

## Dorothea Hilhorst Provides Expert Briefing to the UN on Sexual Violence Response in the DRC

On Wednesday 27<sup>th</sup> January, Professor Dorothea Hilhorst will give an expert briefing in New York at the UN on a major forthcoming report co-funded by the Justice and Security Research Programme (JSRP), the Social Science Research Council (SSRC) and the **Secure Livelihoods Research Consortium** (SLRC). The briefing will take the form of a brownbag lunch, and will cover the main findings of 'Getting the balance right? Sexual violence response in the Democratic Republic of Congo: A comparison between 2011 and 2014', written by Nynke Douma, Dorothea Hilhorst and Jocelyn Matabaro, which builds on an **earlier study** by Douma and Hilhorst. The executive summary of the forthcoming report can be read below.

The briefing is part of a series of policymaker engagements arranged by Tatiana Carayannis, Research Director of the JSRP and Deputy Director of the Conflict Prevention and Peace Forum (CPPF) at the SSRC. CPPF was founded in 2000 as a program of the SSRC and works to strengthen the knowledge base and analytic capacity of the United Nations system. A product of the 2000 Brahimi Panel Report on Peacekeeping, CPPF helps the United Nations strengthen its understanding of conflicts: their causes, dynamics and possible solutions. It supports UN policymaking and operations by providing UN decision-makers rapid, quiet, and unfettered access to leading scholars, experts, and practitioners outside the UN system through informal consultations, off the record briefings, and commissioned research. It is called on frequently by the United Nations system to help brief high-level envoys and start-up missions, and to provide analysis during crisis situations.

### Executive summary of the report:

The Democratic Republic of Congo (DRC) is known internationally for its vast mineral resources, its wars and the conflict-related sexual violence that has affected the lives of a very large number of victims. With growing awareness on the phenomena, the number of programmes addressing sexual violence in DRC has grown, with remarkable achievements in diminishing taboos, helping victims in healing, and criminalising and prosecuting perpetrators.

However, over the past five years questions have emerged about the effects and effectiveness and of sexual violence response programmes. This motivated research that the authors of this report conducted in 2011. This research revealed a number of negative effects related to the complexity of the problem, the political, social and cultural context in DRC, and false assumptions and biases in the interventions. Based on our findings, we argued that sexual violence in DRC was often understood as a single cause, single type phenomenon (rape caused by conflict), without taking the complex context into consideration. We also noted that programmes too often dealt with symptoms rather than contributing factors, and failed to include broader themes and wider community needs. This risked creating false victims and parallel services. Furthermore, coordination was poor and sexual violence assistance was largely detached from overall development planning. Finally, the interventions in the justice sector failed to ensure the independent functioning of Congolese legal actors and often created unfair trials.

In 2011 most of these critiques had already been identified by Congolese stakeholders and some international actors, but they had not yet been openly debated. As this was expected to change, this follow-up research was conducted in 2014 to identify what happened to the sexual violence response three years later, addressing the following questions:

- How has the engagement of responding actors and their approaches to sexual violence in eastern DRC evolved since 2011?

- How have practices of sexual violence assistance evolved in eastern DRC?
- What are the social effects of increased legal action against sexual violence in urban areas of eastern DRC?
- How can sexual violence assistance programmes be improved?

## Methodology of the research and report structure

In May 2014, 49 semi-structured interviews were conducted with representatives of organisations responding to sexual violence (UN, international NGOs, Congolese NGOs), political actors, legal professionals and donor structures. There were also 10 focus groups with 57 respondents, some in rural areas with a high density of NGO programmes, as well as with urban respondents largely removed from NGO activity. Recent publications (from 2011 to mid-2014) were analysed by an intern from the University of Amsterdam. Funds available for sexual violence were also reviewed. Finally, 46 legal files of sexual violence cases in five different civil and military jurisdictions at first degree and appeal level in South Kivu were studied. There was also follow-up on 18 out of the 40 files examined in 2011. All of the data have been coded and analysed through the use of N-vivo.

## Background to sexual and gender-based violence in Congo

The narrative of sexual violence in DRC has been reductionist in nature, mainly addressing rape and focusing on its relation with conflict (the 'rape as a weapon of war' discourse). Conflict-related sexual violence in DRC is indeed real and the presence of a large number of rebel groups in the Kivus, along with increasingly decentralised recurring armed conflict, continues to claim new victims. Several scholars, however, have found that sexual violence is much less organised than the 'weapon' discourse evokes, and that this discourse obscures understanding of sexual violence. Also, a single focus on conflict-related sexual violence normalises other forms of violence, including other forms of sexual violence. The emphasis on female victimhood means that male victims do not get recognised.

Owing in part to civil society lobbying, DRC now has a comprehensive legal framework on gender and sexual violence (including ratification of important international conventions). However, customary practice continues to box women in a secondary position, whether it concerns the institutional domain (women's leadership) or socio-economic participation. Norms around masculinity, in part influenced by warfare and its consequences, further shape practices of sexual 'access' to women. Yet, it must be recognised that the realities of non-conflict sexual violence in DRC may not be so different from those in other countries that score higher on the social development index and are not affected by conflict.

## Engagement and approaches of actors responding to sexual violence

Intervening actors: The 2011 report noted that there were hundreds of organisations working on sexual violence, both at the international and community level. In 2014 their number had not diminished, but the volume of activities had gone down. This is part of a wider trend of reduced funding for Congolese NGOs. As in 2011, intervention strategies were still mainly guided by the 2009 national strategy and orientation provided by the thematically organised working-group system of UN agencies.

Coordination: The previous report criticised organisations for victim appropriation and duplication of efforts. Efforts to coordinate sexual violence assistance and referencing of victims had greatly improved since 2011. The Ministry of Gender has taken greater ownership in guiding coordination, stimulating alignment of the UN working groups with provincial coordination structures. Several respondents were satisfied with improved coordination of medical assistance, with the Ministry of Health cited as a strong partner. What stood out was the lack of engagement with parliamentary representatives, who claimed to have an interest in collaborating with NGOs but felt left out of discussions. Their attachment to geographical constituencies and the realities on the ground would make them an interesting partner to engage with.



**Prevalence:** The 2011 report found there was a preoccupation with reporting on the scale of the problem through statistics. However, data collection and analysis was problematic, including problems with extrapolation to the wider context, overlapping datasets, false reports of cases, and perverse incentives to report cases. Media headlines further contributed to reductionist information. The report concluded that statistics should be used with the utmost care, complemented with qualitative and contextualised information to avoid distortion and encourage transparency. This conclusion continued to be valid in 2014. Improvements had, however, been noted since a specific working group on data gathering and analysis was initiated in 2012, spearheaded by the UN Population Fund (UNFPA). No major change in the number of sexual violence cases reported was observed.

**Changing views and approaches:** Over the past few years, international policy attention on sexual violence has remained high, as a 2013 G8 declaration, new UN resolutions, and an international summit on sexual violence in London showed. The International Criminal Court (ICC) has also intensified its prosecution of Congolese warlords. Attention to sexual violence in DRC continued to relay the rape as a weapon of war discourse. A significant number of international NGOs also presented a similar discourse on their websites, even though actual programming was less geared to conflict-related violence than in 2011.

Organisations increasingly emphasised sexual violence committed by civilians, impunity, women's empowerment as a means to reduce vulnerability, and the need to target men as allies in fighting sexual violence and changing social norms. Organisations have incorporated broader gender notions, moved to address gender-based violence in geographical areas that are currently more peaceful, and tried to embed sexual violence responses in other programming.

**Funding for sexual violence:** Based on data from the major Multi Donor Trust Funds, there was a clear decrease in funding available to DRC over the 2012-2013 period as compared to 2010-2011. Trust funds on peacebuilding and security sector reform have been reduced, adding further evidence to the finding that attention to the conflict-related causes of sexual violence have diminished. The Stabilisation and Recovery Funding Facility (SRFF) on sexual violence had a same proportion of the total as before. Other large programmes on sexual violence represented a budget of \$124 million between 2009 and 2015. As there was an increasing tendency to incorporate sexual violence assistance in other domains (for example, health), actual available funds may continue without being earmarked as such. The Congolese state budget on gender (and its actual disbursement) had increased in comparison to 2011, yet continued to be marginal compared to international engagement.

The 2014 research found an evolution in understanding sexual violence and increasing embeddedness in broader gender and health approaches. This has had many positive effects, yet also created some new problems. In particular, it has complicated monitoring on the effects of programming on the prevalence of sexual violence. In addition, it has increased the gap between international policy representation of the issue (still emphasising the weapon of war component) and realities of programme implementation on the ground.

## **Sexual violence response**

**Immediate response to rape in conflict settings:** While there was activity to follow up emergency cases, the issue of under-servicing these cases was generally acknowledged, for example in the case of the Beni area where Allied Democratic Forces-Nalu (ADF-Nalu) were abusing victims at the time of research. This confirmed findings from 2011 that sexual violence programming has been much more focused on reachable areas, relatively close to the provincial capitals, with an increased focus on community/civilian forms of sexual violence to the extent that conflict-related sexual violence may be neglected.

**Medical response:** With regard to medical response, four major findings stood out in 2014. Firstly, there was increased effort (especially by the specialised hospitals Panzi and Heal Africa) to introduce one-stop centres with all facilities related to sexual violence collected under one roof.

Many respondents feared that this would reinforce the creation of parallel structures and leave other health issues unaddressed. Secondly, an opposite trend among some donors was to strengthen the capacities of regular health services in order to mainstream care for sexual violence. This generated discussion about the extent of free medical services for violated women. Thirdly, the 2011 report raised attention to the fact that only around 3% of fistulas operated on by Panzi and Heal Africa have been directly caused by sexual violence, while international funding and media categorised nearly all fistulas as caused by rape. Even though more recognition of this issue could be observed in the current report, there remained a lack of attention and means for the main cause of fistula: childbirth in dire conditions or by very young women. Fourthly, in past years there was a high level of distribution of post-exposure prophylaxis (PEP) kits (against HIV contamination) for women affected by sexual violence. This over-supply created misuse (selling parts of the content), but recent improvements in coordination of the PEP-kit distribution under auspices of the Ministry of Health had improved this situation.

Psycho-social assistance: Statistics claimed that more than 90% of victims received psycho-social assistance, yet this was considered by many respondents the weakest sector. In many cases this may have been limited to a single session. Much assistance in 2014 was still taking shape through listening projects (*maison d'écoute*). Specialised care, for example to deal with post-traumatic stress syndrome, remained largely absent.

Socio-economic reintegration: This type of service targeted very few women and was mostly shaped through the provision of some material incentive, such as a small monetary incentives or food items, on top of medical care. The trend had shifted to '*autonomisation*' (self-reliance), with attention on saving and credit initiatives, as well as micro-business development at community level, rather than focusing on individual beneficiaries.

Capacity development for prevention: A large variety of awareness raising and training for institutions, women and communities on topics related to sexual violence (assistance) has been organised. A lack of coordination, however, led to duplication. The duration and quality of trainers was contested, especially by professional target groups.

Aid effectiveness and appropriateness: The 2014 findings confirmed a trend identified in 2011 that people inside and especially outside of NGOs shared a frustration over the lack of results from the many millions of dollars invested in sexual violence assistance and other domains of aid. The special attention to sexual violence has fed frustration about other development needs not being covered, or other serious crimes not being addressed. This caused some people to form negative opinions about action against sexual violence.

## **Legal action against sexual violence**

Progress in legal action against sexual violence was observed in the 2014 research as more cases came before justice and the quality of proceedings improved. However, the Congolese justice system continued to be characterised by high levels of corruption and weak investigation capacities. High-ranking officers and resourceful civilians continued to escape justice or prison and victims did not receive compensation.

The Minova trial had become a case in point. The mass rape committed by the Congolese army was tried by a military court but led only to few convictions of lower-ranked personnel. Whereas this could be blamed partly on assumptions that all suspects were guilty, it appeared that problems had mainly occurred in the pre-judicial phase with a poor level of investigation and evidence.

Types of legal support: Legal assistance was in a large majority of cases limited to providing basic advice on legal rights. Only rarely did it concern actual legal accompaniment of victims. Added to the impunity challenges addressed above, actual court cases on sexual violence were low in number. A number of projects were intended to strengthen the presence and functioning of legal institutions, especially in rural areas. A lot of support continued to be channelled to the organisation of mobile courts (where jurisdiction travels to rural areas for trial). The 2011 report

observed perverse effects of these mobile courts for the independence of jurisdiction (pressure to convict, payments made to legal staff, cases selected by NGOs rather than the court) and the potential unfairness of trials (no defence for the suspects, short duration affecting the quality of proceedings). In 2014 significant improvements were noted, with the initiative for mobile courts largely restored to legal institutions, motivation payments harmonised, and the accused's right to a defence more effectively assured.

Sexual violence against minors: In 2014 there appeared to be a growing trend of sexual violence cases being reported in which one or both parties were adolescents of minor age. These were referred to as '*cas de copinage*' (boyfriend-girlfriend). The North Kivu prosecutor estimated these represented 90% of all cases reported to police, especially in urban settings. Such cases posed a dilemma. On the one hand the law defines (any attempt to have) sex with a minor as a crime that should be prosecuted. On the other hand, certain legal practitioners called for greater liberty in dealing with this type of case.

Comparative analysis of sexual violence cases: 46 recent court cases on sexual violence from five jurisdictions in South Kivu were examined (two first degree civil tribunals, a military tribunal, the civil appeal court, and the military high court). They represented cases registered and dealt with between 2012 and 2013 where the files were physically present (many more cases were registered but files had disappeared). The investigators were refused access to pre-judicial files (prosecutor level). In addition, 18 cases that resulted in 2011 in conviction were re-analysed.

As in 2011, all but two cases concerned rape as other types of sexual violence are hardly filed. The age of the victim and relationship between the parties seemed to confirm that at least a quarter of the cases concerned *copinage*. No improvement was noted with regard to the respect of legal timeframe, as nearly all cases vastly surpassed the three-month limit fixed for sexual violence. With regard to evidence present in files, a general improvement was noted – especially concerning the presence of medical reports (absent in 41% of the cases in 2014, as compared to 75% in 2011). The percentage of convictions increased from 60% to 80%. As in 2011, motivations for acquittal were relatively well developed, but in 2014 the quality of motivations for conviction had significantly improved. The type of penalties remained the same (and are quite severe) and compensation payments continued not to be made. Even though the overall quality of proceedings improved, progress was mainly noted for the appeal courts and to a lesser degree the military tribunal. For the civil tribunal, only one in eight judgements was deemed to have sufficient grounds for the conclusion reached.

As for the 18 cases that resulted in conviction in 2011, four out of the five convicts whose term officially ended in the meantime were still in prison by 2014. On average, they served two years beyond their initial penalty, which constituted a clear violation of their rights. None of the 12 eligible cases received conditional liberty. None of the 14 cases convicted to a compensation payment actually paid the victim. In spite of a general belief that sexual violence convicts escape en masse, of the 13 convicts whose term had not yet finished by 2014, only one was no longer in prison. The sample only concerned poor men and low-ranking military personnel, confirming claims that influential perpetrators never make it before justice.

Social practices around legal cases on sexual violence: The 2011 report found evidence of people framing disputes or failed consensual relations as rape, in order to take revenge or gain material benefit. In 2014, more traces were found of such practices, for example in the many cases of *copinage*. Rumours about policy involvement in framing rape cases for purposes of extortion had swelled between 2011 and 2014. A focus group of Bukavu youths reported wariness to engage in love relationships out of fear of being accused. Cases of abuse and fake police-cases over sexual violence claims increase the risk ordinary that citizens stop seeing sexual violence as a serious problem.

## Conclusion



The response sexual violence in eastern DRC peaked around 2012, but since then a reduction has set in. In 2011, many perverse were observed, as it invited misuse of funds at all levels of society. One of the questions informing this report was how this would continue? Would the negative effects become more dominant? Or could this hype usher in more serious attention to gender issues in DRC?

We find that attention to sexual violence has indeed become more regulated and coordination has improved, including with regard to the engagement of the Congolese government. The approaches of actors dealing with sexual violence have changed. There has been more attention for other forms of gender-based violence, women's empowerment and leadership. Victim-oriented support has largely transformed into community-based responses. There is also more recognition of other medical needs.

However, the discrepancy between international rhetoric and realities on the ground is large, with international representations still focusing on the conflict-related rape. This is problematic from an ethical point of view, comes at the expense of transparency, and makes it difficult to scrutinise programmes for their effectiveness.

The gap between the discourse and practice of sexual violence response has been widened. A major concern remains that the fight against impunity has found a way in the political economy of survival and corruption, especially in the cities, where accusations of sexual violence are often used for revenge or extortion. Citizen disengagement with the issue of sexual violence has become stronger as a result.

## Recommendations

On the basis of this report, the following recommendations are made:

Be more transparent about sexual violence response: International agencies should review the conflict-related sexual violence discourse to match it better to local realities of violence and their programmes to end violence, including more precise theories of change.

Develop a comprehensive policy on sexual violence response: The government, together with the UN, should develop a clear strategy on sexual violence response and clarify how the creation of parallel services through one-stop approaches relate to policy perspectives of the health system, including free service provision.

Be more transparent on fistula operations: Notwithstanding the enormous benefits of specialised hospitals, it is important to become more transparent about fistula causes which should lead to more attention to reproductive health care.

Review sectoral sexual violence response: In light of substantial turnaround of public funds and private donations for sexual violence, concerns ought to be externally and transparently evaluated, throughout the sector. Topics that stand out are: the methods and effectiveness of psycho-social response; the practices and effectiveness of training facilities; the coverage and effectiveness of response in armed encounters/rebel attacks; and attention to male victims of sexual violence.

Continue capacity development of the medical and legal sector: Despite improvements in medical and legal response, capacity development of these sectors is of paramount importance (e.g. pre-judicial investigative capacities, respect for the rights of suspects). This is a much broader concern than sexual violence alone and should also address the health sector.

Have an honest discussion on the social effects of the fight against impunity: Thanks to the attention to fighting impunity, many cases are brought to court that in fact concern cases of *copinage* (consensual relations). The question is whether this is desirable. The exclusively legal



approach to sexual violence should at least be accompanied by more educational approaches on contraceptives and reproductive rights.

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She coordinates a large research programme focusing on South Kivu in DRC, together with the Institut Supérieur de Développement Rural (ISDR). In the past years, she has engaged in research on the responses to sexual violence in DRC. Discussions with women in urban areas on sexual violence generated a further interest in the prevalence of transactional sex, which has been the focus of her last research.

Her publications focus on the everyday practices of humanitarian aid, disaster risk reduction, climate change adaptation, reconstruction and peace building. She coordinates research programmes in Angola, DRC, Afghanistan, Ethiopia, Sudan, Mozambique and Uganda. She has recently published the volume: *Disaster, conflict and society. Everyday politics of crisis and crisis response* (London: Routledge, 2013). She is general secretary of the International Humanitarian Studies Association. Twitter: @hilhorst\_thea

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*Note: articles present the views of their authors, and not necessarily the position of the Justice and Security Research Programme, nor of the London School of Economics and Political Science.*

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