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**Fédération internationale des ligues des droits de l'Homme**

ORGANISATION INTERNATIONALE NON GOUVERNEMENTALE AYANT STATUT CONSULTATIF AUPRES DES NATIONS UNIES, DE L'UNESCO,  
DU CONSEIL DE L'EUROPE ET D'OBSERVATEUR AUPRES DE LA COMMISSION AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES

International Federation  
for Human Rights

Federación Internacional  
de los Derechos Humanos

الغدرالية الدولية لحقوق الانسان

**Democratic Republic of Congo (DRC) :**

**"BREAKING THE CYCLE OF IMPUNITY"**

**Paris - Geneva- Brussels-The Hague**

**1 - MASSIVE VIOLATIONS OF HUMAN RIGHTS**

**2 - CRIMES OF SEXUAL VIOLENCE COMMITTED ON A MASSIVE SCALE: FROM WEAPON OF WAR TO TRIVIALISATION**

**3 - GENERALISED IMPUNITY OF PERPETRATORS OF GRAVE HUMAN RIGHTS VIOLATIONS INCLUDING CRIMES OF SEXUAL VIOLENCE**

**4 - POROUS PRISONS**

**5 - THE INTERNATIONAL CRIMINAL COURT: A STRONG SYMBOL IN THE FIGHT AGAINST IMPUNITY BUT WITH LIMITED IMPACT**

**6 – OUR RECOMMENDATIONS**

## 1 - MASSIVE VIOLATIONS OF HUMAN RIGHTS

Since 2006, the conflict has reignited in the **east of the country**, especially in the province of North Kivu, between the FARDC, with the support of the *Maï Maï* militia, and Laurent Nkunda's rebel forces. Approximately 400,000 people were forced to flee their homes as a result of the fighting, civilians suffered widespread violations of international humanitarian law and rape and other crimes of sexual violence were committed on a massive scale.

In the **Bas-Congo** region, members of the politico-religious movement *Bundu Dia Kongo* (BDK) protested against the conditions surrounding the elections of the governors and senators by organising the cease of all activity in towns of the region (manifestations '*villes mortes*') demonstrations, which became violent in some areas. However, according to a report by MONUC report, the use of force by FARDC and the Congolese National Police (PNC) against members of the BDK members on 31 January and 1 February 2007 was indiscriminate and disproportionate. MONUC reported that **105 persons were killed** and more than a **100 were wounded**.

In March 2007 in **Kinshasa** a stand off between the Armed Forces of the Democratic Republic of Congo (FARDC) and some 300 guards assigned to protect Senator and former Vice-President Jean-Pierre Bemba, sparked two days of intense fighting that caused **300 deaths, including many civilians**, and caused significant material damage. The security forces arrested over 200 people in the course of and following the fighting, in many cases without respect for regular procedures. They harassed opposition politicians and their supporters and raided the headquarters of Senator Bemba's party, as well as radio and television stations.

As a result of the recurrent violence, DRC now has 1.2 million displaced persons, mostly in Nord-Kivu and Sud-Kivu. According to the United Nations, in Nord-Kivu, between December 2006 and October 2007, approximately 371,550 persons were displaced. The fighting in Nord-Kivu has also caused civilians to flee DRC to seek refuge in neighbouring Uganda.

### Impunity of the security forces

The impunity enjoyed by the security services remains alarming throughout the country. Allegations of summary executions, rape, torture, and cruel, inhumane and degrading treatment perpetrated by members of FARDC and PNC are widespread. According to MONUC, the civilian and military intelligence services, the 'special services' of the national police in Kinshasa, and the Republican Guard have also participated in politically-motivated crimes, especially intimidation of members of the political opposition, journalists and human rights defenders.

## 2 - CRIMES OF SEXUAL VIOLENCE COMMITTED ON A MASSIVE SCALE: FROM WEAPON OF WAR TO TRIVIALISATION

Over the years armed conflict in DRC rape has been used by armed groups as a **weapon** of war, and is perpetrated with total impunity. As a result, rape has become trivialised and has increased throughout the country, even in areas where conditions are relatively stable. Victims include women, men and children of all ages, from six-months to over 70 years.

At the height of the fighting, rape and other forms of sexual violence have been used **to terrorise** entire communities, forcing populations to flee to take possession of their territory, to control communities, and to punish individuals and entire groups for their alleged support of enemy forces. In times of relative stability, rape is perpetrated alongside pillaging. These crimes are not only characterised by their scale but also by their brutality.

For many reasons (fear of filing complaints, stigmatisation of victims, the fact that most victims are in remote regions that are hard to access, the fact that some victims do not survive), it is impossible to make a precise estimate of the number of victims of rape and other crimes of sexual violence in DRC. The only certainty is that the scale is massive.

In **Sud-Kivu**, in 2005, approximately 14,200 cases of sexual violence were recorded by the health services (statistics of the U.N. Office on Human Rights in Sud-Kivu). In this province in 2006, humanitarian organisations recorded 27,000 sexual attacks. And according to the *Synergie provinciale du Sud-Kivu de lutte contre les violences sexuelles*, over 12,000 cases of rape and sexual violence against women and young girls were recorded in Sud-Kivu in 2007. In **Nord-Kivu**, in 2007, Doctors Without Borders (MSF-France) alone treated 250 rape cases of rape per month.

Every month, between 50 and 120 victims of sexual attacks continue to seek assistance at the Bon Marché hospital in **Bunia, Ituri**, a region that is today relatively stable. In this district, MSF has treated over 7,400 victims of rape over four years, of which 2,708 in the last 18 months (MSF, Switzerland, 2007). These figures demonstrate the persistence of these crimes post-conflict.

### **Trivialisation**

The perpetrators of these crimes, militia, insurgents, rebels, but also members of the Congolese army, benefit from almost absolute impunity. This culture of impunity has contributed to the 'trivialisation' of rape and such crimes have increased throughout the country, including the capital city, Kinshasa. As confirmed by the Special Rapporteur on Violence against Women, who conducted a visit in the Kivus in July 2007, the number of allegations of rape by members of FARDC and PNC are rising. Rape is also increasingly perpetrated by civilians.

#### **The case of a 10-year old girl in Kinshasa**

During a mission in Kinshasa in November 2007, FIDH heard the testimony of a 10-year old girl who was accosted on her way to school, raped several times, and then locked up for several days. A complaint was filed with the police in Kinshasa, but the suspect, after being briefly detained, was released while the girl was detained by the authorities. A second complaint was filed with the public prosecutor's office, but the accused was able to buy his freedom. Adding to her physical and psychological suffering, as a result of the crime the victim was rejected by her own family and for the last year she has been living in a care centre.

Beyond the physical and psychological suffering, the economic and social consequences are often severe.

In the playgrounds and even within the family, victims are taunted "*you got raped, you did...*". Some victims find themselves rejected by their husbands or families, and thus having to face serious economic hardship, some without jobs, income, or education... Victims also speak about their feelings of shame at having been raped. Others express their desire for revenge. Some young boys, who have witnessed the rape of family members express their will to take up arms.

Many victims die of Aids since they have no way to pay for the tri-therapy. Some lucidly comment: "*We would like to be there when justice is rendered, but first we have to manage to stay alive!*"

And what can be said about the permanent trauma suffered by a mother who gives birth to a child born of rape, and the weight of the crime that the innocent baby will carry for life?

### **3 - GENERALISED IMPUNITY OF PERPETRATORS OF GRAVE HUMAN RIGHTS VIOLATIONS INCLUDING CRIMES OF SEXUAL VIOLENCE**

According to the report of the UN Secretary General on the situation in DRC, presented in March 2007 to the Security Council, the national justice system seriously lacks capacity. It has never been independent and has never had the resources necessary to investigate and prosecute criminals and to ensure that court decisions are implemented. Low salaries have contributed to corruption and very few people have access to legal aid. Under 60% of the 180 courts of first instance that the country needs have been created, laws are obsolete and the judicial structures, the courts and

the prisons are in a state of disrepair.

Although the military courts have recently rendered a small number of decisions on human rights violations, the reigning culture in Democratic Republic of Congo is one of generalised impunity.

On 20 July 2006, the President of the DRC promulgated two laws sanctioning sexual violence. However, they remain almost entirely unimplemented, as admitted by the former Congolese Minister of Human Rights, at a meeting with FIDH in November 2007.. In the absence of effective outreach campaigns, awareness of the laws amongst victims, perpetrators, actors in the justice system and the public is generally lacking.

Statistics are scarce, however, in 2005 in Sud-Kivu, of 14,200 cases of sexual violence registered by the health services, only 287 were taken to court (UN Office for Human Rights in Sud-Kivu), representing under 1% of recorded cases. In the Province Orientale, between January and October 2007, the Office of the UN High Commissioner for Human Rights in the field, registered more than 1000 cases of bail being granted to those suspected of crimes of sexual violence, in disregard of the applicable law (providing that bail should be refused on the following grounds: risk of escape of the accused, risk of dissimulation of evidence, risk of reprisals or threats to victims and witnesses). Only 11 cases reached trial.

Numerous suspects are released on bail and never reappear. The few that receive convictions generally receive very light sentences. Alarming numbers manage to escape from prison, whilst victims and witnesses are not given with protection. Police and army chiefs and local authorities continue to encourage families of rape victims to seek an amiable settlement outside the courts.

#### **4 – POROUS PRISONS**

##### **The trial of Songo Mboyo: an exemplary conviction culminating in escape from prison**

The Songo Mboyo trial was supposed to be exemplary. Closely followed by MONUC, the case accused elements of the FARDC 9th battalion of gang raping at least 119 women and girls, including many minors, on 21 December 2003 in Songo Mboyo. In April 2006, for the first time, a Congolese military tribunal convicted 7 FARDC soldiers and sentenced them to life imprisonment for crimes against humanity, on the basis of the Statute of the International Criminal Court.

Yet in the night of 21-22 October 2006, 26 prisoners, including the soldiers sentenced at the Songo Mboyo trial, escaped from the military prison in Mbandaka.

#### **5 - THE INTERNATIONAL CRIMINAL COURT: A STRONG SYMBOL IN THE FIGHT AGAINST IMPUNITY BUT WITH LIMITED IMPACT**

The Prosecutor of the International Criminal Court (ICC) has thus far opened two investigations into the most serious crimes committed in the Ituri region since 1 July 2002, (date as of which the ICC has jurisdiction over crimes committed in DRC). These investigations have led to the arrest and transfer of 3 former warlords, suspected of war crimes and crimes against humanity, now awaiting trial in The Hague: Thomas Lubanga Dyilo, President of *Union des patriotes congolais* (UPC), Germain Katanga, President of the *Force de résistance patriotique en Ituri* (FRPI), and Mr. Mathieu Ngudjolo, leader of the *Front des nationalistes et intégrationnistes* (FNI).

Lubanga is charged only with enlistment, conscription and use of child soldiers. Amongst the charges against Katanga and Ngudjolo is that of sexual slavery. But they have not been charged with rape. According to recent statements by the prosecutor's office, it is likely that the Prosecutor will conclude investigations in this region and focus further investigations on the situation in the Kivus, where other international crimes have been committed, in particular crimes of sexual

violence.

The ICC is not intended to judge all international crimes committed in a country. The prosecutorial strategy of the ICC Prosecutor is to carry out focused investigations and trials, only covering a "sample" of the crimes committed in a certain region in a given time period. The Prosecutor intends to prosecute a very limited number of criminals: those bearing the greatest responsibility. Furthermore, the ICC operates according to the principle of "complementarity" with the national justice system, taking over when the latter lacks the will or the capacity to try perpetrators of the most serious crimes. On this basis, it therefore remains the responsibility of the Congolese courts to try perpetrators of violations of human rights and international humanitarian law. Yet the Congolese justice system is failing. It is therefore essential that the systematic inclusion of crimes of sexual violence, where there is sufficient evidence of such crimes, amongst the charges retained is part of the prosecutorial strategy of the Office of the Prosecutor of the ICC.

## **6 - OUR RECOMMENDATIONS**

### **TO THE HUMAN RIGHTS COUNCIL**

#### **To Member States of the Human Rights Council**

- Renew, at the March 2008 session, the mandate of the independent expert on the situation in DRC;
- Adopt a resolution on violations of human rights in DRC, emphasising the need to combat impunity of perpetrators of the most serious crimes, especially crimes of sexual violence.

#### **To Special Procedures of the Human Rights Council**

- Conduct visits in DRC to investigate and document violations of human rights and international humanitarian law, in particular crimes of sexual violence;
- Emphasise in all reports the need to fight impunity for the most serious crimes committed in DRC and make specific reference to the grave problem of crimes of sexual violence in the country.

### **TO THE EUROPEAN UNION**

- Ensure that the issue of crimes of sexual violence is on the agenda of local-level political dialogue, in application of article 8 of the Cotonou Agreement;
- Systematically consult Congolese human rights NGOs in advance of these meetings and include them in monitoring the implementation of commitments made during political dialogue, in accordance with articles 4 and 6 of the Cotonou Agreement and article 16 of the ACP-EU guidelines on political dialogue;
- Support the efforts of the United Nations to prevent and punish crimes of sexual violence, in particular the work of MONUC;

### **TO THE INTERNATIONAL CRIMINAL COURT AND STATE PARTIES TO THE ICC**

#### **To the Office of the Prosecutor**

- Establish a structure, accountable directly to the Prosecutor, to incorporate systematically

investigation and prosecution strategies on crimes of sexual violence;

- Include strategies on investigating and prosecuting crimes of sexual violence in situations and cases before the ICC;
- Implement the provisions article 42(9) of the ICC Statute, authorising recruitment of one or more gender legal advisers;
- Expand the mandate of Gender and Children's Unit so that it not only assists the investigations division but also other divisions of the Office of the Prosecutor (OTP) and increase the staff of this unit;
- Hold regular, direct consultations between the OTP and victims of crimes of sexual violence.

#### **To the Registry**

- Carry out regular outreach campaigns (including information on victims' rights) with special attention to victims of crimes of sexual violence.

#### **To the Trust Fund for Victims**

- Carry out regular information campaigns for victims of crimes of sexual violence and the institutions working with such victims;
- Adopt a particularly pro-active approach to supporting programmes to assist victims of crimes of sexual violence.

#### **To State Parties**

- Allocate sufficient resources to enable the Court to implement the recommendations listed above;
- Contribute to the Trust Fund for Victims, in particular to enable to Fund to implement assistance programmes for victims of crimes of sexual violence.

#### **TO FRANCE**

- In the framework of France's forthcoming Presidency of the European Union, place at the centre of political dialogue with DRC the issues of independence of the judiciary and the fight against impunity for perpetrators of serious violations of human rights, in particular crimes of sexual violence, in accordance with the Cotonou Agreement;
- Support projects of Congolese civil society on fighting impunity for the most serious crimes and assisting victims in legal proceedings;
- Support medical and psychological treatment centres that provide particular assistance to victims of crimes of sexual violence.