
Ending Sexual Violence in the Democratic Republic of the Congo

GAËLLE BRETON-LE GOFF

"They put you in the middle of everyone, on a cross, with your head down and your legs spread and they raped you in that position. And the others had to cheer them on and dance around you."

"We are dealing with the effects, but not the causes. The cause is all those rapists that are scattered in the forests."

—HONORATA KIZENDE.¹

INTRODUCTION

Over the last fifteen years, the Great Lakes Region has been the theater of numerous bloody conflicts. Sexual violence, specifically, has occurred in many countries, particularly in the Democratic Republic of the Congo (DRC), where such violence has been so pervasive that it is hardly possible to estimate its extent. The "Joint Initiative against Sexual Violence toward Women and Children"² identified 40,000 incidents of rape in 2003, including 25,000 in South Kivu.³ The United Nations Population Fund (UNFPA) identified 15,996 new cases in 2008. More than 65 percent of the victims of sexual violence were children, most of them young girls between twelve and eighteen—although 10 percent were under ten years old.⁴ Statistics and estimates by these and other organizations, however,

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often underestimate the real number of victims. Some victims have died, others have moved far away, and others have retreated internally, refusing to discuss what happened to them. Most of these women and girls lost their families, land, means of survival, dignity, health, and sometimes their lives. Many of the survivors are condemned to live with permanent physical damage, such as destroyed reproductive organs or HIV/AIDS.⁵ Others suffer post-traumatic stress disorder and social stigmatization; others have had to raise children born of violence.

Since the magnitude of the sexual violence of the DRC has been publicized, states, NGOs, and other entities have reacted and adopted programs to help victims. For example, the international community mobilized to help end the wars and promote human rights, democracy, and the rule of law.⁶ Despite these efforts, sexual violence remains a central—and largely unpunished—problem in the DRC. As the international community continues to grant more means and funds to the comprehensive United Nations strategy on combating sexual violence, it is time to understand the facts of sexual violence and the prospects of ending it in the DRC.⁷

The first part of this essay explains the context of sexual violence in the DRC. The second part inventories the sexual crimes and offenses committed before, during, and after the conflicts. The third part describes the different actions taken by various international actors. The fourth part looks forward and recommends ways to support local women's NGOs, which are on the front lines of the fight against sexual violence.

THE MODERN HISTORY OF SEXUAL VIOLENCE IN THE DEMOCRATIC REPUBLIC OF CONGO

The conflict in the DRC is complex. Put in a schematic way, three main conflicts took place in the DRC after the fall of the Mobutu regime in 1997: regional, national, and inter-tribal.⁸ As alliances have shifted, the lines between them are not clearly drawn, as alliances shifted and the origins are intricate and overlapping.

Sexual violence in the DRC occurred and intensified in the context of these different conflicts. Military officers and senior officials in the Mobutu government had committed sexual violence and knew of its nation-wide prevalence. Disrespect for women was common. Prison guards made female detainees pay for basic needs with sexual services, while some high-ranking officials were known to ask their guards to abduct attractive women off the street. The army and police committed sexual violence against the wives and female relatives of the political opposition.⁹ Though some of these

events were reported, no study can document the full scale of the sexual violence.

In October 1996, Laurent-Désiré Kabila, the leader of the “Alliance des forces démocratiques du Congo” (AFDL), supported by Rwanda and Uganda, launched an attack in South Kivu. His armed rebel movement progressed rapidly and conquered territory until it entered Kinshasa in May 1997. During the progression of Kabila’s army, the retreating DRC army raped and abducted women. The AFDL army and some of its Rwandan elements also committed

acts of sexual violence. Between 1997 and 1998, the soldiers and officers of the new regime prohibited women from wearing pants and miniskirts, raped and tortured women and girls at roadblocks, detained young women in hotels to be raped, sometimes collectively, and forced women of the ex-Mobutu militaries to undertake domestic work.¹⁰ Kabila’s regime did not tolerate any form of political opposition. The situation in Eastern Congo deteriorated further in 1998 due to the creation of anti-governmental militias (Mayi-Mayi), and the Kabila army brutally punished those suspected of supporting or interacting with the enemy. The police and the army used sexual violence as a method to intimidate and punish, benefiting from widespread impunity and displaying a lack of discipline.

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In August 1998, Kabila asked the Rwandans and Ugandans to leave DRC territory and consequently lost their support.¹¹ A new movement, the “Rassemblement Congolais pour la Démocratie” (RCD), emerged in opposition and the situation quickly degenerated into a regional conflict, with all parties guilty of sexual violence.

Simultaneously, regional violence erupted between the RCD and groups of *Interahamwe*, Hutu militias, and Burundian rebels. All the belligerents used sexual violence as part of systematic attacks against civilian populations suspected of supporting the enemy. Collective and public rapes, sexual slavery, sexual torture, sexual mutilation, and disembowelment of pregnant women were committed irrespective of the age, sex or status

(widow, virgin, or pregnant) of the victim. In 1999 and 2000, Uganda and Rwanda, which were struggling to take control of the RCD, confronted one another in Kisangani, and individuals in both countries committed sexual violence against Congolese women.¹² The RCD subsequently disintegrated into different political and armed movements in Ituri and Kivu. As the control exercised by the original RCD movement eroded, all parties committed sexual violence and retaliated against the population.¹³

The Pretoria peace agreements (2002) aimed to create a coalition government and to incorporate the rebels into the regular army through “operation de brassage,” but the violence has not stopped. Some rebels did not join the new army, while others who did later left it to create new armed groups. The recent incidents in Ituri—in which Laurent Nkunda’s army, Congrès National pour la Défense du Peuple (CNDP), opposed the Forces Armées de la République Démocratique du Congo (FARDC) at the end of 2008—demonstrated the continued insecurity in the region and the inability of the government to take control of the region.¹⁴

Since 1996, women and girls, then later, men, have been continuously subjected to sexual violence in Eastern Congo. Today, not only soldiers are committing sexual violence; civilians are as well. In cases of child rape, thirty percent of the perpetrators were civilians.¹⁵ The UNHCR estimates that in 2007, twenty-five women were raped every day in South Kivu.¹⁶

THE VARIOUS FORMS AND CAUSES OF SEXUAL VIOLENCE IN THE DRC

Forms of Sexual Violence

During the conflicts, women and girls (and sometimes babies) were raped almost everywhere; their own homes and public spaces provided no security. Men were raped too. Many men were raped in South Kivu near the boundary of Burundi while they were going to the fields or visiting relatives. Women and girls were raped in front of their families, and mothers were forced to have sexual intercourse with their sons. Fighters and rebels raped groups of women seeking refuge in the forest or the bushes. The national army raped women and girls while retreating, and the victors did the same as they advanced. Young girls were frequently raped before being abducted and conscripted by rebels or armed groups.

Rapists used different objects, including rifles, sticks, bananas, bottles, and pepper-covered pestles. These acts resulted in permanent injuries, fistulas, HIV infections, unwanted pregnancies, and the destruction of reproductive organs. Rapes and gang rapes were perpetrated for

many different purposes, including humiliation, punishment, retaliation, terror, and reward.¹⁷ Rape also happened for opportunistic reasons and it was tolerated by the authorities. Not only used as a weapon during armed clashes, rape was common in daily life in the unstable DRC.

All the armed groups (*Interahamwe*, Mayi-Mayi, Ugandan, and Burundian rebels) abducted and forced women and girls into slavery. They forced them to transport stolen goods, to cook, and to wash. They sexually abused their prisoners, sometimes for the purpose of impregnating them: the *Interahamwe* fighters reportedly wanted to change the ethnic composition of the population. Sexual slaves were very badly treated; they were often tied up, locked in huts or holes in the ground that were filled with water, and frequently punished.¹⁸ They lived in constant fear and terror as they watched their mothers, sisters, and other girls get raped, tortured, beaten, humiliated, and killed.

In more structured armed groups, girl combatants were also raped by officers and forced to do domestic work. Some of those girls volunteered to join the armed groups while others were abducted after being raped.¹⁹ In the Union des Patriotes Congolais (UPC) army, led by Thomas Lubanga, some girls underwent forced abortions. In the RCD army, soldiers raped young girls and punished them if they tried to escape. Members of the governmental army and the RCD took advantage of their positions in order to abduct women and girls and rape them in hotels or in their own houses for several days.

Sexual violence was also used as torture to punish civilians. Detainees in the RCD prisons were subject to electric shocking of the genitals, as well as compression or stretching of genital organs and breasts. Others were detained nude and forced to sleep on wet floors. During terror campaigns, the RCD and the Armée Patriotique Rwandaise (APR) army gathered local villagers together and collectively punished those who were suspected of sympathizing with the enemy. They organized public gang rapes to humiliate the whole community. The various armed factions frequently perpetrated sexual mutilations; collective, systematic, and public rapes; insertion of pepper in vaginas; disembowelment of pregnant women; and hanging by the male organ.²⁰ In some cases, people accused of sorcery were severely tortured.²¹

Causes of Sexual Violence

Violence against women does not originate with war and conflicts; it emerges from prior social, economic, and cultural discriminations that fuel sexual violence when a conflict erupts. As in many countries, women in the

DRC are discriminated against through laws and customs. Years of war and impunity have exacerbated the lack of respect for the physical and psychological integrity of human beings, specifically women. War, displacement, trauma, and family and community breakdown have destroyed traditional social and cultural points of reference, and sexual violence has become more widespread in society generally.

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is entirely subject to the will of their husbands. Most people do not perceive early marriage and imposed sexual intercourse in conjugal relations as problematic. In some tribes, *lévirat* (a customary practice that requires a widow to marry her husband's brother)²² is still practiced, and in others, chiefs still exercise a preemptory right to have sexual intercourse with young virgin women.²³ Rape is generally understood as detrimental to women, but is often understood only to include sexual offenses against young virgin women.

A recent national law prohibits “transactional penalties,” but many cases of sexual violence are still settled through financial compensation or marrying the victim.

During the various conflicts, these underlying social factors contributed to the explosion of sexual violence and allowed other factors, such as mystic beliefs, to gain ascendancy. Some militias and fighters—such as the Mayi-Mayi—believe in witchcraft and attempt to protect themselves against it by raping virgin girls,²⁴ pregnant women, or breast-feeding women. In Katanga, militia members made fetishes with sexual parts of the body (a dried hand, penis, breast, or clitoris) for protection in fighting. In South Kivu, militia members collected vaginal fluid for the same purpose. Civilians who were detained in Mayi-Mayi camps located in Maniema reported that soldiers took baths with fetuses for strength. The use of sexual organs for witchcraft was not exclusive to the Mayi-Mayi.²⁵ Soldiers of Jean-Pierre Bemba, the leader of the Mouvement de Libération du Congo (MLC), dried penises and wore them during military operations. Pygmy women were also targeted because *Interahamwe* and RCD soldiers thought that raping pygmies would cure back pain and other diseases.²⁶

The structural nature of violence against women also made them prime targets for exploitation and intimidation. Prison wardens sexually exploited female detainees, making them use sex as currency for buying basic goods. They also coerced them to prostitute themselves outside of prison and required them to hand over the proceeds. Military men or policemen targeted young refugee girls in cities to force them into prostitution.²⁷ Mutiny in the army often led to sexual violence, while rape and threat of rape were, and still are, used for political intimidation.²⁸ Even today, feminist activists fighting against impunity for sexual crimes are at risk of death threats and sexual violence, including having their relatives raped, beaten, or forced to stay nude for hours in front of a group of armed soldiers. Some activists have also been shot and attacked with machetes.

Another factor aggravating the violence is ex-militia members who were disarmed and sent back into the community without there being any real reintegration policy. Moreover, the policy of mixing and reintegrating rebels and militia into the governmental army, as well as the promotion of ex-rebel leaders to high-ranking positions contributed to an undisciplined army. Military men living next to civilians and mixing with them in combat zones or garrisons further contributed to violence and abuses of power.

Combating impunity is a huge challenge that requires a litany of measures, including rebuilding physical infrastructure (tribunals and prisons); fighting corruption; and training police officers and judges on sexual violence. Women's rights NGOs have also worked to convince victims that they are right to testify in court. Victims are constantly under pressure from their families, the community, and the perpetrator, and out-of-court settlements are regularly practiced with the encouragement of community leaders, police, or judicial officers.

REACTIONS BY THE INTERNATIONAL COMMUNITY TO SEXUAL VIOLENCE IN THE DRC

Though ubiquitous, sexual violence in the DRC only became visible in 2002 when international human rights organizations began to document it.²⁹ The international community only started to react in 2006, and has since launched large-scale international campaigns to fight sexual violence and to support victims. Both the public outcry from NGOs and the work of the different UN rapporteurs resulted in putting sexual violence in the DRC on the international diplomatic agenda.

Documenting Sexual Violence Internationally

UN and NGO reports have long classified sexual violence as a human rights violation. In 1997, after allegations of serious violations of human rights and humanitarian law committed by the AFDL against Rwandan refugees, the UN Human Rights Commission created a joint mission charged with investigating the crimes committed in 1996.³⁰ Despite numerous problems and a clear lack of cooperation from the DRC government, the members of the team documented violations committed by both the AFDL/APR and the Mobutu army. For the first time, the report linked massive sexual violence committed by the AFDL/APR to serious violations of humanitarian law. It also reported rapes perpetrated by the Mobutu army. Despite these findings, the investigative team only mentioned a few incidents in its public report.

Things changed when international NGOs published reports on sexual violence. While DRC-based NGOs, and in some cases churches, had documented sexual violence in the DRC for many years, their scope had been mostly national. After 2002, when international NGOs got involved, awareness of the issue spread globally. In June 2002, Human Rights Watch (HRW) published the first report dedicated entirely to sexual violence in Eastern DRC. The report documented crimes of sexual violence perpetrated by all the armed groups in the region.³¹ Over the following years, Amnesty International (AI), HRW, Médecins sans Frontières (MSF), and Congolese NGOs and researchers published reports on sexual violence and impunity.³² Movies and documentaries also contributed to public awareness.³³

Addressing Sexual Violence Internationally

As more information related to the large-scale use of sexual violence in the DRC became public, state representatives, Western diplomats, and UN agencies who were pressured by NGOs, began taking the issue seriously.³⁴ In 2007, the General Assembly adopted a resolution: "Eliminating rape and other forms of sexual violence in all their manifestations, including in conflict and related situations." The Security Council adopted Resolution 1820 on June 19, 2008, after having heard testimonies from experts, UN representatives, and women's rights organizations.³⁵ The Security Council was of the opinion that "sexual violence, when used or commissioned as a tactic of war in order to deliberately target civilians or as a part of a widespread or systematic attack against civilian populations, can significantly exacerbate situations of armed conflict and may impede the restoration of

international peace and security.”³⁶ The Security Council also added that it was ready, “when considering situations on the agenda of the Council to, where necessary, adopt appropriate steps to address widespread or systematic sexual violence.”³⁷ Unfortunately, the strong language of Resolution 1820—which was meant to send a clear signal that the main body in the UN was ready to act in cases in which sexual violence was perpetrated as a war crime or a crime against humanity—did little to abate the sexual violence in the DRC.³⁸

At the regional level, the Members of the International Conference on the Great Lakes Region (ICGLR) adopted a Protocol on the Prevention and Suppression of Sexual Violence against Women and Children.³⁹ The Protocol’s objectives are to work against impunity and provide legal, medical, and material assistance (including compensation) to victims.⁴⁰ To achieve this goal, Article 6 of the Protocol fosters judicial cooperation between the members of the ICGLR for the arrest and the transfer of perpetrators of crimes of sexual violence.

On January 17, 2008, the European parliament adopted a resolution that “strongly condemns the use of rape as a weapon of war, calls on the Government of DRC to put an end to impunity and calls on the UN, the African Union (AU), the European Union (EU) and the other partners of the DRC to do everything possible to put in place an effective mechanism for the monitoring and documenting of sexual violence in the DRC and to provide efficient and adequate aid and protection for women, particularly in the east of the country.”⁴¹ Consequently, many governmental, non-governmental and international actors mobilized to develop strategies to address sexual violence.

ONGOING MEASURES TO ADDRESS SEXUAL VIOLENCE IN THE DRC

After 2004, national and international actors, as well as governmental and non-governmental actors, began launching initiatives to support victims, prevent sexual violence, and fight impunity.

Local NGOs, specifically women’s NGOs, have been supporting victims on the front lines since the beginning of the sexual violence that now seems endemic in Eastern Congo. National NGOs provide victims with social, medical and legal support. In 2003, as more and more NGOs and international actors became involved in supporting victims of sexual violence, the UNFPA set up the abovementioned “Joint Initiative against Sexual Violence toward Women and Children,” a project aimed at coordinating efforts to address the needs of the victims. The Joint Initiative

received funds from various governments to build national capacities for preventing and supporting victims.⁴² The main efforts are directed at medical support and social reintegration.⁴³

The recurrence of sexual violence and human rights violations can be explained, in part, by a lack of control and discipline in FARDC troops. As MONUC explained: "Many of the newly integrated troops and Commanders involved in operations are ex-CNDP and Mayi-Mayi militiamen who have equally bad track records of atrocities in the Kivu provinces."⁴⁴ In 2005, the EU set up the EU Advisory and Assistance Mission for Security Reform in the DRC (EUSEC RD Congo),⁴⁵ and in 2007 the Security Council mandated MONUC to reinforce the capacity-building of the military and the police. The United States, Belgium, the United Kingdom, the Netherlands, South Africa, and Angola are participating in these efforts to promote policies compatible with human rights, humanitarian law, gender issues, children's rights, democratic standards, transparency, and the rule of law.

While some training programs specifically address the issues of sexual violence, their impact has been negligible. Officers do not attend the trainings, the troops are regularly moving and mixing with other troops, sometimes with ex-rebel troops, and impunity persists. Moreover,

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there is a general misunderstanding of what constitutes sexual violence. Some soldiers think that the law only prohibits them from having sexual relations with minors and that paying the victim would repair the offense. As HRW reports, the training programs need to be coupled with additional actions, such as combating impunity.⁴⁶

On the judicial front, national and international NGOs have delivered training to NGO activists, lawyers, police officers and judicial bodies. In Bunia (Ituri), the EU also helped restore the legal system by providing the building blocks of a transparent and functional system, including courts, prosecutors, defense attorneys,

and a prison. Over the last three years, the main achievement of women's NGOs has been the adoption by the Congolese parliament of a national

law against sexual violence (Law 06/018 of July 20, 2006), drafted by a coalition of local NGOs supported by Global Rights.⁴⁷

The 2006 law against sexual violence is revolutionary not only because it prohibits—for the first time in DRC law—sexual crimes such as forced pregnancy, sexual slavery, forced prostitution, and forced sterilization, but also because it expands the definition of rape to include elements developed at the international level. This puts the DRC in an interesting situation: definitional elements and crimes included in the International Criminal Court (ICC) statute are now part of the national law while the adoption of the law to implement the Rome Statute is still pending at the parliament. NGOs have made a tremendous effort to educate and to explain the law to the community, the police, and the judiciary since its adoption. In some cases, NGOs had to distribute copies of the law to prosecutors. Recently, national NGOs, Lawyers without Borders, the Belgian development agency (BTC), and the office of the UNHCHR organized itinerant courts called “Chambres foraines” in order to help the national justice system assert its presence in remote areas.

The military courts have jurisdiction over crimes of sexual violence committed by FARDC soldiers, policemen, rebels, and civilians who perpetrated crimes against the army. The new military criminal code includes sexual offenses as crimes against humanity, as provided by the Rome Statute, and allows the prosecution of cases on the basis of command responsibility.⁴⁸ Unfortunately, the military law did not follow the detailed ICC definition of the crime of sexual violence. Therefore, military judges had to fill the gap in the law. It is encouraging to note that in some cases, the military judges applied the ICC provisions and even sometimes referred to the definition of rape developed by international criminal tribunals. In April 2006, the Mbandaka military court (Equateur Province) convicted seven soldiers who raped approximately 119 women in Songo Mboyo and in Bongandanga during a mutiny. Two years later, the same military court convicted twelve policemen who perpetrated massive rapes in Waka and Lifumba.⁴⁹ More recently, 120 cases of sexual violence were brought to the military courts in South and North Kivu, while twelve soldiers accused of crimes against humanity were convicted of rape by the Walikale military tribunal in April 2009.⁵⁰ Recently, four high-ranking military officers were arrested. The Human Rights Office followed 1,221 rape cases since 2008 and noted that 374 perpetrators were convicted.⁵¹

Following the resolutions adopted by the Security Council and the UN General Assembly, the UN secretary-general and the relevant UN agencies launched a world campaign against sexual violence in conflict

situations. In March 2009, the UN special advisor on Sexual Violence in the DRC released her comprehensive strategy to combat sexual violence and to coordinate the various efforts of UN agencies and national and international NGOs. The strategy is ambitious and tries to address various issues such as protection and prevention, reform of national security sectors, assistance for victims of sexual violence, and ending impunity.⁵² Over the months that followed, MONUC established a Sexual and Gender-Based Violence Unit to support advocacy with Congolese authorities and to support the implementation of the Comprehensive Strategy. In the DRC itself, however, it is unclear whether all UN agencies will work under MONUC coordination. All of these different initiatives, and specifically the uncertain reaction of the UN agencies and the NGOs, raise questions about the struggle against sexual violence in the DRC.

ATTEMPTS BY THE ICC TO PROSECUTE SEXUAL CRIMES

When the DRC government agreed to transfer Thomas Lubanga Dyilo—the former leader of the UPC who was accused for war crimes in Ituri—and then two other top leaders of Ituri militias, some human rights activists celebrated. Women's rights activists, however, became quickly disillusioned because the history of indictments at the ICC did not convince human rights NGOs that the Court has the capacity to effectively address sexual violence in the DRC. In addition, the refusal of the government to transfer Bosco Ntaganda, a former rebel, to the ICC contributed to the discouragement of women activists.

The first indictment delivered by the ICC against a Congolese warlord was against Thomas Lubanga. It was limited to war crimes: enlistment, conscription, and using children under the age of fifteen to participate actively in hostilities. Given that sexual violence, including rape and sexual slavery in UPC camps, was widespread in the Ituri conflict, it was quite surprising that no sexual violence charges were brought against Lubanga.⁵³ Many pragmatic reasons explain the decision to bring limited accusations: the need to build consensus in ICC for rapidly bringing cases to the court, the difficulty of investigating in Ituri due to insecurity, the lack of human resources, and the need to use these resources to investigate in Darfur after referral from the Security Council. Hoping for a speedy process, the prosecutor chose to focus on child soldiers, voluntarily ignoring extensive documentation of cases of mass killings, torture, pillage, rape, and enslavement.⁵⁴ While the prosecutor subsequently recognized, under pressure, that it is his mission to show that Lubanga is criminally

responsible for the crimes committed against girl soldiers, he did not charge sexual violence *per se* as provided for in the Rome Statute.⁵⁵ Addressing sexual violence by subsuming it under conscription and enlistment of child soldiers contributes once again to the invisibility of sexual violence and perpetuates discrimination against women.

Sexual crimes are difficult to prosecute. In two other cases, the prosecutor did choose to include charges of rape and sexual slavery. The focus of the indictment was restricted to a single event: the massacre of the village of Bogoro in Ituri. The cases against Germain Katanga (Front de Résistance Patriotique d'Ituri, FRPI) and Mathieu Ngudjolo Chui (Front des Nationalistes et Intégrationnistes, FNI), former chiefs of Lendu and Ngiti militias, faced procedural difficulties when the judge excluded the testimony of two witnesses, which supported charges of sexual slavery, on technical grounds related to their status as protected witnesses. The prosecutor, therefore, decided to withdraw the counts of sexual slavery. The witnesses were eventually granted protection and allowed to testify, and the charges of sexual slavery were confirmed, but the action of the court demonstrates the difficulty of bringing sexual crimes to trial.

At the grassroots level, women's rights activists welcomed the decision to charge Katanga and Ngudjolo Chui. However, the reality of selective prosecution has led some to question the prosecutor's strategy. Why only prosecute the crimes perpetrated in Bogoro? The FRPI/FNI militias committed numerous massacres, rapes, and sexual slavery in the Djugu and Mahagi territories in Ituri as well as in the mineral rich region of Mogenbawbu, but the ICC did not prosecute for these crimes. Ethnic complexities further complicated the landscape, as some women's activists wondered why the Hema militiamen were not prosecuted for sexual violence perpetrated against Ntigi and Lendu women. "Does a Hema woman deserve more protection than her sisters belonging to other ethnic groups?" asked an activist.⁵⁶

Finally, last year, after the 2008 attacks of Goma and Rutshuru, people in eastern Congo and elsewhere were encouraged when the prosecutor stated that his teams were still investigating in the DRC and that a case would come up soon. At that time, many hoped that Laurent Nkunda would be the next to be prosecuted. Unfortunately, Nkunda escaped to Rwanda, and Ntaganda, his deputy chief who joined the national army, was not transferred to the ICC.

Tarnished Legitimacy of the ICC

The DRC government transferred three leaders of Ituri armed groups to the ICC in 2006-2007. The government has recently reversed position and refused to transfer Ntaganda, despite an arrest warrant issued by the ICC in 2006. As Thomas Lubanga Dyilo is judged in The Hague, his former deputy chief of general staff for military operations is still free from international justice because of an effort to preserve the national peace process. Moreover, the government promoted Ntaganda to the rank of commander (general) in the national army. He is now combating the FDLR in the Kivu.⁵⁷ The fact that a criminal suspect wanted by the ICC benefits from impunity and freedom of movement—from the very country that referred the situation to the ICC—is an affront to the international community. Since early 2009, an international campaign led by NGOs has been lobbying European governments to formally ask for the transfer of Ntaganda to the ICC.⁵⁸ The U.S. recently declared that they would pressure Kinshasa to do so.⁵⁹ The government's refusal coincides with broader feelings across Africa against the ICC.

Some African countries recently led a regional movement to impede the actions of the ICC in Africa. In July 2009, President Gaddafi of Libya, the leader of the African Union, successfully sought an AU declaration asking the Security Council to use Article 16 of the Rome Statute to suspend the judicial proceedings against Sudanese president El Bashir for one year.⁶⁰ In Sirte, Liberia, African governments also agreed to refuse to cooperate with the ICC for the arrest and transfer of the Sudanese president to the ICC. Additionally, and more disturbingly, Senegal, Djibouti, and Comoros proposed reducing the power of the prosecutor and withdrawing from the ICC.⁶¹ Although these propositions may not be followed, they send the message that the ICC is losing credibility. However, there are some African countries (Botswana and Chad, for example) that remain in favor of the ICC.

RECOMMENDATIONS FOR FIGHTING SEXUAL VIOLENCE IN THE DRC

This section recommends actions to reduce the culture of impunity, increase protection, and address the root causes of the violence.

Acknowledge, Support, and Protect Local Women's NGOs

Despite the international community's interest in the sexual violence that plagues the DRC, even the most efficient local NGOs have difficulty

securing funds for their projects. The bureaucratic grant-giving system has been strongly criticized by local women's NGOs, who legitimately claim that they have a better knowledge of the situation than international agencies. Since they will stay in the country after the UN's departure, the future of the fight against impunity as well as the reconstruction of Congolese society depends on Congolese women and men. The international community needs to acknowledge the value of national NGOs in capacity-building and in developing working relationships and partnerships that include local women's NGOs in the decision-making processes related to the fight against sexual violence.

In addition to funding issues, local women's NGOs face unique protection challenges. The unsafe situation prohibits or limits the ability of investigators to come to the field, so the ICC's Office of the Prosecutor (OTP) leads its investigation from neighboring countries and asks local NGOs to conduct preliminary research in remote areas and to facilitate contact with potential witnesses. Other NGOs are asked to relay information from the OTP to the ICC. These "intermediaries" are at risk of retaliation, and supporters of the various leaders indicted by the ICC have attacked some women's rights activists. These activists can rely on neither the national police nor UN peacekeepers. The intermediaries have no official status at the ICC since they are not ICC staff. They are neither witnesses nor victims; therefore, the UN does not protect them. During the November 2008 Assembly of the Parties in The Hague, human and women's rights NGOs denounced the absence of a protection mechanism for the intermediaries, who accomplished much of the ICC's mandate on the ground. As a result, the ICC registrar sent them a questionnaire on how to improve the security situation. The registrar has not yet taken any action.

Implement the MONUC Mandate

After the signature of the Lusaka Agreement in 1999, the UN Security Council agreed to send a peacekeeping mission to the DRC.⁶² The first mandate of MONUC was similar to traditional UN peacekeeping missions. The Human Rights Office of MONUC was in charge of surveying the situation of human rights in the country.⁶³ In 2001 and 2002, NGOs released documented reports on sexual violence describing the range of crimes committed against women and girls and identifying the different armed factions responsible for these crimes. While the security situation was deteriorating due to the presence of two dozen armed groups in the region, the Security Council decided in 2004 to modify the mandate

of MONUC to include the protection of civilians under imminent threat of physical violence and to investigate serious violations of human rights.⁶⁴ Despite this mandate, MONUC did not succeed in preventing crimes of sexual violence last year in North Kivu.

Following the attacks on Goma and Rutshuru in North Kivu last year by Nkunda's CNDP rebels, HRW and other NGOs, as well as the Office of the UN High Commissioner for Human Rights, rapidly denounced sexual violence perpetrated by both: the rebels and the national army. Trapped in their base located close to the city of Kiwanja, the UN peacekeepers failed to protect the civilians and women against the crimes perpetrated by the rebels, a task stated in the MONUC mandate.⁶⁵ The investigations led by the United Nations Joint Human Rights Office (UNJHRO) identified five cases of rape, including one that was perpetrated eighty meters from the MONUC military camp.⁶⁶ Among the reasons that explained MONUC's failure to protect civilians are language problems and a lack of communication between representatives of civil society and the peacekeepers, which resulted in difficulties in assessing the "nature or magnitude of the situation."⁶⁷ After the release of the UNJHRO report, MONUC decided to implement a multidisciplinary team in Kiwanja to improve relations between civil society and the peacekeepers, as well as to develop tools to better assess the human rights situation. This initiative needs to be extended to all the regions that are at risk of conflicts. The recruitment of francophone peacekeepers should be encouraged by the UN and the peacekeepers should be trained on how to protect civilians.

Efficiently Fight Impunity for Crimes of Sexual Violence in the DRC

To change the culture of impunity in the DRC, high-ranking officials must be prosecuted to the fullest extent of the law, the justice system must be reformed, and sexual crimes must not be eligible for amnesty.

Too many cases of sexual violence remain ignored and are left unprosecuted. In addition, "[t]here is a general lack of political will to prosecute high-ranking officials, especially in the military. Police and judicial bodies are weak."⁶⁸ Despite some goodwill, they are unable to prosecute, judge, and maintain perpetrators in jails. MONUC reported that "since January 2008, 1,519 prisoners, including inmates responsible for violent sexual crimes, escaped Congolese prisons."⁶⁹ Too often, criminals are released before their trials. A study undertaken by the MONUC Human Rights Office in 2007 shows that of the sixty-seven rape cases to be judged in 2007, 80 percent of the accused persons had been released before their trials.⁷⁰ On the mili-

tary front, as reported by HRW, “military commanders are powerful figures in Congo, often perceived as being untouchable.”⁷¹ In addition, the military justice organization makes it difficult to adjudicate top commanders, as it requires higher-ranking officers to sit as judges. The independence of judges is not respected; senior officials frequently interfere in prosecutions.⁷² Finally, commanders often protect their soldiers. The results of the investigations launched against two colonels who allegedly ordered rapes in the Kivu will be a test for the future of the fight against impunity.

Corruption is one of the major problems that need to be solved in order to restore an independent and effective judiciary and penal system. Police officers and guards have to be regularly and decently paid, and independent disciplinary mechanisms have to be set up to sanction misconduct. A culture of the rule of law needs to be developed. Civil and military judges need to be protected from any political interference. To prosecute higher-ranking officials, a mixed judiciary mechanism including national and international judges should be considered.⁷³ Finally, police officers and judicial actors have to be sensitized to the gravity of sexual crimes and the need to deter them.

The 2006 law against sexual violence allows for the prosecution of various sexual crimes committed in DRC territory since August 2006. The law defines sexual crimes by
 integrating many elements of international criminal law and the Rome Statute. As the 2006 law applies only to crimes perpetrated after its promulgation, sexual crimes perpetrated before August 2006 should be prosecuted under the provisions of the Congolese Criminal Code adopted in 1940. The old law only criminalizes three sexual offenses: indecent assault, outrage to public morality, and rape, though it does not define what constitutes rape.

“The absence of such a definition gives power to judges who traditionally interpreted rape as forced sexual intercourse between a man and a woman, while not considering marital rape a crime.”

The absence of such a definition gives power to judges who traditionally interpreted rape as forced sexual intercourse between a man and a woman, while not considering marital rape a crime. The 1940 law provides some aggravating circumstances when rape is perpetrated against a child under the age of fourteen. The new Article 170(2) of the criminal code qualifies sexual physical contact as rape without identifying the material elements of the offense. This qualification contributes to the normative confusion

about what should be characterized as the crime of rape. In addition, rape of minors is rightly considered a very serious offense, while rape of adult women, in particular when they are not virgins, is not. This perception is still present among police officers and judges. An effective fight against impunity for sexual crimes requires that national judges undertake a rigorous examination of the law. Clearly, provisions of the 1940 criminal code should be strictly applied, but judges should also sentence the accused to the full extent of the law. Judges, lawyers, prosecutors, and police officers need to be trained about sexual violence as a component of discrimination against women. Despite the international community's efforts to strengthen Congolese judicial institutions, the national justice system remains weak. In the Kivu and Ituri, police officers lack the necessary supplies to carry out their duties; they often complain of not having gasoline for their motorcycles, making it difficult to undertake investigations on the ground. Most police officers also need to be better trained on how to collect evidence and conduct interviews in sexual crimes cases.

In addition, judges and prosecutors encounter problems in applying and interpreting the law because of social and cultural beliefs. The concept of marital rape is not widely accepted. The regional legal offices also suffer from scarcity of financial and human resources. The national justice system discourages victims from filing complaints because judicial expenses are too onerous, distances to the courts or the prosecution offices are too far,⁷⁴ and the possibility of being compensated is vanishingly small.⁷⁵ Several elements of the "road map" for fighting sexual violence adopted by the government in June 2008 have not yet been implemented: the exemption for victims of sexual violence from paying judicial costs, the increase of female personnel, and the drafting of a standardized medical certificate.⁷⁶ The status of the judicial system impedes the work of well-intentioned police officers and judges who cannot properly investigate and judge sexual crimes, partly because of logistics and financial problems. The Congolese government urgently needs to invest in its national justice system.

In December 2005, the transitional government adopted an amnesty law for persons prosecuted for crimes committed within the framework of legal military operations, political crimes, or expression of their opinion committed from August 20, 1996 to June 20, 2003.⁷⁷ The amnesty does not apply to genocide, crimes against humanity, or war crimes. Four years later, in 2009, the DRC government adopted, as a condition of the 2008 Goma peace agreement, a new amnesty law that covers acts of war and insurrection committed in the two provinces of Kivu from June 2003 to May 7, 2009.⁷⁸ While the amnesty law explicitly excludes genocide, war

crimes, and crimes against humanity from its reach, it may, “given the limitations of the Congolese justice system and the culture of impunity that enables ongoing violence” offer a blanket amnesty for crimes perpetrated by rebel groups and the national army.⁷⁹ Following the promulgation of the law, rapists have been erroneously released due to a misunderstanding of the law.

Amnesty laws should not apply to sexual crimes. The international community recognized in Rome that the laws and customs of war do not allow such crimes. The attempt made by the amnesty laws to distinguish between war crimes and facts of war should clearly not prevent the prosecution of sexual crimes committed by rebels, militiamen, or soldiers. While laws should be made explicitly clear in the future, national courts may legally prosecute sexual crimes perpetrated before, during, and after the conflicts without contravening the amnesty.

Address the roots of sexual violence

The international community and the Congolese government need to adopt immediate and long-term measures to address the root causes of sexual violence. Those measures include the restoration of peace, the modification of laws that discriminate against women, and the acknowledgment of the history of sexual violence in the country. Although the wars unleashed large-scale violence and atrocious sexual crimes, discrimination against women is deeply entrenched in customs, laws and minds. The country ranks 130 out of 136 countries in the UNDP gender-related development index.⁸⁰

Even though Article 12 of the Congolese constitution guarantees equality between men and women, women are still suffering from legal discrimination. As discussed, a married woman is subjected to her husband's will. Her goods and assets belong to her husband, she is not free to choose her residence, and her husband has to agree to any commercial or work activity.⁸¹ In cases of adultery, married women are more severely punished than men, and punishment of women's “disobedience” is socially accepted. Widows are not entitled to inheritance. Customary practices entail arranged marriage, early marriage, and forced marriage, which make people think that women belong to the husband's family. Raping a woman is perceived as an offense against the family that needs to be repaired by paying financial compensation or by marrying the raped girl.⁸²

Women also face discrimination at school and work. Families tend to privilege boys' attendance at school. Boys in African societies are the future

of their family, and sometimes of their village. In contrast, girls at school and women at work are often victims of sexual harassment or sexual coercion. Few women have access to national, provincial, or local institutions. Women are largely underrepresented in politics and in positions of power.⁸³ Without addressing these underlying issues, sexual violence is likely to continue.

Restore Peace and Include Women in the Peace Process

Women activists all agree that peace and a ban on arms trafficking are crucial to fighting sexual violence because insecurity favors impunity. But these measures by themselves will not be effective if women are not included in peace talks. Because women and girls account for the vast majority of those adversely affected by armed conflict,⁸⁴ and play an essential role in society, they have to be included and fully involved in peace-building efforts. In 2000, the Security Council adopted Resolution 1325 that “[u]rges Member States to ensure increased representation of women at all decision-making levels in national, regional and international institutions and mechanisms for the prevention, management, and resolution of conflict.”⁸⁵

Make Sexual Violence Part of National History

Peace talks and amnesties should not prevent the Congolese from knowing the history of sexual violence in their country. On the contrary, prevention requires that people are aware of the roots of the conflicts,

.....
“The phenomenon of sexual violence should no longer be seen as limited to conflict situations; it is a structural problem that requires national understanding at all levels of Congolese society as well as in the political sphere.”

the atrocities that were committed, and who was principally responsible. The scale of sexual violence has to be measured and assessed in order to fight against social and family stigmatization and to adopt efficient social, legal, and healthcare policies. The phenomenon of sexual violence should no longer be seen as limited to conflict situations; it is a structural problem that requires national understanding at all levels of Congolese society as well as in the political sphere. Different options to achieve this recognition may be considered.

One possibility is to create a truth and reconciliation commission with a broad mandate that will specifically address sexual violence.⁸⁶ Likewise, some

Congolese activists have tried to push for the creation of *ad hoc* or mixed tribunals to address the crimes perpetrated during the conflicts. Whichever solution is adopted, it has to be designed to include sexual violence.

CONCLUSION

Sexual violence in the DRC has a long history of social acceptance. Throughout various conflicts, the different governments and the military chiefs failed to respect humanitarian law. At least five million people have been killed during the conflicts, and an unknown number of women, girls, boys, and men have been victims of sexual violence. Over the years, international organizations, European and North American countries, and international and local NGOs have invested a large amount of money and energy into fighting sexual violence. However, the multiplicity of initiatives, undertaken by many different actors, dilutes their efforts, while onerous bureaucratic criteria for the allocation of funds and grants serve to exclude local NGOs from counseling and victim aid programs. In addition, the political situation is so complex, economic interests are so important, and the security situation is so volatile that the impact of initiatives aimed at fighting sexual violence are limited. Despite a great interest by the international community on issues of sexual violence, Congolese women's rights NGOs feel disillusioned because the efforts of the international community have not improved the situation.

The solutions to large-scale sexual violence in the DRC are not easy. The fight against impunity and the training of the combatants have had little impact on the ground. The tension between peace and justice was aggravated by the exclusion of women from the peace process, which resulted in some of the main perpetrators of sexual violence being integrated into the national army. Recent analysis and eye-witness reports about the conduct of national soldiers in the East do not show a fall in the rate of sexual violence in the conflict zones.⁸⁷ The failure of the government to adequately respond to discrimination against women and to adopt a comprehensive policy against sexual violence trivializes the harm done to women and masks the vicious violence committed against the whole society. Corruption, laissez-faire attitudes and privileges undermine the government's credibility. As long as the Congolese do not consider women equal to men, as long as peace is not secured, and as long as the government does not restore its authority in the country and enforce the law, ending sexual violence will be an impossible task to achieve. Ending sexual violence in the DRC needs more than money and international attention;

it requires local political will. ■

ENDNOTES

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- 59 “Washington juge “inexcusable” le non-transfert de Bosco Ntanga à la CPI,” *AFP*, November 2, 2009.
- 60 *Decision on the Meeting of African States Parties to the Rome Statute of the International Criminal Court*, AU document Assembly/AU/13(XIII), July 3, 2009.
- 61 The African countries generally accused the ICC of focusing only on the African continent while other crises exist elsewhere in the world. Numerous African leaders have accused the ICC of being a tool of Western imperialism. Some African countries present in Sirte did not support the resolution. David Greenberg reports that the conditions of adoption of the resolution were not fair. See David Greenberg, “African Union Declaration Against the ICC Not What it Seems,” *Foreign Policy in Focus*, August 6, 2009 <http://www.fpiif.org/articles/african_union_declaration_against_the_icc_not_what_it_seems> (accessed February 1, 2010).
- 62 The Lusaka Agreement was signed on July 10, 1999 by the DRC, Uganda, Rwanda, Angola, Namibia and Zimbabwe. It provided for a cease-fire, the control of boundaries to stop mineral trafficking and incursion of rebel groups, disarmament and national dialogue.
- 63 UN Security Council Resolution 1291, February 24, 2000.
- 64 UN Security Council Resolution 1565, October 1, 2004, articles 4(b) and 5(g).
- 65 For an explanation of the reasons for this failure, See *Kiwanja Report*, UNOHCHR, MONUC, paragraph 3.
- 66 *Ibid.*, paragraph 52. During the same period, the soldiers of the governmental army who were leaving fighting zones perpetrated around fifty rapes in Goma and Kanyabayonga. See *Goma/Kanyabayonga Report*, UNOHCHR, MONUC, paragraph 3.
- 67 See *Kiwanja Report*, UNOHCHR, MONUC, paragraph 3.
- 68 *Briefing Materials*, MONUC, 6.
- 69 *Briefing Materials*, MONUC, 7.
- 70 *Ibid.*
- 71 *Soldiers Who Rape*, HRW.
- 72 *Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy: Addendum – Preliminary note on the mission to the Democratic Republic of Congo*, UN General Assembly document A/HRC/4/25/Add.3 (2007), May 24, 2007.
- 73 *Soldiers Who Rape*, HRW.
- 74 For North Kivu, the court is located in Butembo, and the prosecutor’s office in Beni.
- 75 Most of the accused have no assets. When they do have some, they typically escape justice.
- 76 *Soldiers Who Rape*, HRW.
- 77 Loi n° 05/023 du 19 décembre 2005 portant amnistie pour faits de guerre, infractions politiques et d’opinion (Law number 05/023 on amnesty for acts of war and political and opinion crimes), December 19, 2005 <<http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=printdoc&docid=47305d032>> (accessed February 1, 2010).
- 78 Loi n° 09/003 du 7 mai 2009 portant amnistie pour faits de guerres et insurrectionnels commis dans les provinces du Nord-Kivu et Sud-Kivu (Law 09/003, May 7, 2009) <<http://www.leganet.cd/Legislation/JO/2009/JOS%2009%2005%202009.pdf>> (accessed February 1, 2010). Some deputies left the room when it was time to

vote. They disagreed with the *ratione loci* jurisdiction of the law that concerned Kivu. Some of them wanted the law apply to all the DRC territory and others wanted it to apply to Ituri.

- 79 *Amnesty Must not Equal Impunity*, International Center for Transitional Justice, 2009 <http://www.ictj.org/static/Factsheets/ICTJ_DRC_amnesty_fs2009.pdf> (accessed February 1, 2010).
- 80 *Yakin Ertürk Report*, UNHRC, paragraph 96.
- 81 *Report of the International parliamentary-expert mission addressing impunity for sexual crimes in the Democratic Republic of Congo: April 26 - May 3, 2008*, November 2008, 24, paragraph 44 <<http://www.humanrights.se/upload/files/2/Rapporteur%20och%20seminariedok/DRC%20SGBV%20Mission%20Report%20FINAL.pdf>> (accessed February 1, 2010).
- 82 *Ibid.*, 23, paragraph 42; *Yakin Ertürk Report*, UNHRC; Randi Solhjell, *Combating sexual violence in the DRC: Towards a Comprehensive Approach?* Norwegian Institute of International Affairs (NUPI), NUPI Report, 2009, 31.
- 83 *Yakin Ertürk Report*, UNHRC, paragraph 100.
- 84 Security Council Resolution 1325, October 31, 2000, preamble.
- 85 *Ibid.*, paragraph 1.
- 86 On November 9, 2007, the Rwandan and Congolese governments signed the Nairobi Communiqué, in which they agreed to work together to “dismantle the ex-FAR/Interahamwe as a genocidal military organization operating in the territory of the DRC,” paragraph 4 <http://www.iss.co.za/dynamic/administration/file_manager/file_links/GLCOM9NOV07.PDF?link_id=29&slink_id=5116&link_type=12&slink_type=13&tmpl_id=3> (accessed February 1, 2010); See also Surendrini Wijeyaratne, *Country Study: Is Canada Turning its Back on The Democratic Republic in Congo?* discussion paper, Walter & Duncan Gordon Foundation, Canadian Council for International Co-Operation, November 2008, 8, <http://www.ccic.ca/_files/en/what_we_do/002_peace_2008-11_inclusive_peace_drc.pdf> (accessed February 1, 2010) [hereinafter: Wijeyaratne]; “Democratic Republic of Congo (DRC): Peace Agreement signed between the CNDP and the DRC government – a breach of UN Security Resolutions?” *Women’s Voices*, May 2009, <http://www.iccwomen.org/news/docs/Womens_Voices_May_2009/WomVoices_May09.html#drc1> (accessed February 1, 2010). Two months after the Nairobi Communiqué, the Goma conference on Peace, Security and Development was held in Goma. It focused exclusively on the conflicts in the Kivu.
- 87 Wijeyaratne, 12.