



Ministry of Foreign Affairs of the  
Netherlands

Radboud University



## Special Working Paper Series on ‘Unintended Effects of International Cooperation’

Working Paper No. 2017/4

### **Beyond the hype? Legal responses to sexual violence in DRC in 2011 and 2014.**

Dorothea Hilhorst and Nynke Douma\*

#### **Abstract**

There has been a high level of international support to combat sexual violence in the Eastern part of the Democratic Republic of the Congo. This paper investigates whether or not there has been a hype of international support, and concludes on the basis of in-depth interviews and document analysis that there has been a hype. The papers continues to investigate what the unintended effects were of this hype, and identifies amongst others that it lead to an inflation of rape statistics. A major concern is that accusations of sexual violence are often used for revenge or extortion, and as a result citizens are more disengaged with the issue. By comparing the findings during the hype (2011) with the situation three years later (2014), it is noted that the aid system does have some capacities to deal with the most negative unintended effects. There have been some gains, such as victim-oriented support widening to community-based response, greater attention being paid to other forms of gender-based violence, and other medical needs becoming more recognised, conflict-affected rape still remains the focus of international rhetoric. A disconnect remains between the international narrative and the actual realities on the ground. There are still innocent alleged perpetrators of violence in prison in the Eastern part of the DRC.

Copyright ©

\* Institute of Social Studies of the Erasmus University

This paper has been presented at the ‘Unintended Effects of International Cooperation’ conference on January 16&17, 2017 at the Netherlands Ministry of Foreign Affairs in The Hague. The opinions expressed in this article are the author's own and do not reflect the view of neither the Netherlands Ministry of Foreign Affairs, nor the Radboud University, or any other affiliated institutions.

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 large number of citizens. Response to sexual violence started during the final years of the 20th century, when Congolese women groups supporting victims of violence increasingly found their way to radio programmes and international fora to provide witness accounts of what happened. This gained momentum and at the end of the first decade of this century, Congo had become exemplary of conflict-related rape, with the UN special representative on sexual violence (Margot Wallström) dubbing the country the ‘rape capital of the world’ in 2010. In these years, Congo also became the country of unprecedented interventions to halt sexual violence, stop impunity and support victims. The volume of programmes addressing sexual violence in DRC has been impressive, with remarkable achievements in diminishing taboos, helping victims heal and recover, and criminalising and prosecuting perpetrators.

For several years, attention to sexual violence overshadowed every other concern around DRC’s rocky road to peace, the continued governance crisis, and other types of violence and issues of dire poverty affecting the vast majority of the population. In these years, as reported by (Autesserre 2012): “According to an insider, since 2009, there has been no interest in the DRC at the United Nations (UN) Security Council except when it discussed incidents of mass rapes and potential responses to them”. Peacebuilding and development programmes all made reference in their objectives to the combat of sexual violence, and would not receive funding if they did not. The dominance of the theme, where for a time nothing about DRC could be said or imagined outside of it, warrants the label of a hype. Hypes are usually associated with technological innovations that receive a lot of media attention (Meijer et al 2009), yet can also occur around a particular problem, where the hype is a set of story-lines outlining the problem and promising a certain solution. Although hypes pass by, they have effects and “influence what people think and do” (Meijer et al 2009, 3). It is not surprising that this hype also led to a range of perverse effects. These effects first became noticeable in stories told by local people and aid workers during informal meetings in the ‘corridors’ of aid in North and South Kivu, triggering research, amongst others by the authors of this paper, and reforms.

Our initial research, conducted in 2011, was done at the top of this hype (Douma and Hilhorst 2012). Reports around those year outbided each other about the gravity of the problem, often based on dubious extrapolations, and every international and domestic agency was engaged in the response to sexual violence. Participants to the research identified a long list of problems with the response, ranging from lack of coordination; competitive, almost predatory, practices to solicit victims for response programmes; misleading reporting; a reductionist treatment of women as victims disregarding their agency; and a single focus in service provision that meant that women if they wanted to obtain livelihood or medical support had to pose, or accept to be registered, as victims of sexual violence. It had become common to refer to sexual violence as a ‘fond de commerce’, which became the title of our report.

In 2014, we repeated our research. Even though only three years had passed since the first round of research, we anticipated that there had to be changes in the sexual violence response, for two reasons. Firstly, we expected that the swelling critique from operational actors that was omnipresent in our 2011 interviews, would have resulted in reform. Secondly, we were aware of the diminishing donor support for DRC and suspected that the response was over the top of the hype, and we were interested to see what happened after the hype, and whether the attention to sexual violence had led to sustained changes. We found indeed remarkable changes in the approaches to sexual violence. This paper will summarize these changes and focus especially on the legal responses to sexual violence.

The fight against impunity has led to impressive legal developments in DRC. In a country scoring low on performance in every public domain, legal responses to sexual violence have led to substantial numbers of

prosecutions and verdicts within the first decade of legislation against sexual violence that was adopted in 2006. The massive attention to fighting impunity brought about a number of problematic issues, amongst others regarding the rights of suspects, to the extent that everyday parlance did not even distinguish suspects from perpetrators. This paper analyses two data-sets that were collected on legal responses in 2011 and 2014. Both data-sets include the analysis of a number of case files from different criminal and military courts in South Kivu. In addition, the analysis rests on qualitative interviews and focus-group discussions to establish trends in the social responses to sexual violence that were triggered by the fight to impunity.

The DRC continues to be an important case for studying responses to sexual violence. The notion of ‘rape as a weapon of war’ line has been very powerful in generating international policy attention for sexual violence. This has not been unproblematic, as the notion is misleading in different respects (Eriksson-Baaz and Stern 2013, Cohen et al 2013). The DRC is always at the forefront in international fora about sexual violence, and lessons from DRC could be highly valuable for the many other countries where conflict-related sexual violence is a sad reality of today.

### **Responses to sexual violence in DRC**

The issue of sexual violence in DRC was raised in relation to the series of wars that started in 1996. Sexual violence continues to be strongly related to conflict and insecurity. In particular, North and South Kivu have seen several outbreaks of (renewed) conflict, which involved sexual violence crimes committed against civilians by a number of rebel groups. Since 2005, many insurgencies have withdrawn to rural (remote) areas, and since 2010 the intensity of fighting appears to have gradually diminished.

In recent years, attention is shifting to sexual violence perpetrated by civilians. The largest survey on sexual violence that was held in DRC concluded that domestic and civilian rape far outnumbered war-related rape (Peterman, Palermo, and Bredenkamp 2011). The outcome of this survey was criticised on several counts. Nonetheless, this particular conclusion corresponded with other data and observations of key-persons in our interviews. The rise in civilian abuse may in several ways be related to post-conflict conditions, which is a pattern seen in other post-conflict settings, where sexual violence becomes more frequent, which has been explained as resulting from an eroded sense of manhood on the one hand, and militarized masculine control-seeking behaviour on the other (Bouta et al 2005, 38).

DRC set up a first gender secretariat under Mobutu in the early 1980s, and ratified the Convention on the Elimination of all Forms of Discrimination against Women in 1985. DRC adopted several additional African and UN resolutions relating to women’s rights, including the influential UNSCR 1325. Legal responses to sexual violence have started in 2006, when the country with the assistance of the international community adopted a law on sexual violence, even before the ratification of the new constitution of the DRC. The law makes reference to 16 types of sexual violence. For rape, it foresees between 5 and 20 years imprisonment. Importantly, sexual intercourse with minors, below the age of 18 has been included in the definition of sexual violence. After the ratification of the law, a national strategy to combat sexual and gender-based violence was adopted in 2009. Gender-based violence here refers to violation of women’s rights, for example to inheritance. Women have an important role as food providers in the family, but have a low position in the political, social and economic spheres of the country (Sida 2009, Ministry of Gender 2011). Despite the equality of men and women before the law, many domains of life, including marriage, continue to be dominated by customary practice. The DRC has a high rate of early marriage of girls between the age of 15 and 19 years, mostly in rural areas.

## **Fighting impunity**

Fighting Conflict-related sexual violence started to be addressed in earnest since the Beijing's Women's Conference in 1995, where many women from the Balkan testified about rape as a deliberate strategy of ethnic cleansing in that region. Since 2000, the UN Security Council has adopted 8 resolutions on Women, Peace and Security, and five of these specifically address sexual violence in conflict (Lake 2014a). The latest, resolution 2106 highlighted the nexus between rape and the politics of war, and emphasising the fight against impunity. Resolution 2106 reads (UN Security Council 2013: 2):

The Security Council [...] notes that sexual violence can constitute a crime against humanity or a constitutive act with respect to genocide; further recalls that rape and other forms of serious sexual violence in armed conflict are war crimes; calls upon Member States to comply with their relevant obligations to continue to fight impunity by investigating and prosecuting those subject to their jurisdiction who are responsible for such crimes.

In June 2014, a global Summit to End Sexual Violence in Conflict was held in London. The summit was a joint initiative of the British Foreign Secretary William Hague and the Special Envoy for the UN High Commissioner for Refugees, Angelina Jolie. It was attended by 1,700 delegates from 123 countries and aimed to develop action to tackle impunity for the use of rape as a weapon of war and to begin to change global attitudes to these crimes. International resolutions to fight impunity have been followed-up at the international level, most notably with the first convict of sexual violence by the International Criminal Court, former Congolese rebel leader and oppositional party leader Jean-Pierre Bemba, in 2016. On-going proceedings against Bosco Ntaganda also include accounts of sexual violence. The resolutions have also given rise to a large range of internationally-sponsored interventions in DRC.

Rape in DRC has customarily been dealt with through amicable arrangements, which could include material compensation (not necessarily to the woman, but for example to her husband) or forced marriage between the victim and the perpetrator. In the last ten years, a formal legal practice around sexual violence has developed and large number of victims of different socio-economic backgrounds have taken the step to seek justice, have been taken seriously and heard, and many convictions have followed as a result. This fast-track judicial development in a country known for its weak governance and an expenditure for the legal domain of just 0.03% of the annual budget in 2009, has been attributed to the large support of the international community, that found in the weak state conditions a large room for manoeuvre to pro-actively shape this legal domain in support of local forces aiming to fight impunity (Lake 2014a).

Legal support has consisted of training of legal personnel, rehabilitation of legal infrastructure, support for courts, legal counsel for victims, and the support of a range of local NGOs that could support women in their process. Apart from the regular courts, there have also been mobile courts. Sexual violence crimes are the sole jurisdiction of higher courts, located in urban areas, and there are no venues to seek justice in rural areas. Mobile courts fill this gap to show people in rural areas that justice is possible, create awareness and build confidence in the justice system. There have been civilian courts, but in view of the attention to conflict-related rape, most of the mobile courts have consisted of military tribunals.

Our research in 2011 brought out a number of problematic aspects of the fight against impunity. The justice system appeared to be biased against young, poor, vulnerable suspects that were easily convicted compared to more powerful suspects. In the case of the military tribunals, convictions mainly concerned the lower ranked. Other research found that military lacked confidence in these tribunals and considered them corrupt (Eriksson-Baaz, Verweijen, and Deslaurier 2013). The international support for mobile

courts and justice in cases of sexual violence led to the neglect of other criminal offences, since courts tended to follow the donor's agenda. Most problematically we found the lack of distinction – in discourse and practice – between suspects and perpetrators. Suspects were in many instances not given legal counsel and they were mostly presumed to be guilty. The research concluded that rights of suspects were severely breached.

### **Other domains of response.**

This paper focuses on legal responses and the fight against impunity, but this needs to be understood in the context of a much larger response to sexual violence, including organisation, awareness raising, medical responses, and the provision of livelihoods support for victims. In 2011, when financial assistance was at its peak, we found hundreds of local agencies working on sexual violence, among them many without a track record. Local development organisations felt constant pressure by donors to refocus on sexual violence (Lake 2014a, Mertens and Pardy 2016). Assistance was concentrated in easily accessible areas, where high incidents of sexual violence crimes in the war period (1996-2002) had occurred and this led to a huge competition over beneficiaries. Many medical or socio-economic services were exclusively reserved for victims of sexual violence, leading to widespread false reporting when all beneficiaries were counted as victims. International agencies maintained that programmes were 'abuse-proof' because the stigma attached to rape would inhibit the presentation of fake cases. None of the Congolese respondents supported this view. They maintained that women in dire need of medical or socio-economic assistance would pretend to be a victim of sexual violence. A striking example was found in medical care, where sexual violence programmes in practice compensated for the lack of reproductive health facilities. The two most renowned hospitals for the treatment of fistulas of rape victims, estimated that only a small percentage of the cases they treated were the result of rape, while the others resulted from complications in childbirth.

Awareness raising through radio, billboards and community meetings was an important aspect of the response. Research by Milli Lake found that women who choose to take legal action, became motivated by these awareness activities to stand up for their rights, in addition to more material incentives (Lake 2014a). It has also been noted that in certain communities the stigma around sexual violence lessened and the attitude to raped women and children born from rape had changed. There were also problematic aspects to awareness raising, especially with regards to the treatment of sexual intercourse with women under 18 as rape, which did not match customary practice and was often considered unfair (see also Dolan 2010). Customarily, women could get married from 14 years old (and this is still the age referenced in the 1987 Family Code, which is currently under revision because it conflicts with the constitution) and they were given the liberty to engage in sexual relations more or less from that age onwards (Hilhorst and Bashwira 2013).

All in all, there have been a number of critical publications on the responses to sexual violence. While recognizing the importance and achievements of these responses, critical issues have been raised with regards to the single focus on sexual violence at the expense of other political, socio-economic and gender priorities; the international pressure to advance the issue and the subsequent dependency on this support; and unintended effects leading to misuse of the support and legal responses. While the 'hype' on sexual violence has had positive and negative consequences, questions remain unanswered to the long-term effects of this 'hype'. Will it result in a more balanced approach, will the side-effects dominate, or will it simply dissipate? The issue is complex and it is too early to have a clear hindsight window of how it evolved, but this paper aims to start the discussion with a comparison of the legal responses in 2011 and

2014. It focuses especially on how the fight against impunity has evolved, how it has continued to deal with suspects of violence and how local people interpret and use the courts addressing sexual violence.

## **Methodology**

The importance of following interventions as they get shaped during their implementation is derived from a sociology of praxis, that views interventions as policies that alter when they enter a social field, where – after Bourdieu - people act to pursue survival or other objectives in historical, non-homogeneous contexts. Actors in and around the intervention invest the programme with meaning on the basis of how they assess the intentions and possibilities of the programme and seek to transform the programme into a conduit to meet their strategic needs (Long and Long 1992). The realities and outcomes of aid depend on how actors along and around the aid chain — donor representatives, headquarters, field staff, aid recipients and surrounding actors — interpret the context, the needs, their own role and each other (Hilhorst and Jansen 2010). Especially in arenas where many similar interventions are concentrated, such as in sexual violence response in DRC, actors respond to programmes on the basis of their observations of and experiences with the ensemble of interventions happening in their locality (Hilhorst 2003). As a result, in high-level aid environments, interventions become emergent properties that get embedded in the social and political dynamics in situ, altering in the process and in turn refracting these local realities.

To better understand these realities, we have opted for a mixed method methodology with qualitative interviews at its core. Semi-structured interviews (58 in 2011 and 49 in 2014) were held with representatives of organisations responding to sexual violence (UN, INGOs, Congolese NGOs), as well as relevant political, administrative and legal institutions (judges, court clerks, public prosecutors and court presidents). We set out the 2014 research as a panel research, aiming to ask the same questions to the same set of people. Given the high turnover in the international aid sphere, this was often not possible. Nine participants were interviewed for both researchers, and an additional 13 participants held the position of a previous participant. We also interviewed additional and new actors, including donor representatives. The interviews asked specific question on the line of work of the participant, as well as a number of general questions about their observations and opinions of the ensemble of interventions.

In 2014, we also conducted 10 focus groups discussions about the positive and negative effects of the responses to sexual violence. Four focus groups 8 were held in areas with many NGO programmes and were meant to distil what people had absorbed from training and what they identified as outcomes and possible problems. Four focus groups in urban contexts were largely removed from NGO activity. Participants in these groups based their opinions on sexual violence programming mainly on experiences with the legal system, personal stories and/or radio programmes. Two focus groups were held with members of the provincial parliaments of North and South Kivu.

We also performed an analysis of legal cases on sexual violence. In both 2011 and 2014 respectively 40 and 46 legal cases on sexual violence were analysed from five civil and military jurisdictions at first degree and appeal level in South Kivu. The files were analysed by a lawyer who made profiles of suspects and victims and examined the files for their procedural quality. We analysed all cases that had come to a conclusion in the two years prior to the research. In 2014 we also followed-up on 18 cases that resulted in conviction from the 2011 analysis, to assess what had happened. The sample is too small to make statistically significant claims, and the outcomes have been analysed in conjunction with the qualitative data to assess the findings.

## Findings

This section presents the findings on general trends in the response to sexual violence, trends in the legal response and finally the social responses the latter has triggered.

### *General trends 2011-2014 in the response to sexual violence*

In 2011, we found 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 considerably gone down. Respondents commented that the ‘hype’ was over and that the sexual violence response was beyond its peak. On the other hand, the reduction in funding was also part of a wider trend of reduced funding for Congolese NGOs. The reduction of activities was highly visible in local areas where large numbers of rusted bill-boards reminded of previous activity, and few projects remained.

In 2011, the response was overwhelmingly victim-oriented, with a single focus on sexual violence and a strong emphasis on direct service delivery to victims. Looking back on those years, a respondent said: “The issue of sexual violence was colonized by humanitarian organisations. It was almost treated in a similar way as women need shelter, and other needs, instead of looking at the specific causes’. While most agencies claimed to be holistic, combining medical, psycho-social, economic, and judicial assistance (Pratt and Werchick, 2004: 6), responses were disjointed and uneven, with a strong focus on medical support. The availability of medical care for sexual violence stood in strong contrast to general health care, with stories of mobile clinics that were looking for victims while refusing to treat men and women with other urgent health problems (see also Errico et al 2013).

In 2014, most international and domestic agencies had changed their approach in three ways. Firstly, there was a strong shift in attention on civilian violence, to the extent that actual conflict-related sexual violence received little attention and may have become underserved. Secondly, sexual violence was embedded in broader gender or health programming. A donor representative said that “More people are seeing the need to connect action against sexual violence to a much broader gender agenda”. The concept of gender-based violence had come to include a range of issues, such as inheritance rights, and there was a shift to the cultivation of women leadership. Health responses had largely become integrated in maternal health or reproductive health care of regular hospitals. The latter trend was, however, contradicted by some ambitious projects to develop one-stop institutions focusing on all aspects of sexual violence response. Social-economic programming had become more community-based, meaning that they organized all women, rather than handing out assistance to victims only, reducing the stigma and likelihood of fake victims. Thirdly, we noted a significant change in the involvement of the Congolese government in the coordination and implementation of the responses. The financial contribution of the government remained negligible, but had grown in the three year gap between the researches from 0,10% of the state budget for the Ministry on Gender to 0,22% (Ministry of Budget 2011 and 2014).

As a result of these trends, a number of problems seemed to be resolving, while others remained and new issues had started to arise. A number of agencies had started to involve men in their programmes to encourage them to protect women, but there was still none of them paying attention to men as victims of sexual violence. While a higher level of integration of sexual violence work in general programming followed earlier recommendations, it had also led to a situation where the direct relation with sexual violence became remote, and the effect and impact of programming on sexual violence could not be established. Funding for combatting sexual violence could now be stretched to all kinds of intervention, as illustrated by a respondent who was convinced that “all basic healthcare is a response to sexual violence, because healthy women can better protect themselves against assault”. Finally, while the vast majority of agencies have moved to address gender-based violence in broader terms and in areas that are currently

more peaceful, the discrepancy with the continued international representation of the response to rape as a weapon of war, and the operational realities on the ground had grown.

### *Legal assistance*

To fight impunity of sexual violence, legal assistance has focused on building capacity of the legal system and the support and accompaniment of victims. Such assistance comprises advice so that victims can decide if they want to go to court, provision of a lawyer and social accompaniment during the trial. Before going into the different types of court cases, a first finding was that, despite the large attention to sexual violence, only a fraction of cases lead to prosecution. In the year 2013, respectively 15% of 10,706 sexual violence cases reported in South Kivu were given legal assistance, whereas in North Kivu 29% of 6,898 were (UNDP figures). In most of these cases, assistance was limited to basic advice on legal rights, and only few are brought to court. The four civil prosecution institutions in North Kivu that were analysed registered 1,293 cases of sexual violence between 2006 (when the law on sexual violence was adopted) and 2013. This means on average 162 per year in the entire province. We have no accumulative data how many of these cases reached judgement. The capacity of the courts; weaknesses in forensic investigation; difficulties in identifying and arresting perpetrators, and a lack of confidence in the justice system may all be factors contributing to these sobering figures.

### *Capacity development and mobile courts*

In recent years several interventions have also invested in capacity development of legal personnel, for example by raising awareness about laws and procedures on sexual violence. Capacity-building programmes aim to strengthen the justice system and redress systemic injustice in eastern DRC, and there also been support to strengthen legal presence in rural areas, by refurbishing court rooms and prisons. For sexual violence cases, the Tribunaux de Paix in rural areas provide no solution, because these resort under de High Tribunals that are only found in the provincial capitals or larger urban conglomerations. To remove this obstacle, international actors have initiated a number of mobile courts (recognised under Congolese law) that reside for several weeks in an area to deal with local cases (Maya 2011).

In 2011, we found a large number of problems with these mobile courts. In particular, we found that the independence of the courts were threatened by the large influence of donors. Donors ensured that the courts focused only on sexual violence, and often selected the cases, which is the mandate of the judges. The pressure from supporting INGOs (who sometimes set a number of convictions per year in their log frame), combined with incentives around per diems and fees made the system very vulnerable for a pressure to convict. Supporting NGOs made funds available for legal representation of the victim, but not of the suspect, resulting in breaches of rights. Other issues concerned problems with coordination, procedures and time pressure.

In 2014, a number of substantial improvements were found in relation to these issues. The main stakeholders have made efforts to harmonize approaches to supporting mobile courts through a coordinating task force, and supporting international organizations keep more distance to safeguard the independence of the courts. Daily allowance standards have been harmonised, and fees reduced. Importantly, the task force has started giving support to the bar association that offers pro-deo assistance to suspects. The Judge-President of the Bukavu tribunal stated: ‘We should not interpret impunity in a single manner, or else we will convict the innocent.’ Funding for mobile courts continued to be



earmarked for sexual violence, although there have been some developments with organisations supporting cases over land disputes.

### *Mass-rape cases*

There has also been international support for high profile court cases addressing (mass) rape as war crime. At the Fizi trial in South Kivu (2011), a FARDC colonel was sentenced to 20 years in prison for allegedly having ordered mass rape, which was considered a break-through in prosecuting high-ranking army officers. In 2014, a similar and widely publicised trial was completed in Minova over mass rape, looting and killing by FARDC in 2012. The Minova trial started with high expectations, a ‘beacon of hope’ (Enough Project 2014), as the Congolese government took active responsibility for prosecuting alleged perpetrators of sexual violence. The verdict was pronounced in May 2014. Of the 39 defendants, 14 were acquitted, 22 sentenced to 10 or 20 years in prison for pillaging and breaking rank, and three given a life sentence in relation to rape charges. The verdict appeared to be class-based as 13 of the 14 acquitted were officers, and the convicts mainly low-ranking soldiers. According to Human Rights Watch “there were also indications of interference by senior military officers and an unwillingness to investigate and prosecute the most senior officers bearing command responsibility” (Human Rights Watch 2014). Lake likewise argued that the outcomes of criminal trials involving military officers in DRC very much depend on internal arrangements, where those who have fallen out with hierarchy are at greater risk of conviction (Lake 2014b).

Initial reactions to the Minova trial were outraged. The trial has, however, also been partially praised for its grounding in the Rome Statute of the International Criminal Court, the significant degree of participation of victims in the proceedings, and measures to disguise and protect the victims were praised (Human Rights Watch, 2014). A core problem of the Minova trial were flaws in the pre-judicial phase, because the evidence at trial was not enough for a legally motivated conviction in most of the cases. At the time of writing, legal proceedings were prepared for trials in Masisi and Rutshuru territories for crimes committed during the M23 insurgency in 2012-2013.

### *Court cases*

The court cases that were analysed in 2011 and 2014 all concerned rape, with only two exceptions. Other types of sexual violence are apparently rarely reported or prosecuted.

The files in 2014 showed some improvements over 2011. In 2011, 41% of the files included a medical report, this was 78% in 2014. This is apparently the result of awareness work by legal NGOs. The amount of convictions also increased: from 60% in 2011 to 80% in 2014. It is not clear if this is due to better police work and medical examinations, or the result of international pressure to fight impunity. In 2011, we concluded that 50% of the convictions was reached without (sufficient) evidence. In that year, motivations for acquittal were well developed (probably needing additional justification), but not for convictions. In 2014, the quality of motivations for conviction had significantly improved, although mainly at appeal court level. The type of penalties remained the same, with a majority being sentences to between 5 and 20 years imprisonment, and was in particular severe within military jurisdictions. Compensation payments were also included as additional sanction measure (ranging from \$90 to \$15,000 in 2014), but none of the files that were analysed included procedural proof of payment. It has been noted that victims often expect compensation, which is in par with the traditional way of dealing with sexual violence and hence this finding indicates that victims may not receive such reparation, despite convictions.

With regards to the old cases, there were two significant findings. Secondly, the term of five convicts from the 2011 sample had ended in 2014, but four of them were still held in prison. They had served on average two years beyond their initial penalty. Participants to the research explained this with reference to corruption, where apparently one has to buy a ticket out of jail even when the term is closed. None of the 12 eligible cases received conditional liberty, which used to be granted after serving two third of the sentence. Finally, it is worth mentioning that contrary to the idea that convicts massively escape, 12 out of 13 prisoners whose term had not expired were still there.

### *Sexual violence against minors*

Sexual intercourse with a girl below the age of 18 is considered rape in the law on sexual violence. In both data sets 75% of the victims were minors. Of these, 50% were between 14-18 years in 2011 and in 2014 this had risen to 80%. As for the suspects, in 2011 around 50% was under 25 years old, in 2014, this was 28%. Figures of the Division of Justice in North Kivu showed that 60% of 300 men imprisoned for sexual violence in the Goma prison were aged between 18 and 25. Legal stakeholders in South Kivu estimated that in that province even 80% of those in prison for sexual violence are young men (up to 35 years of age). In 2011, two-thirds of the perpetrators were unknown to the victim, which dropped to 24% in 2014. There was a sharp increase in cases that occurred within the sphere of family, friends, acquaintances or professional relations.

These figures underline a growing trend reported in the qualitative interviews of sexual violence cases involving consensual liaisons between a girl and her boyfriend (locally called copinage), or a girl and an older lover, (locally called the sugar daddy). The prosecutor in North Kivu estimated that 90% of all cases reported to police concern 'copinage', especially in urban settings. He had witnessed many cases where the girl came to the defence of her boyfriend and denied the accusation of sexual violence. Such cases posed a dilemma for the judiciary. A number of judges takes the view that the law defines (any attempt to have) sex with a minor as a crime, and prosecute accordingly. Other judges called for greater discretionary room in dealing with this type of case. One of them said in relation to a case involving a 17-year-old girl whose parents accused her boyfriend of rape, "unfortunately the law does not allow her to love at that age".

### *Social responses*

In 2011, a lot of anecdotal evidence was found of people who would frame disputes, failed consensual relations or relations resulting in pregnancy as rape, in order to take revenge or gain material benefit. Many participants to the research from Bukavu and Goma gave testimonies or stories to show how consensual relationships or conflicts were framed as rape. One woman said: "In our neighbourhood, nearly all pregnancies of unmarried girls are sooner or later transformed into a sexual violence case. In my opinion, rape is abused to get money." (Douma and Hilhorst 2012: 53).

In 2014, more traces were found of the social appropriation of legal action on sexual violence. It was said that cases of copinage often concerned cases where parents did not approve of a girl's boyfriend. There were also examples of age being altered when the girl in question was over 18. Especially when a girl becomes pregnant, there are numerous accounts of parents filing a rape case in the hope that legal proceedings might help them claim compensation. In the 2011 and 2014 sample of legal cases, respectively 25% and 13% of the cases involved pregnancy of the victim. An NGO representative

summarised the situation as: “The severity of the law is abused; intimidations and requests for money are widely present. People know that someone will ‘tremble’ when he is accused of sexual violence and is immediately ready to give some money’ (ibid). During a focus group of urban women mothers were quoted who told their daughters: “Why don’t you cope like everybody else and find a man to accuse of rape”? Below the surface of actual court cases, a reality seemed to have evolved where people can take advantage of the fear of prosecution.

The other side of individual people (using the threat of) a law-suit as a means to survive, advance or revenge, are corruptive practices of police or legal officers. Early rumours from 2011 about police involvement in framing rape cases for purposes of extortion had grown in 2014. The special unit of the Police d’Enfance et la Lutte contre les Violences Sexuelles (PNC-PELVS, youth and sexual violence) was often singled out in these stories. The head of this unit owned a night club in Bukavu and sexworkers of this night club stated in a focus group discussion that they call her in when a man does not want to pay you their services. She brings her policemen to arrest the man, and brings the girls to the station to file a complaint for rape. The man has to pay his way out. “Elle mange chez nous” (she eats with/from us). There were many other stories of men being set up by the police to file a rape case.

According to the participants of the research, these social practices have different consequences. A focus group with young men revealed that this had affected courtship in the city. Students are increasingly concerned to date a girl. Another issue is that the criminalization of sexual relations with minors deters schools and other institutes to educate young people about contraception and reproductive rights and that health services for this are wanting (Isumbisho et al 2016). Finally, cases of abuse and fake police cases affects the support of citizens for real victims. One NGO representative expressed it as follows: “In the early days, we were really happy to see organisations that came to help victims. But when people started to abuse the problem, the perception changed. People now just don’t give a damn. ... It becomes difficult to believe a woman that has really been raped and people will say: Uko natafuta makuta tu (you only look for money)”. A risk has developed that progress in the fight against impunity gets eroded when the social support starts to wane.

## **Conclusion**

The response sexual violence in eastern DRC peaked around 2012, but since then a reduction has set in. In 2011, many perverse effects 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 have found that attention to sexual violence has 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, and there is 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.

In the legal domain, likewise, there have been improvements in the coordination and procedures. The lack of discursive distinction between suspects and perpetrators that was systematically found in 2011, had

given way to a practice where suspects were given legal counsel. On the other hand, we found that 4 out of 5 convicts that should have been released because they served their term were still in prison, and that cases of sexual violence were routinely (and now legally) denied conditional liberty which indicates severe problem with the rights of convicts. Whereas women of different walk of life are represented among the victims that bring their case to court, the court seems class-based with regards to the suspects and convicts, and cases against influential or higher-ranking individuals are rare.

It was found that a striking number of cases concern sexual intercourse with women below the age of 18, considered rape by law, even when consensual. This raises a number of ethical and social questions that are beyond the scope of this paper, but it confirms the widening gap between the ongoing international concern and fund-raising to fight impunity of 'rape as a weapon of war' and the local realities. Social policy could address some of the negative social effects by complementing legal responses with education, reproductive health care and the prevention of teenage pregnancies.

While the long-term effects of the attention for sexual violence are still playing out, it is clear that the hype has left marks in the urban social fabric, where the fight against impunity spearheaded by international actors has become embedded in the political economy of survival and corruption. The fight against impunity is based on the assumption that prosecution and conviction sets an example and has a deterring influence. It is not clear how this has affected sexual abuse. There are signs that men are highly aware of the risks and that communities change their attitudes towards violated women. There are also signs, however, in a context where the confidence in the rule of law is low, that the legal practices confirm people's perceptions of an unfair system.

## **Bibliography**

Autesserre, Séverine. 'Dangerous tales: Dominant narratives on the Congo and their unintended consequences.', 2012 *African Affairs*, Vol.111(443), pp.202-222

Bouta, T.; Frerks, G. and Bannon, I. (2005) *Gender, conflict and development*, Washington: World Bank

Cohen, DK; Hoover Green, A; Wood, EJ (2013) 'Wartime sexual violence: Misconceptions, implications and ways forward', United States Institutes of Peace, special report 323. Washington: USIP.

Dolan, C (2010) *War Is Not yet over. Community Perceptions of Sexual Violence and Its Underpinnings in Eastern DRC*. International Alert

D'Errico, N.C., Kalala, T., Nzigire, L.B., Maisha, F., Kalisye, L.M. (2013) "'You say rape, I say hospitals. But whose voice is louder?'" *Health, aid and decision-making in the Democratic Republic of Congo*, *Review of African Political Economy* 40(135): 51-66.

Dolan, Chris (2010). *War Is Not yet over. Community Perceptions of Sexual Violence and Its Underpinnings in Eastern DRC*.

Douma, Nynke and Thea Hilhorst (2012). *Fond de commerce? Sexual violence assistance in the Democratic Republic of Congo*. Wageningen: Wageningen University.

Enough Project (20 May 2014) 'Op-ed: Minova's Rape Acquittals Reveal Lessons for Congo', Enough Project Blog. Available at <http://www.enoughproject.org/blogs/op-ed-minovas-rape-acquittals-reveal-lessons-congo>

- Eriksson-Baaz, M and Stern, M (2013) *Sexual Violence as a Weapon of War? Perceptions, Prescriptions, Problems in the Congo and beyond*, London: ZedBooks, p. 107-114.
- Eriksson-Baaz, Maria, Judith Verweijen, and Christine Deslaurier (2013) 'La « mère des armées » n'est pas encore morte: Des pratiques de justice (in)formelle dans les Forces armées de la République démocratique du Congo'. *Politique africaine* 129(1): 49.
- Hilhorst, D. (2003) *The Real World of NGOs: Discourse, Diversity and Development*. London: Zedbooks, Philippine edition (in English): Ateneo de Manila University Press
- Hilhorst, D. and B. Jansen (2010) 'Humanitarian Space as Arena: a perspective of everyday practice'. *Development and Change* 41(6): 1117–1139
- Hilhorst D. and R. Baswira (2014) *The Women's Movement in South Kivu, DRC: A civil society analysis*. Humanitarian Aid and Reconstruction Occasional Paper #11, Wageningen University and Research Center, 62 pp.
- Human Rights Watch (10 June 2014). *Democratic Republic of Congo: Ending Impunity for Sexual Violence, New judicial mechanisms needed to bring perpetrators to justice*'. Human Rights Watch news item. Available at: <http://www.hrw.org/news/2014/06/10/democratic-republic-congo-ending-impunity-sexual-violence>
- Isumbisho Mwapu, D. Hilhorst, M. Mashanda, M. Bahananga and Ruhamy Mugenzi (2016) *Women engaging in transactional sex and working in prostitution: Practices and underlying factors of the sex trade in South Kivu, the Democratic Republic of Congo*. Secure Livelihood Research Consortium (SLRC), : [http://securelivelihoods.org/publications\\_details.aspx?resourceid=394](http://securelivelihoods.org/publications_details.aspx?resourceid=394)
- Lake, M (2014 a) *Ending impunity for sexual and gender-based crimes, the International Criminal Court and complementarity in the Democratic Republic of Congo*. *African conflict & peacebuilding review* 4(1):1-32
- Lake, M (2014b) *After Minova: Can war crimes trials overcome violence in the Democratic Republic of Congo?* *African Arguments*, [www.africanarguments.org/2014/05/08/ater-minova-can-war-crimes-trials-overcome-violence-in-the-drc-by-millie-lake](http://www.africanarguments.org/2014/05/08/ater-minova-can-war-crimes-trials-overcome-violence-in-the-drc-by-millie-lake)
- Norman N (1992) 'From Paradigm Lost to Paradigm Regained? The Case for an Actor-Oriented Sociology of Development'. In: N. Long and A. Long (eds.) *Battlefields of Knowledge. The Interlocking of Theory and Practice in Social Research and Development*. London/New York, Routledge.
- Maya, M (2011) 'Mobile Courts in the Democratic Republic of Congo: Complementarity in Action?' *American Bar Association Rule of Law Initiative*. Available at: [http://worldjusticeproject.org/sites/default/files/mobile\\_courts\\_in\\_the\\_democratic\\_republic\\_of\\_congo\\_maya.pdf](http://worldjusticeproject.org/sites/default/files/mobile_courts_in_the_democratic_republic_of_congo_maya.pdf)
- Mertens, C. and M. Pardy ( 2016) "'Sexurity" and Its Effects in Eastern Democratic Republic of Congo'. *Third World Quarterly*: 1–24.
- Meijer, A, K. Boersma and P. Wagenaar (2009) *ICT, Citizens and Governance. After the Hype!* Amsterdam, IOS Press
- Ministry of Budget (2011) *Dépenses par administration et chapitre: Exécution au 31 octobre 2011, exécution au fin 2014*, Kinshasa. Available at [www.ministeredubudget.cd](http://www.ministeredubudget.cd)

Ministry of Gender (2011) 'National Gender Report on DRC', Kinshasa: Ministry of Gender, Family and Children.

Peterman, A ; Palermo, T ; Bredenkamp, C. (2011). Estimates and Determinants of Sexual Violence Against Women in the Democratic Republic of Congo.' American Journal Of Public Health, 2011, Vol.101(6), pp.1060-1067

Pratt, M. and L. Werchick (2004) 'Sexual terrorism: Rape as a weapon of war in Eastern Democratic Republic of Congo, an assessment of programmatic responses to sexual violence in North Kivu, South Kivu, Maniema and Orientale Provinces', USAID/DCHA Assessment Report, Kinshasa: USAID

Sida (2009) 'The Democratic Republic of Congo: Country gender profile'.  
[http://www.sida.se/contentassets/64bf42eb34534fc6900703edf9a7c9a6/the-democratic-republic-of-congo-drc-country-gender-profile\\_328.pdf](http://www.sida.se/contentassets/64bf42eb34534fc6900703edf9a7c9a6/the-democratic-republic-of-congo-drc-country-gender-profile_328.pdf)

UN Security Council (2013) 'Resolution 2106: Women, Peace and Security',  
<http://unscr.com/en/resolutions/2106>.