documentation from programmes, however, could not be obtained because of confidentiality restrictions or because their headquarters or directors did not allow it.

In order to provide insight into the legal response to sexual violence (the fourth domain presented above), 40 legal cases on sexual violence were analysed. The cases were taken from six judicial sections in South Kivu:

- The Office of the Public Prosecutor in Bukavu (parquet), 10 cases
- The High Tribunal in Bukavu, 10 cases
- The Court of Appeal, 5 cases⁵
- A decentralised tribunal in Kavumu⁶, 5 cases
- The Military Tribunal in Bukavu, 5 cases
- The Military Court, 5 cases

All cases concerned rape, with two cases including an additional offense (one sexual harassment, one indecent exposure). We selected those cases whose file was physically present in the office as there are many more cases listed than files in the offices. To allow proper analysis, the focus had to be on files that were complete. In many cases, files were empty or had only very little information. We purposefully selected cases to represent:

- 30 first degree cases and 10 appeal cases (second degree).⁷
- 10 cases from military tribunals.
- 10 cases that were never prosecuted (*classé sans suite*).
- Cases from 2007 onwards, with the majority handled in 2009-2010.

³ DRC government (2009).

⁴ See annex 3 for a more complete list of interview questions.

⁵ The file of the cases from the Court for Appeal included documents of both the 1st and 2nd degree.

⁶ The tribunal in Kavumu is operating under the High Tribunal of Uvira.

⁷ The second degree cases studied concerned different cases from the ones studied on first degree.

The analysis focused on a quantitative description of the case, including the age of the victim and defendant, the relation between both parties, the type of charge, the involvement of pregnancy, the length of treatment (time), the type of hearing (mobile court or not), the conclusion of the case and - where relevant - penalties involved.⁸ The data in the files were further analysed and classified according to the following qualitative questions and indicators:

- What can be noted in terms of differences in handling of cases by civil and military courts?
- What can be noted on the status of the defendant?
- What type of crucial evidence was lacking in the files?
- What can be noted about the judge's motivation not to prosecute and/or to acquit?
- What can be noted about the legal argumentation underpinning the court's conclusion?
- What can be noted about the type of penalty applied in convictions?
- What is the overall impression on the quality of legal proceedings of the studied cases?

We then assessed for each case how the judge's motivation was built on the evidence represented in the file, and whether the evidence was of sufficient quality and scope to justify the court's decision. In situations where cases were not followed-up, we looked for the underlying explanation. The 19 interviews with legal representatives were mostly held in relation to specific cases. While major data gaps were found in the files, the data were interpreted by triangulating them with insights generated from the interviews.

The research was carried out under the auspices of Professor Dorothea Hilhorst of the Disaster Studies Group of Wageningen University, with financial support from the Klein Hofwijck Foundation. The primary researcher was Nynke Douma. Two Congolese lawyers and researchers assisted in the data gathering. Mrs Jocelyn Matabara (lawyer and researcher) was responsible for the judicial case analysis in South Kivu. Mr Florent Sangara (lawyer currently working for an international organisation) assisted in interviews and literature study in North Kivu. In total 35 days were spent in the field.

⁸ See annex 3 for the list of themes and questions that guided the analysis of judicial cases.

3

Understanding sexual violence in DR Congo

The term sexual violence is subject to a range of interpretations, both in literature as among local communities, (international) NGOs, political and legal frameworks and international donors and the media. This chapter argues that in the DRC, sexual violence continues to be strongly associated with war-time rape, even though sexual violence has shifted to a civilian character and become part of the 'normality' of post-conflict society. As a result, there is little acknowledgement of socio-cultural notions of sexual violence that are rooted in gender-perceptions and practices.

3.1 General perceptions on sexual violence

Internationally, rape did not receive much attention until the women's movement of the 1960s started calling attention to it. Until that time, rape was largely perceived as a rare and isolated event. It was analysed from a biological point of view and was believed to originate in sexually deviant behaviour.⁹ From the 1970s onwards, a multidisciplinary approach to sexual violence became predominant, resulting in a variation of definitions that each bore a disciplinary basis (medical, legal, psychological, political, social, or cultural).¹⁰ From a socio-cultural perspective, sexual violence became increasingly linked to status, dominance, control and power.¹¹ Rape, in this perspective, is related to gender roles and linked to perceptions and practices of masculinity and femininity.

Sexual violence literature largely defines men as perpetrators and women as victims, reinforced by the widespread use of the term 'violence against women' which is by the UN Declaration on the Elimination of Violence Against Women defined as 'any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering of women'.¹² Even though it is acknowledged that men can also be victim of sexual violence, the attention goes almost exclusively to women because women are considered to be more vulnerable to such type of abuse. Also, men usually do not report it out of shame, confusion, guilt, fear and stigma. Masculinity and victimisation are seemingly incompatible, leaving male victims psychologically and socially extremely vulnerable.¹³

9 White, in Travis (2003, p.283). One of the first groundbreaking books on the matter was written by Susan Brownmiller (1975, *Against Our Will*).

10 White (2003).

11 Travis (2003, p.1).

12 Watts and Zimmerman (2002, p.1232).

13 Sivakumaran (2007, p.255).

Sexual violence encompasses a wide range of offenses, ranging from sex-based discrimination and subordination (e.g. forced marriage, lack of freedom and civil participation) to violent sexual abuse (e.g. sexual assault, rape) and sex-based human trafficking (e.g. forced prostitution). Legislation repressing sexual violence addresses one or more of these various forms of sexual violence. The extent of legislation differs per country. The correspondence of legal definitions with cultural perceptions on sexuality, sexual violence and gender roles varies as well for different countries. Particularly noteworthy is that public opinion worldwide, often tends to blame female victims for having provoked the violence because of disobedient or culturally offensive behaviour.¹⁴

3.2 Sexual violence in the context of conflict

Attention to sexual violence in DRC first appeared during the 1996-2002 wars when local organisations especially were confronted increasingly with large numbers of women and girls that had been brutally mass raped by armed factions. Perpetrators were, in these years, mostly identified as armed factions from neighbouring countries, such as the Rwandan Interahamwe/ FDLR (Forces Démocratiques de Libération du Rwanda) and the Burundian FNL (Forces Nationales de Libération) and FDD (Forces pour la Défense de la Démocratie).¹⁵ Sexual violence became understood as an 'imported' crime, even though it has now become clear that local military actors such as the Mai Mai groups present in Congo also committed these crimes.¹⁶ Moreover, sexual violence also became increasingly seen as a Congolese military problem. This focus partly coincided with broader attention to human rights abuses within the police and army, resulting advocacy to reform the security sector. It was also motivated by reports that pinpointed FARDC soldiers among the main perpetrators of documented sexual violence. For example, in 2007 the UN found that 54% of reported cases over the first six months of that year were committed by the army.¹⁷

Various scholars argue that during conflict, sexual violence, and in particular rape and extreme forms of sexual subordination (e.g. sexual slavery) and mutilation, are likely to occur. They argue that such crimes are rooted in pre-conflict socio-cultural practices linked to gender¹⁸ but become apparent during war when they are linked to and exacerbated by policy decisions and military strategies.¹⁹ In war settings, rape is linked to control, punishment, status, ceremonies (e.g. fetishism), peer pressure, bargaining power²⁰ and often intermingled with sexual needs and desire.²¹ For example, it is reported that in the case of the August 2010 mass rape of an estimated 387 women in Luvungi by the Mai Mai Sheka, the commanders had deliberately adopted this as a strategy to attract attention and 'negotiate' their way to the negotiation table.²² At the extreme end, sexual violence becomes a means to control reproduction of 'the enemy', either by raping to deliberately impregnate (enforcing women

14 Watts and Zimmerman (p.1233).

15 The Interahamwe are the militia that were behind planning and executing the Rwandan genocide (1994) and most of them have since fled to DRC where they exercise a lot of violence. In Burundi, following the 2003 peace agreements, the FDD now forms part of the government. The latest ceasefire between the government and the FNL was concluded in 2008.

16 Pratt and Werchick (2004, p. 9).

17 Human Rights Watch (2009, p.21).

18 Bouta, Frerks and Bannon (2005, p.33).

19 Turshen (2001, p.56).

20 Patricia Rozée (quoted in Pratt and Werchick, 2004, p.8-9).

21 Baaz and Stern (2009, p.498).

22 Autesserre (2012, p.16).

to bear children of the opponents) or by raping and mutilation to affect women's fertility and hence the reproduction potential of communities.²³ A number of studies have focused on the motives of rape among armed perpetrators in Congo, claiming that understanding their point of view would better help to tackle its root causes.²⁴

3.3 *Legislation on sexual violence*

The 'rape as war-crime' reality in Congo provided the basis for the advocacy of a national and international legal framework to address rape and stop impunity.²⁵ Organisations pressed for the adoption of a law that would incriminate rape as a weapon of war under Congolese and international law. Lobby efforts resulted in the adoption in 2006 of the law on sexual violence. In line with international legislation, the law incorporates 16 types of sexual violence, including rape²⁶, sexual harassment, the abuse of one's position (money, power) to obtain sexual favours, forced marriage, underage marriage, pimping and forced prostitution. The penalty for sexual violence ranges from five to 20 years in prison and a fine of maximum FC 200,000 Congolese Francs (approximately \$200). The judge may also decide upon a compensation for the victim to be paid for by the perpetrator, or by the state when the perpetrator is a state official (e.g. soldier).

Although the law was triggered by attention to rape as a weapon of war, it failed to provide a framework for dealing with rape committed by foreign armed factions as international war crime. Hence, and to the dismay of Congolese human rights associations, the law is only capable of dealing with rape committed by Congolese, whether they are soldiers, rebels or civilians. As a civil society advocate stated: 'We wanted the law to incorporate sexual violence as an international crime, but it became a law for the small people'.²⁷ Even though Congo has ratified international treaties that make it possible to prosecute wartime-rape under international legislation (for example through the International Criminal Court), in practice this is a long and complicated process that is beset by complications in fact-finding and lacks political support in Congo in favour of war-lord protectionism.

3.4 *Sexual violence as a civil problem*

After conflict, it is generally observed that sexual violence occurs more frequently in civilian and domestic settings, which is explained by scholars as the result of an eroded sense of manhood and militarised masculine control-seeking identities.²⁸ This also appears to be true in Congo where an increasing number of civilians are currently identified as rapists. It has to be noted that civilian sexual violence may still be conflict-related, as many of the perpetrators are (auto)-demobilised and often severely traumatised ex-rebels and ex-soldiers that took

23 Patricia Rozée (quoted in Pratt and Werchick, 2004, p.8-9)

24 See for example Kelly (2010), Human Rights Watch (2009) and Baazand Stern (2009).

25 Smits and Cruz (2011, p.2); Muchukiwa (2010, p.6); interview CNGO-F-1; interview CNGO-F6/F7; interview INGO-F-5.

26 Journal Officiel de la RDC, August 2006, lawnumber06/018 modifiant et complétant le Décret du 30 janvier 1940 portant Code pénal congolais. The code defines rape as: the penetration of the penis or any other body part or object into the sexual organs or any other body-entrance of the victim, by making use of violence, serious threats/psychological pressure.

27 Interview CNGO-F-1

28 Bouta, Frerks and Bannon (2005, p.38).

their violent behaviour 'back home'.²⁹ In addition, men who have been forced to witness – or even take part in - rape of their wives or family may sometimes resort to sexual violence themselves (Harvard Humanitarian Initiative 2009).

However, a fair share of sexual violence (whether military or civilian) is intertwined with existing gender dynamics and traditional socio-cultural practices that vary among tribes in Congo.³⁰ Albeit forbidden by customary rules and regulations, rape incidents also occurred before the wars and were mostly settled by customary courts, through fine payments *in natura* or by arranging a marriage between the rapist and the victim. One of the reasons why people find it difficult to recognise other types of abuse as sexual violence, stems from accepted traditional practices that persist such as underage and arranged marriages, leverate³¹, sororat, orrapt.³² Cultural definitions that label such practices as sexual violence are absent.³³ Likewise, sexual violence perpetrated by husbands may be considered a 'normal' part of male dominance where sexuality is one of the many domains in which husbands may demand obedience. The notion of gender equality that is at the basis of the term 'consent'³⁴ is very remote from the current gender roles, where the positions of and spaces for women are severely curtailed in political, economic, social and cultural domains. Socio-cultural realities and community perceptions of sexual violence thus differ from the definitions of the law.

In all situations the social and family fabric of communities is severely disrupted and undermined as a result of fear, trauma, stigmatisation and rejection of rape victims.³⁵ What becomes clear from the above is that the understanding of sexual violence in DRC is predominantly centred on war-related crime and security problems. This raises different problems. The attention to sexual violence as the major consequence of war leads to a neglect of other war atrocities like killing, forced labour, forced conscription of child soldiers, or torture.³⁶ On the other hand, the conflict-centred understanding of sexual violence leads to neglect of sexual violence as rooted in the 'normality' of socio-cultural processes, including gender dynamics within Congolese society.³⁷ In public opinion and international attention alike, rape is understood as an extraordinary act triggered by the legacy of war. 'On international level gender dynamics capture people's attention and sympathy to a lesser extent than the cruel dynamics of war-rape, and on social level in Congo cultural causes of rape is something people don't want to hear about.'³⁸ Or, as another respondent stated, 'the focus has been on conflict-related rape because it is so horrible that it attracts more attention'.³⁹

However, as Pratt and Werchick state, 'combating gender-based violence will not be effective without changing the culture of violence and providing alternatives for militarized

29 Human Rights Watch (2009, p.16).

30 Muchukiwa (2010) provides a detailed study into the cultural notions linked to sexual violence.

31 International Alert (2005, p.27). Leverate refers to the practice whereby a man inherits the wife of his late brother. When the wife of a man dies and he takes on his sister-in-law as new wife, this is called sororat.

32 Muchukiwa (2010, p...). Rapt refers to practices in some tribes whereby young men take a girl hostage for a number of days. After having had (forced) sexual intercourse the men negotiate a marriage.

33 Muchukiwa (2010, p.13).

34 Rodgriguez (2007, p.4).

35 Pratt and Werchick (2004, p.8); Kelly (2010, p.3).

36 Autesserre (2012, p.16).

37 Smits and Cruz (2011, p.2)

38 Interview UN-M-5

39 Interview UN-F-6

masculinities in conflict-affected areas'.⁴⁰ During the interviews, it turned out that a growing, yet small number of NGOs and donors begin to focus on socio-cultural notions that underpin sexual and gender-based violence. These organizations distance themselves from re-actively responding to sexual violence and gradually shift instead towards preventive measures, addressing gender roles at the community level. A number of large donors have likewise become somewhat more flexible on budget-allocation for sexual violence assistance. 'We now begin to think that the perception of society towards women is the basis of violence against women. Whether it be acts committed by soldiers or civilians, it is rooted in the way they see women.'⁴¹

40 Pratt and Werchick(2004, p.48).

41 Interview UN-M-5

4

Statistics and the framing of sexual violence

Since the first reports on sexual violence in the DRC triggered widespread attention, a wide range of institutions, organisations and independent researchers have attempted to capture the occurrence of sexual violence through statistical analysis, by estimating the number of cases identified over a certain period of time. Figure 1 presents a collection of figures in order to illustrate the large variety in numbers that circulate. This chapter will show that there is a large number of limitations and shortcomings in data collection, analysis and interpretation. This leads to a situation where figures become contentious, considered by some as understatements and by others as overestimations. Even though some of the shortcomings in statistics have been documented for nearly a decade⁴², the figures continue to play an important a role. They are used by organisations to raise awareness, to prepare projects, to raise funds and to report on results of their interventions. Many figures find their way into the international media, where headlines give crude representations of the data, creating an image of Congo as ‘the worst place for women’⁴³ and the ‘rape capital of the world’⁴⁴. The chapter presents arguments making the case for statistics to be used with the utmost care, and always complemented with qualitative and contextualised information.⁴⁵

<i>Period</i>	<i>Source</i>	<i>Location</i>	<i>Number of cases</i>
Since 1998	UN (estimated)	Nationwide	200,000
2005-2007 (3 yrs)	Malteser (reported)	South Kivu	20,500
2007	Peterman et al (estimated)	Nationwide	1.69 to 1.8 million women raped in their lifetime, over 400,000 in 2007
2008	UNFPA (reported)	North Kivu	4,820
		Nationwide	15,996
2008	CPVS (reported)	South Kivu	10,644
2008	UNFPA (reported)	South Kivu	2,883
2009	MONUSCO (reported)	North and South Kivu	15,000
2009	UNFPA (reported)	Nationwide	17,507

Table 1: A collection of some data on sexual violence ⁴⁶

⁴² See for example Pratt and Werchick (2004), albeit this study mostly refers to limits linked to the fact that victims don't come forward or that some double figures are included.

⁴³ Diverse media reports (2008).

⁴⁴ These words were put forward by UN's special representative on sexual violence Margareth Wallstrom.

⁴⁵ Interview UN-F-3

⁴⁶ The figures that are estimates are based on survey data that have been extrapolated to the entire population. The reported figures originate from incidents collected by a variety of NGOs and UN agencies. The figures presented in the table have an informative function and should

4.1 *Data collection on the basis of identified cases*

Many data on sexual violence are based on extrapolations from registered cases. A major problem is that data-gathering is not coordinated properly. A variety of different organisations and state institutes collect and publish their own data. This is complicated by the fact that organisations are not transparent about their data. Many organisations are reluctant to share data in view of organisational competition, what respondents refer to as the ‘appropriation of victims’. This means that agencies do not want to give names of victims out of fear that other organisations will approach them to become their client. As a result, duplication of names in different data bases cannot be filtered out, which can be serious data bases of organisations include duplication as actors working in the same area tend to register the same beneficiaries. A number of informants also mentioned that many NGOs deliberately exaggerate figures for fundraising.⁴⁷ ‘It has become a championship; the one with the highest figures will receive most funding.’⁴⁸ It has also been observed that women tend to register as victim of sexual violence with different organisations to increase their chance of being assisted. Capacities are lacking to generate reliable figures based on well-developed statistical approaches, and there is a lack of funding to properly supervise data gathering field visits where teams are supposed to verify and cross-check data provided by medical structures and NGOs.⁴⁹ This casts doubt on the trustworthiness of figures.

Another problem concerns the geographical claims of statistics. Due to the inaccessibility of most areas, figures are usually drawn from a limited geographical area, but are often ‘extrapolated’ to the wider population of a province. Most organisations argue that these figures should still be considered ‘a lower-bound approximation of the true situation in DRC’.⁵⁰ Arguments to sustain this claim are that raped women tend not to report to NGOs or other data-collection structures. On the other hand, the extrapolated data could be overstatements. The argument to sustain that claim is that data-gathering is usually concentrated in areas that, on the basis of their conflict history, are known to experience high and grave incidents of sexual violence.

Most data are not clearly explained, and statistics are often vague about the timeframe they use. As a result, old cases are mixed up with new ones. When the timeframe is not explicit, the narrative of the reports raises the suggestion that it talks about recent and ongoing practice. Most data fail to make a distinction between rape and other forms of sexual violence, as recognised in the law on sexual violence (see above, paragraph 3.3).

Recent attempts to structure and coordinate data collection better and improve their quality, have resulted in higher estimates of incidents of sexual violence than were initially available. It has been recognised by respondents that this does not necessary reflect a factual increase, as awareness raising and the multiplication of data collection ‘spots’ has increased reporting.⁵¹ The impression remains, however, that sexual violence in DRC is continuously on the increase. One respondent stated: ‘There has not been a single year where figures were

by no means be interpreted as correct or ‘most reliable’.

47 Interview CNGO-M-3

48 Interview CNGO-M-2

49 Interview GOV-M-1

50 Peterman et al (2011, p.1066).

51 Interview GOV-M-1.

down. How can this be, with all the mechanisms to combat sexual violence’?⁵²

According to some respondents, the problems identified regarding statistics are partly due to the ‘fixation on statistics’ of (international) donors seeking to quantify projects in terms of the number of cases identified, the number of cases treated, the number of cases prosecuted, etc. This pressure leads to flawed, inconsistent and incorrect data, as it ‘pushes people to lie, whether on the side of NGOs or beneficiaries’.⁵³

4.2 Data on the basis of population statistics

In order to come up with more reliable data on the occurrence of sexual violence, there have recently been a number of research projects that seek to map statistically the occurrence and characteristics of sexual violence in the DRC.

A recent study published in June 2011 in the American Journal of Public Health concludes that 48 women are raped in Congo every hour.⁵⁴ The study asked women about their history of rape, rape in the last 12 months, and intimate partner sexual violence. The study consisted of a household-survey sample of 3,436 women between 15 and 49 years from all 11 provinces, with data gathered in 2006 and 2007. The sample has been drawn from a larger sample (9,995 women) of the DRC Demographic Health Survey.

The study provoked a lot of debate in DRC. Several critics question the reliability of the extrapolation, especially since the population data bases that were used are outdated and allegedly lack accuracy. The survey is also thought to be hampered by the lack of detail on local factors that influence intimate partner violence and rape that differ widely within provinces. The research has also resulted in confusion over types of sexual violence. The study asks about the history of rape (‘Has anyone ever forced you to have sexual relations with them against your will?’) as well as intimate partner sexual violence (‘Has your partner ever physically forced you to have sex or perform sexual acts against your will?’). Although the law considers both acts as sexual crimes, the label of ‘rape’ is customarily reserved for sexual violence outside the marriage or partnership. The conclusion of ‘48 women raped per hour’ has by the international media been framed in relation to conflict, reinforcing the previously attributed label of Congo being the centre of rape as a weapon of war. The important conclusion of the study that calls attention to domestic violence and marital rape as the most prevalent type of sexual violence in the country, in conflict-affected as well as non-conflict-affected provinces, has mainly been lost.

Another widely cited source that studies the characteristics of sexual violence in DRC is the Harvard Humanitarian Initiative. One of their studies (2009)⁵⁵ constitutes a statistical analysis of a survey of 255 women that have reported for medical assistance after sexual violence at the Panzi Hospital and two field sites in Chambucha and Bunyakiri. Chambucha and Bunyakiri are situated within or nearby FDLR strongholds, known for grave assaults and a high incidence of abduction. The study found that women that participated in the

52 Interview UN-M-4

53 Interview CNGO-F-2

54 Peterman et al. (2011).

55 Harvard Humanitarian Initiative (2009).

survey were on average assaulted by 2.83 attackers, 69% experienced gang rape and 46% had been abducted. Although the study is clear about the fact that it studied a sub-population of sexually violated women that sought medical aid and were thus probably the most severely affected victims, the figures have been widely cited to represent rape cases in DRC more generally. The data were gathered in 2008, but the study does not give a time reference to when the crimes occurred. As a result, many people citing the study treat the information as currently occurring.

Similar problems appear in other studies. A study statistically analysing the 2006 medical records of Panzi Hospital on criteria such as victims' demographics, patterns of the assault, and consequences for the victim, does not specify where and when assaults took place and nonetheless draws conclusions for the entire South Kivu province.⁵⁶

As a result of these studies, worst cases are seen as typical cases and, because of the unspecified timeframes of the assault, trends in the occurrence of sexual violence remain hidden. The image of predominantly war-related crimes gets frozen in time.

4.3 *International visits and media*

Apart from the studies referred to above, the international perception in media and among policy maker of sexual violence in DRC is strongly influenced by the points of view of a limited number of Congolese activists and experts. They meet international visitors to the DRC and are often invited to international events as key-note speakers. Examples are Dr Denis Mukwege, a medical doctor known for treating fistulas at Panzi Hospital Bukavu, Mrs Justine Masika, winner of the Dutch human rights tulip and Executive Secretary of *Synergie des Femmes Contre les Violences Sexuelles*, Chouchou Namegabe, journalist and coordinator of *Association des Femmes des Médias*, and Colonel Honorine Munyole, Police Officer for the Protection of Women and Children. Mrs Masika acknowledges that the Congolese experts and activists themselves have, for a long time, relied on a simplified victim-based narrative on sexual violence rather than bringing about a strategic discussion on how to eradicate its root causes. At the same time she blames international actors for only wanting to hear part of the story. 'Quite often they alter my interventions because they want information to fit into the theoretical framework they already had.'

International delegations usually visit a limited number of places. Most go to Panzi Hospital (Bukavu) or Heal Africa (Goma), both conveniently located in urban centres. What delegations get to see in those hospitals could be qualified as the most extreme sexual violence cases where women suffer from extensive physical damage. Interviews are arranged with victims. The women available for interviews usually consist of the same women who have been connected to the hospitals for years and hence relate the stories that happened to them years ago. Whereas these cases represent part of reality, this reinforces the impression that sexual violence crimes in Congo are all very brutal in nature and it blurs the timeframe in which these cases should be understood. Because the encounter is shocking, a respondent states that 'visitors find it inappropriate to ask fundamental and strategic questions about

56 Bartels et al (2010).

sexual violence and the assistance offered.⁵⁷ And, as another claims, 'immediately following such visits, funding for sexual violence begins to fall down like rain showers'.⁵⁸ Here, reference can be made to the 2010 visit of the US Minister of Foreign Affairs Hillary Clinton, after which USD 17 million was allocated to the International Rescue Committee, Heal Africa and Panzi.

4.4 *Reacting to statistics*

Many respondents to our study reacted strongly to the situation regarding quantifying sexual violence. They feel that the 'numbers game' distracts attention from the real problem, which is to understand why sexual violence occurs and how it can effectively be dealt with. 'What is the point in knowing whether there are 100,000 or even 1.8 million women raped? What counts is whether help is available and satisfactory - even if it would just be for one woman'.⁵⁹ Nonetheless, it is worthwhile to keep investing in improved data collection, analysis, presentation and information sharing because it is the only way in which needs can be correctly matched with the resources available.

Congolese respondents find it particularly disturbing that the crude figures that reach the international media largely determine how sexual violence in DRC is perceived and stereotyped, constantly highlighting the massive occurrence of the most brutal (war-related) rape crimes. They refer to the resulting negative image of Congo, the simplified reality around sexual violence, and the 'truthification' of doubtful figures. A number of respondents mentioned that figures are rarely comparative, putting DRC on the spot, while other countries may have similar or higher rape incidents, such as, for example, South Africa.⁶⁰ Some respondents even suggested that the 'mediatisation' of the problem, has raised the curiosity of men who start to believe that they can also impose themselves on girls and women.⁶¹

The gravity of sexual violence in DRC, has led to an over-emphasis on statistics regarding its prevalence. Although there are plausible arguments that statistics underestimate the prevalence of sexual violence, because of taboos around reporting such violence, there are also trends that lead to overestimation of figures. The collection of data is intertwined with organisational politics because international funding of programmes is often linked to data produced and organisational competition prohibits data sharing. In the process, an image is created that all figures refer to cases of brutal (war-related) rape. As a result, the way the statistics have come to dominate discussions stands in the way of a meaningful dialogue involving Congolese and international actors aimed at analysing the problems and finding effective ways to address them.

57 Interview CNGO-M-1

58 Interview UN-M-4

59 Interview CNGO-F-2

60 Interview CNGO-F-6

61 Interview UN-M-4

5

Actors, funding and coordination

The increase in attention to sexual violence has attracted a large and, over the years, increasing number of organisations that have developed and implemented projects to assist sexual violence survivors in DRC, representing large flows of funding. The type of actors and funding for programmes against sexual violence that characterises the intervention domain are described in this chapter. It particularly addresses problems linked to coordination and to the over-prioritisation of sexual violence in relation to other development challenges.

5.1 Actors involved in sexual violence assistance

Over the years, the number of organisations that work on sexual violence has grown exponentially, especially in North and South Kivu provinces. It is impossible to say how many organisations it encompasses exactly as registration mechanisms (the responsibility of the Ministry of Planning) are poorly developed. It is estimated that in each of those provinces it may currently add up to 300-400 organisations. It must be noted that this includes Congolese NGOs, international NGOs, and UN agencies, as well as a large number of small community-based organisations in rural areas.

Until 2002, a very small number of mostly Congolese human rights organisations raised awareness on sexual violence as a war crime. Most active organisations gathered into some form of coalition, but their numbers remained small, in South Kivu for example, less than 10. Between 2002 and 2004 international organisations increasingly came to Congo, also influenced by the official end of the war. Most followed an approach whereby sub-grants were to be handed over to local organisations, an approach further strengthened by the establishment of the 2006 Pooled Fund, where humanitarian donors pooled funds to respond to the yearly humanitarian needs assessment.⁶² When increasing reports of sexual violence came out, this led to a sharp increase in funding that was especially earmarked for assistance to survivors of sexual violence and the combat of impunity. An increasing number of the established Congolese but also international NGOs added sexual violence to their main intervention strategies.⁶³ A number of new NGOs were also founded with the particular aim to work on sexual violence, or as a respondent formulated this, to ‘pitch in the sexual violence market’.⁶⁴ Many of those organisations are seen as opportunists. ‘They have never had a vocation for women’s rights but walk around with posters and billboards as if they do.’⁶⁵

62 The Pooled Fund is a humanitarian basket-fund to which most of the large bilateral donors contribute. The often multi-million projects are, under different thematic fields, implemented by lead UN agencies that sub contract local NGOs on the basis of short-term projects (often not surpassing six months in terms of duration).

63 Interview UN-M-3

64 Interview CNGO-M-1

65 Interview CNGO-F-1

International NGOs (35)	Netherlands: ICCO / CORDAID / MensenMet eenMissie / StichtingVluchteling / Oxfam Novib/ ZOA refugee care / Warchild / United States of America: IRC / Eastern Congo Initiative / V-day / Hope in Action / AVSI / IMC / SFCG / American Bar Association / Human Rights Watch / Women for Women /United Kingdom: Oxfam-UK / Merlin / Save the Children / Tearfund (Ireland) / SCIAF (Scotland) / Avocats Sans Frontières (Belgium) / Oxfam-Quebec (Canada) / VSF-Suisse (Switzerland) / COOPI (Italy) / Oxfam Solidarité (Spain) / AMI (France) / Fin Church Aid (Finland) / Norwegian Church Aid (Norway) / Norwegian Refugee Council (Norway) / Médecins du Monde (multiple) / Médecins Sans Frontières (multiple) / CICR (multiple) / CARE (multiple)
UN	UNIFEM-UNWOMEN / UNDP / MONUSCO-JHRO / UNHCR / UNFPA / UNICEF / UN OCHA
Congolese NGOs (37)	Caritas Congo / Centre de Recherche sur l'Environnement la Démocratie et les Droits de l'Homme, CREDDHO / Arche d'Alliance / Caucus de Femmes / Caritas / Commission Diocésaine Justice et Paix, CDJP / Cadre Permanent de Concertation de la Femme Congolaise, CAFCO / Dynamique des Femmes Juristes, DFJ / Synergie des Femmes pour les Violences Sexuelles, SFVS / Action Sociale pour la Paix et le Développement, ASPD / Synergie de l'Assistance Juridique, SAJ / Heal Africa / Fondation Femme Plus / Panzi Hospital, Panzi Foundation / Réseau des Femmes pour le Développement et la Paix, RFDP / Centre Olame / Association des Femmes de Médias, AFEM / Bureau pour le Volontariat au Service de l'Enfance, BVES / Conseil des Organisations des Femmes Agissant en Synergie, COFAS / Laissez l'Afrique Vivre, LAV / Village de Cobaille, VICO / Action Communautaire pour la Défense et le Progrès des Agriculteurs, ACODEPA / Action pour la Promotion et la Défense des Droits des Personne Défavorisés, APRODEPED / Association des Femmes Juristes au Congo, AFEJUCO / Réseau Vision Myriam / Œuvre Communautaire pour l'Education de Tous, OCET / Pole Institute / Collectif des Organisations de Jeunes, COJESKI / Centre d'Assistance Médico Psychosociale, CAMPS / Solidarité Paysanne / Service d'Accompagnement et de Renforcement des Capacités d'Auto Promotion de la Femme au Sud-Kivu, SARCAF / Héritiers de la Justice / Solidarité des Femmes de Fizi pour le Bien Être Familial, SOFIBEF / Réseau des Activistes des Droits Humaines de Fizi, RADHF / Action Contre l'Abolition de la Torture, ACAT / Solidarité pour la Promotion sociale et la Paix, SOPROP / Observatoire Congolaise des Prisons, OCP

Table 2: Organisations working on sexual violence in North and South Kivu that are known to the authors⁶⁶

Next to the NGOs, quite a number of government agencies have responsibility to combat sexual violence, amongst them the Ministry of Gender, the justice sector and special military and police sections. It should be mentioned here that there is a gap in mutual appreciation and collaboration between the NGOs and state actors. Most NGOs claim that government officials are not putting in enough effort and lack capacities and willingness. They claim that government officials stay away from joint meetings and don't follow-up on their promises. 'They have no clue about what is happening; not a single Minister is on top of the sexual violence problem'.⁶⁷ And according to another observer, 'without financial support there is hardly engagement, we have to push them'.⁶⁸ When asked their point of view, government officials draw a different picture and blame NGOs for deliberately excluding them; they believe that NGOs have an established conviction that the state is incapable and NGOs want to 'share the cake amongst themselves'.⁶⁹ The lack of access to funds on behalf of state actors is caused by the weak execution of Congo's state budget (reserved funds are unrealistic and rarely arrive) and also the reluctance of INGOs to reserve budget lines for state functioning either because of fear of corruption or because their mandates often explicitly bar the possibility of directly supporting the state.

66 Many of the organizations have offices in both provinces, as well as smaller field-based offices/representatives, or collaborate with a wide variety of community-based organizations. Those are not mentioned in the table.

67 Interview INGO-F-2

68 Interview UN-M-4

69 Interview GOV-M-1; interview GOV-F-2

Nearly all organisations aim to align their activities with the Congo's governmental national strategy against sexual violence. The National Strategy is operationalised under the STAREC programme. This government programme for stabilising eastern DRC focuses on three domains: security, humanitarian and social assistance, and economic development. The STAREC plan is supported by the international community under the international support strategy (ISSSS). The costs of the programme are estimated at USD 1,204 million, of which a third has been committed (USD 416 million) next to USD 788 million that still needs to be raised.⁷⁰ Sexual violence is a cross-cutting issue and five pillars of intervention in relation to sexual violence are specified. These pillars are considered to be interdependent, and should be approached in a multi-sectoral and holistic way. They are chaired by different UN agencies: the fight against impunity (JHRO-MONUSCO⁷¹, and UNDP access to justice programme), protection and prevention (UNHCR), Security Sector Reform (UN gender office and MONUSCO DSS), multi-sectoral assistance (UNICEF) and data and mapping (UNFPA).

5.2 Available funding

A central database on funding for programmes against sexual violence is lacking, but it is clear that budgets for sexual violence assistance are quite significant. Sexual violence assistance funding is largely directed by two Multi Donor Trust Funds (MDTF). The first concerns the Stabilization and Recovery Funding Facility (SRFF, 2009) in support of the UN International Security and Stabilization Support Strategy (ISSSS), which operates in line with STAREC. Until March 2012, Belgium, the Netherlands, Norway and Sweden have contributed to SRFF, adding up to a total budget of USD 16.7 million (of USD 22.8 million pledged). Of this amount, USD 14.3 million has so far been allocated, of which USD 10.4 million allocated to the sexual violence pillar of the strategy.⁷² Under the second funding modality (Pooled Fund), in 2010 alone, USD 2.2 million was allocated to sexual violence assistance.⁷³ It was originally decided in 2009 to exclude sexual violence programmes from this Fund as it was brought under the mandate of SRFF. However, as different organisations argued that sexual violence continues to require humanitarian interventions, funding became possible. Next to this, there are a number of bilateral funding modalities, of which some of the most important are incorporated in the scheme below. As Table 3 shows, the total adds up to USD 86.4 million available for sexual violence from 2010 onwards with an average project timetable of just under 3 years.⁷⁴ The Table does not include budgets that have been allocated to sexual violence prior to 2010, grants that flow directly to Congolese NGOs from a variety of international organisations, and a variety of other international funding schemes, including the World Bank. The actual budgets for sexual violence assistance are thus higher than presented here. How the amounts of sexual violence-labelled funds relate to actual needs falls outside the scope of this research.

70 Custers (2009, p.1), see also: www.amanileo.net

71 The Joint Human Rights Office is a combined effort of MONUSCO-Human Rights and the UN-Office of the High Commissioner for Human Rights (OHCHR)

72 Based on spending until early March 2012, source: Multi-Partner Trustfund, <http://mdtf.undp.org>.

73 Smits and Cruz (2011).

74 The Table takes 2010 as starting year because from that year onwards sexual violence funding became 'visibly' earmarked under the SRFF funding modality. Most of those programmes are still ongoing and provide thus picture of the present-day reality of available funds.

Donor	Funds	Funding period	# years	Operational partners	Location	Focus of projects
SRFF	10,441,088 USD	2010 - march 2012	2.2	UNOPS, UNHCR, UNESCO, OHCHR, UNFPA	SK, IT	Impunity, protection and prevention, FARDC, services to victims, data mapping (2010-2011)
Pooled Fund	2,200,000 USD	2010	1	UN agencies	Mostly east	2010 alone
USAID	24,524,000 USD	2011-2015	5	IMC2, ABA, COOPI	NK, SK, IT, MN	Promoting reintegration, behaviour change, care, empowerment, psychological support
USAID	7,676,000 USD	2011-2015	5	IMA, Heal Africa, Panzi	NK, SK, IT, MN	
RNE	9,000,000 USD	2010-2012	3	Heal Africa, ABA	MN	Access to justice
SIDA	1,563,506 USD	2010-2011	2	UNDP	NK, SK	Socio-economic integration
SIDA	3,200,000 USD	2009-2010	2	REJUSCO, UNDP	NK, SK	Justice reform, training, case-assistance, justice infrastructure
BDLR	695,000 USD	2011	1	UNDP	NK, SK	
EU3	8,761,241 USD	2010-2011 2010-2013	2-4	SCIAF, COOPI, Heal Africa, AMI	NK, SK	
DFID	1,300,000 USD	2011-2013	3		National	Ministry of Gender capacity building
US (Hillary Clinton visit)	17,000,000 USD	?	?	IRC4, Engender Health, others		Medical training, police training, assistance to victims
Total	86.4 million USD					

Table 3: Funding schemes for sexual violence, mainly from 2010 onwards ^{75/76/77/78/79}

Many respondents in the DRC are critical of what they perceive as an over-emphasis of sexual violence at the expense of other urgent needs in the country. Although a full comparison of funding flows to different sectors is beyond the scope of our research, Table 4 is meant to illustrate the proportion of funds for sexual violence compared to other sectors under a number of different Multi Donor Trust Funds, based on approved projects between January

75 NK=North Kivu; SK=South Kivu; IT=Ituri; MN=Maniema

76 IMC is the main grantee with USD 10 million.

77 This amount, representing 6,637,304 EURO, originates from the 10th EU Development Fund. With a total budget of EUR 561.7 for the period 2008-2013 it is most likely that other parts of this funding modality are also allocated towards sexual violence. The rough thematic division of the 10th EU Development Fund: governance EUR 130 million, infrastructure EUR 251 million, health EUR 51 million, environment EUR 29 million and other themes (ex. emergency aid, agriculture, food security and regional initiatives) EUR 100.6 million. Source: European Commission (2008, p.12).

78 IRC is the main grantee with USD 7 million.

79 Sources: MONUSCO-Sexual Violence Unit (internal), Smits and Cruz (2011), Multi-Partner Trustfund (<http://mdtf.undp.org/factsheet>), individual donor information.

2010 and December 2011 onwards⁸⁰. As Table 4 shows, healthcare spending under the Pooled Fund is just 30% higher than sexual violence funding under SSRF. Also, the sexual

violence budget is nearly double the size of the budget for all security sector reform activities (SSR trust fund), and just under half the size of the entire peace building trust fund, which are arguably two themes geared towards prevention of sexual violence.

<i>MDTF5</i>	<i>Themes, focus</i>	<i>Approved 2010-2011 million USD</i>	<i>% total</i>	<i>SRFF-SV proportion</i>
SRFF 2010-2012	Sexual violence	8.14	3.43	1
	IDPs	3.95	1.66	0.5
SSR 2008-2011	Non-lethal support to FARDC, military justice (training and rehabilitation of infrastructures), living conditions of military personnel (ex. building barracks)	5.33	2.24	0.6
Peacebuilding 2006-2015	Returnees, DDR, police reform and training, restoration of state authority through training and infrastructure rehabilitation, military justice, prison conditions, human rights	17.94	7.55	2.2
Pooled Fund 2006-2012	Coordination, early recovery, education, food security, health, logistics, refugees, nutrition, protection, shelter and non-food item, water-sanitation and hygiene	195.42	82.23	n/a
...of which 6	Water, sanitation and hygiene	16.83	7.08	2.0
	Education	4.83	2.03	0.6
	Health	10.46	4.40	1.3
	Food security	11.87	4.99	1.3
	Nutrition	6.39	2.69	0.8
	Protection	7.15	3.00	0.9
MDG 2007-2012	Economic reintegration of returnees and victims of sexual violence, improving basic social services on community level	1.37	0.58	0.2
UN-REDD 2008-2012	Deforestation, nature conservation	5.50	2.31	0.7
Total		237.65	100%	

Table 4: Multi trust fund modalities for DRC, approved projects between 2010 and 2011 (24 months)^{81/82/83}

80 Since table 3 deals with projects from 2010 onwards and the SRFF under which most sexual violence assistance is now earmarked came in effect in November 2009, the other multi donor trust fund budgets have also been calculated from 2010 onwards to make comparison more accurate.

81 The timeframe is based on years for which charts on budget data are available on the MDTF website.

82 In line with the degree of detail provided by the database on the Multi Partner Trustfund website some of the thematic areas of spending of the Pooled Fund are clarified here. The remaining (biggest share) of the Pooled Fund budget is not thematically labeled and referred to as 'Pooled Fund' and 'Managing Agent/NGOs', and is not included as sub-spending in table 4.

83 Sources: MONUSCO-Sexual Violence Unit (internal), Smits and Cruz (2011), Multi-Partner Trustfund (<http://mdtf.undp.org/factsheet>),

It is also interesting to compare international donor budgets for sexual violence with the budget reserved by the Congolese state for the theme, referred to by respondents as 'quasi-non-existing'.⁸⁴ The implementation and coordination of the National Strategy on Sexual

Violence is primarily the responsibility of the Ministry of Gender. The Congolese state budget for 2011 shows a budget of FC 7,171,815,88 (or USD 7.9 million) for the Ministry of Gender, 0.1% of the total state budget. Of this amount, only USD 3.24 million (or 40.7%) was paid out up to the 31st of October 2011. Roughly three quarters went to the administration of the Ministry and only USD 838,000 to a variety of services and funds that are to ensure research on the status of women and to plan and coordinate sexual violence interventions.⁸⁵

The great disparity in the availability of funds to the Ministry of Gender compared to the budgets of multi-million dollar donor projects indicates that international programmes are dominant in shaping the response to sexual violence. The largest share of management and strategy definition is in the hands of the donor. Local implementing agencies are rarely given the responsibility for the budgets as they are considered lacking in management capacities and transparent accountability. 'They say we don't have the capacities to manage large sums of money and therefore funds are directed towards international actors. But how can we work without funds? It's a new form of colonisation.'⁸⁶

5.3 Coordination of initiatives

In the early days of attention to sexual violence in Congo, a number of Congolese NGOs had their own coordination mechanism. Sometime later, the Congolese government launched the CPLVS (*Comité Provincial de Lutte Contre les Violences Sexuelles*) under the *Initiative Conjointe* (2003). The CPLVS was a mechanism chaired by the Ministry of Gender and gathered mostly Congolese organisations, as well as some international NGOs. As the structure was also present at territory level (CTLVS), it was in theory possible to achieve a rather detailed account of existing initiatives and how they could be complementary. However, the CPLVS started at a time that competition over funds was high and was soon hampered by conflicts over leadership. Participant organisations were reluctant to share relevant information, especially regarding the identification of victims (and hence numbers to be presented in their projects and towards their donors). Due to these problems, CPLVS ceased to be operational.

As this happened at the same time as the increased funding of large UN-led projects that fall under the STAREC programme, the ISSSS strategy and the National Strategy on Sexual Violence, UN agencies created a new multi-sectoral coordination system led by UNICEF. Each of the five pillars of the National Strategy has a working group that involves state actors, local and international NGOs and UN agencies. Most working group meetings centre on information sharing: 'who does what and where'. Debate on more strategic perceptions and possible reorientation of programming hardly occurs, because 'there is no time'.⁸⁷

individual donor information. NK=North Kivu; SK=South Kivu; IT=Ituri; MN=Maniema. The MDTF for microfinance has been left out of the comparison, since it was the only MDTF for which approved budgets covered a 12 month period from 2011-2012. This made comparison with the other MDTFs difficult.

84 Interview UN-M-3

85 Ministry of Budget (2011).

86 Interview CNGO-F-2

87 Interview UN-M-4

Once a year, however, a strategic review is organised to analyse what has been done and to prioritise and budget for new programmes.⁸⁸ A large number of local NGOs and smaller international NGOs do not find those meetings very effective, mostly because of the lack of in-depth debate. ‘Everyone just wants to show they do more than the others.’⁸⁹ Also, there exists a general feeling that the viewpoints of small players and government agencies are little heard, or overruled. Some local NGOs and state agents that were interviewed for this report stopped participating in the meetings for these reasons.⁹⁰ Next to those coordination schemes, a lot of organisations sub-coordinate on the basis of programmes funded by a specific donor, often on request of the donor. ‘There are many sub-committees. These operate like a club of friends that meet each other and refer sexual violence cases to each other.’⁹¹

This chapter, in conclusion, has described the complex web of funding, actor and coordination mechanisms concerning sexual violence in the DRC. Without a clear needs analysis, it is difficult to assess whether available funds are high or low. In comparison with other sectors, the attention to sexual violence is high which leads to frequent comments that the attention to sexual violence by the international community leads to the neglect of other problems. The large number of actors engaged in sexual violence response, highly dominated by international actors compared to the involvement of the DRC government, highlights the complexity and challenges of coordination.

88 Interview UN-F-1
89 Interview GOV-F-2
90 Interview CNGO-F-1
91 Interview INGO-F-3

6

Types and characteristics of assistance

The type of sexual violence assistance programmes evolved through time according to the understanding of the problem and available funds. This chapter looks into the different types of assistance. It argues that the single focus on the direct assistance to victims impedes a preventive strategy to tackle the root causes of sexual violence. The targeting of services for sexual violence leads to reproductive health problems that are being treated under the mandate of services for sexual violence victims being overlooked.

6.1 A holistic approach covering multiple sectors

When the number of agencies started to grow after 2002, a consensus emerged that a holistic approach, also referred to as a multi-sector approach, would be most effective which means the combination of medical, psycho-social, economic, and judicial assistance to survivors of sexual violence.⁹² In addition, there have been cross-cutting efforts in the field of sensitisation and awareness raising, and some security-related preventive measures.

- *Medical assistance* concerns the physical rehabilitation of rape-related body-trauma, in particular fistulas. Fistula is a medical condition in which the tissue separating the vagina from the anus is torn resulting in incontinence, infections and infertility. Although normally associated with child-birth, it may occur through extreme violence during rape, such as during gang rape and the insertion of objects into a woman's vagina. Also, in recent years a lot of programmes have focused on PEP-kit treatment within 72hrs after the attack to avoid the transmission of sexually transmitted diseases (STDs) and HIV.
- *Psycho-social assistance* is mainly focused on the *detraumatisation* of the victim, whereby priority is given to 'écoute' (listening), quite often in a temporary shelter setting created for rape victims (*maisons d'écoute*). Sessions are mostly led by trained psycho-social workers (psychologists are rare in Congo), individually or in group settings. A lot of programmes have also focused on psychological aid to family and community members to reduce rejection and stigmatisation (mediation).
- *Economic assistance* offers rape victims the opportunity to reintegrate into their societies. This ranges from the mere distribution of a kit (usually including kitchen utensils, some food, agricultural working tools, and clothing) to skill based training (Sewing, for example) and agricultural credits for productive activities (for example seeds, goats, rabbits). Many programmes form groups of women, sometimes mixed

92 Pratt and Werchick (2004, p.6)

with other vulnerable people from their communities, with the aim of strengthening the social fabric through joint projects, such as a rotating credit scheme.

- *Judicial assistance* is mostly geared towards the prosecution of rape perpetrators, whereby organisations support the victim in filing a complaint, and pay the process costs and a lawyer. This form of assistance has received increasing attention in recent years. It focuses on civilian rape cases as the soldiers that raped during wartime are difficult to identify. Judicial assistance is also offered to justice experts (for example lawyers, judges) in the form of training or financial support for organising trials, especially in rural areas, and the purchase of office equipment, as well as the payment of logistical costs of organising mobile courts (often including per diems or '*primes*' for judges).
- *Community sensitisation* has been largely focused on raising awareness on the content of the law on sexual violence, to signal that sexual violence does not go unpunished. A lot of sensitisation also focused on the 'acceptance' of victims, with the aim of reducing stigma and rejection.
- *Security and justice sector reform* concerns activities that address structural security and impunity problems linked to sexual violence. For example, army reform programmes address sexual violence as a crosscutting concern to be included in the training of soldiers and the police. Political processes have also been supported, for example in drafting the national plan to fight sexual violence and putting in place of special sexual violence taskforces in a number of ministerial departments (for example Justice, Defence, Gender).

Holistic programming assumes a follow-through of the different steps and a coordinated cross-referral between organisations with specific expertise in either of the domains. However, in reality many organisations refrain from referral and attempt to offer all types of assistance themselves, even though they may not have the all-round expertise this requires. Many organisations only refer to colleagues that work with funding from the same donor: this is often stipulated by the donor to enhance their control over the entire process.

The holistic approach and referral system often stops short of judicial care. This can be illustrated with figures from UNICEF over the first 6 months of 2011: out of 7,157 reported cases, 6,433 received psychosocial and economic assistance, 4,289 received medical assistance and 495 cases were followed up judicially.⁹³ Apart from the difficulty of identifying perpetrators, many women are not interested in judicial care, either because they don't trust the system, or because they prioritise the other types of service.⁹⁴ 'A lot of victims disappear once we start talking justice, simply because their expectations were related to the medical and economic field'.⁹⁵

93 Interview UN-M-4. 'Followed up judicially' merely refers to the case being reported. It does not reflect a conclusion of the case.

94 Interview GOV-M-6

95 Interview CNGO-M-1

6.2 *Victim-oriented relief at the expense of a broader strategy*

The largest share of budgets has gone to the immediate assistance of women that are victims of rape. Only a few organisations focus on male victims or on perpetrators. They feel that working with men is seen by the international community and also Congolese society as some sort of moral betrayal and does not easily fit into mandates.⁹⁶ 'We are indirectly pushed to choose sides, which is largely linked to what is dictated by those that support our programmes'.⁹⁷

A number of respondents question the focus on individual victims at the expense of community-based approaches to sexual violence assistance. For example, under psycho-social and economic reintegration approaches, the installation of '*maisons d'écoute*' or transition shelters for victims, is considered to reinforce stigmatisation. This approach is followed by a lot of local organisations. Sexual violence victims are for a period of time taken away from their communities and return with new skills and goods handed to them in the form of reintegration kits. This reinforces jealousy in overall poor and vulnerable communities. The fact that communities that experienced violent attacks, including sexual violence, are traumatised as a whole is overlooked and especially psycho-social and economic reintegration programmes should, in the eyes of a number of respondents, cater for a more inclusive, broader and development-based approach stepping away from humanitarian victim-relief.

Medical assistance programmes focus on health problems that are directly related to sexual assault (for example fistulas⁹⁸, HIV-infection). Although this seems reasonable from a project point of view, it raises two problems. First, the programmes cannot assist victims of sexual violence with other health problems, including longer-term side-effects (for example infertility problems) or problems that were left untreated because of the psychological condition and/or weak financial situation of the victim. Secondly, the services are not available to women suffering from similar problems as a result of child-birth or consensual sexual relationships. As there are few reproductive health facilities, these patients are rejected or they are treated 'clandestinely', with the possibility of being included in rape-statistics.

The lack of funding for non-sexual violence activities is also observed in other domains and poses problems, as stated by a woman activist: 'Our projects on female political leadership are rejected because donors say they don't have funds for it. But how can we then ensure that women survive in this country? Everyone only looks at the consequences.'⁹⁹

Awareness raising has mainly focused on explaining the content of the law on sexual violence and the different forms of sexual violence it includes, and the problems observed with stigmatisation and rejection of victims. Most of the awareness raising is done through posters and leaflets with the law's content (often through cartoons or pictures) or radio emissions. Nearly all organisations communicate variations of two messages: 'rape is illegal

96 Interview CNGO-F-3, interview CNGO-M-3

97 Interview CNGO-M-2

98 A fistula is a health condition that happens when the wall between a woman's vagina and the bladder and/or rectum tears. This can be caused by rape-related trauma but is also a common consequence of child-birth, especially in situations where women lack adequate reproductive healthcare. Fistula's generally cause serious incontinence problems and may result in life-threatening infections.

99 Interview CNGO-F-5

and punishable by law' and 'rape is never the fault of the victim, she needs support'. A number of respondents are of the opinion that awareness-raising focuses too much on the law, without talking about socio-cultural causes of sexual violence. 'We focus on the legal aspects while the problem is social'.¹⁰⁰ They find this especially problematic because they think that the legal threats are not effective in creating a 'fear-factor', because the population anticipates that the justice system is unlikely to work, given their experiences with the functioning and corruption of the government.

When talking to medical experts and NGO representatives, it appears that today nearly all of the fistulas being treated in Congo's most renowned hospitals (Panzi and Heal Africa) are linked to child-birth rather than rape. Since early 2011, the provincial health inspection (IPS) demands more detail on the cause of reported fistulas (rape-related or pregnancy-related). Since then, Heal Africa reports that less than 3% of its fistula operations have a link with sexual violence.¹⁰¹ A surgeon of the Panzi Hospital affirms that in 2011 only 1 out of over 350 fistula operations was reportedly the immediate consequence of rape.¹⁰² The medical inspector of IPS, himself a surgeon, acknowledges that he uses sexual violence funds for pregnancy-related fistula operations. 'What should I do, it hurts me to see that those women suffer, sometimes already for over 20 years. Should I send them away because they were not raped?'¹⁰³

Box 1: Fistula operations: rape or child birth

6.3 Humanitarian approach to sexual violence

A number of the problems identified above are related to what respondents perceive as the humanitarian approach to sexual violence. As sexual violence is strongly associated with the war, it is dealt with as part of the humanitarian crisis. The policy and funding instruments for sexual violence are thus rooted in 'humanitarian relief, security interventions, early recovery activities and small-scale state building'.¹⁰⁴ One outcome of this is that the funds available to combat sexual violence are predominately oriented towards the war-affected areas in eastern Congo.¹⁰⁵ Although everybody agrees that an effective answer to sexual violence requires political and judicial reforms, the overwhelming tendency in the interventions is towards curative measures, which is consistent with the humanitarian approach which is to aid vulnerable people rather than to aim for institution strengthening.

Other problems associated with the humanitarian approach is the short time-span of funding, usually six months to one year, the lack of follow-up and quality monitoring, and weak learning capacity across the sector. For example, a recent multi-donor evaluation showed that economic reintegration of demobilised ex-combatants (for example under the

¹⁰⁰ Interview CNGO-M-1

¹⁰¹ Interview GOV-M-1

¹⁰² Interview CNGO-F-4. This concerns fistula operations that have been conducted under the project 'medical and psycho-social assistance to survivors of sexual violence and women in need of specialized gynecological care in Eastern DR Congo'.

¹⁰³ Interview GOV-M-1

¹⁰⁴ Smits and Cruz (2011, p.2).

¹⁰⁵ Smits and Cruz (2011, p.2)

CONADER/PNDDR programmes) failed to include community members that were not carrying arms and were limited in offering sustainable reintegration.¹⁰⁶ Nonetheless, sexual violence programmes largely continue to build on approaches that are in a similar way non-community-based. In a similar vein, it has been recognised that singular attention to HIV-AIDS in the long run led to deterioration of general health services. But we now observe similar side-effects in the case of sexual violence.

Many organisations in Congo stress the need to deal with sexual violence as a development question where the prevention should get at least as much attention as working on the consequences.¹⁰⁷ 'We have for a long time been working on the effects and not the causes, which are both found in the security and justice sector but also in broader socio-cultural gender realities'.¹⁰⁸ Increasingly aware of all the problems identified about the way in which sexual violence assistance is shaped, organisations and donors slowly began to move towards more development-sensitive funding for sexual violence. USAID has been mentioned on numerous occasions as being among the first large donors to have recently adopted a broader approach, integrating culturally defined gender-differences into its sexual violence programming and funding opportunities.¹⁰⁹

106 Brusset et al (2010, p.103-115). Within the context of the multi-donor evaluation, the author of this report has been team leader for the DDR and SSR component.

107 Interview CNGO-F-1

108 Interview UN-M-5

109 Interview CNGO-F-2, interview UN-F-1

7

From rape victims to programme beneficiaries

This chapter addresses the approaches organisations adopt in identifying victim-beneficiaries and raises questions about how effective and ethical these are. It will be argued that the current programme practices in response to sexual violence encourages beneficiaries to take advantage of services and increases the likelihood of would-be victims.

7.1 Management by numbers

Most projects present activities and budgets for 'X number of victims assisted during X period of time', in line with the log-frame approaches through which donors and organisations seek to quantify results in terms of input and output. This management by numbers puts pressure on organisations and influences the ways in which they go about identifying beneficiaries.

The majority of sexual violence interventions are focused on a limited number of areas, whereas other - often highly affected or remote- zones are overlooked, such as, for example, Shabunda. This can in part be explained by accessibility, security, infrastructure and operational costs. Geographical choices are also influenced by budget-earmarking by donors. Many calls for proposals clarify that actions should take place in area X or Y - often areas already heavily funded. Most of the sexual violence assistance has been focused in North Kivu (Masisi, Rutshuru, Walikale territories) and South Kivu (Walungu, Kabare and Kalehe territories). However recently, other zones have been taken into consideration, especially under the National Strategy funding scheme, whereby projects have been launched in Province Oriental (Kisangani, Dungu) and Ituri. Organisations tend to extend their coverage to a large area in order to access multiple sources of funding. Geographical specialisation is nearly absent which results in fragmentation of efforts and a superficial and thus limited impact at community level.

7.2 Ceasing opportunities

Because there is no central registration system for victims of sexual violence, organisations identify beneficiaries simultaneously and in a non-coordinated way. Usually they make use of local (women) leaders ('*antennas*', usually social or paralegal worker) that are responsible

for identification and receive a small financial bonus in return.¹¹⁰ This strategy is legitimised because these women know their communities, are trusted and therefore have easy access to victims. There is also a downside to this strategy. Apart from the fact that they may lack the abilities to make a sensitive and reliable identification, their position as indirect employees of an organisation gives them an interest in keeping the project going.

A lot of respondents claim that the dispersed nature of beneficiary identification creates a tendency towards 'victim-appropriation'.¹¹¹ Organisations treat women as 'their victims'. This hampers referral mechanisms and prohibits transparency, as organisations try to hide the identity of beneficiaries out of fear that these will be poached by other organisations. Closed-circle reference schemes between a limited number of organisations that are funded by the same donor add to this and creates obstacles to victims of sexual violence that are not within the circle to benefit from the services. These practices serve fund-raising and accountability purposes, yet raise a serious ethical question on treating victims as 'commodities' in terms of project-funding. Several respondents used words like 'force' and 'kidnap' to describe how some organisations take women from their villages to put them in urban-based shelters to give the organisation the physical possibility to showcase them to donors. One respondent reported knowing an organisation 'whose manager had presented his wife, sisters and even neighbours as victims to look for or justify funds'.¹¹²

A disturbing reality in the DRC are the occasional mass-violations in areas of continued pockets of violent conflict. In the immediate aftermath of an attack to a village where mass-rape took place, a large number of organisations travel to the area to list and register victims. This leads to multiple enrolments of victims, and thus multiple counts. Communities in these areas have the experience that assistance increases when the village consists of vulnerable women that are abandoned by their husbands. There are accounts of men deliberately leaving the village on the day NGOs come in to register women, as well as accounts of women from other villages joining in. A police officer who was involved in research of rape claims stated that 'they even hide the goats and chickens in their homes, saying they were looted'.¹¹³ These practices are to the detriment of the many women that are, in fact, raped during these attacks.

The large offer of services by different organisations invites beneficiaries to take advantage of the system. There are many examples of 'shopping behaviour'. Victims of sexual violence exchange information on the organisations that offer most or free assistance and by consequence prefer to go there. Others report to different organisations at the same time, leading to multiplications of statistics. There are numerous accounts of victims voluntarily leaving their communities for areas where assistance is concentrated. 'One day a victim registers herself in Walikale, the next day she is in Sake for the same purpose'.¹¹⁴

110 Interview CNGO-M-2, interview INGO-M-1

111 Interview, GOV-F-2

112 Interview CNGO-M-4

113 Interview GOV-F-1

114 Interview GOV-M-1

7.3 *Increasing the likelihood of generating would-be victims*

One of the problems that has increased over the years is the presence of would-be victims: women who pretend to be raped. International actors consider it unlikely that women would pretend to be a victim of rape because rape is an intimate humiliation and beset with stigmatisation. Therefore it would be highly unlikely that people that are not raped would want to present themselves as victims. All Congolese respondents among our interviews dismiss this argument and classify it as a Western value judgement of sensitivities surrounding sexual violence. In a context where the population is amongst the poorest in the world, the abundant presence of organisations and services is likely to invite abuse and people may not feel they have other options to access assistance.

Congolese community workers and medical personnel relate that they regularly meet women that admit that they had not been raped, but fabricated a story to obtain services they needed but were only available to rape victims. Some of the respondents gave examples of community workers, the 'antennas' referred to above, that lure women into saying that they have been raped with promises for material and financial assistance.¹¹⁵ The occurrence of would-be victims is related to the exclusive targeting of programmes for victims of sexual violence.¹¹⁶

The presence of fake victims is probably inevitable. Identifying fake stories would require forensic techniques that are lacking. Many organisations, moreover, take the ethical position that it is not their role to judge or categorise women that say they have been raped. 'The guiding principle has always been that the person approaching you does not lie'.¹¹⁷ However, it is important to recognise how certain programme characteristics invite the production of fake stories. The fund-driven nature of response to sexual violence and lack of coordination opens the door to organisations that lack the professional qualities and attitudes to deal with the problem. Tying services to sexual violence, where similar services for the population are hardly available or inaccessible, heightens the likelihood that women present themselves as a victim of sexual violence. A number of respondents is also convinced that a more community-based approach rather than the current victim-oriented approach of the programmes could reduce the likelihood of fake reports.

115 Interview CNGO-F-1

116 Interview INGO-M-1

117 Interview UN-F-7

8

The legal domain of combatting sexual violence

This chapter looks in more detail at the justice system and the legal assistance offered by NGOs to victims. The analysis presented is based on a review of 40 sexual violence cases dealt with by six different tribunals in South Kivu, and 19 interviews. The impunity surrounding sexual violence is often seen as an important root-cause of the scale of sexual violence in Congo. As a consequence, legal reform and anti-impunity measures are increasingly taken up within programmes of organisations and international donors. This includes legal assistance for sexual violence victims.

8.1 Dealing with and interpreting the law on sexual violence

As was mentioned earlier, after strong lobbying by Congolese organisations, a law on sexual violence was adopted by the Congolese parliament in 2006. The law makes reference to 16 types of sexual violence. For rape, it foresees between 5 and 20 years imprisonment. Since the law was published, a lot of awareness raising programmes have aimed to educate the population about its existence and content. As the previous chapter detailed, there are some shortcomings to this awareness raising. Nevertheless, it has been successful in the sense that most people are currently aware that the law exists.

To make the law operative requires serious reforms of the judicial system. For a long time, legal practitioners considered rape cases of inferior interest. They often pointed to the victim for having provoked the sexual act and cases were taking a long time to be followed up, if they ever were. There are a lot of factors that favour impunity. These include a lack of knowledge on procedures and the very tedious and costly procedures that in the end discourage the civil party. When rapists are influential people, they are protected and never arrested. Suspected rapists can corrupt officials to escape from a process or to escape from prison, or to illegitimately grant temporary bail that – without sufficient control mechanisms – causes the file to be classified ‘without follow-up’. As a result, from lack of confidence, a lot of people never file a case and of the cases introduced only a few result in a judgement. It should be mentioned here that the military justice system is generally seen as being more pro-active in sexual violence prosecutions than civil courts.

Since the law was published, legal professionals have felt pressured to take sexual violence seriously. The pressure comes from the government that seeks to take its Zero Tolerance policy seriously, and from NGOs that offer training and case-monitoring to reduce procedural

inconsistencies and corruption. A drawback is that the pressure for a strict application of the law creates problems for judges to apply their own common sense to cases that do not fit into the rigid framework of the law. This is often the case with teenage love-affairs, which are increasingly filed as rape cases in court, especially in urban areas. Normally, they don't reach court unless the families are in conflict over the relationship, especially in cases of unplanned pregnancies. Teenage pregnancies are associated with a lack of reproductive health knowledge and facilities. Many girls, especially in urban areas, have shifting relationships, where complex dynamics play a role and lifestyle is often intertwined with forms of transactional sex. Pressured to enact the law on sexual violence that forbids underage sex in all its forms, judges have the tendency to punish severely. A mild decision would cause outrage with the Congolese public and the international community and 'judges fear to lose their job over it'.¹¹⁸ As a consequence, human rights activists that monitor prison conditions state that a lot of the rape suspects and those convicted are relatively young men and minors.

Among people in Bukavu and Goma, many stories circulate about how consensual relationships or conflicts are framed as rape. Some of these concern adult girls (who are just over 18) that generate fake identity papers to claim before court that they are underage. There are also accounts of girls that have sexual relationships with older men, in exchange for so-called 'sugar-daddy' benefits like clothes, schooling or housing. There are also accounts of girls and women that are believed to deliberately seduce men with the objective of accusing them of rape. A large number of men claim to have been arrested and charged with rape after they had sex, or simply after inviting a girl or woman for a soft drink. These girls and women are believed to collaborate with the police. Most of these cases do not make it to court because corrupt police officers use them to force payments from the (wealthy) men that are targeted by these staged cases. Two of the people that were interviewed have close male relatives that experienced such a case.¹¹⁹ Men that are framed by such practices have no choice but to pay their way out.

In Bukavu, a controversy has arisen around the Police for the Protection of Children and the fight against Sexual Violence (PNC-PELVS). A variety of people claim that the police unit is involved in staging sexual violence for corruption purposes. According to the story, the PELVS deliberately sends out girls to seduce men after which a police-raid is organised to arrest them on sexual violence charges. It takes a large sum of money from these men to be released. The PELVS denies the accusations and claims that these are rumours that are spread because the population does not understand the work of the police.¹²⁰ In the present-day DRC, both sides of the story have a ring of plausibility.

Box 2: Controversy around the police

118 Interview INGO-F-4

119 Interview INGO-F-2; interview CNGO-M-5

120 Interview GOV-F-2, interview GOV-M-7

For about six months I was together with a married man. He was 55, I'm 22. He had rented a small apartment for me. After a while I found out I was pregnant, but he refused to accept that the child was his. I panicked. My mother does not have work, how could I find the means to pay for things the baby would need once it was born? I heard on the radio that girls are assisted in case they are exploited by elderly men. So I told my mother that I was going to accuse the man of sexual violence. I was hoping that the police could intimidate him so that I could receive money as compensation, because I knew this man was rich. But since that day, the police have done nothing with my case. I think he paid the police. I lost my hope and stopped following up on it.¹²¹

Box 3: Sugar daddy

The daughter of a woman I worked with in the market, who has at the same time extended family, is a very complicated girl. She's 18 years old and all she does is to sleep with a variety of men. Her mother wanted her to stay in my house so that I could provide her some advice. She temporarily behaved well, but after one month she started to go out again with soldiers and other youngsters from the neighbourhood and fell pregnant. I went with her to the hospital for HIV testing and paid for the costs. Then her family accused me of sexual violence because I went to the hospital without informing her biological mother. Later they said it had been my son who made her pregnant. But my son is like a brother to her and denies it firmly. The family of the girl then sent soldiers to our house and they arrested my husband for sexual violence and they demanded USD 4,000 as compensation. Only after I paid USD 22 to the police my husband was released. The case is still registered with the police as sexual violence, and the family of the girl now claims that she's only 16 years old for it to be treated more severely by the law. I'm waiting for what will happen now. I'm afraid that my son will be locked up for rape and that we have to pay that large sum of money, even though he never slept with her. In our neighbourhood, nearly all pregnancies of unmarried girls are sooner or later transformed into a sexual violence case. In my opinion, rape is abused to get money.¹²²

Box 4: Staging rape charges

These examples, testimonies and rumours highlight a trend whereby knowledge of the sexual violence law has brought about a practice of people bending the law to their own interest, either to settle conflicts or to criminalise consensual relationships for economic gain. 'The severity of the law is abused; intimidations and requests for money are widespread. People know that someone will 'tremble' once accused of sexual violence and is immediately ready to give some money.'¹²³ This reinforces the perception that sexual violence has become a business and may lead to a situation where real sexual violence cases will not be taken seriously.

121 Interview civilian-F-1

122 Interview civilian-F-2

123 Interview CNGO-M-1

8.2 NGO support to legal reform and legal assistance

An important factor that influences the ways in which the justice system deals with sexual violence is the support offered by NGOs. Over recent years, the conviction grew that in order to stop impunity and develop the capacities of the judicial system, two types of assistance needed to be prioritised. These are training and infrastructural support to improve the capacity and working conditions of legal practitioners, and reinforcement of the presence of the justice system in rural areas. The latter has been operationalised by the organisation and funding of mobile courts (*chambres foraines*).

In principle, the Congolese government is responsible for making the funds available to ensure that tribunals are built and staffed in rural areas. As this has hardly happened, an intermediary mechanism has been introduced whereby legal NGOs financially support mobile courts in rural areas. With this funding, NGOs fill in the gap left by the Congolese government and show people in rural areas that justice is possible, in order to create awareness and build confidence in the justice system. There appears to be a preference for funding of military public hearings. This is related to the prevailing idea that military tribunals are more effective, and ties in with the idea that sexual violence is linked to the security sector.

There are several procedural problems associated with these public hearings. They are set in a time frame of 3 to 10 days which may compromise the correct follow up of procedures and lead to hurried investigations, or cases that are suspended until another hearing is financed.¹²⁴ Public hearings have, by law, to take place in the community where the offense took place, which is not always adhered to. A recent (late 2011) series of public court hearings were organised by the American Bar Association in Uvira. The hearings were unlawful in two ways. Uvira has a permanent tribunal that can deal with cases,¹²⁵ and the cases dealt with during this hearing came from areas as far away as Kalehe and Idwji. To several respondents, such examples show that public hearings are in some cases organised to liquidate budgets and not because there is a real need for it.

A problematic aspect of these *chambres foraines* is their bias towards sexual violence cases. Although hearings are meant to deal with all kinds of offences, the sponsoring NGOs, whose funding is based on sexual violence, is likely to ensure that these cases are prioritised. Instead of the tribunal selecting cases, NGOs present the cases to courts that were screened by their own lawyers and paralegals.¹²⁶ This compromises the independence of the judiciary, and contributes to legal practices that prioritise sexual violence crimes over other forms of (conflict and peacetime) violence. Increasingly, many Congolese feel that the justice system has become commandeered by NGOs 'being the bosses of magistrates'.¹²⁷

Nearly all NGOs only provide funds for the assistance of victims of sexual violence but the defence of suspects is not in their mandate. Suspects have to rely on designated public

¹²⁴ Interview GOV-M-3

¹²⁵ The only reason why a public hearing would legitimately be organized in Uvira is in relation to higher-appeal cases that demands the High Tribunal of Bukavu to be brought to Uvira. This was not the case.

¹²⁶ Interview INGO-F-4

¹²⁷ Interview CNGO-F-4

defenders with the constraint that those lawyers are never paid by the Congolese state and hence usually lack motivation and skills.¹²⁸ Because NGOs pay for the transport, lodging, restoration and per diems of the legal staff during public hearings, this creates a certain ‘moral debt’ that may result in subjective treatment of cases, in favour of what the NGO is looking for: convictions in rape cases. Some NGOs make a certain number of convictions part of the benchmark results in their log-frame.

Many NGOs active in the judicial sector acknowledge that ‘mobile courts are not a very effective mechanism to strengthen access to justice’¹²⁹ They make the calculation, however, that the courts are in principle a good mechanism where the benefits outweigh the problems. They figure that the courts need to be supported, as the government does not pay for them. To some observers, the negative side-effects overshadow the positive effects. Overall, ‘intervening in the justice system is convenient and inconvenient, even though it seems that the inconvenient is more present.’ At this moment, there are no rules of engagement, or monitoring systems for NGOs that support *chambres foraines*.

Apart from mobile hearings, NGOs also fund costs of and monitor the work of permanent tribunals. One of the side-effects is that procedures (such as forms or provisional liberty) of sexual violence have become more expensive than for other criminal offenses. ‘Somebody accused of murder can often obtain provisional liberty against a payment of USD 50, but in the case of sexual violence this may rise to USD 300.’¹³⁰ There are numerous accounts of NGOs that put pressure on the legal system not to allow provisional liberty in sexual violence cases, even though Congo’s legal framework allows provisional liberty for sexual violence under special circumstances.

8.3 *Sexual violence cases analysed*

As part of this research, an analysis of 40 sexual violence cases has been conducted. Our findings have to be read with caution, as we had to rely on information provided in the case files, complemented where possible with interviews (19 in total with judges, court clerks, court presidents, public prosecutors and lawyers). The problems we encountered with the files confirm some of the problems mentioned in the previous paragraphs. All files concerned cases brought before courts, so we cannot say anything about the frequency and number of cases that did not go beyond the police level (through corruption or because the case was not eligible for prosecution). For nearly 80% of the cases studied, important evidence was lacking in the file. The files do not give information about the execution of judgments, which is therefore also missing from our analysis. Given the practices we had been told about regarding the support of NGOs, we had wanted to include cases that had been supported by NGOs. However, the files of such cases were missing entirely from the court clerk’s records. This means that the NGOs had withdrawn the file and never returned them. The only exceptions were military cases from mobile court hearings that are most likely funded by NGOs, although the files were not specific about this.

128 Interview-CNGO-M-1

129 Interview INGO-F-5

130 Interview CNGO-M-1

To illustrate the situation with the files in the judiciary, these are the figures from the 'Tribunal de Grande Instance de Bukavu', the court for grave offences, from 2009.

72 cases on sexual violence are listed

33 cases were apparently sent on for higher appeal, files were absent

From the 39 remaining cases:

18 files contained enough material to include them in our sample

12 files were so incomplete that they were excluded from the sample

9 cases consisted of empty folders

Interestingly, once the court clerk found out we were interested in sexual violence cases, she asked for money for file consultation, although these files are supposed to be freely accessible for lawyers. As she stated 'you are probably funded by NGOs to conduct this research, so you should pay'.¹³¹ The lack of detail in the file, and the impossibility of interviewing all the interested parties for this research, makes it impossible to draw conclusions on the verity of the cases and whether suspects were indeed guilty of a crime, or not.

The Table below represents some figures derived from the case analysis. Thereafter, a more detailed description of what is presented in the table will be provided, regarding the offense and parties involved, the follow-through of procedures, and the case conclusions.

	# Cases													
<i>Jurisdictions</i>	Victims minors	Working relation	Family relation	Neighbour relation	Suspect unknown to the victim	Pregnancy	Rape charge	Indecent behaviour/or sexual harassment	Crucial evidence absent	Legal timeframe respected	Treated during public hearing	Conviction	Release	
TGI (BKV) - 1 st (10 cases)	7	2	1	3	4	1	10	1	9	0	0	3	7	
TGI (KVM) - 1 st (5 cases)	4	1	1	0	3	0	5	0	5	0	0	1	4	
CA - 2 nd (5 cases)	5	0	2	1	2	2	5	0	2	3	0	4	1	
TMG - 1 st (5 cases)	5	0	0	1	4	2	5	0	4	0	5	5	0	
CM - 2 nd (5 cases)	2	0	0	0	5	0	5	0	3	0	5	5	0	
PGI (BKV) - pré (10 cases)	6	1	1	0	8	5	10	1	8	n/a	n/a	n/a	n/a	
% in total (40 cases)	72	10	13	13	65	25	100	5	78	10	33	60	40	

Table 5: Overview of the cases ^{132/133/134}

131 Direct observation by Congolese researchers.

132 Explanation of abbreviations: TGI-BKV/KVM (Tribunal de Grande Instance, the Civil Court in respectively Bukavu and Kavumu), CA (Cour d'Appel, the Civil High Appeal Court), TMG (Tribunal Militaire de Grande Instance, the Military Court), CM (Cour Militaire, the Military High Appeal Court), PGI (Parquet de Grande Instance, the office of the Public Prosecutor).

133 Concerns files that were classified without follow-up, so no conclusive judgement was ever made.

134 The % in the grey cells are calculated on the basis of 30 cases because those indicators concern prosecution, hence excluding the 10 cases of the PGI that were not prosecuted.

Observations linked with the offense and parties involved

- *Type of sexual violence*: All of the cases (N=40) concern charges of rape. In two cases the suspect was prosecuted for an additional charge as well: once for sexual harassment and once for indecent behaviour. In two-thirds of the cases, the suspect was said to be unknown to the victim, the other cases concerned relatives, neighbours or work relations.
- *Rape-related pregnancy*: 25% of the cases concerned a pregnancy.
- *Age status of civil party and defendant*: In 72% of the cases, the civil party is minor, of which half fall in the age group up to 14 years, and half in the age-group 14-18 years. The high group of young girls point to problems with child abuse that receive little attention in writings about sexual violence. In relation to the presumed perpetrators, the analysis shows a relatively large representation of young adults. Over half fall in the age category up to 25 years.
- *Status of suspects*: None of the studied cases included a suspect with a certain degree of wealth or status. They were all men originating from the lower class. In the military trials, most suspects are soldiers with a very low ranking and no command status. Out of the ten cases studied, seven concern corporals and sergeants (the two lowest ranks possible in the Congolese army). This confirms the frequent criticism that judicial sexual violence repression is not focusing on senior military figures.¹³⁵

The high number of pregnancies among the cases, in combination with the youthfulness of the victims and perpetrators seems to confirm a pattern emerging from interviews that rape cases in DRC today often concern unresolved disputes over the care of babies that may have been born from consensual relations.

Observations linked with the follow-through of procedures

- *Legal timeframe*: The legal timeframe for treatment of sexual violence cases (a maximum of three months from instruction to judgement) was respected for three out of 30 cases. These three cases were all dealt with in appeal (civil court). All the other cases surpassed the legal deadline, with an average procedure taking 6.5 months, while the longest took 13 months. At the rural tribunal of Kavumu, first degree case procedures took much longer (on average 10 months) than Bukavu-based first degree civil and military tribunals. Having said this, sexual violence cases are generally handled and concluded faster than other offenses, which may linger on for years.
- *Chambre foraine (mobile court)*: None of the civil, but all of the military cases (N=10, both 1st and 2nd degree) were treated during a mobile court sitting. Even though it is not mentioned as such in the files, it is most likely that those courts were supported by NGOs, especially since they prioritise the funding of military public courts over civil courts.¹³⁶

¹³⁵ Human Rights Watch (2009, p.47).

¹³⁶ An additional comment to be made here is that the legal expert working on the case analysis was aware of some specific cases that were dealt with by NGO-supported mobile courts. When however trying to retrieve these files from the court clerk, they had completely disappeared. Quite often it happens that NGOs keep the files in their own administration, hampering a proper tracking record of the jurisdiction in the courts.

- *Evidence present in files.* Most important pieces of evidence that are expected to be present in a sexual violence file are the following: birth certificate, medical attestation giving proof of rape, school enrolment, medical leaflet, identity cards, or objects that were gathered at crime scene. However, for over three-quarters of all cases studied, convincing evidence was lacking.
- In 23 of the cases, the file only consisted of procedural notes (such as police reports); this was also the case for 8 out of the 19 cases that led to conviction.
- None of the 19 convictions contained the legally required medical report as evidence.
- In only 1 case, the file made mention of the presence of physical proof (underwear of the victim).

Observations linked with case conclusions

- *Reasons for suspension:* ten of 40 cases did not make it beyond the public prosecutor. In five cases, this was caused by the impossibility of finding the suspect. In the other 5 cases, it was linked to '*insuffisance de charge*', meaning the public prosecutor did not see enough reasons to bring the case to justice either because of the very weak nature of evidence or the withdrawal or disappearance of the civil party. Note, however, that unrecorded reasons for suspension may include corruption or a lack of police capacity to conduct a thorough investigation.
- *Conclusion of cases:* in total, of the cases that were followed-through (N=30) 63% of the cases resulted in conviction (19), 37% (11) in acquittal of the suspect. One of the convictions included in the analysis was absolved in higher appeal (CA). It is noteworthy that all military cases studied (N=10) resulted in conviction, reinforcing the general perception that the military justice system is acting severely in relation to rape cases.
- *Reasons to release:* for the 11 cases where the suspect was acquitted, the judges' arguments to support this conclusion were relatively well developed. The motivations recorded were, often in combination, the absence of medical proof (mentioned four times), the absence of witnesses (twice), the overall absence of proof (four times), the constant denial by the suspect (three times), doubt or disappearance of the civil party (mentioned), age contradiction of civil party (once) and presence of consent (once).
- *Reasons to convict:* in four out of 19 convictions the fact that the minority of the victim was proved was sufficient grounds for conviction. Although none of the cases had a medical attestation in the file, three cases nonetheless used 'medical proof' as an argument to convict. In one case, the fact that the woman gave birth to a child was put forward as proof for rape. In another case, the judge found the declarations of the parties involved unclear and unconvincing and therefore decided solely on the basis of the police report to convict. In another case, the judge based the conviction solely on the statement of the victim being 'plausible'. Finally, in three cases the suspect either changed his story all the time or firmly denied guilt, all of which was seen as a sign of 'evilness' and therefore led to the guilty conclusion. For ten convictions it was stated the

suspect confessed, even though the conditions under which confession was obtained is unclear.

- *Prison penalty:* of the 19 convictions prison penalties were as follows: five cases got penalties less than 5 years of which the lowest was six months (which are all, in view of the strict interpretation of the law, illegitimate penalties), nine cases got between five and ten years, and five cases the maximum penalty of 20 years. The military judgements include the most severe penalties (four out of the five cases got 20 years) as well as the least severe (four out of five of the 'illegal penalties' of less than five years originate from the military tribunal). Given the fact that none of the military cases were acquitted, the latter may indicate cases where the judge was in fact not convinced yet nonetheless gave a 'light' sentence.
- *Fines and compensation:* Of the 19 cases, 15 were convicted with penalties ranging from USD 100 to USD 800 (USD 220 on average) and compensation payments ranging from USD 200 to USD 8,000 (USD 2,030 on average). Three out of the ten military convictions also included expulsion from Congo's army as penalty. None of the files included documents proving the actual payment of compensation. The enactment of compensation requires a civil procedure for which the victim is expected to pay 6% of the allocated sum in advance. This is often impossible for victims to come up with, especially the poorest.
- *Results of higher appeal:* Of the cases that were dealt with in the higher appeal court (civil and military) (N=10), one civil conviction was nullified. As for the military second degree cases, the higher court confirmed the prison penalties but in all cases (N=5) raised the financial penalties pronounced in the lower court. None of the higher appeal cases involved complementary research.

On the basis of the information found in the files, as well as their professional expertise, the legal analysts involved in this study have made a value judgement in relation to the quality of the conclusions of cases. They based their evaluation on the evidence presented combined with the judge's motivation. They concluded that half of the convictions do not have the necessary legal backing and represent in fact a violation of the legal rights of the accused. It is remarkable from our case studies that cases that result in release are much better argued by the judges than the cases that result in conviction. Some of the respondents confirmed that this is the case because judges feel the need to defend why in some cases they release a suspect. 'If a presumed perpetrator of sexual violence is found not-guilty by the court, the media reports on such cases with disgust and incomprehension, influencing public opinion to believe that all suspected perpetrators should be convicted no matter what.'¹³⁷

8.4 *Disregarding legal principles*

The law on sexual violence and reforms of the judicial system have resulted in increasing attention to cases of sexual violence. This has the potential to stop impunity to sexual

¹³⁷ Interview UN-M-4

violence. It addresses major flaws in the functioning of the justice system that hampers the prosecution of perpetrators and make it difficult for the victims to find justice. This chapter has mainly focused on unintended consequences of the awareness-raising around the law and the judicial practices that have evolved. The outcomes of our interviews and the cases we have studied add up to the conclusion that the drive to stop impunity, triggered by the atrocious stories of war-related rape, and the concomitant support by NGOs for sexual violence cases leads to a situation where suspects are likely to be convicted, regardless of the evidence presented to sustain the case. The basic legal principle that suspects are 'innocent until proven guilty' is hence of little value in Congo, and this is even more so the case with military justice. Hence, the possibility should not be excluded that there are currently a lot of people, even innocent ones, being convicted for rape even though weaknesses in procedures, proof and argumentation should have led to release. What contributes to this likelihood is the fact that court cases are biased as suspects are barely represented in court (nobody supplies them with lawyers and the public defenders system is weak).

Our interviews point out that the awareness of the law and the current practices of conviction have led to an increase in cases where young lovers are convicted, filed by women or their relatives to resolve questions of caretaking in cases of pregnancy arising from consensual relationships. The analysis of the cases contains some indicators that seem to affirm this pattern, i.e. the high level of minors and the high level of pregnancies among them. The convictions that NGOs report to their donors may thus be of a different nature from the war-related rapes that the donors had in mind. NGOs that support legal cases or public hearings may inadvertently lead to the subjective treatment of cases, the lack of respect for the suspect's rights and even influence the outcome of cases. This evolving practice does not enhance the quality of justice, but alters injustice by shifting from impunity of suspects to bias against suspects.

9

Conclusion

This research was initiated to address the growing discomfort about programmes against sexual violence among staff members of involved agencies and Congolese actors more generally. The report concerns the unintended consequences of responses to sexual violence. These consequences risk undermining the progress in addressing sexual violence, including the work to stop impunity, to raise awareness on sexual violence and the services offered to raped women in the DRC. The main recommendation of this report is that these unintended consequences need to be discussed and acted upon, in order to retain the positive impact of programmes against sexual violence and to prevent them turning against the women for whom the response was intended in the first place: the victims of rape.

From our 58 interviews, the 40 legal cases we studied and the documents we consulted, the following conclusions emerge and are described below.

- *Interpretation of sexual violence*
Sexual violence in Congo is mostly seen and represented by the international media as rape, and moreover, this is often viewed as extremely brutal conflict-related rape. Many agencies worldwide find in this discourse a motivation to address sexual violence in DRC. They fail to acknowledge that war-related sexual violence also affects men and male victims are rarely assisted.
- *Socio-cultural roots of sexual violence*
The war-related interpretation of sexual violence in DRC is narrow and fails to recognise that sexual violence is nowadays mainly happening among civilians and should partly be understood within the socio-cultural context of gender ideologies (masculinity and femininity) and the position of women in the economic, social and political domains.
- *Conflict-related sexual violence*
While it is important to recognise that sexual violence is part of the 'normality' of society and happens outside the conflict dynamics, this is not to deny that conflict dynamics do play a role. Pockets of conflict continue and perpetrators of peacetime sexual violence may themselves be traumatised by war experiences. It is important to note that the very atrocities that triggered the response to violence, sexual crimes committed by international troops, fall outside of the scope of current legislation and are not being prosecuted. Political and military structures and practices that are the legacy of the war continue to be considered one of the causal problems of sexual violence.

- *Governance and the legal system*

The impunity of sexual violence associated with imperfections in the legal system and corruption in relation to arrest and prosecution has led to many initiatives to bring rape suspects to court. However, the response mechanisms continue to be governed by the same imperfections and practices that characterize the Congolese justice system. As a result, justice continues to be difficult to achieve and may lead to new biases towards convicting suspects of sexual violence that are themselves vulnerable in terms of their age, socio-economic position and – in the case of military – low ranks. The 19 convictions from 40 cases that were reviewed all lacked crucial evidence. None of the files contained evidence of medical examinations. Our legal experts considered 50% of the convictions ungrounded.
- *The use of statistics*

There are many problems with data gathering and analysis. Whereas the taboo on sexual violence was considered so stringent that this would lead to under-reporting of sexual violence, we also find the opposite in current practices. Among the factors contributing to inflated statistics are deliberate exaggeration for fund-raising, double counts for lack of transparency, medical treatment of non-victims in need of care, practices of would-be victims and multiple registrations by beneficiaries of programmes. Data are often not specific on types of sexual violence reported, details on the localities in which data were collected, and the timeframe during which reported offenses took place. Furthermore, most international actors rely on the accounts of a limited number of Congolese sources. The use of data with extrapolations and one-liner media representations reinforces the stereotypical notion of war-related brutal rape. The subsequent representations of the DRC as the ‘rape capital of the world’ undermines the constituency among DRC actors for combating sexual violence.
- *Actors and budgets*

The large budgets available for combating sexual violence have led to a multiplication of organisations on the ground which are not sufficiently coordinated or monitored for their capacities. As a result, initiatives range from sincere and professional to those that act as ‘gold diggers’ and use human suffering to obtain funds. International budgets completely overwhelm resources dedicated to deal with sexual violence by the DRC government, contributing to a developing perception that sexual violence is an issue imposed and managed by international actors.
- *Budgets and approaches*

The analysis of sexual violence budgets reveals that these are highly directed towards curative assistance to victims of violence. Much less attention is given to measures to resolve sexual violence, especially by addressing gender relations and cultural practices at the community level, by strengthening women’s positions and fostering women’s leadership, and by addressing continuing problems in the domain of security, peace building and justice. The budgets available to sexual violence under Multi-Donor Trust Funds are relatively high compared to, for example, budgets for general health issues (30% higher than sexual violence assistance), education and security sector reform (each one is half of the value of budgets available for sexual violence).

- The type of assistance*

Most of the projects claim to adopt a holistic approach to assistance, seeking to combine medical, psycho-social, economic and legal assistance to victims. However, the programmes display a ‘humanitarian style’ with short durations and an emphasis on assisting individual victims. This is seen to hinder more preventive, socio-cultural and community-based interventions. Targeting programmes on victims of sexual violence is especially problematic in medical care, where sexual violence programmes in practice compensate for the lack of reproductive health facilities. The two most renowned hospitals for the treatment of fistulas report respectively that only 3% (Heal Africa), and only one out of 350 cases last year (Pansi hospital) were reportedly the result of rape, while the others all resulted from childbirth.
- Awareness raising programmes*

These efforts have succeeded in creating knowledge of sexual violence, highlighting messages that sexual violence will not be tolerated and will be punished, as well as disseminating the notion that victims are never to be blamed. But these messages are on many occasions difficult to understand in a context where most forms of sexual violence recognised in the 2006 law are still part of customary practices. Awareness raising falls short in not addressing predominant gender relations in the context of the criminalisation of those practices. It also leads to cases where disputes resulting from consensual relations lead to fabricated accusations of sexual violence.
- Beneficiary identification*

The emphasis on numbers in project management has created a situation in which beneficiaries are ‘appropriated’ by organizations and it leads at times to the ‘commoditisation’ of victims who are brought in to justify activities and expenditures. Beneficiary identification usually prioritises certain (accessible) areas, which become ‘assistance-hubs’ at the expense of other localities where sexual violence is concentrated. Targeting services for victims of sexual violence, leads to services that are *reserved* for victims of sexual violence, while alternative services are hardly available. International agencies maintain that their programmes are protected against ‘abuse’ because the stigma attached to rape would inhibit women from presenting a fake case. None of the Congolese respondents supports this view. They maintain that women in dire need of medical or socio-economic assistance will pretend to be a victim of sexual violence. Reserving services for victims of sexual violence and the related assumption that assistance seekers are all victims of sexual violence clouds the analysis of trends and problems for women. There is no attention to the prevention of birth-related fistulas and little attention to address problems resulting from teenage pregnancies.
- Legal support by NGOs and the judicial treatment of sexual violence cases*

NGO support to the justice sector takes place through training, contributions to improving working conditions, the accompaniment of rape cases, and financial support for organising public hearings (*chambre foraine*). While the culture of impunity is effectively changing, it has resulted in a system that is biased towards producing rape convictions, while the rights of suspects are severely compromised. Judicial actors feel pressured by the zero-tolerance policy of the government, the advocacy of NGOs,

and public opinion to convict suspects. As a result they disregard actual evidence to support cases and become biased and subjective in their rulings. This is even more so when NGOs pay for organising the mobile court hearings and select the cases to be heard.

These conclusions are based on research focusing in North and South Kivu, where most of the sexual violence funding is made available. They do not apply to other provinces of the DRC. The research concerns the array of interventions, and looks into perceptions and societal responses to these interventions. The substantiation of the trends we observe and the recognition of diversity in objectives and quality of individual programmes, requires additional research at programme level. The research has been limited to the DRC and can therefore not be understood as valid for other countries. Additional research would be required in other countries where (war-related) sexual violence has triggered international responses, such as Northern Uganda.

The different processes that we have observed are strongly inter-related and have set in motion a negative spiral in which sexual violence accounts evoke responses that are prone to abuse by organisations and misuse by victims (and non-victims) and which, in turn, leads to exaggerated figures that add to the statistics evoking responses. The negative spiral results in the increasing commercialisation of sexual violence, where sexual violence is considered a business for agencies and individuals. The consequences are grave. It erodes the Congolese constituency for combating sexual violence. It directs attention away from the socio-cultural gender relations in which much sexual violence is rooted. It leads to an increasing cynicism to the problem with the result that real victims of sexual violence are no longer heard. It leads to biased problem statements, policies and programmes that fail to address the domestic character of sexual violence, the lack of reproductive health, the prevention of teenage pregnancies, the malfunctioning of justice and the dire poverty underlying requests for assistance. To break through this negative spiral, and live up to the intentions of the responses to sexual abuse to stop impunity, assist victims and reduce sexual violence, the response system to sexual abuse needs to be evaluated and reformed.

This leads to the following recommendations to international and Congolese actors concerned with sexual violence:

- There is a need to move away from the predominant ‘rape as a result of conflict’ discourse. Instead, efforts need to be made to understand sexual violence in its context, with particular attention to its socio-cultural gender dimensions.
- As most of the assistance has focused on the relief of the consequences for victims, assistance programmes need to be more strongly embedded in longer-term development approaches that deal with root causes (while continuing to address remaining humanitarian needs). This involves addressing gender relations, strengthening the position of women, fostering women’s leadership, increasing respect for human rights, intensifying security, justice and reform measures, and seeking community-based responses to sexual violence.

- To address the problem of would-be victims and its negative consequences, it is important to recognise the underlying factors of poverty and lack of healthcare. The mandate of medical care must be broadened to incorporate reproductive health, especially to cater to and prevent women with fistulas from child-birth. Socio-economic interventions should be community-based and take into account the lessons learnt from programmes for ex-combatants.
- Interventions in the justice sector need to ensure the independent functioning of Congolese legal actors and should guarantee fair and equal procedures for all parties involved. Promoting convictions for sexual violence, especially through 'quick-fix' procedures in funded mobile courts, leads to severe biases in the justice system and the breach of the rights of suspects.
- The coordination of sexual violence programmes needs to be improved and made more integral to overall development planning. Parallel health and legal services targeting sexual violence victims should be avoided. The communication and coordination between international actors, Congolese government and civil society needs to be improved. The political and financial commitment of the Congolese government to reform measures necessary to combat sexual violence need to be concretised.

Annex 1: Bibliography

Referenced literature

- Autesserre, S. (2012). *Dangerous Tales: Dominant Narratives on the Congo and their Unintended Consequences*, African Affairs, 00/00 1-21 DOI 10.1093/afraf/adro80
- Baaz, M.E. en Stern, M. (2009). Why do soldiers rape? Masculinity, violence, and sexuality in the armed forces in the Congo (DRC). In: *International studies quarterly* 53 (2): 495-518
- Bartels, S.A., Scott, J.A., Mukwege, D., Lipton, R.I., Van Rooyen, M.J and J. Leaning (2010). Patterns of sexual violence in Eastern Democratic Republic of Congo: Reports from survivors presenting to Panzi Hospital in 2006. In: *Conflict and Health* 4 (9): 1-10
- Bastick, M., Grimm, K. and Kunz, R. (2007). Sexual violence in armed conflict: Global overview and implications for the security sector. Geneva: Geneva Centre for the Democratic Control of Armed Forces. In: Bouta, T.; Frerks, G. and Bannon, I. (2005). *Gender, conflict and development*. Washington: World Bank
- Brusset, E., Bak, M., Collin, C., Hansen, A., Douma, N., Elakano, J., Otto, R., Ngalingbaya, S., Ngendakuriyo, A., Valensart, L., Vlassenroot, K. and Voyadzis, C. (2010). *AmaniLabda: Evaluation conjointe de prevention des conflits et construction de la paix et République Démocratique du Congo*. Brussels: Channel Research
- Custers, Raf (2009). *Het STAREC plan van de Congoese regering: Een voorlopige analyse*. IPIS DRC government (2009). *Programme de Stabilisation et de Reconstruction des Zones sortant des conflits armés*. Kinshasa: DRC government
- DRC government (2006). *La loi sur les violences sexuelles*. Kinshasa: DRC government
- European Commission and the DRC government (2008). Rapport annuel conjoint, RDC 2008, available at http://ec.europa.eu/development/icenter/repository/jaro8_cd_fr.pdf
- Harvard Humanitarian Initiative (2009). *Characterizing sexual violence in the Democratic Republic of the Congo: Profiles of violence, community responses, and implications for the protection of women*. Report for the Open Society Institute. Cambridge: Harvard University
- Human Rights Watch (2009). *Soldiers who rape, commanders who condone: sexual violence and military reform in the Democratic Republic of Congo*. New York: Human Rights Watch
- International Alert, Réseau des Femmes pour un développement associatif (RFDA) et Réseau des femmes pour la défense des droits et la paix (RFDP) (2005). *Le Corps des femmes comme champ de bataille durant la guerre en République Démocratique du Congo, violences*. London : International Alert
- Kelly, J. (2010) Rape in war: Motives of militia in DRC. In: *Special Report* 243. Washington: United Nations Institute of Peace
- Ministry of Budget (2011). *Dépenses par administration et chapitre: Exécution au 31 octobre 2011, Kinshasa*. Available at www.ministeredubudget.cd
- Muchukiwa, B. (2010). *Synthèse de la recherche sur les fondements, causes culturelles des violences sexuelles et l'évaluation de la capacité communautaire à prévenir et à répondre*. Bukavu: Centre Médico-Psychosociale (CAMPS)
- Peterman, A., Palermo, T. and C. Bredenkamp (2011). Estimates and determinants of sexual violence against women in the Democratic Republic of Congo. In: *American Journal of Public Health* 101 (6): 1060-1067
- Pratt, M. and L. Werchick (2004). *Sexual terrorism: Rape as a weapon of war in Eastern*

- Democratic Republic of Congo, an assessment of programmatic responses to sexual violence in North Kivu, South Kivu, Maniema and Orientale Provinces.* USAID/DCHA Assessment Report, Kinshasa: USAID
- Rodriguez, C. (2007). Sexual violence in South Kivu, Congo. In: *Forced Migration Review*. Oxford: Oxford University
- Sivakumaran, S (2007). Sexual violence against men in armed conflict. In: *The European Journal of International Law* 18 (2): 253-276
- Smits, R. and S. Cruz (2011). Increasing security in DR Congo: Gender-responsive strategies for combating sexual violence. In: *CRU Policy Brief* 17. The Hague: Clingendael Conflict Research Unit
- Watts, C. and C. Zimmerman (2002). Violence against women: Global scope and magnitude. In: *The Lancet* 359: 1232-1237
- White, J.W. and L.A. Post (2003). Understanding rape: A metatheoretical framework. In: Brown-Travis, C., *Evolution, Gender and Rape*. Massachusetts: Massachusetts Institute of Technology
- Zwaan, N. de, and G. Frerks (2011). *Gender practices and policies in fragile settings: the case of Eastern Congo*. Gender and Conflict Working Group of the Peace, Security and Development Network, The Hague: Ministry of Foreign Affairs

Consulted literature

- Amnesty International report (2004). *Lives blown apart, crimes against women in times of conflict: stop violence against women*. London: Amnesty International
- Amnesty International report (2008). *Democratic Republic of Congo: North Kivu, no end to the war against women and children*. London: Amnesty International
- Campbell, R. and Wasco, S.M. (2005). Understanding rape and sexual assault: 20 years of progress and future directions. In: *Journal of Interpersonal violence* 20 (1): 127-131
- Ertürk, Yakin (2008). *Promotion and protection of all human rights, civil, political, economic, social and cultural, including the right to development*. Report of the Special Rapporteur on violence against women, its causes and consequences - mission to the Democratic Republic of Congo. UN Human Rights Council, seventh session, A/HRC/7/6/Add.4
- Hanlon, H. (2008). Implications for health care practices and improved policies for victims of sexual violence in the Democratic Republic of Congo. In: *Journal of International Women's Studies* 10 (2): 64-72
- Human Rights Watch (2005). *Seeking Justice: The prosecution of sexual violence in the Congo war*. New York: Human Rights Watch
- Human Rights Watch (2009). *You will be punished: Attacks on civilians in eastern Congo*. New York: Human Rights Watch
- International Conference on the Great Lakes Region (2008). *La déclaration de Goma sur l'élimination de la violence sexuelle et la lutte contre l'impunité dans la Région des Grands Lacs*. Conferencedeclaration, Goma 18 June 2008
- Jackson, Lisa (2008). *The Greatest Silence: Rape in Congo*. Documentary production. New York: Jackson Films Inc.
- Mukwege, D.M., Mohammed-Ahmed, O. and Fitchett, J.R. (2010). Rape as strategy of war in the Democratic Republic of the Congo. In: *International Health* 2: 163-164

- Reijbroeck, D. van (2010). *Congo: A history*. Amsterdam: De Bezige Bij
- Réseau des Femmes Pour un Développement Associatif (RFDA), Réseau des Femmes pour la Défense des Droits et la Paix (RFDP) et International Alert (IA) (2004). *Violence sexuelles contre les femmes et les filles au Sud-Kivu (1996-2003)*. London: International Alert
- Van Velzen, Femke and Ilse (2007). *Fighting the Silence: Sexual violence against women in Congo', documentary production*. Amsterdam: IFPRODUCTIONS
- Van Velzen, Femke and Ilse (2009). *Weapon of War: Confessions of rape in DR Congo*. Documentary production. Amsterdam: IFPRODUCTIONS
- Van Velzen, Femke and Ilse (2011). *Justice for Sale: When the system fails everyone is a victim*. Documentary production. Amsterdam: IFPRODUCTIONS
- Vries, Janine (2005). *Sexual violence against women in Congo : Obstacles and remedies for judicial assistance*. Thesis
- Wood, E.J. (2009). Armed groups and sexual violence: When is wartime rape rare? In: *Politics Society* 37: 131-161

Annex 2: Resource persons

As many of the respondents requested that their points of view were to be taken into consideration as individual points of view, not engaging the organisation they work for, it has been decided to quote respondents in a coded manner. The coding system makes reference to the gender of the respondent (F/M) and the type of organisation they work for: UN (UN agency), INGO (international NGO), CNGO (Congolese NGO) and GOV (government agency). Each respondent has also been given a number, hence resulting in coding like GOV-F-1, INGO-M-6, CNGO-F-3 or UN-M-4.

The following organisations and institutes have been interviewed. On some occasions more than one person was present during the interview, for other structures a number of employees were interviewed separately, hence resulting in the total number of 58 interviews. The numerical part of the coding does not reflect the order in which they are presented below and has been attributed at random.

Goma

UN structures: MONUSCO-SGBV, UNICEF, JHRO-MONUSCO, UNHCR, UNDP, UNFPA
Government: Provincial gender division, Provincial Health Inspection, Police PLVS, Provincial Justice Division, Tribunal de Grande Instance
INGOs: Medecins du Monde, International Rescue Committee, Finn Church Aid, American Bar Association, Heal Africa
CNGOs: DFJ, SFVS, ACAT, SOPROP, ASPD, OCP

Bukavu

UN structures: UNFPA, UNICEF, MONUSCO-SGBV, UNHCR
Government: Tribunal de Grande Instance (Bukavu and Kavumu), Cours d'Appel, Parquet, Police PLVS, Provincial Gender Division
INGOs: American Bar Association, ICCO-KerkinActie, International Alert, Avocats Sans Frontières
CNGOs: PanziFoundation, OCET, Caucus des Femmes, RFDP, CAMPS

Annex 3: Data collection tools

Topics for semi-structured interviews with actors

Representation and interpretation of sexual violence

- What is over the years the evolution in how sexual violence in Congo is understood?
- Is the current interpretation of sexual violence doing justice to reality? Why (not)?
- What are factors that you feel influence the interpretation of sexual violence?
- What should in your opinion be changed in which sexual violence is represented?

The focus and effects of (the organisation's) activities

- What is the focus and type of projects are implemented?
- How are beneficiaries selected and dealt with?
- What is the role and influence of by donors in the field of sexual violence programming ?
- Has sexual violence programming and funding over the years in your opinion been effective in addressing existing needs in a context sensitive manner? Why, why not?

Coordination

- Which coordination schemes for sexual violence assistance exist?
- What observations do you have in relation to the effectiveness of coordination?

The use of statistics

- Are statistics important to grasp the problem? Why, why not?
- Which shortcomings can be observed with the collection, analysis and interpretation of data on sexual violence?
- What are the effects of using statistics that are beset by those shortcomings?

Juridical assistance and support offered by NGOs

- Why is juridical assistance in your opinion justified? What is its focus currently?
- What is your opinion on mobile courts, what are its strengths and weaknesses?
- What are factors that cause impunity around sexual violence cases?
- In what ways the law on sexual violence is applied in a counter-productive manner?

Examples of unwanted side-effects

- Do you know examples of side-effects? Which ones?
- What is your analysis/opinion of the examples you gave?

Consequences and risks of the presence of such side-effects

- In what ways is there attention for and debate about those side-effects?
- What are potential risks if those side-effects are not addressed?
- Recommendations and alternatives
- What would you like to see changed in the way sexual violence is dealt with in programming?

In conclusion

- 'Sexual violence has become a business', is this statement in your opinion true or false? Do what degree and why?

Framework for the legal analysis of sexual violence cases

Quantitative analysis

- Nombre d'acquittements, nombre de condamnations (et à quel peine), nombre de dossiers classés sans suite, durée de la procédure (instruction par chambre foraine ou pas), type d'infraction, type d'acteur, l'âge de la victime (mineure ou majeure), nombre de cas traités en appel

Qualitative analysis

- Quels cas sont conclus par une condamnation alors que les éléments de preuves présentés dans les dossiers devraient amener le tribunal à acquitter
- Quels sont les cas conclu par un acquittement alors que les éléments de preuves présentés dans le dossier devraient amener le tribunal à condamner
- Pour quels cas des pièces manquent (et lesquels pièces, quel est leur importance, pourquoi ça manque dans le dossier – est-ce que c'est une instruction incomplet ou par volonté/corruption)
- Est-ce qu'il existe de pièces dans un ou plusieurs dossiers qui ont l'allure d'être fabriqué, comment le savoir
- Pour les cas qui ont été traités en appel, est-ce qu'il existe des incompatibilités par rapport aux arguments/faits présentés (nouveaux éléments, éléments changés)
- Qu'est-ce qu'on constate par rapport au nombre de cas ou la victime n'a pas été remise dans ces droits (acquittement, légère peine, présumé pris fuite)
- Qu'est-ce qu'on peut observer par rapport au traitement juridiques des cas jugés en chambre foraine ? (eg. durée, profondeur de l'enquête, influence des ONGs, effets)
- Qu'est-ce qu'on constate (différence, comparaison) par rapport aux cas traités par la justice militaire et ceux traités par la justice civile
- Qu'est-ce qu'on constate (différences, comparaison) par rapport aux cas traités par le tribunal de grande instance et ceux traités par le tribunal de Kavumu
- Sur base des cas étudiés (ou votre expérience personnel), quels généralisations ou analyses peuvent être faits par rapport à la légèreté, l'influence de corruption, trafic d'influence et les faux condamnations qui peuvent exister au tour de dossiers de violences sexuelles

Please note that not all the questions above have been answered or dealt with in detail in the judicial analysis. On the basis of the file-analysis it proved impossible to formulate a conclusive response to some of the questions.

Biographies

Ir Nynke Douma (independent consultant WHYZE, The Hague, Netherlands)

Nynke holds two master degrees in Development Sociology/Disaster Studies (Wageningen University, Netherlands) and International Journalism (Cardiff University, United Kingdom). She works for her own company WHYZE (www.whyze.eu) as a consultant, evaluator and researcher for the international development sector. Since 2003 she has worked extensively in the DRC, spending between four to six months in the country each year (mostly in North and South Kivu provinces). Nynke has in-depth knowledge of the country's socio-cultural, political, economic and security context. Her expertise lies at the intersection of conflict prevention, development, sexual and gender-based violence, media and awareness raising. In DRC, Nynke worked on a number of research and evaluation projects on a variety of topics including sexual violence assistance, the implementation of UNSCR 1325 on the position of women, DDR and SSR, land-conflicts, mining and NGO capacity building. She has also been involved in the production of several documentary films and written media publications on Congo's conflict and sexual violence. Finally, Nynke has co-developed three ambitious educational film projects for use in DRC through mobile cinemas. All of these projects focus on different issues linked with sexual violence (community stigmatisation, the motivation of perpetrators, and the treatment of sexual violence cases by the justice system).

Prof Dr Ir Dorothea Hilhorst (Disaster Studies, Wageningen University, Netherlands)

Dorothea Hilhorst is professor of Humanitarian Aid and Reconstruction at Wageningen University. Her research concerns the *aidnography* of humanitarian crises and fragile states. Her publications focus on the everyday practices of humanitarian aid, disaster risk reduction, climate change adaptation, reconstruction and peace building. She coordinates research programmes in Angola, DRC, Afghanistan, Ethiopia, Sudan, Mozambique and Uganda. Her programme in DRC consists of research into community-drive reconstruction, livelihoods in the artisanal mining sector and research into basic services and livelihoods. Thea Hilhorst is the Director of the Netherlands MFA-funded IS Academy research programme: Human Security in Fragile States, and she is a member of the DFID-funded and ODI-led 'Secure Livelihoods Research Consortium'. Thea Hilhorst completed her dissertation in 2000 on a Philippine development NGO and its surrounding networks, clientele and donors (*The Real World of NGOs. Discourses, Diversity and Development, Zedbooks*). www.disasterstudies.wur.nl

Acronyms

ABA	American Bar Association
ASF	Avocats Sans Frontières
ASPD	Action Social pour la Paix et le Développement
CA	Cour d'Appel
CAMPS	Centre d'Assistance Médico Psychosociale
CBO	Community Based Organization
CM	Cour Militaire
COOPI	Cooperazione Internazionale
COOPI	International Italian Cooperation
CORDAID	Catholic Organisation for Relief and Development
CPLVS	Comité Provincial de la Lutte Contre les Violences Sexuelles
CTLVS	Comité Territorial de la Lutte Contre les Violences Sexuelles
DRC	Democratic Republic of Congo
FARDC	Forces Armées de la République Démocratique du Congo
FDD	Forces for the Defense of Democracy
FDLR	Forces Démocratiques de Libération du Rwanda
FNL	Forces Nationales de Libération
HIV	Human Immunodeficiency Virus
ICCO	Inter-Church Organisation for Development Cooperation
IMC	International Medical Corps
IPS	Inspection Provinciale de la Santé
ISSSS	International Security and Stabilization Support Strategy
JHRO-MONUSCO	Joint Human Rights Office-MONUSCO
MDTF	Multi Donor Trust Fund
MONUSCO	Mission de Nations Unies au Congo
NGO	Non-Governmental Organization
OCHCR	Office of the High Commissioner for Human Rights
PEP-kit	Post Exposure Prophylaxis
PELVS	Police d'Enfance et la Lutte contre les Violences Sexuelles
PF	Pooled Fund
PGI	Parquet de Grande Instance
PNC	Police Nationale Congolaise
REJUSCO	Restoration of the Judicial System in Eastern Congo
RFDP	Réseau de Femmes pour le Développement et la Paix
SCIAF	Scottish Catholic International Aid Fund
SFVS	Synergie des Femmes Contre les Violences Sexuelles
SGBV	Sexual and Gender Based Violence
SRFF	Stabilization and Recovery Funding Facility
STAREC	Stabilization Strategy for Eastern Congo
STD	Sexually Transmitted Disease
TGI	Tribunal de Grande Instance
TMG	Tribunal Militaire de Grande Instance

UN	United Nations
UNDP	United Nations Development Programme
UNFPA	United Nations Population Fund
UNHCR	United Nations High Commission for Refugees
UNICEF	United Nations Children and Education Fund
UNOPS	United Nations Office for Project Services
WUR	Wageningen University and Research Centre

Disaster Studies focuses on conflict, natural disasters and development, and on the dynamics of aid interventions. It offers education, research, PhD supervision and policy advice. It contributes with qualitative research to multi-disciplinary approaches. Disaster Studies combines academic teaching and research with a desire to enhance policy discussions and local and international responses to disaster and conflict.