

# DRC

## VICTIMS OF SEXUAL VIOLENCE RARELY OBTAIN JUSTICE AND NEVER RECEIVE REPARATION

Major changes needed  
to fight impunity





“ Sexual violence...a daily reality from which Congolese women [have] no respite. Whether schoolgirls or mothers, engaged, married or widowed; simple farmers or wives of political leaders, former army members or civil servants, opposition party activists, humanitarian workers or members of non-governmental organisations, they were all subjected, regardless of social class or age, and for a variety of reasons, to the most diverse forms of sexual violence.<sup>1</sup> ”

**United Nations High Commission for Human Rights,  
Report of the Mapping Exercise**

“ Since start of the conflict, rape has become a widely used weapon which has gradually entered communities.<sup>2</sup> ”

**Julienne Lusenge, Chair of SOFEPADI**

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1. United Nations High Commissioner for Human Rights, Report of the Mapping Exercise (Mapping Report) documenting the most serious violations of human rights and international humanitarian law committed within the territory of the Democratic Republic of the Congo between March 1993 and June 2003, August 2010, para. 630, available at [http://www.ohchr.org/Documents/Countries/ZR/DRC\\_MAPPING\\_REPORT\\_FINAL\\_EN.pdf](http://www.ohchr.org/Documents/Countries/ZR/DRC_MAPPING_REPORT_FINAL_EN.pdf).

2. Julienne Lusenge, Chair of the NGO SOFEPADI (Solidarité féminine pour la paix et le développement intégral), which has offices in Bunia, Beni and Kinshasa, <http://www.medecinsdumonde.org/Presse/Dossiers-de-presse/A-1-International/Republique-Democratique-du-Congo-le-viol-se-generalise-au-Nord-Kivu/Interview-Julienne-Lusenge-presidente-de-l-association-sofepadi> (in French).

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# Abbreviations

- ACHPR:** African Commission on Human and Peoples' Rights
- AFDL:** Alliance des forces démocratiques pour la libération du Congo  
(Alliance of Democratic Forces for the Liberation of Congo )
- AI:** Amnesty International
- ASADHO:** Association africaine de défense des droits de l'Homme (African Association for the Defence of Human Rights )
- CEDAW:** Convention on the Elimination of All Forms of Discrimination Against Women
- CNDP:** Congrès national pour la défense du peuple (National Congress for the Defence of the People)
- DRC:** Democratic Republic of Congo
- EU:** European Union
- FARDC:** Forces armées de la République démocratique du Congo  
(Armed Forces of Democratic Republic of Congo)
- FAZ:** Forces armées zaïroises (Zairian Armed Forces)
- FDLR:** Forces démocratiques de libération du Rwanda  
(Democratic Forces for the Liberation of Rwanda)
- FIDH:** International Federation for Human Rights
- GL:** Groupe Lotus
- HRW:** Human Rights Watch
- ICC:** International Criminal Court
- IGO:** Inter-Governmental Organisation
- LE:** Ligue des électeurs
- LWB:** Lawyers without borders
- M23:** Mouvement du 23 mars (23 March Movement)
- MLC:** Mouvement de libération du Congo (Movement for the Liberation of Congo)
- MONUC:** United Nations Mission in the Democratic Republic of Congo
- MONUSCO:** United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (replaced MONUC as of 2010)
- NGO:** Non-Governmental Organisation
- OHCHR:** Office of the United Nations High Commissioner for Human Rights
- OTP:** Office of the Prosecutor of the International Criminal Court
- RCD:** Rassemblement congolais pour la démocratie (Rally for Congolese Democracy)
- SSR:** Security sector reform
- SGBV:** Sexual and gender-based violence
- SOFEPADI:** Solidarité féminine pour la paix et le développement intégral
- UNDP:** United Nations Development Program
- UNFPA:** United Nations Population Fund
- UNHCR:** Office of the United Nations High Commissioner for Refugees
- UNICEF:** United Nations Children's Fund
- UNJHRO:** UN Joint Human Rights Office
- UNSC or SC:** United Nations Security Council

# Executive summary

Described as the ‘rape capital of the world’<sup>3</sup>, Democratic Republic of the Congo (DRC) has been a war zone for 20 years, a feature of which has been massive and systematic sexual and gender-based violence (SGBV), constituting war crimes and crimes against humanity.

In view of the extent and gravity of these crimes and the inability of the Congolese political and judicial authorities to prevent them and punish the perpetrators, the international community has had to take action. The International Criminal Court (ICC) is carrying out investigations and prosecutions, in particular relating to crimes committed in Ituri and the Kivus. It has issued six arrest warrants. Several trials are underway in The Hague. The United Nations have deployed a mission with a military component, but which also supports the government. Combating sexual violence is one of the priorities of the UN mission in DRC, which involves significant support for reform of the justice system and organising trials. The European Union also has numerous projects in DRC, including to provide support to civil society. It also finances two-thirds of the budget of the Ministry of Justice.

As a result, increasing numbers of legal procedures are being initiated, supported by the UN Joint Human Rights Office (UNJHRO) and several embassies. Yet, once verdicts have been rendered, international attention seems to diminish and victims are once again without recourse. During two investigation missions to DRC in 2012 and 2013, FIDH found that, although international efforts have contributed to greater numbers of hearings and convictions, they rarely concern those who bear the greatest responsibility. Furthermore, few verdicts are definitive and effective; most of those sentenced manage to escape from detention; and none of the orders for reparations have been implemented.

Victims of sexual violence also suffer from stigmatisation. Powerless, their decision to have recourse to the courts in order to break the cycle of impunity takes courage and determination, particularly since they face

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3. Margot Wallström, UN Special Representative of the Secretary General on Sexual Violence in Conflict <http://www.un.org/apps/news/story.asp?NewsID=37580&Cr=sexua#UfjMn8WJSLM>.

an extremely hostile justice system. Court procedures lack transparency and costs are exorbitant. If victims and their lawyers cannot pay the many official and unofficial legal costs, cases cannot be concluded. As both law and practice currently stand, victims of crimes of sexual violence, which in some cases constitute crimes under international law, rarely obtain justice and never receive reparations.

The support of the international community to strengthening the justice system in DRC must therefore be re-oriented, in order to contribute to the effective implementation of judgements. Support to structural reforms (courts and prisons) must be increased and efforts must be reinforced to ensure that judgements are definitive, enforceable, and enforced.

The State must comply with its international commitments to ensure that victims of these crimes have access to an effective remedy and reparation. Victims' right to reparation must be made part of national law in its modern and comprehensive definition: reparations must not be limited to financial compensation, which the courts calculate inconsistently. Beyond ensuring the implementation of the decisions of the courts, the Congolese State must, with the support of the international community, carry out a global review of the law, taking into consideration the forms of reparations required by victims of crimes of sexual violence.

Reform of criminal procedure is crucial to enable victims to have access to the courts and benefit from favourable judgements. To this end, a mixed tribunal should be established to deal with crimes under international law, in order to guarantee effective prosecutions and the rights of victims.

These changes would ensure that victims of crimes under international law, in particular crimes of sexual violence, can obtain justice and reparations, and therefore contribute to ensuring the non-repetition of such crimes. They are also a measure of the credibility of the international community's commitments in DRC.



# 1. Introduction

## 1.1. Background

The conflict which continues to ravage DRC can be traced to the 1994 genocide in Rwanda and the ongoing war, which neighbouring countries have been fighting, directly or through various rebel groups, to obtain control of land and natural resources.

During the first conflict that took place from 1996 to 1997, the *Forces armées zairoises* (FAZ) were fighting the *Alliance des forces démocratiques pour la libération du Congo* (AFDL), which was supported by Rwanda and Uganda.<sup>4</sup> It ended in the overthrow of President Mobutu and the arrival of a new leader, Laurent-Désiré Kabila, the AFDL spokesman. When Kabila conquered the capital in 1997, he renamed the country Democratic Republic of Congo.

A second conflict broke out in 1998, when President Kabila broke the alliance with Rwanda and Uganda. The conflict, which lasted until 2003, was named Africa's first "continental war" and pitted the government of DRC, supported by Angola, Zimbabwe and Namibia, against several rebel groups backed by Uganda, Rwanda and Burundi. The Maï Maï, armed combatants known for their use of rites associated with witchcraft, based mainly in the Kivus, allied themselves with various groups and governments. They were led by warlords, traditional tribal chiefs, village chiefs, as well as local political leaders. A ceasefire agreement was signed in Lusaka in July-August 1999 by six of the belligerent States (DRC, Namibia, Angola, Zimbabwe, Rwanda and Uganda) and the *Mouvement de Libération du Congo* (MLC), backed by Uganda.

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4. Immediately after the Rwanda genocide, members of the *Forces armées rwandaises* (FAR) and militia reassembled in the refugee camps in Zaire under the name *Rassemblement pour le retour et la démocratie au Rwanda*. At that time, the situation of the Tutsi minority (the Banyamulenge) was becoming increasingly precarious and they were receiving military support from Rwanda. The decision by the Vice Governor of Bukavu to expel the Banyamulenge, because they were armed and considered dangerous, sparked an uprising between the FAZ and the *Front Patriotique Rwanda*, involving AFDL rebels which then absorbed other armed Congolese groups opposed to Mobutu, and Ugandan groups seeking to obtain control over the rich natural resources.

In November 1999, the United Nations Security Council decided to send the United Nations Mission in the Democratic Republic of Congo (MONUC) to supervise the ceasefire. But fighting continued, and Ituri in the north-Eastern province was taken over successively by various rebel groups who were still being supported by Rwanda and Uganda. This aggravated the ethnic conflicts and opposition between the Hema and the Lendu.

President Laurent-Désiré Kabila was assassinated in 2001. He was succeeded by his son, Joseph Kabila, following a unanimous vote in his favour by Parliament. A transitional government was established on 30 June 2003. Various peace agreements were signed, but with little effect on the ground. Laurent Nkunda, a former rebel with the group RCD-Goma (*Rassemblement congolais pour la démocratie*), initially joined the Congolese army but quickly returned to his troops in Kivu where they had formed the *Congrès national pour la défense du peuple* (CNDP). This rebel group fought violently against the FDLR and the government troops, despite the Goma Peace Agreement signed on 23 January 2008. The “Kivu War” continued to rage. In January 2009, after Laurent Nkunda was arrested, the CNDP signed a peace agreement with the government. However, in 2012, considering that the agreement had not been respected, the CNDP transformed itself into the “Mouvement du 23 mars” or “M23”.

On 24 February 2013 a Peace, Security and Co-operation Framework was signed in Addis Ababa by the DRC Government, the United Nations and eight heads of state.<sup>5</sup> National consultations were held on how to bring these cycles of violence to an end. Yet, the fighting continues, in violation of international humanitarian and human rights law, mainly involving the M23, FDLR and FARDC.

## **1.2. Systematic and generalised sexual violence**

During the years of conflict in DRC, there have been, and continue to be, confrontations between dozens of armed groups and armies from neighbouring countries. The parties to these regional conflicts and increased ethnic tensions, underpinned by attempts to gain access to, and control of, natural resources, have committed grave violations of international human rights and international humanitarian law. These violations constitute war crimes and in some cases crimes against humanity.

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5. See text at: <http://www.digitalcongo.net/article/90023>.

“Very few Congolese and foreign civilians living on the territory of the DRC managed to escape the violence, and were victims of murder, maiming, rape, forced displacement, pillage, destruction of property or economic and social rights violations”.<sup>6</sup> Difficulties in accessing victims, providing testimonies and the vast size of the country make it impossible to accurately estimate the total number of victims of the conflict and the official figures are certainly underestimates, but there are clearly many millions of victims.<sup>7</sup> “...women have been targeted by all parties to a conflict in which women’s bodies have become another battleground.”

The DRC now has the morbid label of “rape capital of the world”.<sup>8</sup> In the eastern part of the country, women have been targeted by all parties to a conflict in which women’s bodies have become another battleground. Investigations have shown that the majority of perpetrators of rape in eastern DRC and South Kivu were armed fighters.<sup>9</sup> According to the UN Mapping Report, “Women and children were therefore the main victims of violations of the right to life, to physical integrity and to safety. They were also particularly affected by forced deportations, slavery, looting and the destruction of goods and property.”<sup>10</sup> Studies have shown that four women are raped every five minutes in DRC,<sup>11</sup> and that two million Congolese women have been raped during their lifetime. Women and girls of all ages are affected, and to a lesser extent men and boys.

“... women have been targeted by all parties to a conflict in which women’s bodies have become another battleground.”

Rapes are “accompanied by unimaginable cruelty”, taking on “unbearable proportions and cruelty and the many abuses [seem] merely to increase in number exponentially”.<sup>12</sup> Rape, committed with such brutality that it

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6. Mapping Report, *op.cit.* para.127.

7. *Ibid.*, and International Rescue Committee, *IRC Study Shows Congo’s Neglected Crisis Leaves 5.4 Million Dead; Peace Deal in N. Kivu, Increased Aid Critical to Reducing Death Toll*, 22 January 2008, <http://www.theirc.org/news/irc-study-shows-congos0122.html>

8. Margot Wallström, *op.cit.*

9. Harvard & Oxfam Humanitarian Initiative, *Now the World is Without Me. An Investigation of Sexual Violence in Eastern Democratic Republic of Congo*, 2010, p.2; Open Society Institute, *Characterizing Sexual Violence in the Democratic Republic of the Congo: Profiles of Violence, Community Responses, and Implications for the Protection of Women*, 2009, p.15.

10. Mapping Report, *op.cit.*, para.526.

11. Amber Peterman, Tia Palermo, Caryn Bredenkamp. *Estimates and Determinants of Sexual Violence Against Women in the Democratic Republic of Congo*, *American Journal of Public Health*, June 2011, Vol. 101, No. 6, pp. 1060-1067.

12. Mapping Report, *op.cit.*, para. 587, 598.

sometimes results in death, sexual slavery, particularly of young girls forcibly drafted into armed forces, forced prostitution, sexual and genital mutilation, forced incest, forced pregnancies, sometimes with the aim of changing ethnicity (in particular in conflicts between the *Hema* and the *Lendu*), rape of women on the pretext of “searching for minerals in their genitalia”, sexual violence committed on the basis of membership of an ethnic group or in the name of ritual practices (such as violence against pygmies for “medical purposes” or to become “invincible”), rape of political opponents, rape as a punishment for civilians who prevent access to or trafficking in minerals or who refuse to pay bribes at road barriers... In most cases, sexual violence also involves other violence such as murder and other forms of torture and cruel, inhuman and degrading treatment.<sup>13</sup>

Rape is therefore used as a weapon to enslave victims, terrorise the population, seek revenge for alleged support to the enemy and to increase stigmatization, which is made worse by the taboos which surround such crimes.

Women have said that the war is being conducted “*on their bodies*”.<sup>14</sup>

On the grounds of such grave human rights violations, humanitarian organisations and human rights groups have declared DRC, “the worst place to be a child”, “the worst place in the world to be a woman” and “the worst place to be a mother”.<sup>15</sup>

According to the UN High Commissioner for Human Rights, “socio-economic and cultural vulnerability... foster[s] the forms of extreme violence to which [women are] subjected... The unequal place of women in society and the family also [encourage] sexual violence in wartime”. The former UN Special Rapporteur on violence against women, its causes and consequences has echoed these comments: “Sexual violence in armed conflicts in the DRC is fuelled by gender-based discrimination in the society at large”.<sup>16</sup>

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13. Mapping Report, *op.cit.*, para.525-656.

14. <http://www.rdcviolencesexuelle.org/site/fr/node/18>.

15. HRW, Report, *Soldiers Who Rape, Commanders Who Condone*, 2009, note 10 ; Save the Children, *14th Annual State of the World's Mothers report*. [http://www.savethechildren.ch/fr/actualites\\_medias/actualites/?42/mothers](http://www.savethechildren.ch/fr/actualites_medias/actualites/?42/mothers).

16. Mapping Report, *op.cit.*, para.35, 533. Report of the Special Rapporteur on violence against women (A/HRC/7/16/Add.4), para. 96.

“Sexual violence in armed conflicts in the DRC is fuelled by gender-based discrimination in the society at large.”

Victims have to live with the consequences of these crimes. Physical effects include lesions to internal tissue, tears to the genitalia, fistula causing incontinence, injuries to hips and legs and the risk of contracting sexually transmitted diseases (STDs), such as HIV/AIDS. Reproductive problems and sterility are other possible outcomes. Unwanted pregnancies are also a risk. According to studies, about half of women victims seek medical help but very few do so immediately after the attack, which decreases the possibility of preventing STDs and pregnancies. This is due in part to the lack of access to health services. Many women have to travel for over a day to see a doctor. As a result, nearly half of victims wait one year or more to obtain medical help.<sup>17</sup> Rape victims also suffer from psychological conditions, such as post-traumatic stress, depression, anger, fear, anxiety, shame and distress. Women who have been raped also often suffer from social rejection, stigmatisation from their communities and families and isolation. They are often humiliated and ostracised. Many women are rejected by their husbands and are forced to leave their families or communities. The risk of rejection and isolation is greater if the woman gets pregnant as a result of rape.

The use of rape as a weapon has led to the “normalisation of rape”, tending to erode social limits and boundaries against sexual violence and causing acts of gender-based or sexual violence (GBSV) to become more widespread.<sup>18</sup> It is now recognised that perpetrators of rape are not only soldiers, but also an increasing number of civilians. According to Dr. Margaret Agama, UNFPA representative in DRC, “Initially, rape was used as a tool of war by all the belligerent forces involved in the country’s recent conflicts, but now sexual violence is unfortunately not only perpetrated by armed factions but also by ordinary people occupying positions of authority, neighbours, friends and family members”.<sup>19</sup> The “normalisation” of crimes of sexual

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17. Sara E. Casey *et al.*, *Care-Seeking Behavior by Survivors of Sexual Assault in the Democratic Republic of the Congo*. American Journal of Public Health, June 2011, Vol. 101, No. 6, p. 1054-1055, see also: OSI, *Characterizing Sexual Violence in the Democratic Republic of the Congo*, *op.cit.*, p.15.

18. See HHI, *Now the World is without Me*, *op.cit.*

19. UNFPA, *Legacy of War: An Epidemic of Sexual Violence in DRC*, 2008, <http://www.unfpa.org/public/home/news/pid/1399>.

violence committed during conflict extends to all inhabited regions of the country, particularly to cities and suburbs not affected by the armed conflict. A diplomat in Kinshasa told FIDH: “Rape is now considered to be a phenomenon just as widespread and violent in the suburbs of Kinshasa as in the Kivus”. The vast number of rapes and other crimes of sexual violence, committed with almost complete impunity, also partly explains why those who are supposed to protect civilians, women in particular, have also committed such crimes.<sup>20</sup>

A profound change of attitude towards the image and treatment of women in Congolese society is necessary. It is crucial that the focus of support from the international community focus extends to dealing with the range of causes of the increase in and persistence of these crimes, including sources of discrimination against women in law and practice.

Patients supported  
by the *Groupe  
d'entraide et de  
solidarité médicale*,  
who have under-  
gone reparative  
surgery,  
Goma, 2010

© Pierre-Yves Ginet



20. There have been several cases involving soldiers from MONUSCO and formerly MONUC, see for example, [http://www.lemonde.fr/international/article/2007/07/21/l-onu-suspend-un-contingent-en-cote-d-ivoire-apres-des-accusations-d-abus-sexuels\\_938124\\_3210.html](http://www.lemonde.fr/international/article/2007/07/21/l-onu-suspend-un-contingent-en-cote-d-ivoire-apres-des-accusations-d-abus-sexuels_938124_3210.html); and <http://www.slateafrique.com/86/kinshasa-capitale-dun-grand-corps-malade>. A staff member of the ICC in charge of the protection of victims was also accused of sexual violence, see *ICC internally inquires on allegations of sexual abuse by former ICC staff member*, 12 April 2013, [http://www.icc-cpi.int/EN\\_Menus/icc/press%20and%20media/press%20releases/pages/pr895.aspx](http://www.icc-cpi.int/EN_Menus/icc/press%20and%20media/press%20releases/pages/pr895.aspx) and FIDH, *DRC: Allegations of sexual abuse of four persons under ICC protection*, 17 April 2013, <http://www.fidh.org/en/africa/democratic-republic-of-congo/DRC-Allegations-of-sexual-abuse-of-four-persons-under-ICC-protection-13162>.

### 1.3. A delayed and weak response from national authorities

Since the beginning of the conflict in eastern DRC, impunity for the perpetrators of crimes under international law has been the rule and justice the exception. In addition to the weak justice system inherited from the years of dictatorship and the insignificant budget allocated to it, impunity has been fuelled by amnesties and policies aimed at “a clean start”, which have ignored victims and the role of justice in sanctioning and preventing the repetition of such crimes.

President Kabila personally confirmed that the national authorities did not have the capacity to judge the perpetrators of the most serious crimes committed on the Congolese territory when, in 2004, he referred the situation in DRC to the ICC. This gesture was welcomed as a strong sign in favour of the fight against impunity, but enthusiasm quickly faded in view of the absence of efforts to provide justice at the national level, in accordance with the principle of complementarity on which the ICC is based, as well as inconsistent cooperation with the ICC depending on the nature of the case and the failure to adopt a national law implementing the ICC Statute.

Little has been done to deal specifically with crimes as sexual violence committed during the conflict, nor with the increase in such crimes throughout the country. In 2013, the Committee on the Elimination of Discrimination against Women (CEDAW Committee) expressed extreme concern about the “denial by key State officials of the extent of the violence committed against women in conflict-affected areas”.<sup>21</sup> Two laws against sexual violence were adopted in 2006, but they are generally unknown to the public and they remain largely unimplemented. Similarly, ministerial plans and departments responsible for fighting crimes of sexual violence are ineffective, partly because they lack resources.

In the face of the magnitude of the crimes and the rampant impunity, the international community has had to react.

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21. CEDAW Committee Concluding Observations, July 2013, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fCOD%2fCO%2f6-7&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fCOD%2fCO%2f6-7&Lang=en).

#### 1.4. The response of the international community

Following the signature of the Lusaka Ceasefire Agreement, the United Nations Security Council (UNSC) adopted Resolution 1279 of 30 November 1999, creating the United Nations Mission in the Democratic Republic of the Congo (MONUC).<sup>22</sup> Its initial task was to monitor the ceasefire and the retreat of armed forces, but its mandate was later extended to include support for the Government's action to promote human rights and the fight against impunity. On this basis, MONUC regularly reported on the increase in crimes of sexual violence. In 2007, the UNSC adopted Resolution 1794, which, "in view of the scale and severity of sexual violence committed," called on MONUC "to undertake a thorough review of its efforts to prevent and respond to sexual violence and to pursue a comprehensive mission-wide strategy, in close cooperation with the United Nations Country Team and other partners, to strengthen prevention, protection, and response to sexual violence, including through training for the Congolese security forces in accordance with its mandate, and to regularly report, including in a separate annex if necessary, on actions taken in this regard, including factual data and trend analyses of the problem".<sup>23</sup>

In 2010, the Security Council renamed MONUC the United Nations Stabilization Mission in the Democratic Republic of the Congo (MONUSCO), on the grounds that, in the terms of Resolution 1925, the country was entering a new phase. The UNSC declared that it remained "greatly concerned by... widespread sexual violence", and stressed the obligation of the DRC Government to bring the perpetrators to justice and provide various forms of assistance to victims. Resolution 1925 gave MONUSCO a specific mandate to "[e]nsure the protection of civilians from violations of international humanitarian law and human rights abuses, including all forms of sexual and gender-based violence, to promote and protect human rights and to fight impunity".<sup>24</sup>

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22. UNSC Resolution 1279, 30/11/1999, [www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=3b00f1e168](http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=3b00f1e168).

23. UNSC Resolution 1794, 21 December 2007, <http://monusco.unmissions.org/LinkClick.aspx?fileticket=DjBW66-UOJA%3D&tabid=10817&language=en-US>.

24. UNSC Resolution 1925, 1 July 2010, [www.securitycouncilreport.org/atf/cf/%7B65BFCE9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/DRC%20S%20RES%201925.pdf](http://www.securitycouncilreport.org/atf/cf/%7B65BFCE9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/DRC%20S%20RES%201925.pdf).



On the basis of Resolution 1794, a “comprehensive strategy” for combating sexual violence in DRC was drawn up and implemented by MONUC (and later by MONUSCO), in liaison with other UN Agencies, intergovernmental organisations and the DRC Government. This strategy was designed to establish a structure in charge of overall coordination of actions undertaken by all actors to combat sexual violence in DRC. It was officially adopted by the DRC Government on 1 April 2009, and has five components, each handled by one of the UN Specialised Agencies: protection and prevention of violations (Office of the UN High Commissioner for Refugees); ending impunity for perpetrators of crimes (MONUSCO/ Office of the High Commissioner for Human Rights, OHCHR-UNJHRO); security sector reform (MONUSCO/SSR); multi-sectorial assistance to victims of sexual violence (UNICEF); and data and mapping (UNFPA).<sup>25</sup>

The United Nations Joint Human Rights Office (UNJHRO) was established in February 2008. It is composed of the MONUSCO Human Rights Division and of the Office of the UN High Commissioner for Human Rights in DRC. Its activities include developing programmes on access to justice for victims of crimes of sexual violence and training modules.<sup>26</sup> UNJHRO reports on human rights violations, supports victims to seek remedies and advocates for the adoption of laws and policies that comply with international human rights standards on the fight against impunity. It is based in Kinshasa and has 13 regional offices. It is organised in five working groups corresponding to the five priorities, one of which addresses SGBV. Within the Office, the Justice and Impunity Unit monitors the administration of justice and provides assistance in organising legal proceedings against perpetrators of violations.

In 2013, in support of the Peace, Security and Cooperation Framework for DRC and the region, the UNSC established an “intervention brigade” to reinforce peacekeeping operations and to reduce violence, including sexual violence. It authorised MONUSCO to take all necessary steps “to implement existing response plans to ensure the protection of civilians from... all forms of sexual and gender-based violence, ...accelerate the implementation of

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25. For further information see: <http://monusco.unmissions.org/Default.aspx?tabid=10818&language=en-US>.

26. See in particular <http://monusco.unmissions.org/Default.aspx?tabid=10766&language=en-US>.

monitoring, analysis and reporting arrangements on conflict-related sexual violence... and employ Women Protection Advisers to engage with parties to conflict in order to seek commitments on the prevention and response to conflict-related sexual violence”.<sup>27</sup>

As emphasised by the UN Security Council Report, “in the last decade the DRC has probably been the country-specific situation where the Council has paid most attention to gender-based violence.”<sup>28</sup>

In March 2008, the Security Council took an important step by including sexual violence among the criteria for imposing individual targeted sanctions.<sup>29</sup>

Other UN bodies also took strong action, by helping report sexual violence committed in the DRC and by setting up mechanisms to combat impunity.

In 2010 the Office of the High Commissioner for Human Rights published a “mapping” report of the most serious violations of human rights and international humanitarian law committed on the whole of the DRC territory between March 1993 and June 2003. The report aimed to assess the means available to the Congolese justice system for dealing with such violations and to define various options for combating prevailing impunity (“Mapping Report”). The initial mandate referred to the most serious incidents relating to violations of the right to life, but the authors decided to conduct a specific study of crimes of sexual violence in order to “enable full justice to be done to the numerous victims of specific acts of violence” and to “adequately reflect the scale of the violence”. This dynamic approach

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27. UNSC Resolution 2098, 28 March 2013, [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/RES/2098%282013%29](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2098%282013%29) ; see also UNSC Resolution 2106, 24 June 2013 on Women, Peace and Security, [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/RES/2106%282013%29](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2106%282013%29).

28. Security Council Report, *Women, Peace and Security: Sexual Violence in Conflicts and Sanctions*, 10 April 2013, p.31, [http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/cross\\_cutting\\_report\\_2\\_women\\_peace\\_security\\_2013.pdf](http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/cross_cutting_report_2_women_peace_security_2013.pdf).

29. Resolution 1807, 31 March 2008, para. 13 (e), <http://www.refworld.org/docid/47f5f16a2.html>. Since May 2009, the Group of Experts of the of the DRC Sanctions Committee has been reporting on sexual violence and has drawn up a list of suspected perpetrators; Report S/2009/603, and Security Council Report, *Women, Peace and Security*, *op.cit.* pp. 32-34. In 2011 the Sanctions Committee for DRC was briefed for the first time by the Special Representative of the UN Secretary General on sexual violence in times of conflict.

revealed the “recurrent, widespread and systematic nature of these types of violation”, and emphasised that “the figures given... only represent the tip of the iceberg. Many places still remain inaccessible, victims and witnesses have sometimes not survived the violations or are still too ashamed to talk about what happened. Finally, the documentation of sexual violence was not always sufficiently specific or systematic to be used in this report.” This finding applies to all work on sexual violence in DRC.<sup>30</sup>

At the time of publication of the Mapping Report, the OHCHR set up a high-level panel to meet directly with the victims of sexual crimes in various parts of the country in order to hear their needs and their perceptions on reparation. Following hearings in September and October 2010, the OHCHR called on the international community to establish a “fund to support reparations for victims of sexual violence in the DRC,... with the governance of the reparations fund to include representatives of the Government of the DRC, the United Nations, donors, civil society, and survivors themselves”.<sup>31</sup>

The situation in DRC is one of the priorities of the Special Representative of the UN Secretary General on Sexual Violence in Conflict.<sup>32</sup> On 30 March 2013, she concluded an agreement with the DRC Government on fighting crimes of sexual violence. The government undertook to “accelerate the implementation of a national strategy for reforming the security sector, including the adoption of special measures for the prevention of acts of violence against women and children, and in particular the prevention of violence in conflict...; to combat impunity, in particular by reinforcing the special police for the protection of women and children and support units for legal proceedings, mobile court hearings and the improvement of prison conditions and measures to protect victims, witnesses and other actors, both governmental and non-governmental, engaged in combating sexual violence...; to reinforce the implementation of the national strategy for increasing the effectiveness of medical and psychosocial assistance,

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30. Mapping Report, *op.cit.* para. 34 and 536.

31. OHCHR, Report of the Panel on Remedies and Reparations for Victims of Sexual Violence in the Democratic Republic of Congo to the High Commissioner on Human Rights, [http://www.ohchr.org/Documents/Countries/ZR/DRC\\_Reparations\\_Report\\_en.pdf](http://www.ohchr.org/Documents/Countries/ZR/DRC_Reparations_Report_en.pdf).

32. Sexual violence in conflict: Report of the Secretary-General (A/67/792–S/2013/149), 14 March 2013, <http://reliefweb.int/report/world/sexual-violence-conflict-a67792%E2%80%9393s2013149>.

and socio-professional assistance provided to victims of sexual violence; to give the military and civilian justice system the capacity and means to contribute effectively to the fight against impunity; and to ensure that victims of sexual and gender-based violence obtain reparation”.

On the initiative of the United Kingdom, which has launched a global campaign against sexual violence within the framework of its presidency of the G8, on 12 April 2013 the G8 adopted a Resolution on the prevention of sexual violence in armed conflict. Ministers emphasised the need to prevent and punish acts of sexual violence linked to armed conflict and the importance of providing reparation for the victims, as a determining factor for peace, transition in periods of conflict and the reform process<sup>33</sup>.

Finally, in July 2013 the CEDAW Committee endorsed all the concerns expressed by FIDH in its Concluding Observations on DRC. In particular the Committee expressed extreme concern about: “Mass rapes, sexual violence and sexual slavery used as a weapon of war by the FARDC and armed groups in the eastern part of the country; ... Pervasive impunity; The limited enforcement of court decisions and non-payment of compensation for acts of sexual violence. The fact that women do not have effective access to justice owing to multiple factors, such as the high costs of legal proceedings and the prevalence of corruption, legal illiteracy, the insufficient number of courts and tribunals, the tendency to opt for mediation in cases of sexual violence and the limited training of judges, prosecutors and lawyers on women’s rights”. The Committee urged the DRC government to implement necessary reforms to facilitate access to justice and reparation. In addition to the reform of the justice system, the Committee called on the government to establish a comprehensive national policy to provide adequate reparations to victims of sexual crimes; to provide access to free legal aid; to strengthen anti-corruption mechanisms in order to enhance women’s confidence in the judiciary; and to conduct awareness-raising campaigns to eliminate stigmatization of women victims of sexual violence and to inform them of their rights.<sup>34</sup>

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33. [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/185008/](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/185008/).

34. FIDH, ASADHO, Ligue des électeurs and Groupe Lotus, *Déni de justice pour les victimes de crimes sexuels*, (Denial of Justice for Victims of Crimes of Sexual Violence), submission to the CEDAW Committee on consideration of the sixth and seventh periodic reports of DRC at its 55th session, 8-26 July 2013; Concluding Observations of the CEDAW Committee, CEDAW/C/COD/CO/6-7, 23 July 2013.

The issue of reparations for victims of sexual violence has only recently become a subject of concern to the international community, in particular the United Nations, and to an uneven extent. A High-Level Dialogue on the Lessons Learned and the Continuing Challenges in Combating Sexual Violence in DRC, will take place in March 2014 during the 25th session of the UN Human Rights Council. This Dialogue will include national authorities, UN experts and civil society and will enable the Council to assess the measures taken to combat sexual crimes; to examine the causes of the scale and persistence of such crimes; and to propose concrete steps in favour of victims, as well as preventive measures. Access to justice and reparation should be at the centre of its concerns.<sup>35</sup>

At the regional level, the African Union (AU) has on several occasions denounced the widespread perpetration of acts of sexual violence in DRC, and has called on the Congolese authorities to take the necessary steps to address the situation and ensure that victims obtain justice. The African Commission for Human and Peoples' Rights (ACHPR) has denounced "the incapacity of the Congolese Authorities to put an end to the impunity being enjoyed by the perpetrators of these odious crimes despite the existence of two laws on sexual abuse".<sup>36</sup> The AU Peace and Security Council has condemned "in the strongest terms the ongoing use of sexual violence as a means of waging war in the eastern part of the DRC" and stressed that "the perpetrators of these crimes shall be held accountable for their acts".<sup>37</sup> Among the measures considered by AU for dealing with the situation, the question of deploying an ACHPR mission of inquiry charged with establishing the circumstances of the acts of violence, determining the responsibilities and proposing measures for bringing the perpetrators before the relevant courts was discussed on several occasions. So far no such mission has been decided.

At the sub-regional level, the International Conference on the Great Lakes Region (ICGLR) and the Southern African Development Community (SADC) have both made commitments to fighting sexual violence in

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35. Resolution A/HRC/24/L.9, 27 September 2013.

36. Resolution 173, on the Crimes Committed Against Women in the Democratic Republic of Congo (DRC), November 2010, <http://www.achpr.org/sessions/48th/resolutions/173/>.

37. Press Statement, PSC/PR/BR(CCCXLVI), 10 December 2012, <http://www.peaceau.org/en/article/communiqué-of-the-peace-and-security-council-of-the-african-union-au-at-its-346th-meeting>.

Awareness-raising  
for the prevention  
of sexual violence,  
Biruma,  
October 2010  
© Pierre-Yves Ginet



DRC. The ICGLR Protocol on the Prevention and Suppression of Sexual Violence Against Women and Children (2006) contains provisions on protection, reinforcing the legal framework for bringing perpetrators to justice, and setting up a regional mechanism for legal and medico-social assistance to victims

Despite such significant mobilisation, the obstacles encountered by victims seeking justice and reparation persist and are often insurmountable.

### **1.5. Victims' struggles to obtain justice and reparation**

As emphasised in the “Mapping” project, “the scale and gravity of sexual violence [are] primarily the result of the victims’ lack of access to justice and the impunity that has reigned in recent decades, which has made women even more vulnerable than they already were. The phenomenon of sexual violence continues today as a result of this near-total impunity, even in areas where the fighting has ended; it has increased in those areas where fighting is still ongoing.”<sup>38</sup>

The isolation of victims, social stigmatisation, fear of reprisal, vulnerability, lack of financial means, lack of tribunals in non-urban areas, lack of

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38. Mapping Project, *op.cit.* para. 36.

awareness of rights, as well as numerous forms of discrimination against women in law and practice are among the many obstacles to obtaining justice. When victims manage to overcome these barriers and bring their case before a court, other obstacles arise due to the complexity, opacity and the cost of proceedings, which too often depend extensively on the efforts of the victims themselves and their lawyers.

The coordinated action of the UN in DRC focuses on support to fighting impunity, in particular by establishing legal support units to assist the authorities to prosecute those arrested and to organise trials, including mobile courts. There is a genuine commitment on the part of the United Nations. Yet, this increasing involvement raises problems; the UN's support is not adequately taken up by the national authorities. Even when proceedings are supported by the international community, they are so complex and expensive for the victims that they never fully succeed in providing justice.

Following the occupation of Goma and Sake by M23 troops in November 2012 and the withdrawal of FARDC troops towards Minova, rapes were committed on a massive scale. According to a UNJHRO report, at least 102 women and 33 girls were raped or subjected to other forms of sexual violence by FARDC troops, and 59 by members of M23. These crimes received considerable international attention and the United Nations launched an inquiry. However, to date, only 12 senior officers have been suspended and only two of them for rape.<sup>39</sup>

Major problems persist within the justice system, even in emblematic cases in which the United Nations have been heavily involved. Even in cases which result in convictions, victims and their legal representatives in such cases told FIDH of their anxiety about the possibility of convicted criminals escaping from prison, the fear of retaliation and the absence of any genuine reparation. During FIDH missions in November 2012 and April 2013, the victims' lawyers discovered that the defence had lodged appeals and made referrals to the Court of Cassation in two cases which had been considered hugely symbolic: *Gedeon* in 2010 and *Fizi*, in 2011. Lack of

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39. Report of the UN Joint Human Rights Office on human rights violations perpetrated by soldiers of the Congolese armed forces and armed combatants of the M23 in Goma and Sake, North Kivu Province and in and around Minova, South Kivu Province from 15 November and 2 December 2012, May 2013, [http://www.ohchr.org/Documents/Countries/ZR/UNJHROMay2013\\_en.pdf](http://www.ohchr.org/Documents/Countries/ZR/UNJHROMay2013_en.pdf).

notification to the parties by the courts, distance and cost of proceedings and their complexity are among the reasons victims, who thought they had obtained justice, are in effect deprived of the protection of the law.

Other avenues of recourse have therefore been explored by victims and the organisations that support them. The ICC raised hopes of justice and reparation. In 2004, owing to the serious nature of the crimes committed and the incapacity and unwillingness of national courts to prosecute the perpetrators, the ICC opened an investigation into the situation in DRC. Since then, six individuals have been prosecuted by the ICC, three of whom are detained in The Hague.

Many victims participate in these proceedings and should benefit from support from the ICC Trust Fund for Victims. However, the ICC only prosecutes those bearing the greatest responsibility and investigates circumscribed events, thereby excluding the vast majority of victims. The first case, against Thomas Lubanga, did not include charges for crimes of sexual violence.<sup>40</sup> The Trust Fund for Victims has a limited capacity to provide reparation, which depend on decisions in the cases before the court. Having raised many expectations, the first ICC proceedings and decisions were widely criticised.

Victims and international and national NGOs also advocated for the adoption of legislation to establish a mixed tribunal to try international crimes. However, the Bill was rejected by Parliament in 2011.<sup>41</sup>

Yet, as emphasised by the UN Secretary General, whether at the international or the national level, “a victim-centred approach is vital” in DRC.<sup>42</sup>

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40. See FIDH press statement, *The ICC Sentences Thomas Lubanga to 14 Years' Imprisonment*, (in French), <http://www.fidh.org/fr/afrique/republique-democratique-du-congo/RDC-RDC-CPI/La-CPI-condamne-Thomas-Lubanga-a/>; and FIDH, *Crimes of Sexual Violence and the Lubanga Case: Interview with Patricia Viseur Sellers*, <http://www.fidh.org/en/africa/democratic-republic-of-congo/DRC-ICC/Crimes-of-sexual-violence-and-the>.

41. See FIDH press statement, *Senators torpedo the Bill on the establishment of a specialised mixed tribunal*, March 2012, (in French), <http://www.fidh.org/RDC-Les-senateurs-torpillent-le>

42. See Report of the UN Secretary-General on Sexual Violence in Conflict, A/67/792-S/2013/149,14/03/2013, para.116.



## Malfunctioning of national justice in emblematic cases

### The *Songo Mboyo* case: first convictions for crimes against humanity applying the ICC Statute

The *Songo Mboyo* trial had to be exemplary. Organised with the support of MONUC, the case concerned soldiers of the FARDC 9<sup>th</sup> battalion accused of having raped 119 women and girls, in *Songo Mboyo* (Equateur Province) on 21 December 2003.

For the first time, on 12 April 2006, the Military Court of the Mbandaka Garrison sentenced seven FARDC soldiers to life imprisonment for crimes against humanity, on the basis of the ICC Statute. The court accepted complaints lodged by 14 victims of rape who were civil parties in the case and rejected 15 others, simply stating that their actions were “unfounded”. It awarded 5,000 USD to each surviving victim of rape and 10,000 USD to families of those died following the rape.

On 7 June 2006, the Military Court of Equateur confirmed six convictions, decided that the actions brought by all 29 civil parties were admissible and confirmed the amount of compensation to be paid by the DRC Government, “being responsible for the acts of its soldiers against civilians in the Songo Mboyo area”.

However, during the night of 21 October 2006, all those convicted escaped from the Mbandaka military prison.

In order to obtain the compensation awarded by the Court, the victims first had to pay “proportional fees” (*droits proportionnels*) amounting to 28,000 USD, as well as 684 USD for “other costs” (547 USD for legal fees, 82 USD for a copy of the judgement and any other legal document, and 54 USD for “other expenses”) and 756 USD for the judgement itself. It is obviously impossible for victims and their families to pay such costs.

In the absence of any reparation, and following the panel on reparation organised by the OHCHR in 2010,<sup>43</sup> the High Commissioner

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43. *Op cit.*, [http://www.ohchr.org/Documents/Countries/ZR/DRC\\_Reparations\\_Report\\_en.pdf](http://www.ohchr.org/Documents/Countries/ZR/DRC_Reparations_Report_en.pdf).

decided to give the *Songo Mboyo* survivors a boat “to help improve their lives”.<sup>44</sup> The boat was to be used by the women to more effectively transport their merchandise to local markets, in support of their income-generating activities.

**The Gedeon case: crimes against humanity committed by the Mai Mai**

From October 2003 to May 2006, attacks spread across the territories of Manono-Mitwaba-Pweto, known as the “Triangle of Death”. The Mai Mai group led by Gedeon Kyungu Mutanga carried out systematic assassinations, torture, rape and many other forms of violence, including sexual violence, such as genital mutilation, sexual slavery, etc.

On 12 May 2006, Gedeon Kyungu Mutanga surrendered to MONUC authorities. He was handed over to the military and political authorities of Katanga Province on 16 May 2006. Legal proceedings were supported by the international community.

On 5 March 2009, the first trial concerning crimes committed by the Mai Mai forces opened before the Military Court of the Haut-Katanga Garrison<sup>45</sup>. 26 suspects were indicted and 121 victims joined the proceedings as civil parties. Gedeon was found guilty of leading an insurgency, crimes against humanity and terrorism. 21 other members of his movement were also convicted and 4 were acquitted. The Court rejected the majority of the actions brought by victims, determining that they were not admissible, or “unfounded, owing to the poor quality of their legal counsel”.

The Court also held the DRC government liable, for having provided arms to the Mai Mai militia and because the “State made no effort to effectively and totally disarm the combatants”. The Court decided that the DRC government must “repair the damage caused by the crimes, which is the subject of the claims for compensation by the

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44. OHCHR press statement, *UN boat brings help to Congolese victims of sexual violence*, February 2011, <http://www.ohchr.org/EN/NewsEvents/Pages/UNBoatForCongoleseVictims.aspx>.

45. Military Court of Haut-Katanga Garrison, *KYUNGU MUTANGA Gedeon et al.*, RP No. 0134/07, 5 March 2009.

civil parties in the case”. The amount of compensation awarded ranged from 25,000 USD to 300,000 USD.

On 16 December 2010, on appeal, the Katanga Military Court<sup>46</sup> confirmed 16 convictions and 4 acquittals. 103 joined the proceedings as civil parties. The Court ruled that the Tribunal was wrong to have dismissed the actions of the civil parties. The judges declared the victims’ actions to be admissible in form and partially in substance. The Court also confirmed the civil liability of the DRC. The Court revised the damages to be paid by Gedeon and the Congolese State, each liable in full, to between 30,000 USD and 100,000 USD.

A few months later Gedeon escaped from prison and committed further grave crimes.

On 21 December 2010, the defence appealed for the judgement to be quashed. On examining the file, FIDH lawyers discovered that, while the Prosecutor had been notified and had had the opportunity to make observations, only three victims had been notified. There had been no written notification or public posting of the proceedings.<sup>47</sup>

As the case had not been notified, it could not be heard nor sent to the appropriate judges. The Registrar, who should have ensured notification, invoked despondency and disappointment following the convicts’ escape from prison. As the judgement is not final, victims have not been able to claim the execution of the orders for reparation.

### **The *Fizi* case**

During the night of 1 January 2011, FARDC soldiers raped 121 women near Fizi in South Kivu. Bowing to international pressure, the South Kivu Military Court, sitting in a Mobile Court at Baraka, on 21 February 2011, convicted nine soldiers, including a lieutenant-colonel, for crimes against humanity, including rape.<sup>48</sup> The Court

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46. Katanga Military Court, *KYUNGU MUTANGA Gedeon et al.*, 16 December 2010. RPA n° 025/09.

47. Military Procedural Code, Articles 322, 325 and 328.

48. UN news, Head of UN mission welcomes verdicts in DR Congo mass rape case, February 2011, <http://www.un.org/apps/news/story.asp?NewsID=37598&Cr=sexual+violence&Cr1=#.UrGdIbvUBiE>.

declared the actions of 90 victims who had joined the case as civil parties admissible and decided that each surviving victim was entitled to compensation in the amount of 10,000 USD. However, the Court declared the request for the reconstruction of a school as a form of reparation to be inadmissible.

During an FIDH mission in April 2013, victims' lawyers, having travelled to Kinshasa, discovered that an appeal had been lodged in this case on 25 February 2011. There had been no notification of the appeal and, to date, the Military High Court has taken no steps to hear the appeal.

## **1.6. Action by FIDH and its member and partner organisations**

FIDH has developed a range of actions aimed at promoting access to justice for victims of sexual and gender-based violence (SGBV) and at combating discrimination against women in DRC.

Since 1999, FIDH and its member organisations, ASADHO, Ligue des Électeurs and Groupe Lotus, have conducted numerous investigations and published reports alerting the international community to the crimes under international law being perpetrated with impunity by belligerents in DRC.<sup>49</sup>

In 2007, FIDH conducted an investigation on sexual violence, examining how crimes of rape had increased across the country, including in areas of relative stability. The testimonies gathered by FIDH revealed the extent of the crimes, the obstacles to justice and the stigmatisation faced by victims. Among the victims, FIDH met a 10 year old girl from Kinshasa who was abducted on the way to school and raped repeatedly over several days. A complaint was lodged with the Kinshasa police and the suspect was initially arrested. However, he was held only briefly, then released. A second complaint was filed to the Prosecutor's Office, with the same outcome. According to various sources, the accused had bribed his way out of prison. In addition to the terrible physical and psychological trauma

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49. See FIDH website, [http://fidh.org/fr/Afrique/Republique-Democratique-du-Congo,74/?id\\_mot=26&debut\\_artz=10#pagination\\_artz](http://fidh.org/fr/Afrique/Republique-Democratique-du-Congo,74/?id_mot=26&debut_artz=10#pagination_artz).

she suffered, the girl's family rejected her and she was had been taken in by an association.<sup>50</sup>

A year later, on the basis of the report "Breaking the Cycle of Impunity", FIDH and its partner organisations organised a series of information and advocacy meetings to raise awareness of the international community on the urgent need for action to end spiralling impunity for crimes of sexual violence (United Nations in Geneva and New York, European Union representatives in Brussels and the ICC in The Hague).<sup>51</sup> FIDH and its member organisations contributed to the mobilisation of international bodies, resulting in the adoption by the African Commission for Human and Peoples' Rights (ACHPR) in 2006 of its first Resolution on women's rights in DRC and the adoption of a Resolution on crimes of sexual violence in 2009. Following submissions by FIDH and its members, the Human Rights Council, the UN Human Rights Committee, the Committee on the Elimination of Discrimination against Women (CEDAW committee) and the European Parliament have repeatedly called for measures to combat crimes of sexual violence and discrimination against women.<sup>52</sup> FIDH also advocated for these issues to be at the heart of the MONUSCO mandate.

FIDH's campaign "Africa for Women's Rights: Ratify and Respect!", launched with five regional human rights organisations in 2008, contributed to the ratification by the DRC in 2009 of the Protocol of the African Charter on the Human and Peoples' Rights on the Rights of Women in Africa.

FIDH, in particular through its permanent representation at the ICC in The Hague, monitors the ICC's activities and strategies in DRC. FIDH was the first organisation to transmit, in 2005, requests from Congolese victims to participate in ICC proceedings, including victims of sexual violence, and facilitated their legal representation. In 2007, FIDH organised a seminar for civil society representatives from the four situations under investigation

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50. FIDH press statement, Mass rapes in DRC, November 2011, <http://www.fidh.org/en/africa/democratic-republic-of-congo/Mass-rapes-in-the-Democratic>.

51. FIDH report, *Breaking the cycle of impunity*, <http://www.fidh.org/en/africa/democratic-republic-of-congo/Breaking-the-cycle-of-impunity>.

52. See, for example, FIDH, ASADHO, Ligue des Electeurs and Groupe Lotus, *Denial of Justice for the Victims of Sexual Crimes, submission to the CEDAW Committee, for its consideration during the examination of the 6<sup>th</sup> and 7<sup>th</sup> reports by the Democratic Republic of the Congo, at its 55<sup>th</sup> session 8-26 July 2013*.

by the ICC at that time, which aimed to share experiences and strategies to support victims of crimes of sexual violence and to fight impunity of perpetrators, at the national and international level.<sup>53</sup> FIDH has also repeatedly urged the Office of the ICC Prosecutor to ensure that crimes of sexual violence were systematically included in its prosecution strategy and for the rights and needs of victims of such crimes to be taken into account at the national level, including through the establishment of a mixed Court.<sup>54</sup>

In November 2012, FIDH and its member organisations organised a mission to Kinshasa and held a workshop for the main national actors to exchange experiences concerning the progress made, and the obstacles to be overcome, for access to justice for victims of crimes of sexual violence. The FIDH delegation, composed of Mariana Pena, (international justice expert), Fanny Benedetti, (consultant and expert on women's rights), Drissa Traoré (President of the **Mouvement ivoirien des droits de l'Homme**) and Florent Geel (head of the FIDH Africa Desk) exchanged with representatives of the following organisations: *Association congolaise pour l'accès à la justice* (ACAJ, Lubumbashi), *Association africaine des droits de l'homme en Afrique* (ASADHO, Sud Kivu et Kinshasa), *Association des femmes juristes du Congo* (Kinshasa), *Association des victimes de guerre en Ituri* (AVIGUITURI, Beni), the Kinshasa Bar Association, *Equitas* (Bunia), *Forum de la femme ménagère* (FORFEM, Kinshasa), *Groupe Lotus* (Kisangani), *Femmes Juristes engagées pour le Développement* (Butembo), *Ligue des Electeurs* (Kinshasa), *Multi Actions d'Assistance aux Marginalisés et aux Sinistrés* MAAMS (Beni), *Regard rural* (Kinshasa), *Synergie des femmes pour les victimes de violences sexuelles* (Beni), SOFEPADI (Kinshasa, Bunia), *Ligue de la zone Afrique pour la défense des droits des enfants, étudiants et élèves* (LIZADEEL, Kinshasa).

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53. See FIDH, *Crimes of Sexual Violence: Overcoming Taboos, Ending Stigmatisation, Fighting Impunity*, October 2007, [http://www.fidh.org/IMG/pdf/Note\\_crimes\\_sexuels\\_EN.pdf](http://www.fidh.org/IMG/pdf/Note_crimes_sexuels_EN.pdf).

54. See, for example, FIDH press statement, *Viols massifs en RDC : A quand la poursuite des auteurs de ces crimes contre l'humanité ?*, July 2011, <http://www.fidh.org/Viols-massifs-en-RDC-A-quand-la>; FIDH, *Crimes of sexual violence and the Lubanga Case: Interview with Patricia Viseur Sellers*, March 2012, <http://www.fidh.org/en/africa/democratic-republic-of-congo/DRC-ICC/Crimes-of-sexual-violence-and-the>; FIDH press statement, *The Human Rights Council must act to end impunity in the Democratic Republic of the Congo*, July 2012, <http://www.fidh.org/en/africa/democratic-republic-of-congo/the-human-rights-council-must-act-to-end-impunity-in-the-democratic-13702>; FIDH press statement, *Senators torpedo the Bill on the establishment of a specialised mixed tribunal*, March 2012, (in French), <http://www.fidh.org/RDC-Les-senateurs-torpillent-le>.

The seminar identified structural and legislative obstacles to the fight against impunity and in particular the lack of reparation. To further document these issues, a second mission took place in April 2013, which led to the present report.<sup>55</sup> The delegation was composed of Karine Bonneau, (Head of the FIDH International Justice desk), Montserrat Carboni (FIDH permanent representative to the ICC) and Fatimata Sall (lawyer, *Ligue sénégalaise des droits de l'Homme*), joined by representatives of FIDH's member and partner organisations, Dismas Kitenge (President, *Groupe Lotus* and FIDH Vice-president), Sylvain Lumu (Executive Director, *Ligue des Électeurs*), Jean-Claude Katende (President, ASADHO), Maître Jean Kebe (ASADHO), Julienne Lusenge (President, *Solidarités féminines pour la paix et le développement* - SOFEPADI) and Carine Novi (SOFEPADI). The FIDH mission met with the following people:

- Wivine Mumba Matipa, Minister of Justice; Yvon Kalonda Kele Oma, Principal Private Secretary to the Minister of Justice, Honorary President of the Supreme Court
- Geneviève Inagosi Buloi Kassongo, Minister for Gender, Family and Children; Richard Lukunda, Principal Private Secretary to the Minister for Gender, Family and Children;
- Scott Campbell, Director of the UN Joint Human Rights Office, Representative of the UN High Commissioner for Human Rights;
- Josiane Mutombe Giebe, Expert on sexual violence within the UNJHRO Justice and Combating Impunity Unit;
- Ndeye Yande Kane, Coordinator of the UNJHRO, national programme on access to justice for victims of sexual violence;
- Marie Oniwa, Head of the Sexual Violence Unit, MONUSCO;
- Paul Madidi, and Patrick Tshibuyi, Public Information and Documentation Section, ICC;
- Jean-Michel Dumond, EU Ambassador;
- Carmen Garcia Audi, Programme Manager, EU Gender Action Plan;
- Michel Lastchenko, Belgian Ambassador to DRC;

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55. See the first conclusions of the mission in: FIDH, Groupe Lotus, LE, ASADHO, *Violences sexuelles en RDC: les victimes doivent être indemnisées et les jugements appliqués*, April 2013, <http://www.fidh.org/fr/afrique/Republique-Democratique-du-Congo,74/violences-sexuelles-en-rdc-les-victimes-doivent-etre-indemniees-et-les-13205> ; and, *Joint submission to the CEDAW Committee, for its consideration during the examination of the 6<sup>th</sup> and 7<sup>th</sup> reports by the Democratic Republic of the Congo, at its 55<sup>th</sup> session July 8-26, 2013, op.cit.*

- Luc Hallade, French Ambassador to DRC; Philippe Lafosse, Cooperation attaché; André-Abel Barry, Regional Cooperation attaché;
- Laura Johansen, 2<sup>nd</sup> Political Secretary, United Kingdom Embassy;
- Kate Higgins, 2<sup>nd</sup> Secretary, Political Affairs, United States Embassy;
- Maître Mbuyi Mbiye Tanay, President of the Kinshasa Bar Association;
- Christina Etzeli, Cooperation attaché, Swedish Embassy;
- Maître Guylain Kabidu, lawyer at the Goma Bar;
- Georges Kapiamba, lawyer.



World March of  
Women, Bukavu,  
October 2010  
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Dubourthoumie



# The legal framework on sexual violence in DRC

DRC has ratified a number of international conventions, which guarantee victims of crimes of sexual violence the right to an effective remedy and to reparation. Ratification of the ICC Statute also imposes a certain number of obligations, including incorporating the Statute into domestic law. The ICC Statute recognises crimes of sexual violence as crimes under international law. As a consequence of signing up to these instruments, DRC has, to some extent, adapted its national legal arsenal.

## 2.1. DRC's obligations under international human rights law

DRC has ratified the main international and regional human rights instruments, under which the State has the obligation to prevent, protect, investigate, prosecute, sanction and ensure reparation, without discrimination, in relation to crimes of sexual and gender-based violence. These instruments include the International Covenant on Civil and Political Rights<sup>56</sup>, CEDAW<sup>57</sup>, the Convention on the Rights of the Child<sup>58</sup>, the ACHRC<sup>59</sup> and the Protocol on the Rights of Women in Africa<sup>60</sup>.

These instruments recognise the women's rights to be protected against all forms of discrimination and violence and to have access to justice. The Protocol to the African Charter on the Rights of Women in Africa urges all States to “eliminate all forms of gender-based discrimination and violence”; “stop the perpetrators of violence against women and create programs for the rehabilitation of women”; to “establish mechanisms and accessible services for effective information, rehabilitation and reparation for victims of violence against women”; and to “allocate adequate budgetary and other resources for the implementation and monitoring of actions aimed at preventing and eradicating violence against women”. According to these instruments, as well as the UN Security Council resolutions on

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56. Accession on 1 November 1976.

57. Accession on 17 October 1986.

58. Accession 27 September 1990.

59. Ratified on 20 July 1987.

60. Ratified on 9 June 2008.

women, peace and security, States must guarantee special protection for women during times of conflict.

There are several key instruments for the protection of the rights of women and children which have not yet been ratified by DRC, namely the African Charter on the Rights and Welfare of Children and the Optional Protocol to CEDAW, which enables individuals and groups to submit complaints to the CEDAW Committee when justice cannot be obtained at the national level. Finally, DRC has not yet ratified the Protocol to the African Charter on Human and People's Rights on the establishment of an African Court on Human and People's Rights.

States' overarching obligation to guarantee respect for human rights includes the obligation to prosecute the perpetrators of crimes and to guarantee reparation for victims.<sup>61</sup> International human rights law interprets the right to an effective remedy to include the right to request and to receive reparation.<sup>62</sup> This implies that remedies must be made available and accessible to victims of crimes of sexual violence. It also means that they must be guaranteed adequate and effective reparation.

The right to reparation for victims was for a long time considered as an unnecessary complicating factor in national policies. The first UN Special Rapporteur on the draft Principles on the Right to Reparation, Theo van Boven stressed, "In spite of the existence of relevant international stand-

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61. The obligation to guarantee respect for human rights includes the triple obligation to prevent violations, investigate and prosecute their perpetrators, and guarantee reparation for victims. See the interpretation by all the treaty bodies, especially the Human Rights Committee comm 161/1983; Inter-American Court for Human Rights, Decision in *Velasquez v. Uruguay*, 29/07/1988, Series C n°4. This principle was confirmed in Principle II of the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* (Reparation Principles) 60/147, AG Res, 16 December 2005, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>.

62. See especially Principle VII. "Victims' right to remedies" of the Reparation Principles: "*Remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim's right to the following, as provided for under international law: a) Equal and effective access to justice; b) Adequate, effective and prompt reparation for harm suffered; c) Access to relevant information concerning violations and reparation mechanisms*", *op.cit.* ; Art. 8 of the Universal Declaration of Human Rights; Art. 1 and 2 of the International Covenant on Civil and Political Rights; Art. 14 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; and Art. 68 and 75 of the ICC Statute.

ards... the perspective of the victim is often overlooked. It appears that many authorities consider this perspective a complication, an inconvenience and a marginal phenomenon”.<sup>63</sup> The right to reparation was therefore ignored, or defined in financial terms exclusively, thereby contributing to a weakened perception of the gravity of the violations and harm suffered. States could also dodge their obligations by citing a lack of resources.

The evolution of international jurisprudence and the adoption of the Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (United Nations Principles on Reparation), led to a “holistic” definition of reparation, which is the only effective response to the rights and needs of victims, a definition now accepted under international law. The Principles emphasize first and foremost, that they “do not entail new international or domestic obligations but identify mechanisms, modalities, procedures and methods for the implementation of existing legal obligations under international human rights law and international humanitarian law”. They insist that: “Adequate, effective and prompt reparation is intended to promote justice by redressing gross violations... States should endeavour to establish national programmes for reparation and other assistance to victims... States shall, with respect to claims by victims, enforce domestic judgements for reparation against individuals or entities liable for the harm suffered.”

Under international law, reparation includes individual and collective measures, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

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63. Special Rapporteur on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms. E/CN.4/Sub.2/1993/8, para.132-133.

## **Definition of the right to reparation under international law (Principles 19 to 23 of the United Nations Principles on Reparation)**

**19.** *Restitution* should, whenever possible, restore the victim to the original situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property.

**20.** *Compensation* should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as:

- (a) Physical or mental harm;
- (b) Lost opportunities, including employment, education and social benefits;
- (c) Material damages and loss of earnings, including loss of earning potential;
- (d) Moral damage;
- (e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.

**21.** *Rehabilitation* should include medical and psychological care as well as legal and social services.

**22.** *Satisfaction* should include, where applicable, any or all of the following:

- (a) Effective measures aimed at the cessation of continuing violations;
- (b) Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim's relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations;
- (c) The search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed,

- and assistance in the recovery, identification and reburial of the bodies in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities;
- (d) An official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim;
  - (e) Public apology, including acknowledgement of the facts and acceptance of responsibility;
  - (f) Judicial and administrative sanctions against persons liable for the violations;
  - (g) Commemorations and tributes to the victims;
  - (h) Inclusion of an accurate account of the violations that occurred in international human rights law and international humanitarian law training and in educational material at all levels.

**23.** *Guarantees of non-repetition* should include, where applicable, any or all of the following measures, which will also contribute to prevention:

- (a) Ensuring effective civilian control of military and security forces;
- (b) Ensuring that all civilian and military proceedings abide by international standards of due process, fairness and impartiality;
- (c) Strengthening the independence of the judiciary;
- (d) Protecting persons in the legal, medical and health-care professions, the media and other related professions, and human rights defenders;
- (e) Providing, on a priority and continued basis, human rights and international humanitarian law education to all sectors of society and training for law enforcement officials as well as military and security forces;
- (f) Promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as by economic enterprises;
- (g) Promoting mechanisms for preventing and monitoring social conflicts and their resolution;
- (h) Reviewing and reforming laws contributing to or allowing gross violations of international human rights law and serious violations of international humanitarian law.

Establishing, for the first time, an international criminal tribunal that recognises principles of reparation for victims, Article 75 of the ICC Statute is based directly on the definition of the United Nations Principles and enables the Court to make awards for reparations, which may include “restitution, compensation and rehabilitation”.<sup>64</sup>

## **2.2. The ICC, the Rome Statute and crimes of sexual violence in DRC**

DRC ratified the ICC Rome Statute on 11 April 2002 thereby enabling the Court to exercise its jurisdiction to investigate and prosecute those responsible for crimes of genocide, crimes against humanity and war crimes committed in DRC or by Congolese nationals as of 1 July 2002.

The Rome Statute aims to prevent crimes under international law by fighting impunity of the main perpetrators, while national courts retain primary jurisdiction. It is only when national authorities lack the capacity or willingness to prosecute the perpetrators of crimes within the ICC’s jurisdiction that the Court can exercise its complementary jurisdiction. But even in situations in which the ICC has jurisdiction, national courts are expected to investigate and to prosecute perpetrators of international crimes, since the ICC prosecutions target only those “bearing the greatest responsibility”.

The ratification of the Rome Statute requires the adoption of national implementing legislation. However, , in accordance with the DRC Constitution, the Statute can also be invoked directly by the courts.<sup>65</sup>

In September 2003, the ICC Prosecutor informed the Assembly of States Parties that he was closely analysing the situation in DRC. On 19 April 2004, the DRC President referred the situation in DRC, from the time of the entry into force of the Rome Statute, to the ICC Office of the Prosecutor.

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64. The travaux préparatoires on Article 75 directly refer to the draft United Nations Principles for Reparation, including explicit references to satisfaction and guarantees of non-repetition.

65. DRC Constitution, Article 153.

The Office of the Prosecutor has since initiated proceedings against six individuals accused of crimes against humanity and war crimes in DRC. Five of them have been charged with crimes of sexual violence.

The first ICC trial was against Thomas Lubanga Dyilo, who was charged with recruiting and using child soldiers but not with crimes of sexual violence. On 14 March 2012, the Trial Chamber considered the scope of the charges brought against Lubanga for the purposes of determining his individual criminal responsibility. It recalled that, although victims had requested the inclusion of crimes of sexual violence and several witnesses had given evidence of such crimes, the prosecution had chosen not to include rape or sexual slavery among the charges. The judges discussed the question of whether the charge of “using of children to participate actively in hostilities” could be interpreted as including sexual violence against children, since the court had heard evidence that child soldiers, especially the girls, had been subjected to sexual violence,<sup>66</sup> but the majority considered that these crimes could not be taken into account. However, the judges decided that sexual violence could be taken into account in determining reparation.

On 7 August 2012, the Trial Chamber I issued its first decision on the principle of reparation in the Lubanga case.<sup>67</sup> The Chamber recognised the principle of reparation as a human right. It decided that reparations should take into account sexual and gender-based violence (SGBV) suffered by the victims. Moreover, the ICC judges decided that reparations should “reflect the fact that the consequences of these crimes are complicated and they operate on a number of levels; their impact can extend over a long period of time; they affect women and girls, men and boys, together with their families and communities; and they require a specialist, integrated and multidisciplinary approach”<sup>68</sup>.

Referring to international law and practice, the ICC judges decided that reparations should include various forms: restitution, compensation, rehabilitation, and other forms of redress. This is an example of jurisprudence

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66. This was the position adopted by Judge Odio Benito in her dissenting opinion. Dissenting opinion by Judge Odio Benito, 14 March 2012, <http://www.icc-cpi.int/iccdocs/doc/doc1379838-O.pdf>.

67. Decision establishing the principles and procedures to be applied to reparations, ICC-01/04-01/06-2904, 7 August 2012, <http://www.icc-cpi.int/iccdocs/doc/doc1447971.pdf>.

68. *Ibid*, para. 207.

that could be applied by national judges. As of December 2013, this decision is under appeal.

Case	Charges for Crimes of a Sexual Nature	Stage of the Proceedings
The Prosecutor v. Thomas Lubanga Dyilo	None	Found guilty of enlisting and conscripting of children under the age of 15 years and using them to participate actively in hostilities. Sentenced on 10 July 2012 to a total of 14 years of imprisonment. Under appeal.
The Prosecutor v. Germain Katanga	Sexual slavery and rape as crimes against humanity. Sexual slavery and rape as war crimes.	All the evidence has been presented to a Trial Chamber, but the judges decided that the mode of liability should be re-defined. A final decision is pending.
The Prosecutor v. Bosco Ntaganda	Rape and sexual slavery as crimes against humanity. Sexual slavery and rape as war crimes.	Bosco Ntaganda voluntarily surrendered to the ICC on 22 March 2013. He has already appeared in Court. The confirmation of charges hearing is expected to take place in early 2014.
The Prosecutor v. Callixte Mbarushimana	Rape as a crime against humanity. Rape as a war crime.	On 16 December 2011, the Pre-Trial Chamber I declined to confirm the charges. Mr. Mbarushimana was released from ICC Custody.
The Prosecutor v. Sylvestre Mudacumura	Rape as a war crime.	The accused remains at large.
The Prosecutor v. Mathieu Ngudjolo Chui	Rape and sexual slavery as crimes against humanity. Sexual slavery and rape as war crimes.	On November 2012, Ngudjolo Chui was acquitted. The decision is under appeal.

*Source: Official website of the International Criminal Court.*

### **2.3. National legislation on sexual and gender-based violence (SGBV) and its interpretation**

Several national legal reforms have sought to increase protection against sexual violence, but laws remain largely unimplemented. Furthermore, many provisions of national laws are profoundly discriminatory against women, in particular in the area of the family, thereby contributing to persisting inequalities and increased vulnerability of women.

#### **a) Strengthening the national legal framework**

In 2006, DRC adopted several reforms designed to increase protection for women against sexual violence and to fight against discrimination.



On 18 February 2006, a new Constitution was adopted, establishing the principle of equality between men and women and the basis for fighting impunity. The Constitution provides for equal protection under the law and prohibits all forms of discrimination. As a result, public bodies have a constitutional obligation to eliminate all forms of discrimination against women and to guarantee their rights, including by fighting all forms of violence against women in public and private life. The Constitution further provides for sexual violence to be punished as a crime against humanity. “The public authorities are responsible for the elimination of sexual violence... International treaties and agreements notwithstanding, any sexual violence committed against any person with the intention to destabilise or to displace a family and to eliminate a population is to be considered as a crime against humanity punishable by law.”<sup>69</sup>

On 20 July 2006, DRC adopted two laws against sexual violence that amended the definition of rape and other forms of gender-based violence and changed several aspects of criminal procedure.

Law No. 06/018 amends and supplements the Congolese Criminal Code by incorporating the rules of international humanitarian law on crimes of sexual violence. It introduces new definitions of rape, forced prostitution and procuring, created twelve additional offences of sexual violence and made penalties harsher.

Law No. 06/019 aimed to strengthen prosecution of crimes of sexual violence by introducing new standards on the rapidity of proceedings, on ensuring the safety, physical and psychological well-being and dignity of the victim, and for guaranteeing legal aid to victims. Other important aspects include: recognising crimes of sexual violence as gross violations for which the suspect can be arrested without prior notification of a superior authority; prohibition on imposing fines as a penalty for crimes of sexual violence; the right of victims to legal assistance by counsel from the beginning of the proceedings; the right to a medical and a psychological examination; and the right to a closed hearing. The law also includes specific provisions on the rules of evidence.

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69. DRC Constitution, Articles 13, 14, and 15, unofficial translation, available in French at [http://democratie.francophonie.org/IMG/pdf/Constitution\\_de\\_la\\_RDC.pdf](http://democratie.francophonie.org/IMG/pdf/Constitution_de_la_RDC.pdf).

The following offences are now defined as crimes under Congolese criminal law: acts of indecency, rape, obtaining sexual services, sexual slavery, forced marriage, sexual mutilation, forced pregnancy and sterilisation, and other forms of sexual violence. Sentences are increased in cases involving children under the age of 18 years.

The definition of rape comes close to recognised international standards, although there is room for improvement. Rape is defined as sexual abuse using violence or intimidation, either directly or through an intermediary, including by using psychological pressure or by means of a coercive environment<sup>70</sup>. According to this definition, it is the use of violence, and not the lack of consent by the victim that becomes the main element in proving rape. This is in line with recent international practice.

The reform of the Code of Criminal Procedure provides that when violence is used, or if the act takes place in a coercive environment, consent cannot be deduced from spoken words or from conduct and silence or non-resistance cannot in any case be interpreted as consent. Details of the victim's prior sexual conduct cannot be invoked by the accused in support of his defence, nor can it be used to challenge the credibility of a witness<sup>71</sup>. Amendments provide for shorter time limits for investigations and prosecutions, and guarantee legal assistance for victims. The authorities also have to offer a medical and psychological examination of the victim in order to evaluate the harm suffered as well as the required care.<sup>72</sup>

However, the definition of rape is limited to acts of penetration, "even superficial". The law provides a detailed explanation of what can be considered to constitute penetration. When minors are involved, the definition of rape is not limited to penetration, but includes a vague reference to "carnal acts". The case law of international criminal courts, particularly the International Criminal Tribunal for Rwanda (ICTR),<sup>73</sup> has adopted a broader definition in which rape can be considered to have been committed without penetration,

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70. Law No. 06/018 of 20 July 2006 amending and supplementing the Decree of 30 January 1940, Article 2, para. 2.

71. Official Gazette of the Democratic Republic of Congo, 1 August, Law No. 06/019 of 20 July 2006 amending and supplementing the decree of 6 August 1959 on the Congolese Penal Code, Article 14 Tier.

72. *Ibid.* Articles 7bis and 14bis.

73. In particular, *The Prosecutor v. Akayesu, Case N. ICTR-96-4-T.*

and includes other acts of sexual abuse that are committed with violence. Ordinance-Law No. 72/060 of 25 September 1972 establishing the former Military Justice Code defined international crimes for the first time (Articles 501 to 505). Law No. 024/2002 of 18 November 2002 establishing the Military Criminal Code includes the crime of genocide, war crimes, and crimes against humanity (Title V).

In theory, DRC's ratification of the Rome Statute enables the effective prosecution of sexual violence as crimes against humanity<sup>74</sup> and war crimes. These include crimes such as sexual slavery, forced prostitution, forced pregnancy, forced sterilisation, and other forms of sexual violence of similar gravity. But a draft law implementing the Rome Statute in Congolese law has been pending before Parliament since 2003. It defines crimes against humanity and war crimes, including crimes of sexual violence, in accordance with the definitions under the Statute, and expands the jurisdiction of civilian courts to include war crimes and crimes against humanity perpetrated by members of the armed forces. The adoption of this law would bring Congolese law in line with international standards on the most serious crimes and would transfer military jurisdiction for these crimes to civilian courts.

In 2009, the Minister for Gender adopted a national strategy to fight sexual and gender-based violence, which includes a section on strengthening the law and the fight against impunity. A national agency to fight violence against women and girls was established, but no budget has been allocated to it.<sup>75</sup> With regard to reparation, Congolese law only provides for compensation, and there are no criteria governing how the amount is to be determined.

## **b) Inconsistent interpretation by the courts**

Having benefited from training organised by international organisations for military judges and international support for the organisation of key trials, some judges stand out. This was so in the *Songo Mboyo* case before the Mbandaka Garrison Court and in the *Gedeon* case before the Katanga

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74. Article 7 of the Rome Statute. The definition of crimes against humanity in the Congolese Military Criminal Code (MCC) is not identical to the definition in the Rome Statute (Art. 165 to 172 of the MCC).

75. Discussion with Josiane Mutombe, Minister for Gender, Kinshasa, 24 April 2013.

Military Court. The judges in these cases adopted a broader definition of rape which included inhumane acts with specific sexual connotation, not only limited to penetration. They referred to the case law of the International Criminal Tribunal on Rwanda (ICTR) and the ICC Elements of Crimes.

But in other cases, judges have restricted the scope of the law. Several judgements refer to the alleged consent of the victim as the basis for acquittal.<sup>76</sup> In other cases, a medical examination has been required as proof of rape, under specific conditions.<sup>77</sup> The FIDH delegation was told that the lack of resources for investigations meant that prosecutors were “unable to find other evidence of sexual violence”.

Finally, jurisprudence has not developed criteria for determining the amount of financial compensation in a consistent and objective manner. Compensation therefore tends to be awarded without taking into account the specific harm suffered by each individual victim.

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76. ASF, *La Justice Face à la Banalisation du Viol en République Démocratique du Congo*, May 2012, p.39.

77. *Ibid.* pp.35-36.

### 3. The difficult quest for justice before national courts

For victims of sexual and gender based violence, seeking access to justice is an individual and social struggle, in which they are forced to confront trauma and stigma, often alone. Taking the decision to go to court is a real challenge in itself.

“Taking the decision to go to court is a real challenge in itself.”

Victims who seek justice before national courts have to overcome significant institutional, financial and material obstacles. The justice system in DRC is weak, under-funded and overloaded. It is largely non-existent outside the main urban areas - the very places where most of these crimes are committed.

Victims have to travel to the court, pay their own expenses, as well as the costs of a system that expects those who use it to pay the costs of reaching a judgement. Despite some legal provisions that can reduce the costs for individuals who prove indigence, the reality is that access to justice is costly, presenting a major difficulty for victims. For women victims of sexual violence, who are often socially isolated and live in conditions of extreme poverty, the obstacles to justice are even greater.

Once proceedings are underway, victims are faced with long delays. It can be hard for victims to bear the experience of a legal culture in which lawyers and judges take a mechanical approach to the law and leave only a small margin to interpretation, especially when it comes to reparation. Even in cases in which national authorities and the international community have provided support to investigations and prosecutions, judgements are rarely implemented, sentences are rarely served, and orders for reparations are never executed.

### 3.1. The Congolese justice system

The Congolese justice system mainly leaves the prosecution of crimes of sexual violence as crimes under international law to military courts. It is remote and discredited in the eyes of victims, despite significant international support.

#### a) Organisation

The criminal justice system is composed of civilian and military jurisdictions.<sup>78</sup> Military courts have jurisdiction over “military offences” and “mixed offences”. “Military offences” are those committed by military personnel, which concern failure to respect the military rules of conduct. “Mixed offences” are ordinary crimes aggravated by the circumstances in which they are committed.<sup>79</sup> Military courts thus have jurisdiction to try war crimes and crimes against humanity committed in DRC and crimes of sexual violence amounting to crimes under international law.

The lack of independence of military courts is widely criticised. The military hierarchy continues to lean heavily on the courts and convictions of those bearing the greatest responsibility are rare. Legal standards are more restrictive than in the civilian courts. In fact, criminal responsibility of superiors and military leaders is limited to war crimes. When they are prosecuted, it is as co-perpetrators or accomplices. In the latter case, they must be shown to have tolerated subordinates’ activities.<sup>80</sup>

The jurisdiction of military courts raises another series of questions about victims’ access to justice and the execution of judgements (see below).<sup>81</sup>

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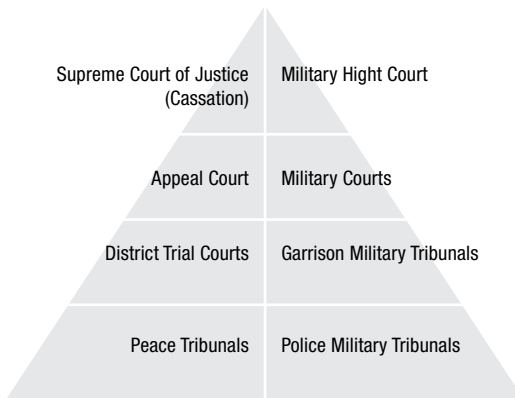
78. DRC Constitution, Article 153.

79. Military Criminal Code Law No. 024/2002 of 18 November 2002, Article 39 and subsequent.

80. *Ibid.* Article 175.

81. Mapping Report, *op.cit.*, para. 968.

## Structure of DRC's Military and Civilian Criminal Justice Systems



### b) Remote courts

Organic Law No.13/011-b of 11 April 2013 provides for the existence of one or more peace courts in each territory, town and commune, as well as one or more district courts for two or more territories.<sup>82</sup> However, there are vast expanses of DRC which have no courts. In Eastern DRC, courts are located in towns or cities. Military courts do not cover all areas.

According to many lawyers and victims interviewed by FIDH, cases are often transferred to very remote courts, sometimes with the aim of guaranteeing the judges' impartiality. However, the victims have then to cover significant distances, and are thus often unable to attend hearings, contribute to investigations and participate in trials.

To partially compensate for such problems of accessibility, mobile hearings are organised. 'Mobile courts' have a temporary nature and enable hearings to be organised outside courthouses and even in remote regions.<sup>83</sup> They can have jurisdiction in civil and criminal cases, and are often called upon to try serious crimes, including sexual violence. These mobile hearings have

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82. Organic Law No. 13/011-b of 11 April 2013 on the organisation, functioning and jurisdiction of the justice system, Articles 7.1 and 14.1.

83. Regulation 82-020 on the organisation of legal proceedings and jurisdiction, 31 March 1982, Art. 67. Courts and tribunals can sit in all locations under their jurisdiction, if they consider it necessary for the administration of justice.

the advantage of taking place close to where the crimes were committed. However, organising them is very costly and complex and is dependent on external funding. The United Nations, the EU and NGOs have implemented many support programmes to organise mobile hearings.<sup>84</sup> There is a question mark over their sustainability given the organisational burden and cost. Moreover, these mobile hearings, organised on a case-by-case basis according to the tribunal concerned and the partners involved, are not part of a coordinated plan and thus do not offer a coherent and satisfactory response to victims' needs.

Finally, a fundamental problem also results from the fact that appeals are heard in the capital Kinshasa. This takes on particular significance in cases in which reparations have been awarded. Judgements must be final for victims to claim any compensation award. They are not entered into any national computer system and to find out what the final judgement is, lawyers must go all the way to Kinshasa.



Tribunal in Bweremana, north-west of Lake Kivu  
© Pierre-Yves Ginét

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84. See, for example, the EU's Programme for the Restoration of the Judicial System in Eastern Congo (REJUSCO) [http://europa.eu/rapid/press-release\\_IP-06-845\\_en.htm](http://europa.eu/rapid/press-release_IP-06-845_en.htm), and programmes of the UNJHRO, UNDP and ASF.



### c) Support from the international community

Actions of the international community, in particular UNJHRO and MONUSCO, aim to support efforts to ensure justice for victims, principally through training, legal assistance and the organisation of mobile hearings.

Despite significant efforts, impunity continues to prevail for crimes of sexual violence amounting to war crimes or crimes against humanity. The case of rapes committed by FARDC officers in Minova in November 2012 provides a clear illustration. Although a dozen officers were arrested, rape charges have only been brought against two of them and there have been no trials. No senior officers have been investigated. During the FIDH mission in April 2013, witnesses insisted that military personnel involved in the attacks were still at large and continued to threaten victims.<sup>85</sup>

International efforts focus on initiating proceedings and organising trials. However, very little attention is paid to the implementation of the judgments issued. The UNJHRO's representative met by the FIDH delegation admitted that the office needed to focus more on systematic follow-up, in particular concerning orders for reparations.

Even in cases in which the perpetrators have been convicted and imprisoned, they generally manage to escape, due to the precarious state of the prison system and endemic corruption. The *Gedeon* case is a striking example. The Mai Mai leader escaped from Kasapa prison, in Lubumbashi, on 8 September 2011 and continues to this day to commit grave international crimes against civilians in the Katanga region.

### 3.2. Obstacles for victims' participation in national proceedings

The participation of victims in legal proceedings must start with reporting the crime to a police officer or investigating judge (generally a man). This is the first obstacle for women, who often fear humiliation and stigmatisation.

As soon as the accused is called to appear before a judge or taken into custody, the investigating judge has to submit the case to the relevant jurisdiction,

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85. See also, UNJHRO report, [http://www.ohchr.org/Documents/Countries/ZR/UNJHRO-MAY2013\\_en.pdf](http://www.ohchr.org/Documents/Countries/ZR/UNJHRO-MAY2013_en.pdf).

Suspects can be held in pre-trial detention. By order of the Public Prosecutor, investigating judges are forbidden to release alleged perpetrators of sexual violence on bail. However, FIDH observed that in practice suspects are not always kept in detention; the accused often manage to hold up investigations and prosecutions by escaping custody. There is a correlation between the lack of progress in criminal cases and the release of suspects on bail.

Congolese law allows for trials to take place *in absentia*,<sup>86</sup> however, according to lawyers and victims, such cases are very rare.

Victims can join proceedings as civil parties once the investigating judge has referred the case to the relevant jurisdiction. As civil parties, they can ask to be heard at any stage of the proceedings, on condition that it is before the end of the trial.<sup>87</sup> For this reason, transferring cases to courts far away from where the crimes were committed poses significant problems; neither the victims nor their lawyers are necessarily aware of progress in the proceedings in which they have the right to participate.

If victims do not participate in the proceedings, they run the risk of not being able to obtain reparations. This can create tensions within communities, especially in cases in which many women have been subjected to sexual violence. Victims have no possibility of claiming reparation after the conclusion of court hearings. This poses serious problems, especially in view of the fact that Congolese law does not provide for any form of collective reparation.

In cases which end in acquittal, if proceedings were originally initiated by victims as civil parties, they may have to pay the full costs of the case. If they became civil parties after the case was referred to the relevant court, they may have to pay half the costs. In other words, taking part in a criminal case as a civil party creates a financial risk for victims.

Studies show that many criminal trials for sexual or gender-based violence take place without victims' participation. Judges issue their decisions without taking into consideration victims' rights and interests. When victims do not participate, there is little chance that the court will grant repara-

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86. DRC Code of Criminal Procedure, Article 72.

87. *Ibid.* Article 69.

tion. Further, it is unlikely that judgements in such cases will contribute to restoring victims' trust in national legal institutions.<sup>88</sup>

### a) Evidence

The law provides for a medical examination of victims of crimes of sexual violence, in principle to evaluate the most appropriate care to be provided to victims. Medical certificates are not required as evidence under Congolese law, and thus there are no provisions imposing formalities on how medical examinations are to be conducted. However, many judges require certain formalities to be met in order to consider any medical certificate which might be presented to them and they refuse to accept medical certificates which do not respect the formalities required for forensic examinations. FIDH does not know of any case in which a judge has accepted or requested a psychological report for the victim.

### b) Costs

Congolese law requires parties to pay legal costs at almost each stage in the proceedings. Under the Code of Criminal Procedure, courts cannot accept a complaint, petition or appeal from victims participating as civil parties unless they pay a certain amount set by the court clerk. Throughout proceedings, judges specify the amounts of additional costs. If these costs are not paid, no action is taken on a victim's claim.<sup>89</sup> In order to join proceedings as civil parties, victims have to pay. In order for a judge to deliver an order, the parties must pay. The law has even required a fee to be paid to obtain a summons to appear, or for an interim arrest warrant. Parties have to pay the costs of interpretation and the fees of expert witnesses, and even the costs of summoning any witnesses that they call to testify. Complainants have to pay for a judgement to be rendered.<sup>90</sup> A copy of an order or a judgement costs 2 USD per page.<sup>91</sup>

“In order to join proceedings as civil parties, victims have to pay.”

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88. HHI, *Now the World is without Me*, cf.

89. Official Gazette of the Democratic Republic of the Congo, No. 06/019 of 20 July 2006, Article 14a.

90. DRC Code of Criminal Procedure, Article 122.

91. DRC Code of Criminal Procedure, Article 126.

Theoretically victims can ask for a certificate of indigence, meaning that they do not have to pay some of the legal costs and are exempted from proportional fees (the sum necessary in order to claim payment of any reparations awarded, which represents 6% of the total award, see below).<sup>92</sup> However, this certificate is very difficult to obtain. Firstly, victims and their lawyers are often not aware of this little-known and complex procedure. Furthermore, victims who request a certificate of indigence have to pay between 25 and 50 USD. Such costs are prohibitive in a country in which the GDP per inhabitant is 231 USD per year, 71.3% of the population is considered below the poverty line and 67.6% live on less than 2 USD per day<sup>93</sup>. When victims do request a certificate of indigence, the judge or the president of the tribunal evaluates the victim's means and fixes a limit on sums that will be met by the State Treasury. The procedure carries a number of uncertainties, insofar as the judge is free to assess the level of indigence as he sees fit. The law does not provide for any specific parameters. The judge can decide to exempt the complainant from all costs or only part.

Finally, obtaining a certificate of indigence means that the victim has no choice over the lawyer who will represent her.

### **c) Inadequate legal representation**

The 2006 law provides that victims of sexual violence can benefit from the assistance of a lawyer at all stages in the proceedings.<sup>94</sup> However, the law does not stipulate who pays for this assistance. In the course of discussions with FIDH, State representatives always seemed to start from the principle that victims just had to follow the regular procedure to obtain a lawyer's services, i.e. to obtain a certificate of indigence in order to have a *pro-bono* lawyer assigned to their case.

The issuance of a certificate of indigence and a declaration of indigence by a judge are required for the bar to appoint a *pro-bono* lawyer. This procedure does not allow victims to choose their counsel. The majority of *pro bono* lawyers are students or very young lawyers who lack training

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92. DRC Code of Criminal Procedure, Article 149.

93. World Bank Data on Democratic Republic of Congo <http://data.worldbank.org/country/congo-dem-rep>.

94. Official Gazette of the Democratic Republic of the Congo, No. 06/019 of 20 July 2006, Article 7a.

and the necessary experience to handle complex cases concerning crimes of sexual violence, amounting to war crimes or crimes against humanity. The definitions and criteria for establishing the forms of criminal responsibility of perpetrators demand complex legal analysis and a new approach to presenting evidence.

Such an appointment mechanism for a *pro bono* lawyer does not guarantee the level of trust that should exist between a client and her lawyer in a case of sexual violence, particularly in the context of an armed conflict. Additionally, the majority of lawyers in DRC are men, and many women victims of sexual violence find it difficult to speak about the crime they have suffered with a man.

In hearings before mobile courts, it is easier for victims to obtain legal representation, since lawyers make up part of the itinerant team. However, they do not represent victims at all stages in the proceedings and certainly not during hearing to decide on the award of reparations.

#### **d) Language**

Legal proceedings are conducted in French and judgements are written in French. This represents an additional barrier for many victims, who either do not speak the language or do so poorly.

#### **e) Lack of protection measures**

The amendments to the Code of Criminal Procedure in 2006 require the judge or public prosecutor to take all necessary steps to guarantee the physical and psychological well-being of victims of sexual violence, and to protect their dignity and their privacy.<sup>95</sup> Victims can also request that hearings be held in *camera*.

However, the reality is very different. There is no victim or witness protection programme in DRC. Those met during FIDH's missions stressed significant levels of corruption that allow criminals in custody to escape from prison.

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95. Official Gazette of the Democratic Republic of the Congo, No. 06/019 of 20 July 2006, Article 74a.

“Victims fear coming face-to-face with their attacker in the same street that they walk down every day”, explained one lawyer in April 2013.

Some NGOs and associations try to fill this gap by supporting victims in their quest for justice. But due to the sensitivity of this work and sometimes their lack of resources or experience, they run the risk of putting themselves in danger.

#### **f) Lack of trust**

According to information gathered by FIDH, victims generally do not participate in proceedings as they fear being stigmatised and lack faith in the effectiveness of the legal system, due to cost, lack of protection, and fear of reprisals, worsened by the fact that those sentenced often escape from prison.

When they participate as civil parties in proceedings, the crimes to which they have been subjected are made public. If at the conclusion of proceedings, victims obtain neither justice nor reparation, the negative consequences of bringing a claim can outweigh any benefit. Victims sometimes decide to withdraw from proceedings due to cost, lack of reparation and lack of legal or psychological support.

In cases in which suspects are military personnel, victims’ reticence is even greater and their trust in the capacity of the authorities to bring them justice is further reduced.

The Congolese legal system is perceived as corrupt, subject to the whim of the authorities, and incapable of fighting impunity. At each stage in proceedings, the plaintiff is called upon to pay additional fees, over and above those fixed by law.

Legal personnel, including police officers, are usually male. The State has made attempts to recruit women into the Criminal Investigation Department responsible for investigations, in particular to the specialised units in charge of the protection of women and children. However, the number of women officers remains low.<sup>96</sup>

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96. HHI, *see in particular, Now the World is without Me, op.cit.*, p.19.

Women, and especially young girls, dependent on their husbands or parents, risk finding themselves in a particularly difficult situation. In DRC, crimes against minors are considered to be crimes against the family. Families often seek an out-of-court settlement, as the only means of obtaining compensation, considering the prohibitive costs of criminal proceedings. Thus, in many cases, traditional justice prevails and the case is closed when the rapist provides, for example, a goat or plot of land. Such settlements are unacceptable in cases of sexual violence.



Anonymous woman,  
Kinshasa 2013  
© Montserrat  
Carboni

# 4. The right to reparation in national courts

If a criminal prosecution leads to a conviction, the judge may order financial reparation, which should be paid to the victim either by the convicted offender or by the state or by both. However, a judgement ordering reparations is only the beginning of another long struggle, so far unsuccessful, to effectively obtain the reparation due.

“To date, not a single court order for reparation has been enforced.”

Indeed to date, not a single court order for reparation has been enforced. FIDH has not heard of any victims of sexual violence who have received any of the damages ordered by a judge.

## 4.1. The nature of reparation

Congolese law maintains a conventional approach to reparation, which does not take account of developments in international law. An offender has a duty to repair the damage resulting from the offence, but such reparation may only be financial.<sup>97</sup> Given that the convicted person is usually poor, this obligation is usually borne by the State. The amount is never calculated on the basis of an assessment of the extent of the damages suffered by the victim.

### a) The conviction: a form of partial reparation

Obtaining a judgement recognising the commission of a crime and punishing the perpetrator is an important form of reparation for victims. A conviction establishes who the guilty person is, and exonerates the victim from all liability. However, in DRC, convictions lose meaning as they are rarely enforced. Perpetrators generally succeed in bribing their guards and escaping from prison. One of the individuals interviewed by FIDH said: “*The only criminals who remain in prison are there because they don’t want to leave*”.

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97. Decree of 30 July 1888, Conventional Contracts and Obligations, Article 258, 260, Larquier Codes, Civil law and procedure, T.I. 2003.



The lack of prosecutions against high-ranking military personnel and government representatives confirms the partiality of the justice system and increases victims' distrust in national institutions.

#### **b) Reparation limited to compensation**

Financial reparation is the only form of reparation available under Congolese law. The law provides for the right of victims to receive monetary damages, with interest, to compensate for the damage suffered. This narrow monetary definition does not comply with the definition of reparation under international law, nor does it fulfil the obligation of the DRC State to ensure full reparation.

Neither lawyers nor judges propose other forms of reparation that would more adequately take account of the damage suffered and the needs of victims. Consultations with victims on their expectations for reparation, which is essential to any definition of effective remedies, is almost non-existent. Legal reparation is therefore exclusively monetary and individual.

There are centres in the eastern part of the country which provide medical and psychological support, or socio-economic and legal assistance to victims of sexual crimes, such as the Karibuni Wamama Centre, managed by *Solidarité des femmes pour la paix et le développement intégral* (SOFEPADI) in Bunia, and the Panzi hospital led by Dr. Mukwege, near Bukavu. But these clinics remain civilian-led and isolated initiatives and are dependent on private funding and support. Their existence remains fragile and they cannot respond to the needs of all victims. Furthermore, their important efforts do not absolve the State of responsibility to ensure reparations to victims.<sup>98</sup>

#### **c) The amount of reparations does not reflect the reality of the damage suffered**

Congolese judges do not assess the individual case to determine the amount of compensation that should be awarded to victims of sexual violence and the reasons for the amount allocated are rarely given. Judges generally decide on the basis of equitable principles (*ex aequo et bono*) and therefore have

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98. Military Court of Mbandaka Garrison, RPM, 12 April 2006 (*Songo Mboyo*).

wide discretion. Decisions can thus appear arbitrary. For example, judges can decide to award 10,000 USD to the families of deceased rape victims and 5,000 USD to surviving rape victims, without justifying such a decision.

#### **d) Who is liable?**

Most convicted criminals are declared indigent, so military courts also make a reparation order against the State, making it jointly liable and requiring it to pay compensation in full.<sup>99</sup> Thus, the obligation to pay reparation ultimately falls on the State, whether the perpetrators were members of the armed forces (e.g. the *Songo Mboyo* case) or rebel groups (e.g. the *Gedeon* case, in which the judges considered that the government had contributed to the Mai-Mai militia, had acted recklessly and had failed in its duty to protect persons and their property). Compensation from the State remains the only hope for victims to obtain any form of reparation.

## **4.2. Long, complex and costly proceedings**

The full range of obstacles to the participation of victims in proceedings continues to apply once the judgement, including reparation, has been issued. In addition, the enforcement of legal decisions is not automatic; victims themselves have to push for them to be enforced.

#### **a) Steps necessary for the right to compensation to be recognised**

Only victims who participated in proceedings as civil parties have a right to compensation. In the case of victims who are minors, compensation is owed to her or his parents or guardians.

Sometimes victims are excluded from reparations orders without any reasons being given and they have to appeal such a judgement in order to obtain recognition of their right to reparation. In the *Songo Mboyo* case, 17 victims of rape and other forms of sexual violence saw their right to compensation recognised by at first instance; 18 other victims of rape were excluded. But on appeal, the military court granted compensation to

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99. ASF, Case Study, *Application of the Rome Statute of the International Criminal Court by the Courts of the Democratic Republic of Congo*, March 2009, [http://www.asf.be/wp-content/publications/ASF\\_CaseStudy\\_RomeStatute\\_Light\\_PagePerPage.pdf](http://www.asf.be/wp-content/publications/ASF_CaseStudy_RomeStatute_Light_PagePerPage.pdf).

the majority of the victims.<sup>100</sup> In the *Gedeon* case, among the 121 victims participating as civil parties, only 11 obtained reparations at first instance. A further 72 others were not granted compensation, but had their legal fees waived. While their claims had been declared admissibility, they were deemed unfounded due to the poor quality of their legal representation.<sup>101</sup> These victims appealed the decision and their right to compensation was finally recognised.<sup>102</sup> This case demonstrates the particular difficulties faced by civil parties with very limited means.

## **b) Onerous proceedings**

When judges decide to grant reparation, victims must wait until all appeals have been exhausted and the judgement is final. In practical terms, this means that they can only commence proceedings to enforce the judgement once it has been upheld by the Court of Cassation in Kinshasa (see above).

The DRC justice system does not have a computerised information system. The only way for lawyers to know if an appeal has been filed with the Court of Cassation is to physically go to the Court in Kinshasa. In addition to the high cost of such a journey, victims and their lawyers have to pay approximately 2 USD per page for a copy of the decision. At all stages of the proceedings, victims have to pay for copies of documents in order to learn of the decisions taken. In order to obtain a copy of a document confirming that an appeal had been lodged, FIDH had to pay 105 Euros in April 2013. These prohibitive costs are real obstacles to the exercise of the right to an effective remedy and reparation for victims.

FIDH observed that some victims' lawyers are not prepared to pay the costs and give up on enforcement proceedings. Furthermore, victims (and often their lawyers) are often unaware that a decision is under appeal, do not know the final judgement or that they have been awarded reparation, which they will never receive anyway.

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100. Military Court of Equateur, RPA No. 14/2006, 7 June 2006.

101. Military Court of Haut-Katanga Garrison, RP N° 0134/07, 4 Mars 2009.

102. Military Court of Katanga, RPA N° 025/09, 16 December 2010.

### **c) Prohibitive “proportional fees” for the enforcement of judgements**

It is the applicant who must pay fees to the court clerk to have the judgement enforced. These fees include 6% of the total reparation granted (“proportional fees”), to which the court fees are added. According to the Code of Criminal Procedure, these fees must be paid to the court clerk within eight days of the date that the conviction is deemed final.<sup>103</sup>

The court clerk cannot provide a copy of the decision ordering the payment of damages and interest before the proportional fees have been paid. This prohibitive amount, however, prevents the enforcement of the judgements and the payment of compensation due to the victims. For example, in the case of *Songo Mboyo*, the proportional fees calculated in 2006 were 28,000 USD. The Court required an additional 684 USD for “other fees” (547 USD for legal fees, 82 USD for a copy of the order and any other copies, 54 USD for “other” fees), and 756 USD for the judgement itself.

Only if victims are declared indigent can proportional fees be waived. However, as seen above, these proceedings are complex and expensive and the victims do not choose their lawyers, which means that they are represented by inexperienced lawyers who lack the confidence of victims and the necessary experience.

### **d) No payment**

Once proceedings before the enforcement clerk have been completed (payment of the certificate of final judgement, proportional fees, notification to parties and other costs) the court clerk issues an execution order to the Ministry of Justice and Human Rights. The Ministry’s enforcement office has to include all amounts corresponding to orders made against the State in the next budget. The Finance Ministry receives the information on the amounts owed, and the payment of claims is made according to the expenditure plan of the Finance Ministry.

So the enforcement office decides on the which amounts are to be paid to which claimants. The proposals for payment must also receive the approval

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103. Article 117 CCP; see also, MONUSCO, OHCHR, *The Enforcement of Judgements*, Kinshasa, January 2012.

of the Director of Litigation and Secretary General of the Ministry of Justice, who can postpone execution of payment without providing any reasons.<sup>104</sup>

In April 2013, the Minister of Justice told FIDH that she had never received any enforcement request for reparations for the victims of crimes of sexual violence. The Ministry of Justice also confirmed that it did not have enough in its budget to comply with orders for reparation. It was reported that in 2010 the Ministry of Justice had requested 44,633 million Congolese Francs (approximately 48.5 million USD) to discharge about 150 cases. However, the State only made 0.7% of this sum available (612 million Congolese Francs, i.e. 670,000 USD).<sup>105</sup>

In principle, the enforcement office selects beneficiaries according to the budget available. Its proposals are approved by the Director of Litigation or the Secretary General of the Ministry of Justice who pass it to the Minister of Justice for final approval.

The Minister of Justice told FIDH that it was possible to include the cost of reparations due before 2011 in the public debt, a decision that would only further complicate payment of these reparations, to the point of making them impossible.

The result is that victims of crimes of sexual violence can seldom obtain justice and can never obtain reparation.

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104. For more details, see MONUSCO, OHCHR, *The Execution of Judgements*, *ibid.*

105. *Ibid.*

# 5. Plans for the establishment of a specialised mixed court in DRC

In the face of almost total impunity of perpetrators of crimes under international law, including crimes of sexual violence, committed over the last twenty years, and given the limited jurisdiction of the ICC, Congolese civil society, with the support of international NGOs, has been advocating for the creation of a specialised mixed court based in DRC, composed of both Congolese and international staff, with jurisdiction over crimes under international law.

## 5.1 Background

The reference to the proposal for a specialised mixed court in the UN Mapping Report unquestionably contributed to decision of the Minister of Justice to fast-track a law through the Council of Ministers and to try to get it adopted before the November 2011 elections.<sup>106</sup>

From January 2011, the Congolese Government held consultations with civil society on the draft law. Many NGOs, including the members of the Congolese Coalition for Transitional Justice contributed and improved the draft. But on 28 February 2011, the Council of Ministers suddenly adopted an early version of text, which did not include recommendations from civil society. Between March and April 2011 the Congolese Law Reform Commission (an independent body charged with reviewing draft legislation and providing comments to the Ministry of Justice) met to work on this draft, in consultation with Congolese and international civil society, and other national and international experts.

After a conference organised by Human Rights Watch in Goma in April 2011, the Congolese authorities, foreign states and potential donors such as the United States, international organisations, and national and international NGOs held discussions on the draft legislation. National and international

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106. Mapping Report *op.cit.*, para.1035-1046.

NGOs issued a common position on the draft version of the law dated February 2011.<sup>107</sup> Several months of advocacy and dialogue between civil society and the Congolese authorities followed, to try to find the most suitable and effective formula for the specialised court.

To everybody's surprise, just before the end of the Parliamentary session, the Minister of Justice, through the Prime Minister, submitted the February 2011 version of the draft law to Parliament, and appended the comments of the Law Reform Commission, for "information purposes". Congolese civil society called for Parliament to examine the latest version of the draft, including amendments submitted by the Law Reform Commission and recommendations from national and international NGOs. The admissibility of the draft legislation was not put to the vote and the examination of the draft law was postponed.

After further advocacy, including a roundtable discussion organised by Groupe Lotus with the support of FIDH, and attended by the Congolese authorities, representatives of the international community and local human rights NGOs, on 11 July 2011, the Minister of Justice submitted a new version of the draft law, which included most of the amendments submitted by the Law Reform Commission and the main recommendations of Congolese and international civil society, to the *Commission gouvernementale des lois* for adoption prior to transmission to Parliament. Congolese and international NGOs called on the Congolese Prime Minister to have the improved version of the draft law examined at the next extraordinary session of Parliament, scheduled to be held before the elections, to avoid further postponement and uncertainty.

On 30 July 2011, the Council of Ministers adopted the amended version of the draft law presented by the Minister of Justice, with two significant changes: inclusion of the death penalty and making the presence of international staff optional. The Council of Ministers transmitted the Bill to Parliament on 2 August 2011 for examination and adoption at its next

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107. FIDH-ASADHO-Groupe Lotus-Ligue des électeurs press statement, "*Vers l'établissement d'une cour spécialisée mixte pour juger les crimes les plus graves en RDC : le projet de loi devra être renforcé*" 15 April 2011: <http://www.fidh.org/Vers-l-etablissement-d-une-cour-specialisee-mixte>.

extraordinary session.<sup>108</sup> The Parliament met in an extraordinary session from 6 August to 4 September 2011. The Minister of Justice introduced the draft law at the Senate on 10 August 2011. It was then examined by the Senate's Political, Administrative and Legal Commission.

However, on 22 August 2011, the senators met in extraordinary session and sent the draft legislation back to the government on the grounds that the sovereignty of DRC would be undermined by the presence of international staff and that they preferred national courts to have exclusive jurisdiction.

Just under two years later, in July 2013, when the issue of establishing a mixed court was again at the centre of debates, the new Congolese Minister of Justice, Ms Wivine Mumba Matipa, did not renew the government's commitment to such a mechanism when she spoke before the CEDAW Committee. Yet the creation of this mixed court, which was backed by the national and international civil society, had been one of the government's flagship projects for fighting against impunity.

## **5.2. The objectives**

The establishment of a specialised mixed court to try serious crimes (war crimes, crimes against humanity, genocide, crimes of sexual violence) should be considered for several reasons.

Since the Court could be installed anywhere in the DRC, it would be able to render justice near the site of commission of the crimes.

The presence of international staff at all levels of the Court (prosecution, trial chamber, appeal chamber, supreme court, registrar, etc.) would provide a significant barrier to political intervention in the exercise of justice and should thus make it possible to try those accused of the most serious crimes, regardless of rank or position.

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108. The version of the draft law transmitted by the Council of Ministers to the Parliament on 2 August 2011 was analysed in an FIDH-ASADHO-GL-LE position paper "Recommendations for an independent, efficient Specialised Mixed Court" published in August 2011, and available at the FIDH website (in French), <http://www.fidh.org/RDC-Les-senateurs-torpillent-le>.



The establishment of a specialised mixed court would mean that the DRC would have to incorporate into domestic law rules of international criminal law and procedure e.g. the definition of crimes, increased protection for victims participating in proceedings, and a definition of reparation which conforms to international standards.

Proceedings would be more transparent and less costly for the victims.

Finally, the creation of a specialised mixed court, with the active involvement of the international community, could have positive repercussions for the national criminal justice system in terms of training, materials and equipment necessary to deliver modern justice of quality and to reform national criminal law and procedure.

## 6. Conclusion

In Democratic Republic of Congo, victims of crimes sexual violence, in some cases amounting to crimes under international law, have to bear the burden of stigmatisation, exclusion and lack of family and community support, as well as insecurity, to find the courage to engage in the lengthy process of trying to secure justice and reparation. This long and difficult road causes further trauma and fresh disappointments with victims rarely receiving justice and never obtaining reparation.

Victims of crimes of sexual violence have to pay in order for the justice system, and through it the Congolese State, to grant them justice and reparation.

In DRC, the “rape capital of the world”,<sup>109</sup> sexual violence has reached endemic levels. The Congolese government and the international community must address the root causes of this violence, which means eliminating all forms of discrimination against women in law and practice. They must also tackle the impunity, which contributes to further commission of such crimes. Despite the efforts of the national authorities, with the support of the international community, to organise trials, particularly before military tribunals, and to secure convictions of some of the perpetrators of such crimes, judgements remain unenforced. Those convicted easily escape from prison and compensation awarded by judges has never been granted to victims of sexual violence.

The fact that judgements are rarely enforced also raises questions over the strategy for fighting impunity for crimes under international law, including crimes of sexual violence, promoted by the international community. It is legitimate to question the purpose of such efforts, when the national justice system does not ultimately permit criminal and civil judgements to be enforced.

Victims of crimes, and particularly victims of sexual violence, face huge obstacles, confronted with a justice system riddled with systemic failures: courts which are difficult to access; lack of security; unreasonable fees

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109. *Op.cit.*, note 3.

for each procedural document or service of process (required to continue pursuing a complaint); political interference. Women who are victims of sexual violence suffer twice over, stigmatised from the moment the crime is committed and throughout the proceedings, especially when proceedings do not result in convictions. They are among the poorest, are often responsible for children and families, and are often the most isolated.

National procedures impose barriers to the right of victims to reparation, imposing insurmountable costs, as well as onerous proceedings for the execution of reparations awards.

The alarming level of sexual and gender-based violence in DRC requires new measures to be adopted to fight the impunity of the perpetrators of crimes and to ensure that victims secure reparation and are able to overcome the impact of these crimes. The establishment of a specialised mixed court to try crimes under international law would therefore represent a major tool in the fight against impunity. However, measures are also required at the national level, to benefit the greatest number of victims under common law.

“Victims of crimes of sexual violence have to pay in order for the justice system, and through it the Congolese State, to grant them justice and reparation.”

In addition to strengthening the judicial and prison infrastructure and the system for paying civil servants' salaries, it is important to improve training for magistrates and lawyers, paying particular attention to recruitment of female staff; to increase the budget of the Ministry of Gender (beyond the current 0.3% share of the government budget) and in particular that of the National Agency for the Elimination of Violence Against Women and Girls; to develop awareness-raising campaigns; and to improve multidisciplinary support, including legal support, for victims of crimes of sexual violence. Legislative reform is necessary to enable DRC to respect its international obligations regarding access to justice and the right to an effective remedy and reparation.

Reducing legal costs is vital. In cases of crimes under international law, and crimes of sexual violence in particular, the lack-of-means certificate should be issued free of charge and should not prevent victims from having the lawyer of their choice. The proportional fee should be abolished so that it no longer prevents reparation orders being enforced. The same applies to

fees for copies of procedural documents. Further, the enforcement office should not have the power to suspend the enforcement process, without providing reasons.

The right to reparation should be incorporated into national law and should be defined in full in accordance with the State's international commitments. The State, with the support of the international community, should undertake a comprehensive review of the laws and procedures governing reparation. A mechanism should be put in place to gather the observations of victims, civil society representatives working with victims and lawyers representing them to hear their needs in terms of reparation. There has been recent discussion concerning the creation of a compensation fund to fill the gap created by the lack of enforcement of court decisions. However, this project is not without problems. Such a fund must not replace the enforcement of judicial decisions to which victims have a right. It should not, as has been suggested to FIDH, serve as "a trade-off" for persisting impunity. In any case, its management and operation should be strictly supervised.

The cooperation required of the DRC government to give effect to reparations orders decided by the ICC in the *Lubanga* case, should sow the seeds for consideration of more holistic reparation for victims of crimes of sexual violence amounting to crimes against humanity or war crimes.

The unequal and partial definition and implementation of the right to reparation for victims of crimes of sexual violence breach DRC's international obligations and indicate the need for a new model of justice and an extended reparations programme.

# 7. Recommendations

## 7.1. To the Congolese authorities

- **Ratification and implementation of international and regional women's rights protection instruments**

- Ratify the Optional Protocol to CEDAW, the African Charter on the Rights and Welfare of the Child.
- Deposit notification of ratification of the Protocol to the African Charter on Human and Peoples' Rights on the creation of the African Court on Human and Peoples' Rights; enter a declaration under Article 34.6 to enable individuals and NGOs to have recourse to the African Court; and amend national law accordingly.
- Implement all recommendations of the CEDAW Committee issued in July 2013.<sup>110</sup>
- Adopt the draft law implementing the ICC Statute.
- Invite the UN Working Group on the Discrimination of Women in Law and in Practice to visit DRC.

- **Raising awareness of sexual violence**

- Strengthen the national strategy for combating sexual violence, by significantly increasing the budget of the National Agency to Eliminate Violence against Women and Girls, within the Ministry of Gender, with the aim of conducting national awareness-raising campaigns against sexual violence and stigmatisation of victims and promoting gender equality.
- Implement a national awareness-raising campaign on the rights of victims of crimes sexual violence.

- **Prosecuting crimes under national legislation**

- Adopt the draft law implementing the ICC Statute.
- Guarantee effective implementation of the 2006 laws on sexual violence.

- **Access to justice for victims of crimes of sexual violence**

- Increase the budget allocated to the justice system, particularly to courts with jurisdiction over crimes of sexual violence and crimes under international law.

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110. CEDAW/C/COD/CO/6-7, Concluding Observations, 23 July 2013.

- Undertake prison reform aimed at making prisons more secure and re-arrest those who have escaped.
- Ensure that legal personnel involved in trying crimes under international law receive necessary protection.
- Adopt a victim and witness protection programme.
- Provide training to prosecutors and judges on prosecuting crimes of sexual violence under international criminal law, international human rights law and international humanitarian law.

• **Jurisdiction of civil and military courts**

- Amend national legislation so that human rights violations and crimes under international law, including those involving members of the military, are tried before civilian courts.
- Strengthen the organisation of mobile hearings for courts responsible for trying crimes under international law and crimes of sexual violence, with the support of the international community.

• **Criminal procedure**

- Reform national laws to abolish exorbitant legal costs (proportional fees, execution fee and other legal fees).
- Apply a presumption of indigence for victims of crimes of sexual violence and provide a certificate of indigence free of charge.
- Establish a legal aid programme to remove the condition of obtaining a certificate of indigence to be assigned a *pro bono* lawyer and ensure that victims of crimes of sexual violence can be represented by a lawyer of their choice, paid by the State.
- Establish an effective legal aid programme to include psychological and medical care for victims of sexual violence.
- Facilitate class actions by groups of victims where desired.
- Encourage judges not to require victims of sexual violence to produce a medical certificate.
- Enable judges to hear victims who are minors capable of exercising judgement and to take account of possible conflicts of interest between child victims and their legal guardians.

• **The right to reparation**

*Definition of reparation*

- Adopt a definition of the right to reparation in conformity with international law, which includes restitution, compensation, rehabilitation, satisfaction

and guarantees of non-repetition, to address the consequences of crime in a comprehensive manner.

- Establish objective criteria for assessing physical and psychological damage and calculating corresponding damages.
- Recognise the right of minors to reparation for individual damages suffered.
- With the support of the international community, implement the recommendations of the Special Rapporteur on Violence against Women to compensate all victims of sexual violence committed by agents of the State, beginning with cases where compensation orders have already been issued by courts.

### ***The enforcement process***

- Abolish proportional fees in proceedings linked to crimes against international law and crimes of sexual violence in particular.
- Remove the capacity of the Ministry of Justice to suspend enforcement of judgements and the payment of reparations.
- Set up an independent commission composed of judges, lawyers and associations of victims of crimes of sexual violence to examine the reasons reparations orders have not been executed and to present recommendations aimed at simplifying the procedure and reforming the corresponding provisions in national legislation.

### ***Enforcing compensation awarded by the courts***

- Gather data on reparations ordered by the courts to victims of crimes of sexual violence and the status of execution.
- Produce a schedule of payments due by the State to civil parties and create an independent national to monitor payments.
- Pay compensation granted to victims, in which State liability has been found, in accordance with an equitable division between the budgets of the Ministry of Justice and the Ministry of Finance, as an exceptional procedure.
- Make a declaration of the compensation due in cases of crimes of sexual violence cases to the litigation service. If the government does not execute the decisions of the courts, issue a note of liability for all sums outstanding to be taken into account in the next budget.
- Inform the parties, particularly lawyers, of the steps taken to pay compensation due to victims.

### ***Overall policy on reparations***

- Adopt a national plan on reparation for victims of sexual violence in consultation victims, in accordance with the State’s international obligations and as recommended by the CEDAW Committee in July 2013.
- Adopt a law aimed at creating a compensation fund for victims of rape and other forms of sexual violence, to be drafted in consultation with victims and civil society organisations. All aspects of this fund, including its finances, should be managed independently and the funds allocated to it used in accordance with international standards on reparation.
- Establish clinics throughout the country, with the support of the international community, guaranteeing victims of crimes of sexual violence free access to medical, psychological and social support.

#### **• Creation of a mixed court**

- Submit a Bill on the establishment of a mixed court, which incorporates recommendations of human rights NGOs, to Parliament.

#### **• The Bar association**

- Encourage women law graduates and law students to become lawyers.
- Ensure that lawyers are trained on international law and in particular the prosecution of crimes of sexual violence under international criminal law, international human rights law and international humanitarian law.

## **7.2. To the international community in DRC**

- Undertake more concerted, comprehensive action in support of the justice sector, aimed at encouraging genuine reform.
- Increase support to the reform of the national justice system, to encourage greater capacity of civilian jurisdictions, including protection of legal personnel, witnesses and victims.
- Continue to support the construction, maintenance and security of court and prison infrastructure.
- Support the establishment of a mixed court for the prosecution of crimes under international law.
- Encourage the State to establish a comprehensive reparations policy.
- Increase advocacy directed at national authorities, in particular the Justice and Finance Ministries, to guarantee payment of compensation due to victims and a more comprehensive reparations policy.



- Include indicators on the payment of reparations due to victims in programmes on development aid to the justice sector in DRC.
- Support training for judges, lawyers and representatives of civil society on the right to reparation for victims of crimes of sexual violence.
- Support the creation and operation of private clinics to ensure that victims of crimes of sexual violence in every region of the country receive medical, psychological and social support.
- Continue to support civil society organisations in their human rights activities in DRC and to provide support to victims of crimes of sexual violence.

### **7.3. To MONUSCO**

- Improve implementation of mechanisms for monitoring, analysing and communicating information on sexual violence linked to conflict, in accordance with UN Resolution 1960 (2010).
- Ensure immediate deployment of trained women’s protection advisers in contact with parties involved in conflict to secure their commitment to preventing conflict-related violence and adopting measures to tackle it.
- Provide the DRC government with advice and support in drawing up a clear and comprehensive roadmap for reforming the security sector, in particular training security forces on human rights and their duty to protect civilians, including victims of sexual violence seeking justice.
- Increase support for the DRC government to apply a “zero-tolerance policy” in matters of discipline and breaches of human rights under international humanitarian law committed by members of the security forces and insist that the action plan be immediately and rigorously applied to prevent and put an end to sexual violence committed by the FARDC.

### **7.4. To the Special Representative of the Secretary-General of the United Nations on Sexual Violence in Conflict**

- Retain the situation of sexual violence in DRC as a priority of her mandate.
- Increase advocacy to secure the introduction of a comprehensive policy for the effective criminal prosecution of crimes of sexual violence, reparation for victims and payment of compensation due.

## **7.5. To the United Nations Human Rights Council**

- Include issues of access to justice and the right to reparation for victims of crimes of sexual violence in the high-level dialogue on lessons learned and ongoing challenges in the fight against sexual violence, at its 25<sup>th</sup> session (March 2014).
- Support a study of the causes and consequences of impunity relating to sexual violence in DRC with a view to formulating concrete and quantifiable recommendations to combat impunity, with a time-line for implementation in the short and medium term.

## **7.6. To the African Union**

- Give effect to the decisions of the Peace and Security Council on the deployment of a fact-finding mission on sexual violence in DRC, which was mandated to shed light on the circumstances of this violence, to establish responsibility and to put forward measures for African Union support to the criminal prosecution of perpetrators before competent jurisdictions.
- Create a Special Rapporteur on crimes of sexual violence.
- Adopt a continent-wide plan of action to combat impunity for crimes of sexual violence.
- Support the fight against impunity of perpetrators of the most serious crimes, by calling on DRC to set up a mixed court.

## **7.7. To the European Union**

- Put the issues of access to justice and violence against women at the heart of political dialogue with DRC and ongoing regional discussions and continue to condemn, in the strongest terms, attacks on civilians, including women and children.
- Include DRC as a priority case in the campaign on women's political and economic participation, under the European Union Strategic Framework on Human Rights and Democracy, and pursue efforts to implement UN Security Council Resolutions 1325 and 1820 on women, peace and security.
- Implement the EU guidelines on violence against women. To this end, ensure that EU observers are sent to trials on crimes of sexual violence and call on the Congolese authorities to adopt strategies and mechanisms to prevent violence and to support victims at all levels - local,

provincial and national, to fight impunity and facilitate victims' access to legal proceedings up to the reparations stage and the enforcement of judgements. In accordance with the guidelines, analyse data concerning violence against women, discriminatory laws and practices and gaps in public policy to ensure a coherent and effective policy.

- Ensure that the question of violence against women in DRC remains high on the EU agenda. Ensure the monitoring of the results of initiatives, such as that approved on 23 July 2013 which allocated 25 million Euros to these issues. In this context, ensure adequate political follow-up with national and local authorities, the forces of law and order and the justice system, and effective coordination with the various project partners. Support the Ministry of Gender and the recruitment of women judges as well as the National Agency for the Elimination of Violence against Women and Girls.
- Ensure that support to the justice system is identified as one of the priority programming elements for the 11<sup>th</sup> European Development Fund (EDF) for DRC and incorporate specific measures concerning the fight against impunity, women's access to justice and combating sexual violence.
- Develop the capacity of civil society and regularly invite civil society organisations to consultations to draft and implement the Country Strategy Paper and National Indicative Programme for DRC. Encourage the Congolese authorities to do the same.
- Increase the effectiveness of development aid and budget support offered by the EU to DRC by putting in place mechanisms and indicators, monitoring the progress made (including in the context of political dialogue) and adapting the support allocated. Ensure that the indicators measure and support structural reform of the justice system and in particular:
  - Reform of criminal law to ensure access by victims, including women, to courts, particularly by increasing legal aid;
  - The right to effective remedy and to reparation;
  - Primacy of civilian jurisdictions over military jurisdictions in matters of crimes under international law;
  - Creation of a mixed court specialising in international crimes;
  - Incorporation of the rules of international criminal law into national law, including those concerning the status of participating victims;
- Ensure a coordinated and effective approach by EU Member States to ensure that questions of access to justice and the right to reparation for victims of crimes of sexual violence are included in the high-level dialogue at the 25<sup>th</sup> session of the United Nations Human Rights Council, in March 2014.

## **7.8. On the International Criminal Court**

- **To the DRC government**

- Cooperate with the ICC in its investigations and prosecutions, including by transferring Sylvestre Mudacumura to the ICC.
- Facilitate the activities of the Registry of the ICC, particularly concerning raising awareness on the ICC.

- **To the Office of the Prosecutor**

- Continue to monitor the situation in DRC and to prosecute crimes within the ICC's jurisdiction, in particular, those bearing the greatest responsibility for crimes of sexual violence.

- **To the Registry**

- Increase awareness-raising campaigns in DRC, in particular on ICC proceedings relating to crimes of sexual violence.
- Increase awareness of reparation procedures at the ICC, particularly following the decision by the ICC Appeals Chamber in the *Lubanga* case on the principles of reparation.

- **To the Trust Fund for Victims**

- Inform civil society organisations of the implementation of its assistance mandate.
- If the decision on the principles of reparation in the *Lubanga* case is confirmed on appeal, consult civil society organisations on the implementation of this decision.



### Establishing the facts

#### Investigative and trial observation missions

Through activities ranging from sending trial observers to organising international investigative missions, FIDH has developed, rigorous and impartial procedures to establish facts and responsibility. Experts sent to the field give their time to FIDH on a voluntary basis.

FIDH has conducted more than 1 500 missions in over 100 countries in the past 25 years. These activities reinforce FIDH's alert and advocacy campaigns.

### Supporting civil society

#### Training and exchange

FIDH organises numerous activities in partnership with its member organisations, in the countries in which they are based. The core aim is to strengthen the influence and capacity of human rights activists to boost changes at the local level.

### Mobilising the international community

#### Permanent lobbying before intergovernmental bodies

FIDH supports its member organisations and local partners in their efforts before intergovernmental organisations. FIDH alerts international bodies to violations of human rights and refers individual cases to them. FIDH also takes part in the development of international legal instruments.

### Informing and reporting

#### Mobilising public opinion

FIDH informs and mobilises public opinion. Press releases, press conferences, open letters to authorities, mission reports, urgent appeals, petitions, campaigns, website... FIDH makes full use of all means of communication to raise awareness of human rights violations.



## Association africaine des droits de l'Homme (ASADHO)

Created in 1991, the ASADHO has the following mandate: Promotion and protection of individual and collective rights and freedoms; Respect of the primacy of law and independence of the judiciary for the consolidation of the Rule of law, basis of a democratic society; Sensitisation on human rights.

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## Ligue des Électeurs (LE)

Created in 1990, the Ligue des Électeurs's purpose is to support the democratic development, through the protection of human rights and promotion of the electoral culture. The LE organises training session of civil society members, carries out activities of sensitization to human rights, undertake international missions of assessment and electoral observation.

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## Groupe Lotus (GL)

The Groupe Lotus is based in Kisangani. It denounces human rights violations, alerts public opinion, investigates on authorities' practices to urge the government to the respect of the Rule of Law. It supports those who suffer from discrimination and oppression due to their belonging to a social, national, religious group or due to their political opinion. It informs, teaches and promotes human rights values and principles in DRC.

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**FIDH**  
represents **178**  
**human rights organisations**  
on **5** continents



inhuman or degrading treatment or punishment.

Article 6: Everyone has the right to recognition everywhere as a person before the law. Article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination. Article 8: Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. Article 9: No one shall be subjected to arbitrary arrest, detention or exile. Article 10: Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of

## About FIDH

FIDH takes action for the protection of victims of human rights violations, for the prevention of violations and to bring perpetrators to justice.

### A broad mandate

FIDH works for the respect of all the rights set out in the Universal Declaration of Human Rights: civil and political rights, as well as economic, social and cultural rights.

### A universal movement

FIDH was established in 1922, and today unites 178 member organisations in more than 100 countries around the world. FIDH coordinates and supports their activities and provides them with a voice at the international level.

### An independent organisation

Like its member organisations, FIDH is not linked to any party or religion and is independent of all governments.

**fidh**

Find information concerning FIDH's 178 member organisations on [www.fidh.org](http://www.fidh.org)