

THE DEMOCRATIC REPUBLIC OF THE CONGO





Cover picture:
Meeting with survivors in Kaniola, Democratic Republic of the Congo, November 2022.
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**STUDY ON THE STATUS
OF AND OPPORTUNITIES
FOR REPARATIONS
FOR SURVIVORS OF
CONFLICT-RELATED SEXUAL
VIOLENCE**

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A survivor and participant of GSF's interim reparative measures project, Kasai Central, the Democratic Republic of the Congo, November 2023.
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EXECUTIVE SUMMARY

Since the 1990s, the Democratic Republic of the Congo (DRC) has experienced a series of armed conflicts and simultaneous unrest. Inter-ethnic in nature and aimed at gaining control over the country's vast natural and mining resources, these conflicts involve a multitude of national and regional players. Serious violations of international humanitarian law and international criminal law – particularly against civilian populations – are recurrent. The decades of conflict have resulted in an estimated death toll of over six million people and have displaced approximately seven million people within the country. The systematic use of sexual violence as a weapon of war – used by rebel groups, militias and the army to terrorise and destabilise entire populations – is also a brutal reality of the conflicts in the DRC. The negotiation of numerous ceasefire and peace agreements since 1999, the adoption of a new Constitution and the holding of the first free presidential elections (2006) have been marred by political crises and the cyclical resurgence of rebel groups creating new waves of violence, particularly in the East of the country. Transitional justice efforts have been – and continue to be – insufficient; it was not until the end of 2020 that the government openly declared its political will to set up a National Reparations Fund. Subsequently, various initiatives and draft guidelines on this subject began to be formed under the auspices of the Office of the First Lady.

In the DRC conflict-related sexual violence (CRSV) has reached endemic levels. According to UN Women estimates more than one million women have been raped. Multiple forms of sexual violence of unprecedented brutality have been recorded involving all warring parties. Women of all ages – including young girls and elderly women – are the main victims. Men and boys are also victims of sexual violence, although the figures are not known due to the social stigma surrounding men reporting having been victimised. Survivors carry multiple burdens: that of having been raped, of living with the physical and psychological after-effects of such crimes and of being subsequently rejected by their partners, families and communities. Repudiation, stigmatisation, ostracism and the impossibility of gaining access to employment or generating a stable livelihood are part of their daily lives. They are left without emotional or economic support, while the

seriousness of the crimes they have suffered is denied and impunity for the perpetrators is almost total.

The main needs and priorities expressed by survivors of CRSV primarily concern material and economic issues such as the possibility of accessing income-generating activities (IGAs), covering school fees for children, being able to own a house or have a field or a plot of land. The need for medical care and psychological support is also reported, but to a lesser extent – which could indicate a certain dissociation between the impacts and self-identified needs. Issues of security, acknowledgement and accountability are also present, be it to a lesser degree, amongst the expressed needs and priorities.

International, regional and national obligations have recognised the right to judicial reparation for survivors of CRSV. In 2006 Law 06/018 amended the Penal Code of Congo by adding 12 new sexual violence offences and increasing the range of applicable sentences. Similarly, Law 06/019 (2006) on criminal procedure introduced new rights for victims of sexual violence. However, legal and procedural barriers are numerous: lack of access to legal aid, difficulties related to initiating proceedings and gathering evidence, exorbitant costs of proceedings and failures to enforce sentences. In practice these barriers prevent any real or complete access to reparation measures and result in a preference for traditional and customary mechanisms being employed. Recent progress has been made in setting up a national administrative programme for reparations, but any actual implementation thereof remains stagnated, and survivors continue to suffer the consequences of the harm experienced without receiving comprehensive and effective attention.

In this context, the establishment and implementation of the interim reparative measures (IRM) project by the Global Survivors Fund (GSF) in Bukavu remains the only concrete example of an initiative that is granting reparations (in the form of IRM) to survivors of CRSV – and moreover through a process centred on survivors and co-created with them. This process is therefore in itself restorative in both its form and methods. The impact evaluation of the IRM project shows that survivors feel more dignified, happier, and more confident.

In the DRC survivors of CRSV face not only the physical, psychological and social consequences of the crimes endured, but also the frustration and disappointment caused by the almost absolute impunity afforded to perpetrators of sexual violence or the lack of reparations for the harm survivors have suffered. Drawing on the lessons from the IRM project (among others), this study offers a series of recommendations to the various actors involved to ensure that survivors of CRSV receive comprehensive reparations. These recommendations focus on:

- Legal and political measures available to prevent and eliminate sexual and gender-based violence (SGBV) and CRSV;
- Access to justice;
- Access to judicial reparations, both at the national level and through the International Criminal Court (ICC) and the Trust Fund for Victims (TFV);
- Administrative reparations;
- The commitment of international cooperation and the international community;
- National civil society initiatives.



ACRONYMS

AFDL	The Alliance of Democratic Forces for the Liberation of Congo (<i>Alliance des forces démocratiques pour la libération du Congo</i>)	FIDH	The International Federation for Human Rights
AFEDEM	Organisation for the Support of Destitute Women and Marginalised Children (<i>Appui aux femmes démunies et enfants marginalisés</i>)	FONAREV	The National Fund for Reparations for Victims of Sexual Violence (<i>Fonds National des Réparations des Victimes de violences sexuelles liées aux conflits et des crimes contre la paix et la sécurité de l'humanité</i>)
AI	Amnesty International	GSF	Global Survivors Fund
AMAB	Association of Anti-Bwaki Mothers (<i>Association des mamans Anti Bwaki</i>)	HIV/AIDS	Human Immunodeficiency Virus / Acquired Immunodeficiency Syndrome
AMP	The Alliance for the Presidential Majority (<i>Alliance pour la majorité présidentielle</i>)	HRW	Human Rights Watch
ANPR	The National Advocacy Alliance for Reparations for Victims of Conflict in the DRC	ICC	The International Criminal Court
ASF	Lawyers Without Borders (<i>Avocats Sans Frontières</i>)	ICGLR	The International Conference on the Great Lakes Region (<i>Conférence internationale sur la région des Grands Lacs or CIRGL</i>)
AU	The African Union	ICTJ	The International Center for Transitional Justice
AVIFEM	The National Agency for Combating Violence against Women and Girls (<i>Agence nationale de lutte contre les violences faites à la femme, à la jeune et petite fille</i>)	IDIP	Initial Draft Implementation Plan
CNDP	The National Congress for the Defence of the People (<i>Congrès national pour la défense du peuple</i>)	IGA	Income-generating activities
COOPI	Cooperazione Internazionale	IMF	The International Monetary Fund
CRSV	Conflict-related sexual violence	IRM	Interim reparative measures
DIP	Draft Implementation Plan	LUC	Single Consolidated List (<i>Liste unique consolidée</i>)
DRC	Democratic Republic of the Congo	MNSVS-RDC	The National Movement of Survivors of Sexual Violence in the DRC (<i>Mouvement national des Survivantes des violences sexuelles liées aux conflits en RDC</i>)
FARDC	The Armed Forces of the Democratic Republic of Congo (<i>Forces armées de la République démocratique du Congo</i>)	MONUSCO	United Nations Organization Stabilization Mission in the DRC (<i>Mission de l'Organisation des Nations Unies pour la stabilisation en RDC</i>)
FAZ	The Zaire Armed Forces (<i>Forces Armées Zaïroises</i>)	MUSO	Community Coopération (<i>Mutuelles de la solidarité</i>)
FDLR	The Democratic Forces for the Liberation of Rwanda	NGO	Non-Governmental Organisation
FGD	Focus group discussion	NSCR	The Netherlands Institute for the Study of Crime and Law Enforcement

OHCHR	The Office of the United Nations High Commissioner for Human Rights	SADC	The Southern African Development Community
OSRSG-SVS	Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict	SGBV	Sexual and gender-based violence
PPRD	The People's Party for Reconstruction and Democracy (<i>Parti du peuple pour la reconstruction et la démocratie</i>)	SOPROP	Solidarity for Social Promotion and Peace (<i>Solidarité pour la Promotion Sociale et la Paix</i>)
PTSD	Post-traumatic stress disorder	STD	Sexually transmitted disease
RCD	The Congolese Rally for Democracy (<i>Rassemblement congolais pour la démocratie</i>)	TFV	The Trust Fund for Victim
RSE	Socio-Economic Reintegration (<i>Responsables de réinsertion socio économique</i>)	UN	The United Nations
		UNJHRO	The United Nations Joint Human Rights Office in the DRC



I. BACKGROUND AND METHODOLOGY

| 1.1. About the study

Global Survivors Fund (GSF), in collaboration with The Panzi Foundation, The Dr. Denis Mukwege Foundation and The National Movement of Survivors of Sexual Violence in the DRC (*Mouvement National des survivantes de viols et violences sexuelles liées aux conflits en RDC* – MNSVS-RDC) have conducted this study to identify the reparation needs of survivors of CRSV in the DRC, as well as the opportunities for delivering reparations to survivors through judicial and administrative processes. It presents and analyses survivors' perspectives and their expectations for reparations. It also offers practical, concrete and context-specific recommendations to policy-makers and other relevant actors at national and global levels to inform the design and delivery of survivor-centred reparations in the DRC.

This study also seeks to establish whether survivors of CRSV have already received any form of assistance and/or reparation through government programmes or civil society initiatives. If they have received reparations, the study looks at what lessons can be learned from these experiences to inform the design and implementation of comprehensive measures – including the delivery of GSF's interim reparative measures project. As an objective in itself, the research process aims to increase understanding and awareness of survivors' right to reparation and to create further momentum for the delivery of meaningful survivor-centred reparations to survivors of CRSV.

The DRC study is part of the Global Reparations Study launched by GSF in 2020, which focuses on the status of (and opportunities for) reparations for survivors of CRSV in more than 20 countries. The Global Reparations Study is a multi-actor process led by GSF in collaboration with over 40 local and international partners, including survivors' networks and groups. It seeks to make recommendations for further action based on survivors' needs and aspirations, to identify potential support available amongst key actors, and take concrete action to enhance access to reparation for survivors of CRSV around the world.

| 1.2. About the project partners



GSF was founded in October 2019 by Dr Denis Mukwege and Ms Nadia Murad, Nobel Peace Prize Laureates in 2018. GSF's mission is to enhance access to reparations for survivors of CRSV around the globe, thus seeking to fill a gap long-identified by survivors. GSF acts to provide interim reparative measures in situations where states or other parties are unable or unwilling to fulfil their responsibilities. GSF also advocates for duty bearers – as well as the international community – to develop reparation programmes, and provides expertise and technical support to guide states and civil society in the design of reparation programmes. GSF's survivor-centred approach is the cornerstone of its work. For more information, visit www.globalsurvivorsfund.org.



The Panzi Foundation DRC was created in 2008 to support the Panzi Hospital and provide – through a holistic model – various types of care to survivors, such as legal and judicial assistance, psychosocial support and socio-economic programmes. The Panzi Foundation is also involved in advocacy, prevention of gender-based violence, and communication campaigns aimed at influencing positive social and behavioural change. The Panzi Hospital – established in Bukavu in 1999 by Dr Mukwege – has acquired a worldwide reputation as the pre-eminent treatment centre for survivors of CRSV. For more information, visit <https://panzifoundation.org/fr/>.



The Dr. Denis Mukwege Foundation is an international rights-based, survivor-centred organisation working to change the global response to conflict-related sexual violence. We support survivors' demands for a world where sexual violence as a weapon of war is no longer tolerated and bears

consequences for individual perpetrators and states. We work for a future where survivors receive the holistic care and compensation they need to rebuild their lives. We create opportunities for survivors to speak out and be heard, and where they can organise to create change, influence policies, and demand justice and accountability. For more information, visit <https://www.mukwegefoundation.org/>.



The Mouvement National des survivantes de viols et violences sexuelles liées aux conflits en RDC (MNSVS-RDC) – founded in 2017 by Congolese survivors – envisions a Democratic Republic of the Congo free of rape and violence against women, where women’s rights are guaranteed and protected. Their mission is to enable survivors themselves to speak out against rape used as a weapon of war in the DRC, but also to conduct advocacy at various levels to ensure that the needs of survivors are genuinely taken into account in reparation and justice processes. For more information, visit MouvementdesSurvivantesenRDC/?locale=en_FR.

| 1.3. About the author

Julie Guillerot is an international legal consultant. She has over 20 years of expertise in conducting academic research and providing technical assistance to the process of institutionalisation of public transitional justice policies – in particular reparation programmes – from a gender perspective. She has participated in numerous projects with international organisations, international non-governmental organisation (NGOs) and aid agencies, including in Peru, Colombia, Nicaragua, Morocco, Côte d’Ivoire, Mali and the Democratic Republic of the Congo. In particular, she was part of the technical team on reparations for the Peruvian Truth and Reconciliation Commission and has worked with the International Center for Transitional Justice (ICTJ) in various roles (local associate in Peru, consultant for the Reparations Unit, the Research Unit, the Europe Programme, and the Gender Unit, and national manager in Morocco). She is author and co-author of

numerous books and articles, notably on the Peruvian reparation process and on reparations and gender.

| 1.4. Acknowledgements

The author is deeply grateful to the survivors of sexual violence who took part in the various focus group discussions and interviews – both before and after the writing of this report – for their time, commitment and contributions. Without them, this work, which reflects their points of view and expectations, would not have been possible.

The author would also like to thank the many GSF colleagues who contributed to the revision of this study: Zoé Bertrand, Karine Bonneau, Elsa Chemin, Claudia Gonçalves, Eduardo González, Thésée-Aurore Makaba, Ruth Quinn and Delia Sánchez del Ángel. Finally, we would like to thank Annie Bunting, Sandrine Lusamba and Olivier Vanderveeren, our external reviewers, as well as the teams at the Panzi Foundation, the MNSVS-RDC and the Dr. Denis Mukwege Foundation. Their critical analyses, insightful suggestions and vast experience have considerably improved this study.

| 1.5. Methodology

1.5.1. Aim of the DRC study

To identify the avenues currently available in the DRC to obtain reparation for survivors of CRSV, the gaps that exist between opportunities for survivors to access these avenues and survivors’ needs, and how these gaps can be reduced to ensure rapid access to reparation for all survivors of CRSV.¹

1.5.2. Specific objectives of the DRC study

1. To reflect as accurately as possible the scope and nature of sexual violence committed during – or related to – the conflict.
2. To identify and assess what legal and administrative remedies are in place for awarding reparations to survivors of CRSV.

¹ This study takes into account events up to December 2023.

3. To identify and analyse survivors' perspectives, needs and expectations in relation to reparations.
4. To identify gaps between current opportunities for survivors to access reparations and survivors' needs and determine the opportunities for – as well as possible challenges to – accessing reparations in the DRC.
5. To provide contextual recommendations for ensuring that reparations (urgent, interim and full) are provided to survivors of CRSV in the DRC.

1.5.3. Research methods

This DRC study has been conducted using mixed methods, comprising of secondary research (literature review) and primary research (focus group discussions – FGDs). It involves the analysis of both qualitative and quantitative data to help understand the experiences of harm suffered by survivors of CRSV and their perspectives and expectations regarding reparations.

The secondary research element comprised a systematic review and in-depth analysis of relevant standards/norms, legal, institutional and policy frameworks, as well as existing reports by state institutions and national and international civil society organisations on the scope, scale and nature of CRSV and on any existing reparations. This secondary research element of the study culminated in December 2023, and largely refers to documents that have been published and disseminated, and that can be consulted online by readers.

The primary research element of this study comprised the collection of primary data through FGDs that were organised in 2019 at the initiative of the Dr. Denis Mukwege Foundation and the Panzi Foundation. The objective of the FGDs was to inform the establishment of GSF's pilot project for interim reparative measures for survivors of CRSV. To ensure that survivors were at the centre of the process, FGDs were organised during the initial phase of the study in partnership with MNSVS-RDC. They were held between February and March 2019 in the survivors' homes or in nearby towns, taking into account security issues and the

risk of stigmatisation from their communities. They brought together a total of 43 women aged between 14 and 73, from communities in South Kivu (Minova in Bulenga, Kavumu and Kigulube in Mulamba) and North Kivu (Masisi, Rutshuru in Goma). These five communities were selected on the basis of the following criteria:

1. The prevalence of conflict-related sexual violence from 2012 up to the present day;
2. Reports indicating that different types of sexual violence have been perpetrated over this time period (rape, recurrent cases of CRSV, sexual slavery, etc.);
3. A range of different survivor experiences of access to criminal justice.²

The MNSVS-RDC facilitated the organisation of these group discussions, including the selection of participants, translation into Swahili, logistical coordination and emotional support for the participants. The discussions were primarily led by the DRC Project Officer of the Dr. Denis Mukwege Foundation. In Goma, they were organised in informal settings and conducted jointly with the consultant from the Dr. Denis Mukwege Foundation, who is the author of this study. A semi-structured questionnaire developed in collaboration with the MNSVS-RDC formed the basis for discussion in the FGDs.

This study also includes the results of interviews conducted by Apolline Pierson for her study entitled "Listening to Victims' Voices when Awarding Reparations to Survivors of Conflict-Related Sexual Violence in Eastern DRC", which employed a methodology and a semi-structured interview protocol similar to those used by the Dr. Denis Mukwege Foundation in 2019. Pierson conducted 23 interviews in March and April 2018 with a total of 44 participants. Among these interviews, 14 were individual and nine were conducted – wholly or partially – in groups of two to five people. Due to the sensitivity of the topic of sexual violence, some interviews were conducted in a hybrid manner – the first part of the interview concerning rape and its consequences was individual, whilst the second part of the interview concerning justice and reparations was conducted in a

2 In Kavumu, a case was lost against individuals alleged to have committed sexual crimes, and in Minova, a case was won by the victims. However, the other three communities have never had access to justice.

group. The interviewees were identified with the help of The Panzi Foundation staff. They included survivors who had initiated or were going to initiate legal action, as well as survivors who could not or did not want to take legal action. The participants came from different demographic groups – teenagers or young adults who did not yet have families, women with families (a husband and children), and survivors who had a child born of CRSV. All participants were 18 years or older at the time of the interviews, although half were minors at the time the violence against them was perpetrated. Their ages ranged from 18 to 62, with an average age of 25. Three interviews were conducted with mothers of victims who had experienced the sexual violence when they were aged between 3-5 years old. The interviews were conducted in four different locations: Kavumu, Katana, Bulenga and Bukavu. In the latter location, interviews were conducted at Maison Dorcas, a transit house for victims of sexual violence run by the Panzi Foundation, and with members of the MNSVS-RDC).

In the final phase of the study, validation workshops were held with survivors from Kananga (Kasai Central) and Minova (South Kivu) who took part in The Panzi Foundation's IRM project between 2020 and 2023.

In Kananga, the 30 participants – 25 women and five men – came from all the villages covered by the interim reparative measures project – namely, Tubuluku, Ntambwe Saint Bernard, Mulombodi, Kabanza, RVA, Meteo, Kamupongo and Oasis-Malole. In Minova, the workshop included 20 women from the villages of Minova, Ruchunda, Buganga, Kagarama, Bulenga, Kalungu, Kishinji and Bitonga (Hamlet of Mufuni-Shanga, Chieftaincy of Bahunde, Masisi Territory in North Kivu). The age ranges of the participants varied between 20 and 60 years at both sites.

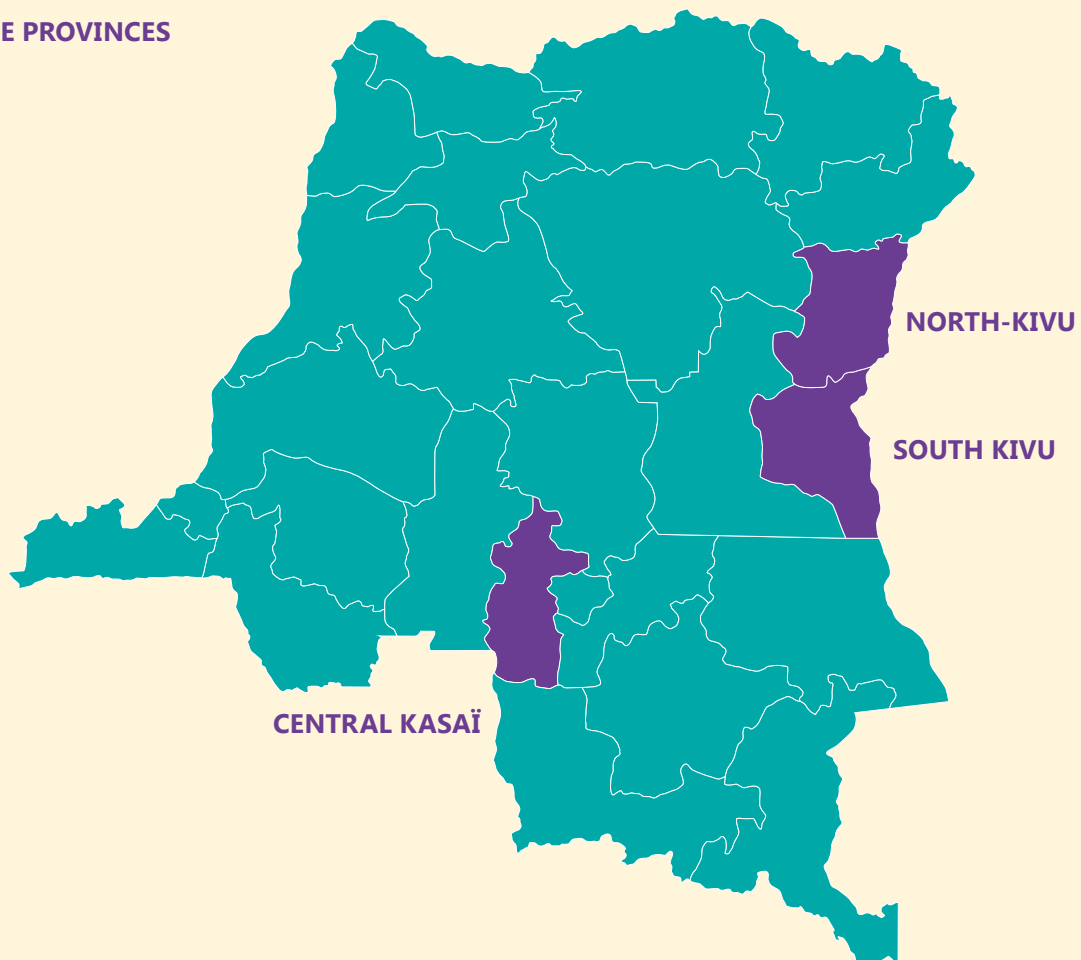
The validation workshops provided an opportunity to verify with survivors whether the study had correctly captured their perceptions of their needs, priorities, and expectations regarding reparations and recommendations, and to make any necessary adjustments.

The study thus incorporates data gathered from the FGDs, Pierson's interviews and the validation workshops – which were then analysed to identify gaps between current opportunities for survivors to access reparations and survivors' needs, and to make recommendations accordingly.

PARTICIPANT PROFILES



HOME PROVINCES



Source: Focus group discussions organised in 2019, interviews conducted by Apolline Pierson for her study "Listening to Victims' Voices when Awarding Reparations to Survivors of Conflict Related Sexual Violence in Eastern DRC" and interviews with participants in the study validation workshops in 2023.



Minova, the Democratic Republic of the Congo, 2021.
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II. INTRODUCTION

Sexual violence is a common feature in many contexts where there is armed conflict and political upheaval. In the Democratic Republic of Congo (DRC), CRSV has reached endemic levels and continues to be used on a daily basis as a weapon of war, especially in the ongoing conflicts in the eastern part of the country. This violence has devastating physical, psychological and socio-economic consequences for the survivors and their communities.

Despite international and national obligations recognising the right to reparation for survivors of CRSV and recent progress in establishing a national administrative reparation programme, implementation thereof remains stagnated, and survivors continue to suffer the consequences of the harm inflicted without receiving comprehensive and effective attention.

This study aims to better understand the needs of Congolese survivors and how to address them. Section III first provides a general overview of the Congolese socio-political context. Section IV then addresses the nature and scope of CRSV perpetrated in the DRC, and outlines the profile of the survivors and perpetrators of sexual violence. Section V

examines the impact of CRSV on survivors, but also on their families and communities. It presents survivors' perspectives, needs and priorities regarding reparation, as well as associated challenges.

Section VI analyses the existing judicial and administrative frameworks in the DRC that pertain to international, regional and national laws concerning sexual violence and reparation. Section VII examines the extent to which reparations ordered by the International Criminal Court and by national courts are being implemented. In doing so, it identifies existing gaps in – and shortcomings of – the process and how these translate into a lack of real access to the reparation measures.

Section VIII specifically addresses the implementation and operation of GSF and The Panzi Foundation's interim reparative measures project in the Kivu and Central Kasai regions. Chapter IX provides a conclusion, highlighting the opportunities and challenges for accessing survivor-centred reparations in the DRC. Chapter X presents a set of recommendations aimed at ensuring that survivors of CRSV effectively receive reparations.



Minova, the Democratic Republic of the Congo, 2021.
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III. THE NATIONAL CONTEXT

After gaining independence from Belgium in 1960, the Democratic Republic of the Congo – then known as Zaire – underwent a 32-year period of dictatorship (1965-1997) under President Mobutu Sese Seko. Although Mobutu's rule contributed to forging national unity, it also "[...] embodied the worst characteristics of post-colonial African dictatorships: absolute concentration of power, one-party rule, cult of the personality, widespread corruption, cronyism, violent suppression of dissent, accumulation of colossal personal fortunes and, ultimately, total institutional decay."³ In the early 1990s Mobutu's power began to decline and the DRC started to plunge into a series of simultaneous armed conflicts and unrest, involving a multitude of national and regional actors. By 2010, the death toll was already estimated at between five and a half⁴ and seven million people,⁵ and by 2022 nearly seven million people were said to be internally displaced.⁶

In the context of the Rwandan genocide against the Tutsis and the large-scale massacres of moderate Hutus starting in 1994, a prolonged presence of thousands of refugees and Rwandan and Ugandan

armies was seen in eastern DRC. In 1997 – following a seven-month campaign – Mobutu Sese Seko was overthrown by the AFDL Rebel Alliance (*Alliance des forces démocratiques pour la libération Congo*), led by Laurent-Désiré Kabila and supported by Rwandan and Ugandan soldiers.

Although Rwanda and Uganda were initially allies in this campaign, they soon became both adversaries to each other and to the new government in the DRC.⁷ Starting in 1998, the DRC was the site of a violent war with apparent inter-ethnic dimensions⁸ aimed at controlling and exploiting the country's vast natural and mineral resources.⁹ This war involved the Armed Forces of the Democratic Republic of the Congo (FARDC), nine nations and a myriad of over 40 national and international rebel groups.¹⁰

*"In this conflict, it appears that members of each side have committed serious violations of international humanitarian law and international criminal law, including the murder of civilians, rape and other forms of sexual violence, forced displacement and abduction, and the recruitment and use of child soldiers."*¹¹

- 3 Federico Borello, 'A First Few Steps. The Long Road to a Just Peace in the Democratic Republic of Congo' (ICTJ 2004) p. vii <https://www.ictj.org/sites/default/files/ICTJ-DRC-Just-Peace-2004-English.pdf> accessed 2 April 2024.
- 4 ICTJ, Point de Mire: La République Démocratique du Congo, 'La recherche de la paix et la justice en RDC' (2008) <https://www.ictj.org/sites/default/files/ICTJ-DRC-Justice-Recherche-2008-French.pdf> accessed 2 April 2024.
- 5 Caritas, 'SIX MILLION DEAD IN CONGO'S WAR' (2010) <https://www.caritas.org/2010/02/six-million-dead-in-congos-war/> accessed 2 April 2024.
- 6 UN Migration (IOM), 'Record High Displacement in DRC at Nearly 7 Million' (30 October 2023) <https://www.iom.int/news/record-high-displacement-drc-nearly-7-million> accessed 2 April 2024.
- 7 They initially created the Rassemblement Congolais pour la Démocratie (RCD) to oppose the Kinshasa government, but fighting broke out in 1999 as the two countries fought over a dominant relationship with the RCD to secure control of the Kisangani diamond region. The RCD quickly split into several competing factions controlled either by Uganda or Rwanda. Uganda also created the Movement for the Liberation of Congo, which controlled the vast Equateur province. Meanwhile, Zimbabwe, Namibia and Angola supported Kabila's government. Several other African states and militias were involved in the war at different times. In 1999 the war reached a military stalemate and the country was divided into four zones: one controlled by the government and three separate zones controlled by rebel forces. See also: Federico Borello, 'A First Few Steps. The Long Road to a Just Peace in the Democratic Republic of Congo' (ICTJ 2004) p. vii and Laura Davis and Priscilla Hayner, 'Difficult Peace, Limited Justice: Ten Years of Peacemaking in DRC' (ICTJ 2009) p. 8 <https://www.ictj.org/publication/difficult-peace-limited-justice-ten-years-peacemaking-drc> accessed 2 April 2024.
- 8 "The DRC is home to approximately 250 ethnic groups, which can be categorized into several groups. The first group consists of the Bantu peoples (about 80% of the population), with major ethnicities including the Luba (18%), Mongo (17%), Kongo (12%), and Rwandan Hutus and Tutsis (10%). Other Bantu ethnicities include the Lunda, Chokwe, Tetela, Bangala, Shi, Nande, Hunde, Nyanga, Tembo, and Bembe. The non-Bantu ethnicities are divided among Sudanese groups (Ngbandi, Ngbaka, Mbanja, Moru-Mangbetu, and Zande), Nilotes (Alur, Lugbara, and Logo), Hamites (Hima), and Pygmies (Mbuti, Twa, Baka, Babinga)." [Author's translation] Jacques Leclerc, 'Congo-Kinshasa, République démocratique du Congo' (5 January 2024) [https://www.axl.cefan.ulaval.ca/afrique/czaire.htm#:~:text=80%20%25%20of%20the%20population\)%20of%20which,the%20Tembo%20and%20the%20Bembe](https://www.axl.cefan.ulaval.ca/afrique/czaire.htm#:~:text=80%20%25%20of%20the%20population)%20of%20which,the%20Tembo%20and%20the%20Bembe) accessed 2 April 2024.
- 9 United Nations, Security Council, 'Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo' S/2001/357 (12 April 2001) <https://reliefweb.int/report/democratic-republic-congo/report-panel-experts-illegal-exploitation-natural-resources-and> accessed 2 April 2024. "The DRC, with a surface area equivalent to that of Western Europe, is the largest country in sub-Saharan Africa and possesses exceptional natural resources, including mineral deposits (cobalt, copper, etc.), great hydroelectric potential, vast arable land, tremendous biodiversity and the second largest tropical forest in the world" (World Bank, 'Democratic Republic of Congo: Overview' <https://www.worldbank.org/en/country/drc/overview> accessed 2 April 2024).
- 10 Described as "Africa's first continental war", the conflict pitted the DRC government, supported by Angola, Zimbabwe and Namibia, against several rebel groups backed by Uganda, Rwanda and Burundi.
- 11 ICTJ, 'La recherche de la paix et la justice en RDC' (2008) <https://www.ictj.org/sites/default/files/ICTJ-DRC-Justice-Recherche-2008-French.pdf> accessed 2 April 2024.

The systematic use of sexual violence by rebel groups, militias and the army has been a brutal reality of conflicts in the DRC since the 1990s and has been used as a weapon of war to terrorise and destabilise entire populations.¹²

Since 1999, various ceasefires and Peace Agreements have been negotiated with the help of international actors such as the United Nations (UN), the African Union (AU), the Southern African Development Community (SADC) and several European countries. Such agreements have been signed with numerous combatant groups and neighbouring states.¹³ The security and humanitarian situation was improved somewhat by President Joseph Kabila¹⁴ and the main rebel leaders signing a coalition agreement, and a Peace Agreement was subsequently signed by Uganda and the DRC. Following the Global and Inclusive Agreement of Pretoria, which put an end to the war in 2003, Joseph Kabila remained in power as President of the new transitional government.¹⁵

People's hopes were raised by this theoretical end to a long and costly war, alongside the adoption of a new Constitution and the holding of the first free presidential, parliamentary and provincial elections in 40 years (in 2006). However, these gains were marred by the cyclical reappearance of rebel groups creating new waves of violence, particularly in the eastern part of the country where the conflict has always involved local, national and international players. The Kivu region in particular continues to be the scene of violent clashes between the troops of the CNDP and the

Democratic Forces for the Liberation of Rwanda (FDLR) on one side, and the government forces on the other, despite the signing of the Goma Peace Agreement (in 2008) and the Addis Ababa Peace, Security and Cooperation Framework Agreement (in 2013).

Hopes were also tarnished by an escalating political crisis: the election of Joseph Kabila in 2006 and his re-election in 2011 already took place in a context of violent protests not only against his nationality¹⁶ but also against the validity of the election results. In 2016, when he could not legally run for a third term, President Kabila decided to indefinitely postpone the presidential elections. This period was defined by harsh political repression in the form of arrests, torture and murders¹⁷ against members of the opposition (including activists, students, journalists, protesters).

It was not until the 2018 elections and the 2019 transfer of power that the DRC experienced its first peaceful political transition. Félix Tshisekedi – the son of the well-known former opposition candidate Étienne Tshisekedi – succeeded Joseph Kabila, who had led the country for 18 years and who has since established himself as a senator for life.¹⁸

To this day, however, peace remains elusive – particularly in the eastern part of the country, which continues to suffer from instability and where the government is unable to regain control or maintain security. In fact, in May 2021, President Tshisekedi declared a state of emergency in the provinces of North Kivu and Ituri and launched military operations

12 United Nations, General Assembly, 'Report of the Special Rapporteur, Yakin Ertürk, on violence against women, its causes and consequences. Mission to the Democratic Republic of Congo' A/HRC/7/6/Add.4 (27 February 2008) para 2 <https://digitallibrary.un.org/record/621971?ln=en&v=pdf> accessed 2 April 2024.

13 Accord De Cessez-Le-Feu' (Accord de Lusaka, 1999) and Résolutions du Dialogue intercongolais tenu à Sun-City Afrique du Sud (2002).

14 Joseph Kabila, who succeeded his father in 2001 after the latter's assassination, heads the Alliance for the Presidential Majority (Alliance pour la majorité présidentielle or AMP). In 2002, he founded the People's Party for Reconstruction and Democracy (Parti du peuple pour la reconstruction et la démocratie or PPRD).

15 "The transitional government included four vice-presidents representing the Kinshasa government, the two main rebel armed groups, and the political opposition. Representing an imperfect political compromise, most of the major rebel forces were integrated directly into the national army, the FARDC (Armed Forces of the DRC). No questions were raised about the individuals' past practices regarding serious human rights violations. In addition to creating a joint army, the transitional government was tasked with preparing national elections with the assistance of the UN." [Author's translation], Accord global et inclusif sur la transition en République démocratique du Congo de Pretoria, signé le 17 décembre 2002, Journal Officiel n°spécial du 5 avril 2003, <https://www.droitcongolais.info/files/Accord-global-et-inclusif.pdf> accessed 2 April 2024. See also, Laura Davis and Priscilla Hayner, 'Difficult Peace, Limited Justice' (ICTJ 2009) p. 8.

16 Similar to the nationalist and discriminatory political debates in Côte d'Ivoire based on the concept of 'Ivoirité', the theme of 'Congolité' was widely used by the Congolese opposition, particularly targeting President Kabila. They questioned both his lineage to Laurent-Désiré Kabila and his Congolese nationality, accusing him of actually being Rwandan. Gérard Gerold, 'RD Congo, analyse comparative des violences électorales 2006-2011' note 28/13 (2013) p. 6 <https://www.frstrategie.org/publications/notes/rd-congo-analyse-comparative-violences-electorales-2006-2011-2013> accessed 2 April 2024.

17 HRW 'DR Congo: President Brutally Represses Opposition' (2008) <https://www.hrw.org/news/2008/11/25/dr-congo-president-brutally-represses-opposition> and 'DR Congo: Crackdown on Dissent Tops Rights Concerns' (2015) <https://www.hrw.org/news/2015/07/22/dr-congo-crackdown-dissent-tops-rights-concerns> and 'Sanctions contre des hauts responsables de RD Congo : HRW motive les décisions' (2016) <https://www.mediacongo.net/article-actualite-22599.html> accessed 2 April 2024.

18 World Bank, 'Democratic Republic of Congo: Overview' <https://www.worldbank.org/en/country/drc/overview> accessed 21 March 2024.

that led to an increase in attacks against civilian populations by militias, foreign and government forces.¹⁹ The state of emergency has been extended more than 45 times²⁰ and the security and human rights situation continues to deteriorate²¹ in a context where intolerance towards dissenting and opposing individuals, journalists, activists and peaceful demonstrators is also increasing on a national level.²²

The conflicts, authoritarian regimes and political turmoil of the last 30 years have left behind not only millions of victims and survivors and a persistent humanitarian crisis²³, but also a dilapidated and weakened public infrastructure and corrupt political, military and judicial systems. The result is a prevalence of impunity and representatives of Congolese institutions with low credibility.

Nevertheless, in this context, transitional justice initiatives have also been developed by successive Congolese governments. Participants in the peace talks of the 2000s agreed to adopt the Sun City and Pretoria Resolutions, which included a commitment to create a Truth and Reconciliation Commission and a request to establish an International Tribunal. However, the government never formally submitted this request to the United Nations Security Council, and this aspect of the agreement did not progress. A Truth and Reconciliation Commission operated during the transitional period from July 2003 to February 2007 but failed to carry out its mandate and its recommendations for establishing a reparation

programme covering financial compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition went unheeded.

In 2010, the Office of the United Nations High Commissioner for Human Rights (OHCHR) published an exhaustive mapping of the violations of human rights and international humanitarian law that had been committed in the DRC between 1993 and 2003 (known as the “Mapping Exercise”). This shed light on the widespread patterns of violations across the country and provoked continued debate.²⁴ The report was accompanied by various recommendations aimed at ensuring that survivors’ rights to justice, truth, reparation and guarantees of non-repetition of atrocities were finally respected. Nearly 14 years after its publication, the main recommendations of the OHCHR Mapping Exercise have not been implemented. This is despite advocacy efforts by civil society and campaigns for the establishment of a specialised mixed court to prosecute the most serious international crimes committed across Congolese territory, and the development of various initiatives aimed at implementing all the mechanisms of transitional justice that could break the vicious circle of violence and impunity.²⁵

It was not until 2020 that transitional justice was once again on the government’s agenda, which until then had only shown a lukewarm political will for its implementation. Indeed, despite the launch of a public consultation process on transitional justice at

19 HRW World Report, ‘Democratic Republic of Congo, Events of 2021’ (2022) <https://www.hrw.org/world-report/2022/country-chapters/democratic-republic-congo> accessed 21 March 2024.

20 Anadolu (AA), ‘RDC: l’état de siège prolongée à l’est du pays pour la 45^e fois’ (4 April 2023) <https://www.aa.com.tr/fr/afrique/rdc-l%C3%A9tat-de-si%C3%A8ge-prolong%C3%A9-%C3%A0-l'est-du-pays-pour-la-45%C3%A8-fois-/2863377> accessed 2 April 2024.

21 “Insecurity in eastern DRC has continued to fuel a long-standing humanitarian crisis often ignored by the international community. Around 6.3 million people have been displaced in the country and since March 2022, more than 2.8 million people have recently fled their homes in the provinces of Ituri, North Kivu and South Kivu due to insecurity. Currently, 28% of the population of North Kivu and 39% of Ituri are displaced (...). Gender-based violence has increased by 23% throughout the country and by 73% in North Kivu province alone, compared with the same period last year. These violations are linked to the proliferation of armed groups in areas hosting displaced persons and the frequent violation of the civilian and humanitarian nature of these displacement sites. There has also been an increase in sexual violence against children.” [Author’s translation] United Nations, ‘La situation sécuritaire dans l’Est de la RDC continue de détériorer’ (26 June 2023) <https://news.un.org/fr/story/2023/06/1136467#:~:text=Environ%206%2C3%20millions%20de,de%20l'Ituri%20sont%20d%C3%A9plac%C3%A9s> consulted 2 April 2024.

22 HRW World Report, ‘Democratic Republic of Congo, Events of 2022’ (2023) <https://www.hrw.org/fr/world-report/2023/country-chapters/democratic-republic-congo> accessed 2 April 2024.

23 “The DRC is one of the five poorest nations in the world. In 2021, almost 64% of the country’s population – just under 60 million people – lived on less than 2.15 dollars a day (...) The DRC ranks 164th out of 174 countries on the 2020 Human Capital Index, the result of decades of conflict, fragility and stunted development. The DRC’s Human Capital Index stands at 0.37, below the average for sub-Saharan Africa (0.40)” (World Bank, ‘Democratic Republic of Congo: Overview’) <https://www.worldbank.org/en/country/drc/overview> 2 October 2023.

24 OHCHR, ‘Report of the Mapping Exercise documenting the most serious violations of human rights and international humanitarian law committed within the territory of the Democratic Republic of the Congo between March 1993 and June 2003’ (2010) https://www.ohchr.org/sites/default/files/Documents/Countries/CD/DRC_MAPPING_REPORT_FINAL_EN.pdf accessed 2 April 2024.

25 HRW, ‘DR Congo: Prioritize Justice for Serious Crimes’ (2021) <https://www.hrw.org/news/2021/04/29/dr-congo-prioritize-justice-serious-crimes> accessed 2 April 2024.

the instigation of the Minister for Human Rights in 2022 and the establishment in 2023 of a Scientific Committee responsible for drafting a national policy on transitional justice in the DRC, this comprehensive policy has still not been adopted. In terms of reparations the most tangible process has been made under the auspices of The Office of the First Lady, who created the National Fund for Reparations for Victims of Conflict-related Sexual Violence (FONAREV) and adopted Law 22/065 that established several fundamental principles related to the protection

and reparation of victims of CRSV. However, at the same time, former warlord Jean-Pierre Bemba was appointed both Deputy Prime Minister and Minister of Defence, and a former right-hand man of Thomas Lubanga was appointed Military Governor of the Province of North Kivu. Alongside a series of arbitrary arrests and violent repression of public demonstrations organised by the opposition during the December 2023 elections, concerns were raised about the risk of politicisation and instrumentalisation of the reparation process and its sustainability.



IV. CONFLICT-RELATED SEXUAL VIOLENCE IN THE DRC

4.1. The nature and scope of conflict-related sexual violence

As this study has noted, the DRC has been the scene of conflicts characterised by massive and systematic perpetration of sexual and gender-based violence, constituting war crimes and crimes against humanity.²⁶ The figures for cases of CRSV committed vary greatly from one source to another. The UN estimated that 200,000 cases of sexual violence were perpetrated between 1996 and 2010.²⁷ In 2019, the organisation REDRESS estimated that around 250,000 women were victims of rape during the wars in the DRC,²⁸ whilst UN Women estimates that over a million women have been raped in total.²⁹ The Panzi Foundation alone has treated nearly 80,000 victims of sexual violence in South Kivu since 1999.³⁰ Recent conflicts in the East of the country involving the M23 rebels supported by Rwanda have exacerbated the risk of women being displaced or subjected to rape or sexual assault.³¹

However, these official estimated figures reveal only a fraction of the actual number of survivors, most of whom do not report the violence perpetrated against them due to deeply ingrained stigmatisation and fear of retaliation.

The United Nations Mapping Exercise remains the most comprehensive effort to uncover the truth and to conduct “a mapping exercise of the most serious violations of human rights and international humanitarian law committed within the territory of the DRC between March 1993 and June 2003.”³² It highlights the systematic use of rape and other forms of sexual violence by all combatant forces³³ and underscores the recurrent, widespread, and systematic nature of these acts.³⁴ In particular, it concludes that not only do the majority of acts of sexual violence constitute offences and crimes under Congolese law, international human rights law and international humanitarian law, but also that they may constitute crimes against humanity and war crimes – given the broader context in which the crimes were committed.³⁵

Many forms of sexual violence of unprecedented brutality have been documented,³⁶ taking on “unbearable proportions and cruelty and [...] seem[ing] merely to increase in number exponentially.”³⁷ Rape was often public, collective and/or mass and sometimes with the deliberate intention of spreading HIV/AIDS. It could also take the form of forced incest, sexual slavery, forced prostitution, torture and inhuman treatment of a sexual nature, the mutilation

26 Jeune Afrique, ‘La RDC, capitale mondiale du viol’ (2010) <https://www.jeuneafrique.com/155899/societe/la-rdc-capitale-mondiale-du-viol/> accessed 2 April 2024.

27 Ibid.

28 REDRESS, ‘No time to wait: Realising the right to reparations for victims before the International Criminal Court’ (2019) p. 1 <https://redress.org/news/no-time-to-wait-realising-the-right-to-reparations-for-victims-before-the-international-criminal-court/> accessed 2 April 2024.

29 UN Women, ‘Africa, Democratic Republic of Congo’ <https://africa.unwomen.org/en/where-we-are/west-and-central-africa/democratic-republic-of-congo> accessed 2 April 2024.

30 Panzi Foundation, ‘Notre Impact : des Générations de Femmes Soutenues. Des Milliers De Nouveaux départs’ <https://panzifoundation.org/fr/> accessed 2 April 2024.

31 “In North Kivu, where the M23 and dozens of other militias are active, gender-based violence increased by 37% in the first three months of 2023 compared to the same period last year, with several thousand cases reported.” The New Humanitarian, ‘Sexual violence plagues women displaced by DR Congo’s M23 conflict’ (July 2023) <https://www.thenewhumanitarian.org/news-feature/2023/07/12/sexual-violence-plagues-women-displaced-dr-congo-m23-conflict> accessed 2 April 2024.

32 OHCHR, ‘Report of the Mapping Exercise documenting the most serious violations of human rights and international humanitarian law committed within the territory of the Democratic Republic of the Congo between March 1993 and June 2003’ (2010) para. 1.

33 Ibid, para. 530.

34 Ibid, para. 535.

35 Ibid, paras. 22-26.

36 Ibid, paras. 556-629.

37 Ibid, para. 598.

of genitals, or the disembowelment of pregnant women. Rapes have led to forced pregnancies, forced abortions and even the death of the victim due to the extreme brutality of the acts committed.

*"They aim at the complete physical and psychological destruction of women with implications for the entire society. Women are brutally gang-raped, often in front of their families and communities. In numerous cases, men are forced at gunpoint to rape their own daughters, mothers or sisters. In some cases women were shot or stabbed in the genital organs after they were raped. Women who survived months of enslavement, told me that their tormentors had forced them to eat excrement or the human flesh of murdered relatives."*³⁸

Factors that increased a person's vulnerability to CRSV included links – whether suspected or proven – to an opposition party or to enemy forces, trade unions, political activism, or a family relationship with someone allegedly affiliated with these.³⁹

The Mapping Exercise report also emphasises that being in proximity to certain locations also increased a person's vulnerability to CRSV – including detention centres, military encampments and roads to markets, fields, and forests. This vulnerability would also heighten in situations where armed groups would carry out patrols, checks at roadblocks, sweeps, retaliatory operations or raids, when they would experience a withdrawal, victory or defeat, or when they would capture a town or territory.⁴⁰

Finally, it reports sexual violence committed on the basis of ethnic identity and fuelled by racial hatred (particularly towards the Tutsi, Bembe, Banyamulenge, and Pygmy communities).⁴¹ CRSV was also committed

in the name of mystical beliefs or ritual practices involving fetishes around sexual organs or the belief that sexual relations with virgins, children, pregnant or breast-feeding women would cure certain diseases or make people invincible.⁴²

No province or district seems to have been spared from the commission of CRSV. However, North and South Kivu, the Eastern Province (Ituri) and Maniema recorded the most alarming rates.⁴³

4.2. Profile of victims

According to the OHCHR Mapping Exercise, women of all ages, including young girls and elderly women, integrity, and security.⁴⁴ They are also the main victims of the systematic use of forms of violence such as sexual violence:

*"Whether schoolgirls or mothers, engaged, married or widowed; simple farmers or wives of political leaders, former army members or civil servants; opposition party activists, humanitarian workers or members of non-governmental organisations, they were all subjected, regardless of social class or age, and for a variety of reasons, to the most diverse forms of sexual violence."*⁴⁵

Moreover, many women have been raped multiple times – first by an armed combatant (or combatants) from one side, and then by one from the other side – "ironically in retaliation for having supported an 'enemy' at the hands of who they had in fact suffered."⁴⁶ Men and boys are also victims of sexual violence, although ostensibly to a lesser extent,⁴⁷ yet the lack of data in this regard can be clearly linked to a stigmatisation of male violence rooted in broader prejudices.

38 United Nations, General Assembly, 'Report of the Special Rapporteur, Yakin Ertürk, on violence against women, its causes and consequences. Mission to the Democratic Republic of the Congo' A/HRC/7/6/Add.4 (27 February 2008) para. 21.

39 OHCHR, 'Report of the Mapping Exercise documenting the most serious violations of human rights and international humanitarian law committed within the territory of the Democratic Republic of the Congo between March 1993 and June 2003' (2010) para. 633.

40 Ibid, paras. 556-629.

41 Ibid, para. 646.

42 Ibid, paras. 647-650.

43 Ibid, paras. 556-629.

44 Ibid, para. 526.

45 Ibid, para. 630.

46 Ibid, para. 629.

47 Ibid, para. 532.

The successive conflicts are also characterised by the recruitment of children by all armed groups, whether through forced enlistment or 'voluntary' enlistment to ensure their survival. Trained and indoctrinated under extremely brutal conditions, the children are used as 'cannon fodder', human shields, bodyguards, porters, spies and cooks within armed groups and militias.⁴⁸ They are also forced to perpetrate atrocities or murders, as well as to rape civilians, enemy soldiers, and sometimes even members of their own family.⁴⁹ In June 2023, the United Nations Children's Fund observed an increase in the recruitment and use of children, as well as an increase in the sexual violence to which they are subjected.⁵⁰ Indeed, the victimisation of girls and boys associated with armed forces and groups through sexual violence, particularly rape and sexual slavery, has been said to constitute a form of psychological coercion.⁵¹ Amnesty International (AI) notes that:

*"[a]lmost all girl soldiers have reported being raped or sexually exploited by their commanders and other soldiers in their unit. Some boys have also reported similar experiences."*⁵²

Furthermore, "[c]ontemptible beliefs and superstitions led to children being targeted for their virginity, in the conviction that sexual relations with children cure certain diseases (HIV/AIDS) or make the perpetrator invulnerable."⁵³

Women are subject to gender discrimination⁵⁴ and unequal status⁵⁵ be it in the family, society, through social customs and under Congolese law – and face a marked socio-economic⁵⁶ and societal vulnerability.⁵⁷ This in turn contributes to their vulnerability to the extreme forms of sexual violence to which they have been subjected during the various conflicts.

Survivors of sexual violence bear multiple burdens: having been raped, living with the physical and psychological aftermath of these crimes, and then being rejected by their spouses, families and communities. Subsequently, these individuals are left without moral or economic support,⁵⁸ while the severity of the serious crimes they have suffered is not recognised and almost total impunity prevails for the perpetrators.

48 Amnesty International, 'Democratic Republic of Congo: Children at War' AI: AFR 62/034/2003 (2003) pp. 7-8 <https://www.amnesty.org/fr/documents/afr62/034/2003/fr/> accessed 2 April 2024.

49 Ibid, p. 9.

50 "Recruitment and use of children by armed groups increased by 45% during the first six months of the year. In 2022, 1,545 children—some as young as 5 years old—were reported to have been recruited and used by armed groups. The number of child murders and mutilations rose by 32% during the same period, compared to 699 cases the previous year. Furthermore, the incidences of rape and other forms of sexual violence against children, as well as child abductions, are also on an upward trajectory. In 2021 and 2022, the DRC recorded the highest number of verified cases of sexual violence against children committed by armed forces and armed groups." [Author's translation]. ONU Info, 'Conflits en RD Congo : des niveaux records d'enfants tués, enlevés et violés' (2023) <https://news.un.org/fr/story/2023/09/1139182> accessed 2 April 2024.

51 OHCHR, 'Report of the Mapping Exercise documenting the most serious violations of human rights and international humanitarian law committed within the territory of the Democratic Republic of the Congo between March 1993 and June 2003' (2010) paras. 643-645.

52 Amnesty International, 'Democratic Republic of Congo: Children at War' AI: AFR 62/034/2003 (2003) p. 11 <https://www.amnesty.org/en/documents/afr62/034/2003/en/> accessed 2 April 2024.

53 OHCHR, 'Report of the Mapping Exercise documenting the most serious violations of human rights and international humanitarian law committed within the territory of the Democratic Republic of the Congo between March 1993 and June 2003' (2010) para. 669.

54 While 51% of the DRC's total population of almost 100 million is female, women and girls have less access to education than boys (36.1% of girls and 64.7% of boys complete lower secondary education according to 2014 data). In addition, illiteracy rates are higher between them: adult literacy is lower among women (66.5%) than among men (88.5%) (2016). This gap (22) is greater than the gap for sub-Saharan Africa as a whole (13.1). The proportion of women aged 15 to 49 who have experienced violence is higher than the global average: all forms of sexual violence, 27%; domestic violence, 50.7%. In addition, 121 out of every 1,000 girls aged 15 to 19 gave birth in 2019 (World Bank, 'Gender Data Portal. Republic Democratic of Congo' <https://genderdata.worldbank.org/en/economies/congo-dem-rep> accessed 2 April 2024).

55 The country ranks 151* (out of 191) on the Gender Inequality Index of the Gender-related Development Index (UNDP, 'Human Development Report 2021/2022: Uncertain times, changed lives: Shaping our future in a changing world' (2022) p. 30 <https://hdr.undp.org/content/human-development-report-2021-22> accessed 2 April 2024).

56 The economic empowerment of women in the DRC is limited. In 2019, the activity rate for women was 61%, while that for men was 66.2%. Most of them worked in agriculture. Although this rate is relatively high, women earn much less than men and own fewer assets. In 2019, vulnerable employment among women stood at 88.3%, compared with 66.9% among men. In 2020, women will hold only 12.8% of parliamentary seats, which is below the average rate for low-income countries (World Bank, 'Gender Data Portal. Republic Democratic of Congo' and World Bank, 'Women's Economic Empowerment in the Democratic Republic of the Congo: Obstacles and Opportunities' (2021) <https://openknowledge.worldbank.org/bitstreams/3d10a659-e36b-5799-a60c-dec231e5f871/download> accessed 2 April 2024).

57 "27% of women are victims of discriminatory traditional practices. Early marriages are common and, in 2007, 39% of women under the age of twenty were married or in a union before the age of 18". (UN Women, 'Democratic Republic of Congo' accessed 2 April 2024) "feearly marriage and high fertility rates are problematic, with the fertility rate of women and girls with no education at all being twice that of women who have completed secondary education (7.4 children compared to 2.9, DHS 2014)." (World Bank, 'Democratic Republic of Congo: Overview' accessed 2 April 2024).

58 OHCHR, 'Report of the Mapping Exercise documenting the most serious violations of human rights and international humanitarian law committed within the territory of the Democratic Republic of the Congo between March 1993 and June 2003' (2010) para. 629.

| 4.3. Profile of perpetrators

The common denominator between all the parties to the successive and concurrent conflicts in the DRC is that they have all perpetrated sexual violence. These include many different elements of the government forces, such as the National Police and its special services, the gendarmerie, the Presidential Guard, the Army, the Navy, the intelligence services and prison staff.⁵⁹ Perpetrators have also come from tribal militias and rebel soldiers, as well as Rwandan, Ugandan and Burundian soldiers, and even civilians in positions of power,⁶⁰ including peacekeeping personnel.⁶¹

“In the eastern part of the country, women have been targeted by all parties to a conflict in which women’s bodies have become another battlefield.”⁶²

Key factors that explain the widespread occurrence of CRSV thus encompass the tacit consent and passive or active encouragement by both institutional and rebel military hierarchies, impunity for perpetrators, patterns of patriarchal domination and the normalisation of violence.⁶³

59 United Nations, General Assembly, ‘Report of the Special Rapporteur, Yakin Ertürk, on violence against women, its causes and consequences. Mission to the Democratic Republic of the Congo’ (27 February 2008) A/HRC/7/6/Add.4, paras. 13-14.

60 OHCHR, ‘Report of the Mapping Exercise documenting the most serious violations of human rights and international humanitarian law committed within the territory of the Democratic Republic of the Congo between March 1993 and June 2003’ (2010) para. 531, 652. and United Nations, General Assembly, ‘Report of the Special Rapporteur, Yakin Ertürk, on violence against women, its causes and consequences. Mission to the Democratic Republic of Congo’ A/HRC/7/6/Add.4 (27 February 2008) para. 15.

61 United Nations, General Assembly, ‘Report of the Special Rapporteur, Yakin Ertürk, on violence against women, its causes and consequences. Mission to the Democratic Republic of Congo’ A/HRC/7/6/Add.4 (27 February 2008) para. 41, 54.

62 FIDH, ‘DRC: Victims of sexual violence rarely obtain justice and never receive reparation: Major changes needed to fight impunity’ (2013) p.11 https://www.fidh.org/IMG/pdf/rapport_rdc_.pdf accessed 2 April 2024.

63 OHCHR, ‘Report of the Mapping Exercise documenting the most serious violations of human rights and international humanitarian law committed within the territory of the Democratic Republic of the Congo between March 1993 and June 2003’ (2010) paras. 532; 652.



V. SURVIVORS' PERCEPTIONS

5.1. Impact of conflict-related sexual violence

The devastating impacts of CRSV on survivors extend beyond the physical and psychological. They affect not only survivors' personal and social development; whether it be with their spouse, their immediate or extended family, or their community. As evidenced by the testimonies collected, being a victim of CRSV can lead to, among other things, repudiation, stigmatisation, ostracism, and the inability to access employment or generate a stable livelihood.

5.1.1. Physical impacts

In her study *Listening to Victims' Voices when Awarding Reparations to Survivors of Conflict-Related Sexual Violence in Eastern DRC*, Pierson conducted 23 interviews in March and April 2018 with a total of 44 survivors of CRSV. When asked about the main consequences of the rape on their lives, 55% of the survivors first mentioned physical consequences. *"Many indeed contracted sexually transmitted diseases (STDs), some with lasting impacts on their health, their bodies severely weakened by the infection. Several had their genital organs completely destroyed during the rape, resulting in infertility and/or continuing to have very painful menstruations. Several respondents had to undergo surgical operations, either for a fistula or for a prolapse."*⁶⁴

The Panzi Foundation in Bukavu⁶⁵ – like most of the non-governmental organisations (NGOs) working in the DRC – has noted multiple physical and gynaecological injuries caused by CRSV. These include tears and injuries to internal tissues and

genitals, fistulas between the vagina, rectum and bladder, incontinence and related infections, prolapse, disfigurement, scarring, reproductive problems and sterility, headaches, back and lower abdominal pain, and lower limb dysfunction.

The lack of immediate and appropriate care exacerbates these physical consequences, often for life:

*"According to studies, about half of women victims seek medical help but very few do so immediately after the attack, which reduces the possibilities of preventing STDs and pregnancies. This is due in part to the lack of access to health services. Many women have to travel for over a day to see a doctor. As a result, nearly half of victims wait one year or more to obtain medical care."*⁶⁶

According to Human Rights Watch (HRW), less than 50% of raped women have access to health centres.⁶⁷

5.1.2. Psychological impacts

"You're a survivor for life. You relive the stories."⁶⁸

Survivors of CRSV naturally display symptoms of depression and post-traumatic stress disorder (PTSD), such as extreme fear, eating and sleeping disorders, self-harm, and fear of abandonment. Seventy per cent of the participants in Pierson's study spontaneously mentioned psychological impacts, ranging from anxiety to suicide attempts, epileptic seizures, fear of men, isolation, depression, or a lack of interest in sex.⁶⁹

64 Apolline Pierson, 'Listening to Victims' Voices when Awarding Reparations to Survivors of Conflict-Related Sexual Violence in Eastern DRC' (Graduate Institute of International and Development Studies, 2018) p. 36.

65 Panzi Foundation, 'Cruel. Complexe. Critique. C'est notre crise' <https://panzifoundation.org/fr/the-crisis/> accessed 2 April 2024.

66 Sara E. Casey, 'Care-Seeking Behavior by Survivors of Sexual Assault in the Democratic Republic of the Congo', (June 2011) Vol. 101, No. 6, 1054-1055, *American Journal of Public Health*, quoted in FIDH, 'DRC: Victims of sexual violence rarely obtain justice and never receive reparation. Major changes needed to fight impunity' (2013) p. 13.

67 HRW, 'Soldiers Who Rape, Commanders Who Condone: Sexual Violence and Military Reform in the Democratic Republic of Congo' (2009) p. 14 <https://www.hrw.org/report/2009/07/16/soldiers-who-rape-commanders-who-condone/sexual-violence-and-military-reform> accessed 3 March 2024.

68 AFRDRCFGGOMA04, 20 March 2019.

69 Apolline Pierson, 'Listening to Victims' Voices when Awarding Reparations to Survivors of Conflict-Related Sexual Violence in Eastern DRC' (Graduate Institute of International and Development Studies, 2018) p. 36.

“Sometimes, it’s ok, we feel normal, like others. Other times, it feels like our head is going to explode, we relive the events over and over again. You doubt everything and everyone. You’re afraid of everyone.”⁷⁰

Such psychological problems, coupled with worries regarding their safety, their survival and the education of their children, prevent survivors from imagining a future and moving forwards: *“we only live in the present”⁷¹; “we can’t think about the future because the present is ruined”⁷²; “I can’t think about the future when the present is a blur”⁷³; “I can’t think about tomorrow because I’m unable to live in the present”⁷⁴*. These testimonies reflect the inertia and paralysis in which survivors of CRSV find themselves mired.

Cases of forced pregnancies and children born of conflict-related sexual violence are extremely high, and abortion is illegal in the DRC. Exactly 50% of the victims of CRSV interviewed by Pierson had given birth to a child.⁷⁵ Some women who had been raped multiple times had several children born of CRSV. Having a child born of CRSV has profound psychological consequences for the victims: these children are constant reminders of what happened to them. Some women do not consider them to be their children and, when asked how many children they have, one of them answered: *“I have four children*

and a daughter born of rape.”⁷⁶ In Goma, one woman admitted that she rejects her child – who she calls *“the snake child”* – because they represent the end of her prospects in life and constitute a burden.⁷⁷ Another woman, however, considers that her child saved her life, as other abducted women who did not become pregnant were killed, and thus she is obliged to love them for that.⁷⁸

5.1.3. Stigmatisation and ostracism

“Here, an animal is held in higher regard than a person.”⁷⁹

Psychological damage can be considerably aggravated by the stigmatisation and ostracism faced by survivors within their family, community and society. Ostracism is further intensified in cases of complications resulting from fistulas, pregnancies from rape, and STDs, especially HIV/AIDS.⁸⁰ *“Victims are not only traumatized by sexual violence, but also by the negative attitude of their communities towards them”⁸¹* an attitude that is encouraged by certain beliefs, customs and traditions.

Survivors can be rejected within their community and feel ‘pointed at’ or the subject of mockery or reproach for having *“let themselves be raped”*. *“I don’t go near my neighbours; I think they’ll point fingers”⁸²; “When I walk down the street, the neighbours talk and point fingers.”⁸³* Furthermore, survivors report that their

70 Individual interview no. 22, Bukavu, 5 April 2018, quoted in Apolline Pierson, ‘Listening to Victims’ Voices when Awarding Reparations to Survivors of Conflict-Related Sexual Violence in Eastern DRC’ (Graduate Institute of International and Development Studies, 2018) p. 37.

71 AFRDRCMINOVA01, 18 February 2019.

72 AFRDRCFGGOMA04, 20 March 2019.

73 AFRDRCFGGOMA05, 20 March 2019.

74 Ibid.

75 Apolline Pierson, ‘Listening to Victims’ Voices when Awarding Reparations to Survivors of Conflict-Related Sexual Violence in Eastern DRC’ (Graduate Institute of International and Development Studies, 2018) p. 37.

76 Ibid.

77 AFRDRCFGGOMA04, 20 March 2019.

78 Ibid.

79 AFRDRCMINOVA01, 18 February 2019.

80 OHCHR, ‘Report of the Panel on Remedies and Reparations for Victims of Sexual Violence in the Democratic Republic of the Congo to the High Commissioner of Human Rights’ (March 2011) para 30–33 https://www.ohchr.org/sites/default/files/Documents/Countries/CD/DRC_Reparations_Report_en.pdf accessed 2 April 2024.

81 HRW, ‘Soldiers Who Rape, Commanders Who Condone: Sexual Violence and Military Reform in the Democratic Republic of Congo’ (2009), p. 16.

82 Ibid.

83 Ibid.

children are also victims of this behaviour: *"When the children go out to play with others, they are insulted";⁸⁴ "I am a victim, but so is my child. In my family, people throw stones at the child. I'm afraid for his future."⁸⁵*

"We are like animals in the neighbourhood."⁸⁶

All survivors mention profound changes in their relationships with their husbands, families, and communities following the CRSV. Rape, particularly, is considered taboo in traditional Congolese society and is seen as an affront and humiliation to the family and community – destroying the values and ideals of masculinity. Survivors are viewed as the propagators of curses. They must either *'lose their marriage'*⁸⁷ due to the *tshibawu* ('taboo') of having suffered sexual violence in the eyes of the community or pay the *tshibindi*. This is a customary fine paid by the woman to the community, which involves her walking naked, in broad daylight, in view of everyone, while members of the community hit and jeer at her, until she brings three goats to her husband's family in the hope that he will forgive her.⁸⁸

"Families sometimes reject their own daughters after rape. When girls are rejected by their families and leave their home, they become vulnerable to further abuse. Girls are also often rejected by their fiancés and have difficulties finding a husband."⁸⁹ Thirty-eight per cent of those interviewed by Pierson reported having been abandoned by their parents or husbands after the rape.⁹⁰ There are numerous first-hand accounts of marital problems, abandonment by the husband and family rejection.

"I had a fiancé who disappeared since it happened, and since then, the whole neighbourhood mocks me, I no longer have any value."⁹¹

"The family has distanced themselves from us, and now that my husband is dead, I no longer have any value, I can no longer go to my family or my husband's family, because I am rejected."⁹²

The situation is particularly difficult for those who have a child born of CRSV and whose story is often known within the community. The 38 per cent abandonment rate mentioned by Pierson is even higher for participants who have given birth to a child who constitutes 'living proof' of what happened.⁹³ Their chances of getting married and having other children are reduced, which alters their place in Congolese society. Even if they manage to get married after having a child born of rape – as was the case for one woman interviewed in Goma – it is not uncommon for the husband to give priority to his own children and discriminate against the child born of CRSV in terms of food, clothing and all the basic necessities: *"Now that I'm married but my husband discriminates against my child, it reminds me of everything and the affection diminishes. Should I divorce, should I abandon my daughter, or should I live in this hell?"⁹⁴ Children born of CRSV are themselves stigmatised within their community: *"When my child plays with other children, the other mothers stigmatise him [as being FDLR] and he cries and I console him and he asks what it is."⁹⁵ They are also stigmatised within their own families: *"Even at home, when the children play with each other, if he makes a mistake, his brothers and sisters say 'that's what children of rape are like'.⁹⁶***

84 AFRDRCMINOVA01, 18 February 2019.

85 Apolline Pierson, 'Listening to Victims' Voices when Awarding Reparations to Survivors of Conflict-Related Sexual Violence in Eastern DRC' (Graduate Institute of International and Development Studies, 2018) p. 70.

86 AFRDRFCFGGOMA05, 20 March 2019.

87 In this context, "perdre leur mariage" or "losing their marriage" means that the wife is repudiated by the husband and/or his family.

88 "Les hommes mariés violés ne subissent pas la même humiliation et ne voit pas leur mariage remis en question" Panzi Foundation, 'Rapport de l'atelier de validation' (2024).

89 HRW, 'Soldiers Who Rape, Commanders Who Condone: Sexual Violence and Military Reform in the Democratic Republic of Congo' (2009) p. 16.

90 Apolline Pierson, 'Listening to Victims' Voices when Awarding Reparations to Survivors of Conflict-Related Sexual Violence in Eastern DRC' (Graduate Institute of International and Development Studies, 2018) p. 39.

91 AFRDRFCFGGOMA05, 20 March 2019.

92 Ibid.

93 Apolline Pierson, 'Listening to Victims' Voices when Awarding Reparations to Survivors of Conflict-Related Sexual Violence in Eastern DRC' (Graduate Institute of International and Development Studies, 2018) p. 39.

94 AFRDRFCFGGOMA04, 20 March 2019.

95 AFRDRFCFGGOMA05, 20 March 2019.

96 Ibid.

Survivors face challenges even when they are not abandoned by their partner. *"I'm with my husband but it's not a good home; to find peace I'd have to jump into a river because of all the many disappointments and rejection."*⁹⁷

5.1.4. Socio-economic impacts

The physical and psychological consequences, fear of reprisals, feelings of shame, and stigmatisation lead to the isolation of survivors and negatively impact their social vulnerability and financial deprivation.

The physical consequences of CRSV often negatively impact survivors' physical abilities – meaning that they no longer have the same capacity for work. *"I have pain in my spine and can't carry heavy loads like I used to, and I don't know what the future will be like because my body is getting weaker."*⁹⁸ This decrease in productivity among women has socio-economic consequences that extend beyond the individual victims: it affects the entire family, as women are generally responsible for household chores as well as fetching firewood and water for the home. They are also more likely than men to spend the little income they generate on expenses that benefit their family, such as children's education.⁹⁹

As mentioned previously, women have often been victims of sexual violence whilst performing tasks traditionally assigned to their gender (such as going to the market or the well, working in the fields, or collecting firewood in the forest). The psychological impact of having been victimised in these places is also a factor that prevents women from resuming their usual activities: *"I'm still afraid to go to the fields and that it might happen again."*¹⁰⁰ Pierson notes that

the mothers interviewed in Kavumu, where the mass rapes of children occurred, had stopped going to the fields because they were too afraid to leave their children alone at home.¹⁰¹

The majority of survivors mention serious economic difficulties as a result of the aforementioned abandonment and exclusion that they suffer – a rupture between the 'before and after' of the rape. *"Their future is often compromised as they have difficulty finding a partner, drop out of school, are rejected by their own family, or have to raise a child born from rape while still being a child themselves."*¹⁰²

"Many girls drop out of school after rape, due to ill-health, trauma, displacement or stigma."¹⁰³

Ostracism, rejection and abandonment also affect children and negatively impact their access to education and healthcare: *"Before, my children studied under good conditions but now that their father is no longer here, that has also changed negatively."*¹⁰⁴ *"Before my children were studying, now only one is."*¹⁰⁵ *"Rejected by the family, my children are in the street without studying, with no means of getting them treated under good conditions."*¹⁰⁶

5.2. On survivors' current needs

In August 2010, the United Nations High Commissioner for Human Rights set up a High-Level Panel tasked with hearing from victims of sexual violence in the DRC about their needs and the remedies and reparations available to them. The experts met with 61 individuals,

97 Ibid.

98 AFRDRCFGGOMA05, 20 March 2019.

99 Davis, Fabbri and Ilot Muthaka, 'Gender Country Profile', quoted in Apolline Pierson, 'Listening to Victims' Voices when Awarding Reparations to Survivors of Conflict-Related Sexual Violence in Eastern DRC' (Graduate Institute of International and Development Studies, 2018) p. 36.

100 AFRDRCFGGOMA04, 20 March 2019.

101 Apolline Pierson, 'Listening to Victims' Voices when Awarding Reparations to Survivors of Conflict-Related Sexual Violence in Eastern DRC' (Graduate Institute of International and Development Studies, 2018) p. 37.

102 HRW, 'Soldiers Who Rape, Commanders Who Condone: Sexual Violence and Military Reform in the Democratic Republic of Congo' (2009) p. 5.

103 Ibid, p. 16.

104 AFRDRCFGGOMA04, 20 March 2019.

105 AFRDRCFGGOMA05, 20 March 2019.

106 Ibid.



Meeting with survivors in Kaniola, the Democratic Republic of the Congo, November 2022.

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individually or in groups.¹⁰⁷ The OHCHR report highlights a recurring demand for a return to peace and security – seen as a necessity not only for reducing the frequency of CRSV and enabling people to resume their daily activities, but also for survivors to benefit from any form of reparation received.¹⁰⁸

“We first want a good government for stability. With insecurity, even if we gather a small sum, it’s not worth it.”¹⁰⁹

During the FGDs organised by the Dr. Denis Mukwege Foundation in 2019, when survivors were asked to express their needs in relation to the consequences of what they had experienced, the immediate response was often a general request for “support”.¹¹⁰

When asked to specify what kind of support would respond to their needs, the responses largely related to material and economic demands:

- Income-generating activities (IGAs);
- Covering children’s school fees;
- A house of their own;
- A field or a plot of land of their own.¹¹¹

¹⁰⁷ OHCHR, ‘Report of the Panel on Remedies and Reparations for Victims of Sexual Violence in the Democratic Republic of the Congo to the High Commissioner of Human Rights’ (March 2011) para. 5.

¹⁰⁸ OHCHR, ‘Report of the Panel on Remedies and Reparations for Victims of Sexual Violence in the Democratic Republic of the Congo to the High Commissioner of Human Rights’ (March 2011) paras. 4, 23, 29, 48–49, 126, 138, 144. See also: AFRDRCFGKAVUMU02, 28 February 2019, AFRDRCMINOVA01, 18 February 2019.

¹⁰⁹ AFRDRCMINOVA01, 18 February 2019.

¹¹⁰ AFRDRCFGGOMA04, 20 March 2019.

¹¹¹ Ibid; AFRDRCFGGOMA05, 20 March 2019.

In Kavumu and Kigubule survivors also expressed their need for the State to pay financial damages¹¹² and provide financial assistance towards social reintegration and “start[ing] over in life.”¹¹³ The emphasis placed on material support clearly reflects the difficult socio-economic circumstances that survivors are facing – compounded by the aforementioned abandonment by husbands and/or family members, the number of dependent children, and the high costs of access to justice, health and education.

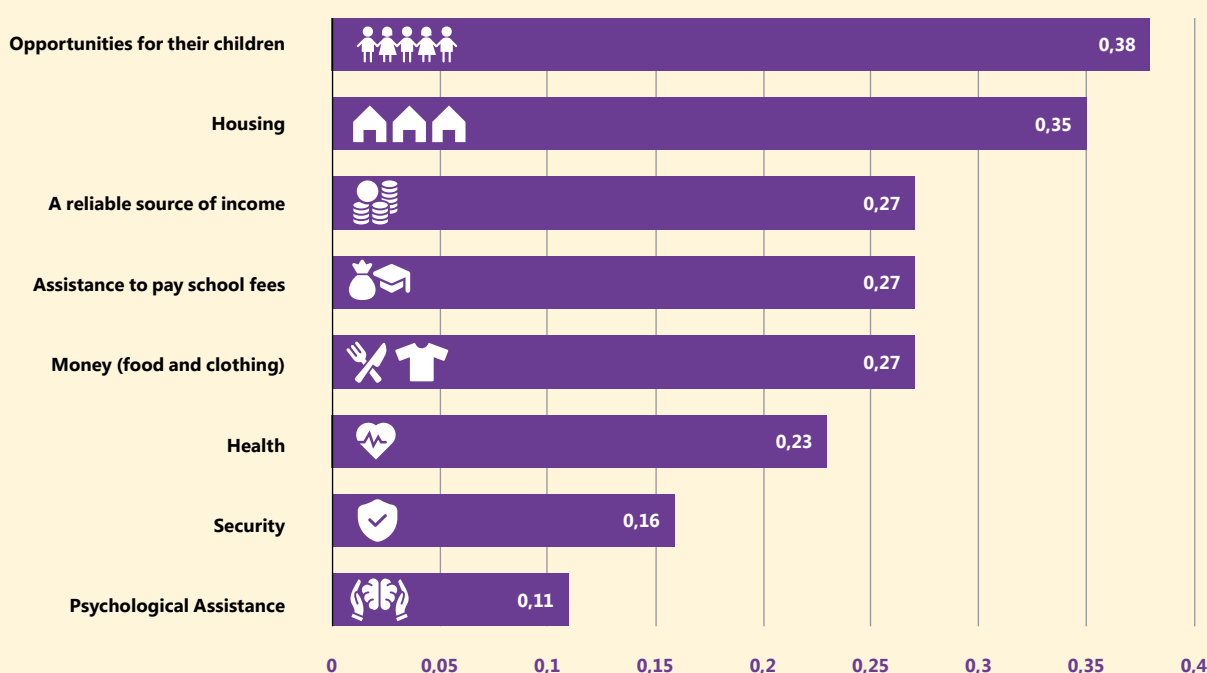
Survivors also find themselves needing to visit hospitals¹¹⁴ to receive medical care¹¹⁵ and psychological support¹¹⁶ for themselves and their children, although this is mentioned to a lesser extent. This suggests a

certain disparity between the impacts of CRSV as identified by survivors and their priorities in terms of their self-identified needs.

In Minova, survivors went into more detail regarding their needs, perhaps due to the trial held there for the mass rape perpetrated in 2012. Here, they also mentioned the need to pursue education, to raise community awareness so that they and their children would no longer be stigmatised, and to create victim’s associations so that they can share experiences.¹¹⁷

As part of her study *Listening to Victims’ Voices* (cited above) – and following individual interviews and group discussions in eastern DRC – Pierson identified the following needs:

NEEDS IDENTIFIED BY SURVIVORS



Source: Pierson, 'Listening to Victims' Voices' p. 40.

112 AFRDRCFGKAVUMU02, 28 February 2019; AFRDRCFGKIGULUBE03, 12 March 2019.

113 AFRDRCFGKIGULUBE03, 12 March 2019.

114 Ibid.

115 AFRDRCFGGOMA04, 20 March 2019; AFRDRCFGGOMA05, 20 March 2019; AFRDRCFGKAVUMU02, 28 February 2019; AFRDRCMINOVA01, 18 February 2019.

116 AFRDRCMINOVA01, 18 February 2019.

117 AFRDRCMINOVA01, 18 February 2019.

Thirty-eight per cent of those interviewed expressed their needs in terms of “opportunities for their children” in general. This overlaps with the 27 per cent who identified the need for a reliable source of income, assistance with school fees and expenses related to food and clothing, as well as the 23 per cent who requested assistance with expenses related to health.¹¹⁸

Thirty-five per cent of survivors identified housing as an urgent need. This high percentage could be explained by the impossibility of returning to their homes due to safety concerns or ostracism, or by the feeling that a home of their own would allow them to not be dependent on their families and to have more freedom.¹¹⁹

The expressed needs vary according to the profile of the survivors. For example, those suffering from physical consequences to the point that they can no longer work in the fields want to be trained and have the necessary resources to start a new income-generating activity, such as basket weaving or trading.¹²⁰ They often recognise that training in itself is not sufficient:

“I received training in basketry at Panzi, but today I do not have the money to buy the raw materials. Money could help me get the threads to make these baskets, which is better than cultivation (sic), because I became too weak after the rape.”¹²¹

The younger survivors or those with many children to support tend to be the ones who focus on education, believing that education could help them escape poverty and open up new opportunities for them and their children.¹²² Finally, it was largely the older survivors – whose bodies were severely weakened by the rape and who needed regular medical

care, as well as women whose children suffer from a disease – who identified the need for help with medical expenses.¹²³

This self-assessment of their needs highlights a number of interesting points. Firstly, survivors clearly have difficulty separating their own needs from those of their children. Secondly, beyond the need to address the initial impacts mentioned in relation to their physical and mental health, survivors do not express the fulfilment of their physical and mental health needs in general as a priority. This may be because most of the interviewed survivors already receive free medical assistance from the Panzi Hospital and its mobile clinics, but also due to the stigma associated with acknowledging and seeking treatment for mental illness.¹²⁴

Finally, the material and socio-economic needs identified by survivors must also be understood in the context of the high levels of poverty and extreme poverty present in the DRC. Whilst the stigmatisation and ostracism associated with sexual violence certainly exacerbates survivors’ acute need to cover basic necessities, similar needs could also be expressed by populations not affected by sexual violence.¹²⁵

5.3. On reparations

“Something that is damaged, we repair it.”¹²⁶

Various insights regarding reparation emerged from the FGDs organised in 2018 by Pierson and in 2019 by the Dr. Denis Mukwege Foundation, as well as from the interim reparative measures project put in place in 2020 by GSF and the Panzi Foundation.¹²⁷ Most

118 Apolline Pierson, ‘Listening to Victims’ Voices when Awarding Reparations to Survivors of Conflict-Related Sexual Violence in Eastern DRC’ (Graduate Institute of International and Development Studies, 2018) pp. 40–41.

119 Ibid, p. 40.

120 Ibid.

121 Ibid.

122 Ibid, pp. 40–41.

123 Ibid, p. 41.

124 Ibid, pp. 40–41

125 Sahla Aroussi, ‘Perceptions of Justice and Hierarchies of Rape’, Volume 12, Issue 2 (International Journal of Transitional Justice 2018) p. 8 <https://academic.oup.com/ijtj/article-abstract/12/2/277/4954025> accessed 2 April 2024.

126 AFRDRCFGGOMA04, 20 March 2019.

127 See Section X below.

survivors have limited knowledge of reparation or understand it only in terms of judicial compensation. For example, some survivors initially understood reparation as *"If it's outside the court, it's assistance to help people."*¹²⁸

Any prior knowledge of the concept of reparation held by survivors before participating in the FGDs was often tied to access that these survivors had already had to the criminal justice system and/or support that they had received from civil society organisations. However, once the concept of administrative reparation was explained, very specific ideas emerged – as detailed below.

5.3.1. The meaning of reparation: responsibility and recognition

The survivors from Kavumu saw a difference between 'reparation' – which certain actors are responsible for providing – and assistance. According to them, assistance comes from the goodwill of those who provide it, whereas reparation is an obligation.¹²⁹ They believe that it is the State's responsibility to acknowledge their situation and provide reparation:

"It is the State that must recognise our case [...] The State turned a blind eye for years even though we had started to denounce [...] Normally, the state should have provided security for its population. That's why it's the state that has to pay."¹³⁰

Survivors from Kigulube also stressed that it is important for the crimes committed to be recognised: *"The State must recognise because it sees the evil and yet it does not intervene."*¹³¹ They agreed that it is the State's duty to acknowledge the crimes and their consequences, and for such recognition to be meaningful *"because it is the State that has to ensure that rights are respected."*¹³² In Goma, survivors echoed this sentiment: *"It must be the government that recognises and acts accordingly."*¹³³

Survivors from Minova believed that reparation differs from other forms of assistance because it is sustainable and has two objectives: a recognition of harms done and an improvement in living conditions for survivors. *"When we give reparation, we recognise and then we repair. There has to be recognition before reparation can be given."*¹³⁴

5.3.2. Forms of reparation

Survivors from Minova and Kavumu preferred individual reparations to collective reparations.¹³⁵ The interviewed survivors who had already filed complaints expressed a strong sense of frustration, injustice, and anger – especially when court decisions had been made in their favour, but no compensation has been awarded. They also had an increased awareness of their rights, which coincided with a clear preference for individual rather than collective reparation.

In other places where no legal proceedings have yet taken place – such as in Goma – survivors also expressed some reluctance towards collective reparations. They believed that such reparations would benefit individuals who were not victims and considered individual reparations to be *"better"*.¹³⁶

The general preference for individual as opposed to collective reparations is also evident from responses collected by the OHCHR panel when survivors were

128 Ibid.

129 AFRDRCFGKAVUMU02, 28 February 2019.

130 Ibid.

131 AFRDRCFGKIGULUBE03, 12 March 2019.

132 Ibid.

133 AFRDRCFGGOMA04, 20 March 2019.

134 AFRDRCMINOVA01, 18 February 2019.

135 Ibid. AFRDRCFGKAVUMU02, 28 February 2019.

136 AFRDRCFGGOMA04, 20 March 2019.

asked about state initiatives such as building hospitals and schools. These survivors pointed out that *"such initiatives would benefit everyone and would not sufficiently recognise their suffering, and their children's suffering, and more generally the suffering of the victims. They were concerned that their individual entitlements not be displaced by collective reparations."*¹³⁷

However, in Kavumu and Goma, survivors did discuss how collective reparation measures could help overcome stigma around being a survivor of CRSV and could benefit all of their children.¹³⁸ Some also considered that the benefit of collective reparations, such as the building of a hospital or a school, could be

*"that the entire community would benefit, with some recognition that the community as a whole had suffered harm."*¹³⁹

Furthermore, some survivors from Goma considered that collective and individual reparations could go hand in hand,¹⁴⁰ along with survivors from Kigulube who believed that both forms of reparation were important.¹⁴¹ These views align with the report from the OHCHR Panel, which *"heard many views on the relative benefits and drawbacks of individual vs. collective reparations, and repeatedly the suggestion was made that both collective and individual reparations should be provided for."*¹⁴²

The preference for material reparations was very pronounced in all the locations in which survivors were interviewed. Generally speaking, material reparations are often perceived as more important because the symbolic dimension cannot solve survivors' immediate problems or the direct and indirect consequences of the sexual violence suffered

in a context of extreme poverty.¹⁴³ The same idea emerges from interviews conducted by the OHCHR Panel during which

*"[s]ymbolic reparations, such as the statue built in Shabunda as a memorial to the suffering of women in war or the idea of a public apology, were welcomed by those whom the panel consulted, but clear preference was expressed for tangible benefits to address the more concrete needs of victims, to which a symbolic component might be attached."*¹⁴⁴

Some survivors value material reparations because they consider they will have a multiplier effect: *"material [reparation] because it can help the whole family"*.¹⁴⁵

Survivors appeared to attach some importance to symbolic reparations – linking them both to the process of personal, family, and community remembrance, as well as to the process of raising society's awareness, and thus preventing new atrocities. Nevertheless, every survivor interviewed considered that any symbolic reparations should come only after material reparations.

5.3.3. Reparation measures

Regarding individual reparation measures, the survivors from Minova expressed their preference for the following:¹⁴⁶

- Construction of a house;
- Income-generating activities;
- Periodic sums of money;
- Medical care for children;
- Payment of tuition fees.

137 OHCHR, 'Report of the Panel on Remedies and Reparations for Victims of Sexual Violence in the Democratic Republic of the Congo to the High Commissioner of Human Rights' (March 2011) para. 100.

138 AFRDRCFGKAVUMU02, 28 February 2019; AFRDRCFGGOMA04 and AFRDRCFGGOMA05, 20 March 2019.

139 OHCHR, 'Report of the Panel on Remedies and Reparations for Victims of Sexual Violence in the Democratic Republic of the Congo to the High Commissioner of Human Rights' (March 2011) para. 147.

140 AFRDRCFGGOMA05, 20 March 2019.

141 AFRDRCFGKIGULUBE03, 12 March 2019.

142 OHCHR, 'Report of the Panel on Remedies and Reparations for Victims of Sexual Violence in the Democratic Republic of the Congo to the High Commissioner of Human Rights' (March 2011) para. 9.

143 AFRDRCMINOVA01, 18 February 2019; AFRDRCFGKAVUMU02, 28 February 2019; AFRDRCFGKIGULUBE03, 12 March 2019; AFRDRCFGGOMA04 and AFRDRCFGGOMA05, 20 March 2019.

144 OHCHR, 'Report of the Panel on Remedies and Reparations for Victims of Sexual Violence in the Democratic Republic of the Congo to the High Commissioner of Human Rights' (March 2011) paras. 62, 150.

145 AFRDRCFGGOMA04, 20 March 2019.

146 AFRDRCMINOVA01, 18 February 2019.

Survivors from Kigulube prioritised the provision of money and training in various trades.¹⁴⁷ Survivors from Kavumu¹⁴⁸ and Goma¹⁴⁹ were almost unanimous in their requests for a house. As mentioned earlier, the lack of housing is a factor that increases the vulnerability of survivors. The OHCHR report identifies similar priorities to those directly expressed by survivors.

The report also mentions that when asked what would restore their rights and dignity, survivors of CRSV from the Kivu provinces responded in terms of medical care and access to education – first for their children and, in some cases, for themselves. Some survivors also expressed their wish to receive financial aid or support for economic empowerment through the provision of micro-finance loans.¹⁵⁰ In the Eastern Province, the survivors interviewed also added a request for housing and the provision of land.¹⁵¹ In the case of individual reparation measures, it is interesting, therefore, to note the similarity between the needs and the desired reparation measures expressed by survivors.

In terms of collective reparations, in all of the locations featured in the 2019 study survivors emphasised symbolic collective reparations, specifically the construction of a monument (with the exception of the survivors from Kigulube who suggested building health centres).¹⁵² All survivors agreed that this monument should not bear the names of the victims to avoid adding to the stigma.¹⁵³ Survivors from Goma, Kigulube, and Kavumu also suggest establishing a Day of Commemoration.¹⁵⁴

During the activities of the OHCHR Panel, other collective reparation measures were mentioned, such as *“the construction of roads, hospitals, memorials, as well as psycho-social support programs. The need to develop a structure in remote areas to ensure victims access healthcare within 72 hours was noted, as well as the training of doctors, particularly to deal with fistula.”*¹⁵⁵

The survivors who participated in the feedback workshops specifically highlighted their needs in terms of education and institutional reforms relating to the education system, which overlapped the categories of individual and collective reparations. They mentioned building or renovating schools and setting up a system of non-formal education, such as remedial education centres for adults, literacy programmes and learning centres for spoken and written French for adults, and vocational training centres. They also mentioned measures to make it easier for children born of CRSV to access education, such as covering school fees at primary, secondary and university levels.

OVERVIEW OF INDIVIDUAL REPARATION MEASURES PREFERRED BY SURVIVORS

- Construction of a house;
- Income-generating activities;
- Periodic sums of money;
- Medical care for children;
- Payment of tuition fees;
- Training in various trades;
- Medical care and access to education first for their children and for themselves;
- Economic aid or support for economic empowerment through microcredits.

¹⁴⁷ AFRDRCFGKIGULUBE03, 12 March 2019.

¹⁴⁸ AFRDRCFGKAVUMU02, 28 February 2019.

¹⁴⁹ AFRDRCFGGOMA04 and AFRDRCFGGOMA05, 20 March 2019.

¹⁵⁰ OHCHR, ‘Report of the Panel on Remedies and Reparations for Victims of Sexual Violence in the Democratic Republic of the Congo to the High Commissioner of Human Rights’ (March 2011) paras. 29, 48, 50.

¹⁵¹ Ibid, paras. 66–67.

¹⁵² AFRDRCFGKIGULUBE03, 12 March 2019.

¹⁵³ AFRDRCMINOVA01, 18 February 2019. AFRDRCFGKAVUMU02, 28 February 2019. AFRDRCFGGOMA04 and AFRDRCFGGOMA05, 20 March 2019.

¹⁵⁴ AFRDRCFGKIGULUBE03, 12 March 2019. AFRDRCFGGOMA05, 20 March 2019. AFRDRCFGKAVUMU02, 28 February 2019.

¹⁵⁵ OHCHR, ‘Report of the Panel on Remedies and Reparations for Victims of Sexual Violence in the Democratic Republic of the Congo to the High Commissioner of Human Rights’ (March 2011) para. 38.

5.3.4. Main risks and identified mitigation measures

The majority of survivors believed that receiving reparations would restore their value within their families and communities, and would allow them to regain social standing and respect¹⁵⁶: *"the community will recognise and respect the survivor if her standard of living improves."*¹⁵⁷ They explained that reparations would provide something concrete that would improve the material situation of their family, in the context of them also living in extreme poverty: *"single people are a burden for their family. If they are better off economically, it's one less burden."*¹⁵⁸ Survivors felt that they would once again have control over their future and that their families and the community would feel satisfied.¹⁵⁹

However, survivors were aware that intra-family and intra-community conflicts might arise: *"not everyone will be happy. There may be conflicts"; "jealousy will depend on the people around you because, in principle, no one should be jealous of the good done to someone who has suffered."*¹⁶⁰ Some suggested that raising awareness amongst families and communities could help to mitigate the risk of such conflict.¹⁶¹

To mitigate the risk of potential conflicts and stigmatisation, as well as security risks (*"the rebels could come back to pillage"*¹⁶²), some recommended

that reparations should be granted secretly or privately: *"It has to be a secret. The community has to be surprised. The community should not be included in the reparation process, nor should the family. They'll be happy to see that a life has changed for the better, but they mustn't know where the money comes from. Even if they find out, it should be afterwards."*¹⁶³ In providing reparations privately, they also suggested that the process should be carried out progressively: *"build the house, first say she is a tenant and later give her the property title."*¹⁶⁴ They also mentioned the possibility of travelling outside their communities and neighbourhoods to receive reparations discreetly.¹⁶⁵

Almost all the survivors mentioned the risk of theft and looting if the reparations involved money. They also mentioned the risk of not knowing how to manage the money, or even of *"going crazy from receiving too much money at once."*¹⁶⁶ They also proposed that the sums of money should be paid in several instalments, *"so that they don't fly away"*,¹⁶⁷ or take the form of training in IGAs, vouchers for medical care, or vouchers for their children's schooling.¹⁶⁸ This concern also emerged in discussions with the OHCHR panel:

*"It was suggested by some that monetary compensation could raise security concerns for recipients and that credit-based methods of delivery might be safer than the dispensation of cash."*¹⁶⁹

156 AFRDRCMINOVA01, 18 February 2019; AFRDRCFGKIGULUBE03, 12 March 2019; AFRDRCFGGOMA04 and AFRDRCFGGOMA05, 20 March 2019; AFRDRCFGKAVUMU02, 28 February 2019.

157 AFRDRCMINOVA01, 18 February 2019.

158 Ibid.

159 AFRDRCFGGOMA04 and AFRDRCFGGOMA05, 20 March 2019.

160 AFRDRCFGGOMA04, 20 March 2019.

161 Ibid.

162 AFRDRCFGKIGULUBE03, 12 March 2019.

163 AFRDRCMINOVA01, 18 February 2019.

164 AFRDRCFGGOMA04, 20 March 2019.

165 AFRDRCFGGOMA05, 20 March 2019.

166 AFRDRCMINOVA01, 18 February 2019; AFRDRCFGGOMA05, 20 March 2019.

167 AFRDRCFGGOMA05, 20 March 2019.

168 Ibid.

169 OHCHR, 'Report of the Panel on Remedies and Reparations for Victims of Sexual Violence in the Democratic Republic of the Congo to the High Commissioner of Human Rights' (March 2011) para. 149.



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VI. AVENUES FOR REPARATIONS

6.1. International obligations under international human rights law

As shown in the table below, the DRC has ratified the key international human rights instruments. This obligates the country to prevent, protect, investigate, prosecute, punish, and provide reparation for various issues, including torture and other cruel, inhuman, or degrading treatment or punishment, discrimination against women, the protection of children, the prohibition of sexual and gender-based violence (SGBV), and conflict-related sexual violence.

It should be noted, however, that the DRC has not yet ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, and that it does not permit the Committee of the same name to receive and examine individual complaints, nor does it allow for inquiry procedures to be carried out. The same applies to the Optional Protocol to the Convention on the Rights of the Child. With regard to the Convention against Torture, the DRC has only accepted the Committee's competence to carry out confidential inquiries, but not to receive individual complaints.

RATIFICATION STATUS

Treaty	Abbrev.	Date of signature	Date of ratification, Date of accession (a), of succession (d)
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	CAT		18 March 1996 (a)
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	CAT-OP		23 Sept. 2010 (a)
International Covenant on Civil and Political Rights	ICCPR		01 Nov. 1976 (a)
Convention on the Elimination of All Forms of Discrimination against Women	CEDAW	17 July 1980	17 Oct. 1986
Convention on the Rights of the Child	CRC	20 March 1990	27 Sept. 1990
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	CRC-OP-AC	08 sept. 2000	11 Nov. 2001
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography	CRC-OP-SC		11 nov. 2001 (a)

Source: OHCHR, UN Treaty Bodies Database https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Home.aspx?lang=En accessed 2 April 2024.

ACCEPTANCE OF INDIVIDUAL COMPLAINTS PROCEDURES

Treaty	Abbrev.	Acceptance of individual complaints procedures	Date of acceptance/non-acceptance
Individual complaints procedure under the Convention against Torture	CAT, Art. 22	N/A	
Optional Protocol to the International Covenant on Civil and Political Rights	CCPR-OP1	YES	01 Nov. 1976
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women	CEDAW-OP	NO	
Optional Protocol to the Convention on the Rights of the Child	CRC-OP-IC	NO	

Source: OHCHR, UN Treaty Bodies Database.

ACCEPTANCE OF THE INQUIRY PROCEDURE

Treaty	Abbrev.	Acceptance of the investigation procedure	Date of acceptance/non-acceptance
Inquiry procedure under the Convention against Torture	CAT, Art.20	YES	18 March 1996
Inquiry procedure under the International Convention for the Protection of All Persons from Enforced Disappearance	CED, Art.33	The CED's inquiry procedure (visits) does not require a specific declaration by State parties. This procedure is applicable as soon as the Convention enters into force in the country.	
Inquiry procedure under the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women	CEDAW-OP, Art. 8-9	-	
Inquiry procedure under the Optional Protocol to the Convention on the Rights of the Child	CRC-OP-IC, Art.13	-	

Source: OHCHR, UN Treaty Bodies Database.



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6.2. International obligations' regarding international crimes

Ratification of the Rome Statute of the International Criminal Court (ICC) by the DRC on 11 April 2002 gives the ICC jurisdiction (as of 1st July 2002) to try crimes of genocide, crimes against humanity and war crimes committed in the DRC or by its nationals. It also imposes a number of obligations, including that of adapting the Rome Statute to domestic law. However, in accordance with article 153 of the DRC Constitution, national judges may apply the provisions of the Rome Statute directly.¹⁷⁰

In April 2004, the DRC referred the situation in its territory to the ICC, which can now exercise its jurisdiction over crimes covered by the Rome Statute. This referral led to the opening of several investigations and prosecutions by the ICC against several Congolese rebel leaders accused of war crimes¹⁷¹ and crimes against humanity.¹⁷² These investigations and prosecutions sometimes included CRSV mainly committed in the East of the country, in the Ituri region and in the provinces of North and South Kivu.¹⁷³

The following cases were opened:

- The Prosecutor v. Thomas Lubanga Dyilo, convicted on appeal on 1st December 2014 of war crimes, namely enlisting and conscripting children under the age of 15 and using them to participate

in hostilities, which did not include charges of crimes of sexual violence;¹⁷⁴

- The Prosecutor v. Germain Katanga, found guilty on 23rd May 2014 of complicity in crimes against humanity in the form of murder and war crimes (attack against a civilian population, destruction of enemy property, pillaging constituting war crimes). However, he was acquitted of the crimes of rape and sexual slavery due to a lack of corroborating evidence;¹⁷⁵
- The Prosecutor v. Bosco Ntaganda, convicted on appeal on 30th March 2021, as direct or indirect perpetrator, of 13 counts of war crimes (murder and attempted murder, attacks against the civilian population, rape, sexual slavery, displacement of the civilian population, enlisting and conscripting children under the age of 15 and using them to participate in hostilities, attacks on protected objects, destruction of property) and five counts of crimes against humanity (murder and attempted murder, rape, sexual slavery, persecution, forcible transfer of population and deportation);¹⁷⁶
- The Prosecutor v. Callixte Mbarushimana, whose charges of five counts of crimes against humanity (murder, torture, rape, inhumane acts and persecution) and eight counts of war crimes (attacks against the civilian population, murder, mutilation, torture, rape, inhumane treatment, destruction of property and pillaging) have

170 "Civil and military courts apply duly ratified international treaties, laws, and regulatory acts, provided they are in conformity with the laws, as well as customary law, provided it does not contravene public order or morals." and "Treaties and international agreements regularly concluded, upon their publication, have a superior authority to that of domestic laws, subject to the application of each treaty or agreement by the other party." [Author's translation]. 'Constitution de la RDC', art. 153, 215 (2011) <https://www.leganet.cd/Legislation/JO/2011/JOS.05.02.2011.pdf> accessed 2 April 2024, and "In this case, by ratifying the Rome Statute of the International Criminal Court, Decree-Loi n°003/2002 of March 30, 2002 incorporates the Rome Statute of the International Criminal Court into Congolese legal framework." [Author's translation] (ASF, 2014) p. 112 https://www.asf.be/wp-content/uploads/2015/09/ASF_RDC_R--parationCrimesInternat_201509.pdf accessed 2 April 2024.

171 The war crimes charged were "conscripting or enlisting children under the age of 15 years and using them to participate actively in hostilities; murder and attempted murder; wilful killing; attacks against civilians; pillaging; displacement of civilians; attacks against protected objects; destruction of property; rape; sexual slavery; mutilation; cruel treatment; torture; outrages upon human dignity". (ICC, 'Situation in the Democratic Republic of Congo' ICC-01/04 (2004) <https://www.icc-cpi.int/drc> accessed 2 April 2024.

172 The crimes against humanity were "murder and attempted murder; torture; rape; sexual slavery; inhumane acts; persecution; forcible transfer of population; attack against a civilian population; destruction of property; and pillaging". Ibid.

173 FIDH, 'Unheard, Unaccounted: Towards Accountability for Sexual and Gender-Based Violence at the ICC and Beyond (2018) https://www.fidh.org/IMG/pdf/sgbv_721a_eng_au_20_nov_2018_13h_web.pdf and 'Accountability for sexual and gender-based crimes at the ICC: An analysis of Prosecutor Bensouda's legacy' (2021) <https://www.fidh.org/IMG/pdf/cpiproc772ang-1.pdf> accessed 2 April 2024.

174 ICC, 'Case Information Sheet: The Prosecutor v. Thomas Lubanga Dyilo' ICC-01/04-01/06 (2021) <https://www.icc-cpi.int/sites/default/files/CaseInformationSheets/LubangaEng.pdf> accessed 2 April 2024.

175 ICC, 'Case Information Sheet: The Prosecutor v. Germain Katanga' ICC-01/04-01/07 (2021) <https://www.icc-cpi.int/sites/default/files/CaseInformationSheets/KatangaEng.pdf> accessed 2 April 2024.

176 ICC, 'Case Information Sheet: The Prosecutor v. Bosco Ntaganda' ICC-01/04-02/06 (2021) <https://www.icc-cpi.int/sites/default/files/CaseInformationSheets/NtagandaEng.pdf> accessed 2 April 2024.

not been confirmed. The Prosecutor can only request confirmation of the charges by presenting additional evidence;¹⁷⁷

- The Prosecutor v Mathieu Ngudjolo Chui, who was finally acquitted on appeal on 27th February 2015 of three counts of crimes against humanity (murder, sexual slavery and rape) and seven counts of war crimes (participation of children under the age of 15 in hostilities, intentionally directing an attack against the civilian population, intentional killing, destruction of property, pillaging, sexual slavery and rape);¹⁷⁸
- The Prosecutor v. Sylvestre Mudacumura, a warrant has been issued for his arrest for nine counts of war crimes (murder, mutilation, cruel treatment, torture, outrages upon personal dignity, attack against the civilian population, pillaging, rape and destruction of property).¹⁷⁹ He is on the run and cannot be tried by the ICC in his absence.

Only the prosecution of Bosco Ntaganda has led to his conviction for crimes of sexual violence (rape and sexual slavery), paving the way for reparation for these victims.

6.3. Regional obligations

At regional level,¹⁸⁰ the DRC ratified the African Charter on Human and Peoples' Rights on 20th July 1987. Ratification of the Protocol establishing the African Court on Human and Peoples' Rights was lodged on 8th December 2020,¹⁸¹ but the DRC has not filed a declaration recognising the Court's jurisdiction to receive complaints lodged directly by NGOs and

individuals. Furthermore, it has not yet ratified the Protocol on the Statute of the African Court of Justice and Human Rights or the Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights.

On 9th June 2008, however, the DRC ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women (commonly known as the Maputo Protocol, which celebrated its 20th anniversary of adoption in 2023).¹⁸² This is the most comprehensive and progressive instrument on women's rights in the region. Amongst other things, it insists upon the elimination of all forms of discrimination and violence – particularly sexual violence – against women. It also advocates for complete equality of rights between men and women in all areas, and the provision of adequate reparation – judicial, administrative or legislative – for all women whose recognised rights and freedoms are violated.¹⁸³

On 8th December 2020, the DRC also deposited the African Charter on the Rights and Welfare of the Child, previously ratified on 31st January 2017. Articles 22 and 27 of the Charter protect children in armed conflict and against sexual exploitation.¹⁸⁴

The DRC has also adopted the Protocol on the Prevention and Suppression of Sexual Violence against Women and Children of the International Conference of the Great Lakes Region (ICGLR) (2006).¹⁸⁵ It has also signed the Declaration of the Heads of State and Government of the Member States of the ICGLR on Sexual and Gender-Based Violence (2011), which declared "Zero Tolerance Now" on SGBV and impunity.¹⁸⁶

177 ICC, 'Case Information Sheet: The Prosecutor v. Callixte Mbarushimana' ICC-01/04-01/10 (2021) <https://www.icc-cpi.int/sites/default/files/CaseInformationSheets/MbarushimanaEng.pdf> accessed 2 April 2024.

178 ICC, 'Case Information Sheet': The Prosecutor v. Mathieu Ngudjolo Chui'. ICC-01/04-02/12 (2021) <https://www.icc-cpi.int/sites/default/files/CaseInformationSheets/ChuiEng.pdf> accessed 2 April 2024.

179 The Prosecutor v. Sylvestre Mudacumura, ICC-01/04-01/12, ICC, (2012).

180 African Union, 'OAU/AU Treaties, Conventions, Protocols & Charters' <https://au.int/en/treaties> accessed 2 April 2024.

181 More than three years after its ratification and 21 years after its signature. African Union, 'Protocol to the African Charter on Human And Peoples' rights on the establishment of an African Court on Human and Peoples' Rights' (2004) https://www.african-court.org/wpafic/wp-content/uploads/2023/03/36393-si-PROTOCOL_TO_THE_AFRICAN_CHARTER_ON_HUMAN_AND_PEOPLESRIGHTS_ON_THE_ESTABLISHMENT_OF_AN_AFRICAN_COURT_ON_HUMAN_AND_PEOPLES_RIGHTS_0.pdf accessed 2 April 2024.

182 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women (July 2003).

183 Ibid, art. 25.

184 African Union, 'OAU/AU Treaties, Conventions, Protocols & Charters' <https://au.int/en/treaties> accessed 2 April 2024.

185 CIRGL, 'Protocole sur la prévention et la répression de la violence sexuelle contre les femmes et les enfants' (2006) <http://www.icglr-rtf.org/fr/publication/view/protocole-sur-la-gestion-de-linformation-et-de-la-communication-2/> accessed 2 April 2024.

186 Déclaration des Chefs d'États et de Gouvernements des États membres de la CIRGL sur les violences sexuelles et basées sur le genre (2011) http://www.icglr-rtf.org/fr/publication/view/declarationsur-les-vsbg-dec-2011_2_kampala2011/ accessed 2 April 2024.

6.4. Relevant national legal and policy framework

6.4.1. Conflict-related and non-conflict-related sexual violence

In addition to its obligations under international law, the DRC is bound by its own laws to prevent and punish acts of sexual violence. The last 20 years have seen the evolution of more protective legislation, even though improvements can still be introduced to reach international standards.

In 2006, the DRC adopted several reforms aimed at strengthening the protection of women against discrimination and sexual violence. The new Constitution of 18th February 2006 establishes equality between men and women. It also provides for equal protection before the law, prohibits all forms of discrimination and lays the foundations for the fight against impunity.¹⁸⁷ In particular, it stipulates that *"the public authorities shall ensure the elimination of sexual violence. Without prejudice to international treaties and agreements, any sexual violence committed against any person with the intention of destabilising or breaking up a family or causing the disappearance of an entire people shall be deemed a crime against humanity and punishable by law."*¹⁸⁸

Furthermore, the adoption of Law 06/018¹⁸⁹ on 20th July 2006 amended the Congolese Criminal Code by adding 12 new offences of sexual violence and increasing the scale of applicable penalties. For the first time, the law criminalises acts such as sexual mutilation, sexual slavery, forced pregnancy and sterilisation, and the deliberate transmission of incurable STDs. Furthermore, in addition to penetration by a sexual organ, it considers the insertion of an object to constitute rape. Rape is punishable by sentences

ranging from 5 to 20 years and *"a fine of not less than one hundred thousand Congolese francs."* These penalties are doubled in certain circumstances, for example if the rape is committed by public officials, if it is committed on persons in captivity, if it is committed in public or if it is committed with the use or threat of a weapon. The penalties are also heavier for offences committed against young people under the age of 18.¹⁹⁰ Law 06/018 also includes sexual violence obtained through direct or indirect violence or intimidation within the definition of rape – including when it is obtained through the application of psychological pressure or coercion.¹⁹¹ In this sense, *"it is the use of violence, and not the lack of consent by the victim that becomes the main element in proving rape. This is in line with recent international practice."*¹⁹² However, the definition is still more restrictive than that developed by the case law of international criminal tribunals, insofar as it makes penetration the qualifying condition for rape to have occurred. In 2011, another amendment introduced the criminalisation of torture.¹⁹³ *"However, neither of these two amendments refers to the qualification of crimes against humanity."*¹⁹⁴

Additionally, Law 06/019 on criminal procedure¹⁹⁵ sets out new rights for victims of sexual violence, including a guarantee of legal counsel from the outset of the proceedings and the right to be seen by a doctor and a psychologist to assess the harm caused and the care required. It also lays out requirements concerning the speed of the legal proceedings, which must not exceed three months; and that the safety, dignity and psychological well-being of victims and witnesses must be guaranteed – in particular through the right to a closed hearing.¹⁹⁶

Law 06/019 also contains provisions on collecting evidence, particularly with regard to how the victim's consent and previous conduct is considered, in line with international practice: *"By way of derogation, in the*

187 Constitution of the DRC (2011) art. 14.

188 Ibid, art. 15.

189 Loi n°06/018 of 20 July 2006 amending and supplementing the Decree of 30 January 1940 on the Congolese Criminal Code.

190 Loi n°06/018, art. 2.

191 Ibid.

192 FIDH, 'DRC: Victims of sexual violence rarely obtain justice and never receive reparation: Major changes needed to fight impunity' (2013) p. 42.

193 Loi n°11/008 of 9 July 2011 criminalising torture.

194 Martin Ekofo Inganya, 'La réparation des crimes internationaux en droit congolais' (ASF, 2014) p. 23.

195 Loi n°06/019 of 20 July 2006 amending and supplementing the Decree of 06 August 1959 on the Congolese Code of Criminal Procedure.

196 HRW, 'Soldiers Who Rape, Commanders Who Condone. Sexual Violence and Military Reform in the Democratic Republic of Congo' (2009) p. 19 and FIDH, 'DRC: Victims of sexual violence rarely obtain justice and never receive reparation: Major changes needed to fight impunity' (2013) p. 43.

case of offences relating to sexual violence, the following rules of evidence shall apply: 1. Under no circumstances may consent be inferred from the words or conduct of a victim where the victim's ability to give freely valid consent has been impaired by the use of force, trickery, drugs, threats or coercion or by a coercive environment; 2. Under no circumstances may consent be inferred from the silence or lack of resistance of the victim of the alleged sexual violence; 3. Under no circumstances may the credibility, honourability or sexual availability of a victim or witness be inferred from their previous sexual behaviour; 4. Evidence relating to the previous sexual behaviour of a victim of sexual violence cannot exonerate the accused from criminal liability".¹⁹⁷ In practice, however, judges rarely apply these provisions. Moreover, in the few cases that are brought before the courts, outcomes are inconsistent, and judges often implicitly or explicitly hold the rape victim responsible.¹⁹⁸

In 2009, a law on child protection was passed, Article 61 of which reaffirms the protection of minors against all forms of sexual exploitation and violence, as well as in the context of armed conflict.¹⁹⁹

Following the DRC's ratification of the Rome Statute in 2002, attempts at legislative reform sought to bring the DRC's domestic military law into line with the provisions of the Rome Statute. In the DRC, it is the military courts that have exclusive jurisdiction over war crimes, crimes against humanity and genocide, in accordance with Law 024/2002 (which lays out the Military Penal Code²⁰⁰) and Law 023/2002 (which establishes the Military Judicial Code²⁰¹) – both of which date from 18th November 2002. Article 207 of the Military Penal Code stipulates that "subject to the provisions of articles 117 and 119 of the Military Judicial code, only the military courts have jurisdiction over the offences provided for in this code."²⁰²

With specific regard to acts of sexual violence, Article 169 of the Military Penal Code states: "It is also a crime against humanity and punishable by death, whether committed in time of peace or in time of war, to commit any of the following acts as part of a widespread or systematic attack knowingly directed against the Republic or against the civilian population: [...] 7. Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation and other forms of sexual violence of comparable gravity; [...]"²⁰³

It must be noted that the definitions of serious crimes – including sexual crimes – and the applicable penalties are less detailed within the Military Penal Code and differ from those in the Rome Statute.²⁰⁴ "[T]he Military Penal Code [...] falls short of providing adequate definitions for common elements of crimes and prohibited acts, in accordance with the Rome Statute. For example, it conflates the definitions of crimes against humanity and war crimes by referring to crimes against humanity as grave breaches against persons and objects protected by the Geneva Conventions and its additional Protocols (which are only relevant with regards to crimes related to an armed conflict)."²⁰⁵ Furthermore, it does not make any stipulations regarding increased responsibility for commanders and others in senior positions – as required by Article 28 of the Rome Statute. Instead, it states that a superior will only be prosecuted if his or her subordinates are also prosecuted, in which case the superior will be considered a co-perpetrator or accomplice, not a principal perpetrator.²⁰⁶ Further, it does not impose penalties for war crimes, an omission in direct conflict with the principle of legality;²⁰⁷ problematically, it also provides the death penalty for persons convicted of genocide or crimes against humanity.²⁰⁸

197 Loi n°06/019, art. 14 ter.

198 FIDH, 'DRC: Victims of sexual violence rarely obtain justice and never receive reparation: Major changes needed to fight impunity' (2013) p. 16.

199 Loi n°09/001 of 10 January 2009 on child protection.

200 Loi n°024/2002 du 18 novembre 2002 portant code pénal militaire, art. 161.

201 Loi n°023/2002 of 18 November 2002 on the Military Judicial Code.

202 Martin Ekofo Inganya, 'La réparation des crimes internationaux en droit congolais' (ASF, 2014) pp. 28-38.

203 Loi n°024/2002.

204 Martin Ekofo Inganya, 'La réparation des crimes internationaux en droit congolais' (ASF, 2014) p. 19.

205 Sofia Candeias, Luc Côté, Elsa Papageorgiou, and Myriam Raymond-Jetté, 'The Accountability Landscape in Eastern DRC' (ICTJ, 2015) p.1 <https://www.ictj.org/sites/default/files/ICTJ-Briefing-DRC-Prosecutions-2015.pdf> accessed 2 April 2024, and Loi n°024/2002, art. 165, 166 and 169.

206 Loi n°024/2002.

207 Sofia Candeias, Luc Côté, Elsa Papageorgiou, and Myriam Raymond-Jetté, 'The Accountability Landscape in Eastern DRC' (ICTJ, 2015) p.1 and Martin Ekofo Inganya, 'La réparation des crimes internationaux en droit congolais' (ASF, 2014) p. 18.

208 Loi n°024/2002.

From 2003 onwards, Congolese military courts began exercising their jurisdiction to investigate and try international crimes, utilising provisions in the Constitution of the DRC which establish the primacy of conventional international law over domestic law. In doing so, *“Congolese military judges have reconciled situations in which national law and international criminal law conflict by directly applying the Rome Statute. However, courts have yet to formulate clear criteria for circumstances in which the Rome Statute should be invoked over domestic law, and vice versa. Consequently, the attempts by judges to remedy shortcomings in domestic law have led to fragmented and unpredictable jurisprudence on serious crimes.”*²⁰⁹

In April 2013, the Parliament adopted Law13/011-B pertaining to the organisation, functioning and jurisdiction of civilian courts with regard to the punishment of crimes of genocide, crimes against humanity and war crimes.²¹⁰ According to this law, the military courts continue to have jurisdiction over military and police personnel, whilst civilians now come under the jurisdiction of the civilian courts – in this case the Court of Appeal.²¹¹ However, the Courts of Appeal are yet to use their authority in this domain.²¹²

Alongside these legislative developments, the Ministry of Gender, Family and Children introduced the National Strategy to Combat Sexual and Gender-Based Violence in 2009, on the basis of United Nations Security Council Resolution 1794.²¹³ The overall objective of this Strategy was to contribute to the prevention and reduction of sexual and gender-based violence and to improve the holistic care of victims and survivors, including the

rehabilitation of perpetrators.²¹⁴ It is structured around the following components: *“Strengthening the application of the law and the fight against impunity (i), prevention and protection (ii), support for reforms of the army, police, justice and security forces (iii), responses to the needs of victims and survivors (iv), data and information management in relation to SGBV (v), analysis and awareness-raising on SGBV (vi), institutional capacities to fight against SGBV (vii) women’s empowerment.”*²¹⁵ The National Agency for Combating Violence Against Women and Girls (AVIFEM) – created by Prime Ministerial Decree 09/38 on 10th October 2009 within the Ministry of Gender, Family and Children²¹⁶ – was tasked with implementing this Strategy, but it was given no budget with which to operate.²¹⁷

Similarly, on 30th March 2013, the DRC made a joint commitment with the United Nations in a communiqué to combat conflict-related sexual violence. The Congolese Government committed itself, amongst other things, to *“strengthen the implementation of the National Strategy through appropriate coordination of the actions of the various national and international stakeholders in order to increase the effectiveness of the medical, psychosocial, judicial and socio-economic reintegration assistance provided to victims of sexual violence”* and to *“equip civil and military justice with the capacity and resources needed to contribute effectively to the fight against impunity and ensure reparation for victims of sexual and gender-based violence.”*²¹⁸ An Addendum to this communiqué was signed on 3rd December 2019. In it, the DRC reiterates its commitment to four priorities, which include not only access to fair reparation and payment of reparations established in judicial decisions, but also speeding up the process of adopting a law to set up a reparations fund for

209 Sofia Candeias, Luc Côté, Elsa Papageorgiou, and Myriam Raymond-Jetté, ‘The Accountability Landscape in Eastern DRC’ (ICTJ, 2015) p. 2.

210 Organic law no. 13/011-B of 11 April 2013 on the organisation, functioning and jurisdiction of the courts of the judiciary (2013).

211 Ibid, art. 91 a).

212 Comité scientifique chargé de l’élaboration du projet de politique nationale de justice transitionnelle en République Démocratique du Congo, ‘Rapport final’ (2023) p. 45 <https://www.leganet.cd/Doctrine/textes/generalites/projet%20de%20politique%20nationale%20COMITE%20SCIENTIFIQUE%20RAPPORT%20FINAL%202023.pdf> accessed 2 April 2024.

213 United Nations Security Council, ‘Resolution 1794’ S/RES/1794 (2007) <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/CAC%20SRES%201794.pdf> accessed 2 April 2024.

214 Ministère du Genre, de la Famille et de l’Enfant, ‘Stratégie nationale de lutte contre les violences sexuelles basées sur le genre’ (2009) https://monusco.unmissions.org/sites/default/files/old_dnn/National%20Strategy.pdf accessed 2 April 2024.

215 Ibid.

216 Decree No. 09/38 of 10 October 2009 on the creation, organisation and operation of the National Agency to Combat Violence against Women and Girls (2009).

217 FIDH, ‘DRC: Victims of sexual violence rarely obtain justice and never receive reparation: Major changes needed to fight impunity’ (2013) p. 45.

218 ONU et le Gouvernement de la RDC, ‘Communiqué conjoint entre le gouvernement de la République démocratique du Congo et les Nations Unies sur la lutte contre les violences sexuelles en conflit’ (2013) https://www.un.org/sexualviolenceinconflict/wp-content/uploads/joint-communique-with-the-government-of-the-democratic-republic-of-the-congo-30-march-2013/Joint_Communique_DRC_UN.pdf accessed 2 April 2024.

victims of CRSV and ensuring that it is properly funded and operational.²¹⁹

6.4.2. Reparations

6.4.2.1. JUDICIAL REPARATIONS

Congolese law recognises the right of victims to obtain compensation for the harm they have suffered. Article 258 of the Civil Code, Book III, states that *"Any act whatsoever by man which causes damage to another person obliges the person through whose fault it was caused to make reparation for it."* Article 260 further states: *"A person is liable not only for damage caused by his own act, but also for damage caused by the act of persons for whom he is responsible, or by things in his care."*²²⁰ In addition, *"apart from the perpetrators of the offence, masters and principals are civilly liable for acts committed by their agents in the performance of their duties. The same applies to the Congolese State for acts committed by its civil servants."*²²¹ *"Four conditions are required for the application of Article 260, namely: the existence of a principal-agent relationship; proof that the damage was caused by the fault of the agent; and the occurrence of the damage in the performance of the duties in which the agent was employed at the time of the events; the damage must be caused to a third party."*²²²

In the case of crimes committed during the course of official duties, in relation to conflict and the international crimes of genocide, war crimes and crimes against humanity, Congolese victims have the right to seek

compensation by bringing a civil action before the military court alongside any criminal proceedings taking place.²²³ According to article 77 of the Military Judicial Code, *"the injured party may bring an action for compensation for damage caused by an offence falling within the jurisdiction of the military courts, by bringing a civil action at the same time and before the same judge as the public prosecution. The same applies to claims for damages made by the accused against the civil party or against the co-defendants."*²²⁴ The injured party may bring a civil action at the court Registry or during the trial, as long as the proceedings have not been closed and upon payment of a deposit for the costs of the proceedings.²²⁵ This is the only way of bringing a civil action before the military courts. It implies the individual nature of both the civil claim and the compensation and makes it difficult to bring a collective legal action.²²⁶

According to both Congolese law and Military High Court jurisprudence, the broad definition of 'victim' (any natural or legal person who has suffered harm in connection with the offence) means that both the direct victim and indirect victims who suffer material or moral harm directly caused by the offence may claim the status of victim of an international crime in order to obtain reparation by bringing a civil action.²²⁷ In theory, this would make it possible for the descendants of a victim of CRSV to bring a civil action for compensation.

Under article 260 of the Civil Code, when international crimes are committed by agents of the DRC State,²²⁸ the State may be subject to civil liability. Thus, it

219 ONU et le Gouvernement de la RDC, Addendum au Communiqué conjoint entre le gouvernement de la République démocratique du Congo et les Nations Unies sur la lutte contre les violences sexuelles en conflit (2019) <https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2019/12/joint-communique/addendum-au-communique-conjoint-sur-les-violences-sexuelles-liees-au-conflit-entre-la-republique-democratique-du-congo-et-l'organisation-des-nations-unies/RDC.pdf> accessed 2 April 2024.

220 ASF, 'Study of Case Law: Application of the Statute of Rome of the International Criminal Court by Congolese Courts' (2009) p. 97 https://www.asf.be/wp-content/publications/ASF_CaseStudy_RomeStatute_Light_PagePerPage.pdf accessed 2 April 2024.

221 Article 260 ter of the Civil Code, Book III, cited by Guy Mushiata, 'Promouvoir le droit à la réparation' Nouvelle série n° 52, 286 (Cahiers du CERUKI, 2016) http://crds.ub.edu.bi/wp-content/uploads/2020/07/Banuza_alexis_et_al_recherche_didactique_rigion_desgrandsLacs.pdf accessed 2 April 2024.

222 ASF, 'Study of Case Law: Application of the Statute of Rome of the International Criminal Court by Congolese Courts' (2009) p. 103.

223 "Military courts deal with military offenses punished under the provisions of the military penal code within the territory of the Republic. They also address offenses of any nature committed by military personnel and punished according to the provisions of the ordinary penal code." [Author's translation]. See also, Article 76, Loi n°023/2002.

224 Article 77, Loi n°023/2002.

225 It is governed by Article 69 of the Decree of 6 August 1959, establishing the Code of Criminal Procedure.

226 Martin Ekofo Inganya, 'La réparation des crimes internationaux en droit congolais' (ASF, 2014) p. 62.

227 Ibid, pp. 56-57.

228 The Court considers that the militias that fought alongside the regular forces should also be regarded as 'agents' of the Congolese state, thereby implicating the State's responsibility as well. ASF, 'La justice face à la banalisation du viol en République démocratique du Congo. Etude de jurisprudence en matière de violences sexuelles de droit commun' (2009) p. 98 https://www.asf.be/wp-content/uploads/2015/10/ASF_RDC_BanalisationViol_EtudeJurisprudence_2012.pdf accessed 2 April 2024.

can be ordered to pay damages to the victims or their dependants for failing in its duty of direction, supervision and control over its agents. Case law also suggests that the State can be considered liable for failing in its obligation to guarantee public safety²²⁹ and its obligation to respect and guarantee respect for human rights.²³⁰ In theory, this would mean that no victim would go without reparation.

However, the vision of reparation enshrined in Congolese law is a narrow and conservative one. It requires the presence of three conditions to establish civil liability: (1) the perpetrator has been identified, captured, and convicted; (2) a causal link has been established between the offence, the harm suffered, and the perpetrator; and (3) an assessment has been carried out of the harm suffered by the individual. These conditions result in a single form of reparation: individual compensation. This approach does not comply with international developments and standards in this area, which require the DRC to provide full reparation.

With regard to the assessment of the harm suffered, Congolese law classifies the types of harm that can be compensated into three categories: (1) material harm: all infringements of economic and property rights and interests; (2) physical harm: infringements of the physical person; (3) moral harm, which can be reduced to infringements of personality rights and harm to honour or reputation.²³¹ In cases of sexual violence, the harm suffered must be assessed by a medical expert, as stipulated in the Congolese Code of Criminal Procedure since 2006: *"the Public*

Prosecutor or the judge shall automatically call in a doctor and a psychologist to assess the condition of the victim of sexual violence and to determine the appropriate care, as well as to assess the extent of the harm suffered by the victim and any subsequent aggravation."²³² This medical assessment must enable the judge to establish the causal link between the offence and the harm and to determine the extent of the harm. On this basis, the judge sets the compensation assessment, but there does not appear to be any consensus among the judges as to what is fair compensation. In fact, there is no range of amounts agreed in advance, nor is there a valuation table.²³³ Existing case law is characterised *"on the one hand, by the lack of specific criteria in the assessment of personal injury resulting from international crimes and, on the other hand, by the award of damages for "all injuries combined."*²³⁴ *"[J]urisprudence has not developed criteria for determining the amount of financial compensation in a consistent and objective manner. Compensation therefore tends to be awarded without taking into account the specific harm suffered by each individual victim."*²³⁵ Amounts are often set *ex aequo et bono* ('according to what is equitable and good'), due to a lack of details provided by lawyers or the civil party and the lack of adequate information enabling the amount of damages to be calculated.²³⁶ This leads not only to a lack of transparency regarding the compensation awarded, but also to unequal treatment of victims depending on the military court hearing the case.

Finally, article 109 of the Code of Criminal Procedure states that the Public Prosecutor is responsible

229 "The Military Court of Equateur, in the Songo Mboyo case, ruled that the civil liability of the State is engaged in cases of the assassination of a citizen, as in all other cases of aggression and harm to individuals where not only military personnel are involved but also the State due to its failure to fulfill its duty to protect individuals." [Author's translation] Martin Ekofo Inganya, 'La réparation des crimes internationaux en droit congolais' (ASF, 2014) p. 68, and ASF, 'Étude de jurisprudence' (2009), pp. 99-101.

230 In 2009, a judge sentenced the Congolese State jointly with a group of Rwandan rebels from the Democratic Forces for the Liberation of Rwanda (FDLR) on the grounds that, under Article 52 of the Constitution, the State is responsible for the peace and well-being of all Congolese citizens. However, research indicates that this precedent is sometimes ignored. Martin Ekofo Inganya, 'La réparation des crimes internationaux en droit congolais' (ASF, 2014) p. 69. See also, Physicians for Human Rights & Columbia-SIPA, 'Barriers to Justice: Implementing Reparations for Sexual Violence in the DRC' (2013) p. 17 <https://phr.org/our-work/resources/barriers-to-justice-for-survivors-of-sexual-violence-in-the-drc/> accessed 2 April 2024.

231 Martin Ekofo Inganya, 'La réparation des crimes internationaux en droit congolais' (ASF, 2014) p. 47.

232 Loi n°06/019, art. 14bis.

233 The amounts allocated can range from 200 to 20,000 US dollars or from 1,000 to 10 million Congolese francs. ASF, 'La justice face à la banalisation du viol en République démocratique du Congo. Étude de jurisprudence en matière de violences sexuelles de droit commun' (2012) pp. 9, 64-65 and Martin Ekofo Inganya, 'La réparation des crimes internationaux en droit congolais' (2014) pp. 82-83. There is no maximum or minimum amount of reparation for a given crime. (Physicians for Human Rights & Columbia-SIPA, 'Barriers to Justice: Implementing Reparations for Sexual Violence in the DRC' (2013) p. 27).

234 Martin Ekofo Inganya, 'La réparation des crimes internationaux en droit congolais' (ASF, 2014) p. 79.

235 FIDH, 'DRC: Victims of sexual violence rarely obtain justice and never receive reparation: Major changes needed to fight impunity' (2013) p. 44.

236 ASF, 'La justice face à la banalisation du viol en République démocratique du Congo. Étude de jurisprudence en matière de violences sexuelles de droit commun' (2012) p. 85 and Martin Ekofo Inganya, 'La réparation des crimes internationaux en droit congolais' (ASF, 2014) p. 85.

for enforcing prison sentences, whilst it is the complainants themselves who must pursue the enforcement of civil compensation once all domestic remedies have been exhausted and the judgement is final. *"In practical terms, this means that they can only commence proceedings to enforce the judgement once it has been upheld by the Court of Cassation in Kinshasa."*²³⁷ In addition, it is the victims who must engage with State mechanisms – individuals who have been awarded reparation must apply to the Congolese government to receive it. They then have 30 years in which to collect it.²³⁸

6.4.2.2. ADMINISTRATIVE REPARATIONS

A legal framework for the establishment of a comprehensive Reparations Policy is gradually emerging in the DRC, under the combined pressure of efforts by the Office of the First Lady, the Special Advisor to the Head of State on Sexual Violence and Youth, and the Ministries of Human Rights, Gender and Justice. In February 2021, an initial round table was organised by GSF, the Panzi Foundation and the MNSVS-RDC in Kinshasa. The *"Inclusive round table on the establishment of a national reparation fund for survivors of conflict-related sexual violence and other serious crimes in the Democratic Republic of Congo"* was then organised by the First Lady in Kinshasa in October 2021. These initiatives led to the setting up of an *ad hoc* committee responsible for working on various documents aimed at the creation and operation of a National Reparation Fund.²³⁹

This work led to the promulgation of Law 22/065 on 26th December 2022²⁴⁰ – which sets out fundamental principles relating to the protection and reparation of victims of CRSV and crimes against the peace and security of humanity. In addition, the National Fund

for Reparations (FONAREV) was created by Decree 22/38 on 6th December 2022 and amended and supplemented by Decree 23/20 on 9th June 2023. Several sources mention these Decrees, however, at the time of writing this study, they had not yet been officially published in the Official Journal of the DRC (*Journal officiel de la RDC*), making it impossible to consult and analyse them.²⁴¹

The material scope of Law 22/065 is set out in Article 1, which mentions two categories of crime: (1) conflict-related sexual violence, and (2) serious crimes against peace and the security of humanity. Even though the former is *de facto* included in the latter, the separation of the two categories has the merit of making CRSV specifically visible.²⁴² Nevertheless, the categories remain generic and the manner in which they are defined in Article 1 does not make it possible to clearly establish the actual scope of the Law's applicability, or to what extent it can be used to support the development of a Reparations Policy. The Law's definition of 'victim' is addressed in no less than five Articles.²⁴³ This could be seen to open the door to almost the entire Congolese population being able to be defined as a victim under the Law, as can be inferred from a joint reading of Articles 43 to 48, which identify all individual or collective, physical, psychological, material, economic and financial, moral and cultural losses recognised by the Law.

In addition, Article 4 states that *"[t]he status of victim as defined in article 2 point (y) of this Law shall be established by a first instance decision of the High Court (Tribunal de Grande Instance) of the place where the acts were committed."* This provision makes the status of victim conditional upon a court decision and, subsequently, limits access to reparation measures. In the context of massive and/

237 FIDH, 'DRC: Victims of sexual violence rarely obtain justice and never receive reparation: Major changes needed to fight impunity' (2013) p. 59.

238 Physicians for Human Rights & Columbia-SIPA, 'Barriers to Justice: Implementing Reparations for Sexual Violence in the DRC' (2013) p. 17.

239 The *ad hoc* Commission was established by presidential decree in February 2022. It is composed of members from the Presidency, the Prime Minister's Office, the Ministries of Human Rights, Justice, Gender, as well as civil society organisations such as MNSVS-RDC, the Panzi Foundation, and the NGO Ma Voisine. (7sur7, 'RDC – Réparation des victimes de violences sexuelles : Début des travaux de la Commission ad hoc chargée d'implémenter le Fonds national' (14 mars 2022) <https://7sur7.cd/2022/03/14/rdc-reparation-des-victimes-de-violences-sexuelles-debut-des-travaux-de-la-commission-ad> accessed 2 April 2024.

240 Loi n°22/065 of 26 December 2022 establishing the fundamental principles relating to the protection and reparation of victims of conflict-related sexual violence and victims of crimes against the peace and security of humanity (2002).

241 OSRSVC-SVC, 'UNGA78 High-Level Side Event : A Holistic Justice Journey for Survivors of Conflict-Related Sexual Violence' <https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2023/11/remarks-from-the-unga78-high-level-side-event-a-holistic-justice-journey-for-survivors-of-conflict-related-sexual-violence/UNGA78-High-Level-Remarks-Document.pdf> accessed 2 April 2024 and FONAREV <https://www.fonarev.cd/> accessed 2 April 2024.

242 It is also worth mentioning that, despite references in the law to children born of CRSV, their status as direct victims is not explicitly mentioned. However, this is not ruled out either, but clarifying it would be a guarantee of recognition of their rights.

243 Loi n°22/065, art. 2 w), 2 y), 5, 7 and 9.

or systematic rights violations the very essence of an administrative reparation programme should be to guarantee victims faster and more effective access to reparation measures than if they had to go through a judicial process.²⁴⁴ This requirement for a High Court to determine the status of 'victim' thus contradicts the purported utility of this Law for establishing a potential administrative reparation programme.

Moreover, this same provision would also seem inconsistent with the creation of a fund to support access to justice, reparation, empowerment and community recovery for victims and their dependants (as per Art. 21),²⁴⁵ as one of the key tasks of such a fund would be precisely to identify victims (as per Art. 22). This provision would also conflict with Article 20, which mandates the establishment of a consultative commission called the Inter-institutional Commission for Victim Support and Reform (*Commission Interinstitutionnelle d'aide aux victimes et d'appui aux réformes*), under the authority of the President of the Republic. The potential functions of this Commission have not been clearly defined. Lastly, the provision is not consistent with Chapter V, Section II, which concerns the procedure by which an individual is identified as a victim. This Chapter establishes a requirement for a single consolidated list (an official register containing the names of people identified as victims by the Fund), which needs to be authenticated by the Ministry of Human Rights (as per Art. 50). Furthermore, it stipulates that "*applications for identification shall be submitted to the Fund by victims or their heirs in accordance with the conditions set out in article 4 of this Act. These applications are processed in accordance with the Fund's procedural manual approved by the Minister responsible for human rights. The National Human Rights Commission, the Inter-institutional Commission for Assistance to Victims and Support for Reforms and all other structures set up by the State or international bodies, local and international partners, civil society organisations and*

victims' associations support the Fund in the process of identifying victims by contributing their expertise and the information at their disposal" (Art. 51). According to this logic, there would be many stages to go through before being officially recognised as a victim under the Law.

In light of this, the Law should be read as a whole, taking into account the ethical principles set out in Art. 3 – in particular principle 3.1, which states that no harm should be caused to survivors, and principle 3.7, which provides for the autonomy of judicial and administrative reparation.

Nonetheless, the establishment by law of a system made up of three bodies – namely the Fund for Support to Access to Justice, Reparation, Empowerment and Community Rehabilitation for Victims and their Claimants; the Single Consolidated List (*Liste unique consolidé – LUC*); and the Inter-Institutional Commission for Victim Support and Reform – is to be welcomed. Comparative international experience shows that a global political strategy for reparation must consider the creation and organisation of several institutions with specific missions, functions and areas of expertise, for an integral system of reparation to function holistically and effectively.²⁴⁶ However, the exact remits of the three bodies created by Congolese law need to be specified and clarified to ensure coherent and coordinated functioning.

The law can also be considered progressive in that it contemplates a variety of funding sources; including budget subsidies, repayments and liquidation of assets and real estate, and contributions from donors and international and philanthropic organisations.²⁴⁷ Reflecting the negative contribution of mining and deforestation practices to prolonging conflict, innovative funding streams have also been identified, such as a 2 per cent tax on profits from the sale of carbon certificates and an 11 per cent tax on mining royalties paid by mining title holders

244 United Nations, General Assembly, 'The gender perspective in transitional justice processes' A/75/174 (2020) para. 42 and 'Promotion of truth, justice, reparation and guarantees of non-recurrence' A/69/518 (2014) para 71. Also: The judicialization of reparation claims generates various challenges for victims of mass atrocities and, in particular, for victims of sexual violence (Rashida Manjoo, Report of the Special Rapporteur on violence against women, its causes and consequences, A/HRC/14/22 (2010) paras. 34–40).

245 From the reading of the minutes of the ninety-seventh meeting of the Council of Ministers on Friday, May 5, 2023, it emerges that the Fund for Access to Justice, Reparations, Empowerment, and Community Recovery for Victims and Their Dependents is actually the FONAREV, which was created before the enactment of the law (Ministère de la Communication et Médias (2023) <https://www.primature.gouv.cd/wp-content/uploads/2023/05/COMPTE-RENDU-DE-LA-QUATRE-VINGT-DIX-SEPTIEME-REUNION-DU-CONSEIL-DES-MINISTRES-DU-05-MAI-2023.pdf> accessed 2 April 2024).

246 United Nations, General Assembly, 'Promotion of truth, justice, reparation and guarantees of non-recurrence', A/HRC/42/45 (2019) para. 78.

247 Loi n°22/065, art. 25.

that has already been approved.²⁴⁸ In December 2023, the Africa Department of the International Monetary Fund reported that approximately 120 billion CFA francs of mining royalties (approximately US\$43,384,339) had been redirected from the International Monetary Fund's (IMF) Treasury to FONAREV in the 2024 draft budget.²⁴⁹ Other innovations include the use of income from the FONAREV's own investments and the introduction of a premium on insurance contributions. The exact arrangements and mechanisms underpinning the collection and management of these funds had not been made public at the time of writing. Their transparent and ethical management is a fundamental element in gaining the trust of CRSV survivors and the general public in the process.

Ultimately, the definition of the modalities for administrative reparation (Art. 42) remains generic

and does not fundamentally differ from judicial reparation or even from recourse to customary reparation practices. The latter may be based on largely sexist preconceived beliefs and practices and be prejudicial to victims of sexual violence – who the law is designed to protect.

Law 22/065 marks a major turning point in the recognition of the rights of Congolese victims of serious violations of international humanitarian law and human rights law, and in particular victims of sexual violence. However, the general guidelines it lays down need to be clarified and standardised in order to comply with relevant international obligations and standards, and to provide a clear framework for their legal applicability. These would be key elements to build trust in – and support for – the process amongst victims and survivors, and *ultimately* in reparation.

248 Decree no. 23/32 of 26 August 2023 specifying the procedures for collecting and distributing mining royalties.

249 IMF, 'Democratic Republic of the Congo: Fifth Review Under the Extended Credit Facility Arrangement, Requests for Modification of Quantitative Performance Criteria, Waivers of Nonobservance of Performance Criteria, and Financing Assurances' Review-Press Release, Staff Report, and Statement by the Executive Director for the Democratic Republic of the Congo, vol. 343 (2023) <https://www.elibrary.imf.org/view/journals/002/2023/434/002.2023.issue-434-en.xml> accessed 2 April 2024.



VII. IMPLEMENTATION STATUS OF REPARATIONS

As the normative framework for implementing a national administrative reparation programme is still in the making, this section will address the issues of national and international judicial reparations.

“weak, under-funded and overloaded. It is largely non-existent outside the main urban areas – the very places where most of these crimes are committed.”²⁵²

7.1. National judicial processes: challenges and obstacles

Studies produced by various international NGOs and legal experts on the implementation of judicial reparations all note the lack of payment of compensation ordered by the Congolese courts. This can be explained by the financial insolvency of the individuals convicted, but also – in cases where the government is convicted *in solidum* – by the weak capacity of the judicial system to enforce the law and the government’s lack of will.²⁵⁰ These studies thus identify a long series of legal and procedural obstacles faced by victims in asserting their right to reparation through the Congolese legal system.²⁵¹

7.1.1. Lack of access to judicial structures and legal aid

While survivors of CRSV have to cope with trauma, social stigmatisation and fear of reprisals in the wider context of insecurity, those who decide to take legal action are further faced with a judicial system that is

The remoteness of the courts means that victims, who often live in social isolation and poverty, have to travel long distances. This limits their ability to participate in and contribute towards the procedure at any stage, even though they are not necessarily informed of its progress.²⁵³ In addition, as the judicial system is not digitised, the lawyers or civil parties in the trial have to travel to Kinshasa to find out the final decision from the Cassation Court, as the conviction judgements must be final for the ordered compensation to be paid.²⁵⁴ This limits their opportunities to assert their rights and interests before the end of the hearing, and therefore to obtain reparation.

Even though legal representation for victims of sexual violence is guaranteed at every stage of the procedure, the law does not specify how lawyers should be compensated through legal aid.²⁵⁵ The appointment of *pro bono* lawyers – who also lack the training and experience needed to handle these types of cases – depends on obtaining a Certificate of Indigency beforehand, and the fees charged by private lawyers are prohibitive for most survivors.²⁵⁶

250 ASF, ‘Study of Case Law: Application of the Statute of Rome of the International Criminal Court by Congolese Courts’(2009) and Agency for Cooperation and Research in Development, ‘Protection and Reparation Under Congolese Law for Survivors of Sexual and Gender-Based Violence : Situational Analysis and Prospects for Reform’ (2010) and ASF, ‘La justice face à la banalisation du viol en République démocratique du Congo’ (2012) and Sharanjeet Parmar and Guy Mushiata, ‘Déni de justice : Les victimes de crimes graves ne reçoivent pas les réparations ordonnées par la Cour de justice en République démocratique du Congo’ (ICTJ 2013) and FIDH, ‘DRC: Victims of sexual violence rarely obtain justice and never receive reparation: Major changes needed to fight impunity’(2013) and Physicians for Human Rights & Columbia-SIPA, ‘Barriers to Justice: Implementing Reparations for Sexual Violence in the DRC’ (2013) and ‘Summary of roundtable discussions : Reparations for Survivors of Sexual Violence in the Democratic Republic of Congo’ (2014) and Martin Ekofo Inganya, ‘La réparation des crimes internationaux en droit congolais’ (ASF, 2014) and Guy Mushiata, ‘Promouvoir le droit à la réparation des victimes des violations graves en République démocratique du Congo’ (Cahiers du CERUKI, 2016) p. 52.

251 See the diagram of this sum of legal, procedural, socio-cultural and security obstacles in: Physicians for Human Rights & Columbia-SIPA, ‘Barriers to Justice: Implementing Reparations for Sexual Violence in the DRC’ (2013) p. 3.

252 FIDH, ‘DRC: Victims of sexual violence rarely obtain justice and never receive reparation: Major changes needed to fight impunity’ (2013) p. 45.

253 Ibid, 49. 50. The organisation of mobile courts (or mobile hearings) has the advantage of being closer to the places where the crimes are committed. But their material and financial cost – which largely depends on the international community – does not allow for a sustainable and coordinated solution. See also Physicians for Human Rights & Columbia-SIPA, ‘Barriers to Justice: Implementing Reparations for Sexual Violence in the DRC’ (2013) pp. 14-15, 23-24 and ‘Summary of roundtable discussions’ (2014) p. 6.

254 FIDH, ‘DRC: Victims of sexual violence rarely obtain justice and never receive reparation: Major changes needed to fight impunity’ (2013) p. 51.

255 Loi n°06/019, art. 7bis.

256 FIDH, ‘DRC: Victims of sexual violence rarely obtain justice and never receive reparation: Major changes needed to fight impunity’ (2013) pp. 55 – 56.

Moreover, in the absence of a Victim and Witness Protection Programme in the DRC, any proposed measures to guarantee the physical and psychological well-being of victims and to protect their dignity, anonymity and privacy as provided for by the law²⁵⁷ represent a dead letter. In a general context of insecurity, where armed actors are still active and prisons are struggling to keep detainees behind bars, the risks for survivors of bringing a case before the courts and bringing a civil action are real.

7.1.2. Proceedings and gathering evidence

For victims, the difficulty – if not the impossibility – of identifying the perpetrators of the violence they have experienced, as well as the fact that police and judicial administration personnel are predominantly male, are also barriers to seeking justice. Even when victims have joined the proceedings as civil parties, their right to reparation is not necessarily recognised. They may therefore be *“excluded from reparations orders without any reasons being given and they have to appeal such a judgement in order to obtain recognition of their right to reparation.”*²⁵⁸

In addition to this, civil actions can only be brought individually, *“a condition that prevents groups of victims from pooling their resources and experience to seek redress collectively.”*²⁵⁹ This is despite the fact that cumbersome regulations and bureaucratic legal requirements govern the presentation and acceptance by the courts of testimony and evidence – which is also the responsibility of the victim to put together.

Even though the law stipulates that the judge must request a doctor and a psychologist on his or her own

initiative,²⁶⁰ the required Medical Certificates are rarely produced because doctors are not paid for issuing them.²⁶¹ Survivors must therefore obtain them at their own expense. For victims who have no money and whose case has not been taken on by an NGO, access to a psychologist is therefore impossible. It is often impossible to get hold of a Medical Certificate within 48-72 hours of the incident, because of widespread obstacles to accessing basic medical care in the DRC,²⁶² and/or the costs involved. Lastly, the Medical Certificates required by judges are only accepted if they comply with specific forensic medicine formats, but these do not typically include a report on the victim’s psychological state.²⁶³

Under the current legal system, however, these Medical Certificates provide the only opportunity for judges to assess the damage suffered and its subsequent impacts upon the victim, in order to determine the amount of compensation. Without the certificates, judges have little evidence apart from the statements of those directly involved in the case. In practice, therefore, there is no full assessment of the damage and compensation is calculated *ex aequo et bono*, (according to what is fair and good) in the form of a fixed sum to be paid in a single instalment.²⁶⁴

7.1.3. Exorbitant cost of procedures

In addition to the costs associated with being geographically faraway from the courts and the difficulty in obtaining legal aid, all stages of the proceedings require the parties to pay for legal costs. This starts with a deposit that needs to be paid to be able to be a party in the proceedings. These costs put justice beyond the reach of most survivors.

257 Loi n°06/019, art. 74 bis.

258 FIDH, ‘DRC: Victims of sexual violence rarely obtain justice and never receive reparation: Major changes needed to fight impunity’ (2013) p. 58.

259 Sharanjeet Parmar and Guy Mushiata, ‘Dénî de justice: Les victimes de crimes graves ne reçoivent pas les réparations ordonnées par la Cour de justice en République démocratique du Congo’ (ICTJ 2013) p. 3.

260 Loi n°06/019, art. 14 bis.

261 Physicians for Human Rights & Columbia-SIPA, ‘Barriers to Justice: Implementing Reparations for Sexual Violence in the DRC’ (2013) p. 22.

262 Sharanjeet Parmar and Guy Mushiata, ‘Dénî de justice: Les victimes de crimes graves ne reçoivent pas les réparations ordonnées par la Cour de justice en République démocratique du Congo’ (ICTJ 2013) p. 3.

263 FIDH, ‘DRC: Victims of sexual violence rarely obtain justice and never receive reparation: Major changes needed to fight impunity’ (2013) p. 53.

264 Sharanjeet Parmar and Guy Mushiata, ‘Dénî de justice: Les victimes de crimes graves ne reçoivent pas les réparations ordonnées par la Cour de justice en République démocratique du Congo’ (ICTJ 2013) p. 3 and FIDH, ‘DRC: Victims of sexual violence rarely obtain justice and never receive reparation: Major changes needed to fight impunity’ (2013) p. 61.

"In order to bring a civil action, victims have to pay. To get a judge to issue an order or a judgement, the parties have to pay. The law even stipulates the amount to be paid to obtain a summons to appear or a provisional arrest warrant. The parties must pay the costs of interpretation, experts and even the costs of summoning the witnesses they request. Plaintiffs must even pay for a judgment to be handed down. To obtain a copy of an order or judgment, you have to pay two US dollars per page."²⁶⁵

The obligation to pay a fee proportional to the harms (commonly referred to as "proportional fees") prior to the claim for compensation – which amounts to 6 per cent of the total amount of compensation claimed under Art. 149 of the Code of Civil Procedure – constitutes an additional barrier.

The production of a Certificate of Indigency would make it possible to be exempted from certain legal costs, in particular proportional duties. However, even this involves costs of between US\$25-US\$50 and requires professional legal assistance. It is therefore difficult to obtain, and the victim's considered level of indigence and the limit to the sum to be paid by the Treasury depend in any case on the judge's own interpretation of what constitutes indigency.²⁶⁶ Even if victims are exempt from certain costs when their indigence is recognised, it should be noted that the State does not enforce any claims for reparation.²⁶⁷

Finally, the petty bribery that goes on at every stage of the procedure often leads to the complainant being asked to pay fees in addition to the already high fees and costs set by law.²⁶⁸

7.1.4. Lack of implementation

Even in the event of a final conviction and the payment of proportional duties, or their waiver, the enforcement of a judgment ordering compensation remains complex in legal and procedural terms. Moreover, it is subject to further bureaucratic steps: the Court Registry must issue an Enforcement Order to the Ministry of Justice; the Ministry's Judgements Enforcement Office must then forward the amounts mandated by the State's judgements to the Ministry of the Budget with a view to incorporating this into the next budget – which must be approved by the Ministry of Finance. On the basis of the available budget, the Judgements Enforcement Office selects the recipients, who must in turn be approved by the Director of Litigation or the Secretary General. The agreement is then submitted to the Minister of Justice for final signature.²⁶⁹

As a result, survivors almost never receive the compensation awarded. This glaring failure to pay court-ordered reparations undermines the rule of law in the DRC. It also erodes confidence in the capacity of the judicial system and the rule of law, and not only reinforces survivors' sense of disappointment and frustration, but also perpetuates the culture of impunity.²⁷⁰ Surprisingly, despite this state of affairs, the vision of reparations remains steadfastly focused on legalistic remedies, even amongst civil society organisations and legal and human rights professionals.

²⁶⁵ FIDH, 'DRC: Victims of sexual violence rarely obtain justice and never receive reparation: Major changes needed to fight impunity' (2013) p. 54.

²⁶⁶ Ibid, p. 55.

²⁶⁷ Ibid, p. 63. See also: TRIAL, ASF, RCN-Justice et démocratie 'L'urgence pour la RDC de solder sa dette envers les victimes de crime de masse et revoir sa politique de réparation' (2020) <https://trialinternational.org/wp-content/uploads/2020/10/Policy-Brief-Lurgence-pour-la-RDC-de-solder-sa-dette-envers-les-victimes-de-crime-de-masse-et-revoir-sa-politique-de-re%CC%81paration.pdf> accessed 2 April 2024.

²⁶⁸ FIDH, 'DRC: Victims of sexual violence rarely obtain justice and never receive reparation: Major changes needed to fight impunity' (2013) p. 57.

²⁶⁹ Ibid, pp. 64-65. See also: Physicians for Human Rights & Columbia-SIPA, 'Summary of roundtable discussions' (2014), p. 3.

²⁷⁰ Sharanjeet Parmar and Guy Mushiata, 'Déni de justice : Les victimes de crimes graves ne reçoivent pas les réparations ordonnées par la Cour de justice en République démocratique du Congo' (ICTJ 2013) p. 2. Physicians for Human Rights & Columbia-SIPA, 'Summary of roundtable discussions' (2014), p. 3.

7.1.5. Preference for traditional and customary mechanisms

The aforementioned realities of seeking judicial and/or administrative reparations result in a strong community preference for traditional and customary mechanisms, rather than taking legal action before the courts. Community or family pressure on victims, as well as the threats they may receive from the perpetrators of the violence, (who are often still members of the military or police forces) are all factors that encourage recourse to traditional and customary mechanisms.²⁷¹ In addition, police officers often persuade victims to take traditional routes and act as mediators in return for bribes.²⁷² Such behaviour allows the perpetrators to escape criminal prosecution and only serves to reinforce corruption and impunity under the law. Yet these mechanisms have officially been banned for crimes of sexual violence since the Law of 2006.

In cases where traditional mechanisms are used, issues of family and community honour take precedence over the rights, needs and wishes of the survivors.²⁷³ Officials, community leaders and even families arbitrate rape cases and demand, for example, that the perpetrators pay reparations in kind, such as cows or goats, which are supposed to represent the bride's dowry that her family would have received had she not been raped.²⁷⁴ In such cases, it is the victim's family, not the victim, that receives the compensation. They may also require the victim to marry the perpetrator of the rape in order to repair the family's "lost honour",²⁷⁵ inflicting an additional penalty on the survivors of these forced marriages.

7.2. The ICC process: progress, challenges and obstacles

The mandate of the ICC includes the enforcement of Reparations Orders issued by the Chambers against convicted persons.²⁷⁶ The Trust Fund for Victims (TFV) has the dual mandate of implementing the reparations awarded by these Orders and providing assistance to victims of situations brought to the ICC, even if there is no direct link to a particular case before it.²⁷⁷ The ICC's reparations system is therefore unique in that it is based on both punitive justice, linked to the establishment of individual criminal responsibility and sanctions, and restorative justice, the aim of which is to provide reparation and assistance to victims. This makes it possible to reach victims who have no connection with a specific case brought before it.

7.2.1. Reparations orders

Although in the Thomas Lubanga Dyilo case no charges of crimes of a sexual nature were brought, the trial judges nevertheless recognised the existence of victims of sexual violence for the purposes of reparations. In its decision on 7th August 2012, Trial Chamber I decided that reparations should take into account survivors of sexual violence.²⁷⁸ It also acknowledged that it might be necessary to give priority to – amongst others – victims of sexual or gender-based violence, as well as people in need of immediate medical care, particularly if their condition requires reconstructive surgery or HIV treatment. These people were considered to be in a particularly vulnerable situation or in need of urgent assistance.²⁷⁹ However, this progressive interpretation was not upheld on appeal.

271 Physicians for Human Rights & Columbia-SIPA, 'Summary of roundtable discussions' (2014) p. 11.

272 Physicians for Human Rights & Columbia-SIPA, 'Barriers to Justice: Implementing Reparations for Sexual Violence in the DRC' (2013) pp. 5-6, 20.

273 Sahla Aroussi, 'Perceptions of Justice and Hierarchies of Rape', Volume 12, Issue 2 (International Journal of Transitional Justice 2018) pp. 10-11.

274 Physicians for Human Rights & Columbia-SIPA, 'Barriers to Justice: Implementing Reparations for Sexual Violence in the DRC' (2013) pp. 5, 19.

275 Ibid.

276 ICC, Rome Statute of the International Criminal Court, vol. 2187, No. 38544 (2002) art. 75.

277 Ibid, art. 79.

278 ICC, Trial Chamber I, Case of the Prosecutor v. Thomas Lubanga Dyilo, 'Decision establishing the principles and procedures to be applied to reparations', ICC-01/04-01/06-2904 (7 August 2012) paras. 207-209.

279 Ibid, para. 200. The Appeals Chamber confirmed this decision on 18 July 2019.

To date, the only case before the ICC that has led to a conviction for CRSV is that of Mr Bosco Ntaganda. On 8th March 2021, Trial Chamber VI issued its order on reparations to victims: it set the total amount of reparations for which Mr Ntaganda is responsible at US\$30,000,000, in the form of collective reparations with individualised elements.²⁸⁰ The Chamber established that the victims eligible for reparations included: direct and indirect victims of the attacks, victims of crimes against child soldiers, victims of rape and sexual slavery, and children born as a result of sexual violence. It also decided that priority should be given to people in need of immediate medical and psychological care, disabled and elderly victims, victims of sexual or gender-based violence, victims who are homeless or in financial difficulty, as well as children born of CRSV and sexual slavery and former child soldiers. On 13th July 2023, Trial Chamber II issued an addendum to the reparations order of 8th March 2021.

*"The Chamber conclusions included the estimation of the approximate number of direct and indirect victims of crimes against child soldiers, to approximately 3,000 individuals in total; and the estimation of the approximate number of direct and indirect victims of the attacks, to approximately 7,500 individuals in total. The Chamber assessed Mr Ntaganda's liability for reparations at USD 31,300,000."*²⁸¹

As Mr Ntaganda was recognised as indigent for reparations purposes, the TFV was instructed to design and submit, in consultation with victims, a draft implementation plan based on all the reparations modalities identified in the Order, as well as an urgent plan for priority victims. On 23rd July 2021, on this basis, Trial Chamber II approved two proposed projects under the Fund's initial draft implementation plan (IDIP).²⁸²

The eligibility process, conducted by the TFV with the support of the Registry, ended in July 2022 for the case as a whole.²⁸³ The first phase of victim

identification concerned those who participated in the legal proceedings. In this respect, the victims' legal representatives indicated those who needed priority access to the programme due to their level of vulnerability and continued to provide the TFV with information on the victims they were currently representing and others whom they had been able to contact. After gathering information through the partner organisation in charge of implementation, the TFV would carry out an eligibility assessment. This assessment consisted of determining whether the person had in fact been a victim of one of the crimes for which Mr Ntaganda had been convicted and determining the degree of urgency of reparation. Once the TFV had determined the individual's eligibility, the implementing partner would proceed to grant admission to the reparations programme.

The two IDIP projects approved by the Chamber are run by two separate implementing partners. One of the partners provides comprehensive care for 29 former child soldiers and is considering providing support to an additional 13. The other partner cares for 43 victims of armed conflict, who receive holistic emergency care and psychological follow-up. Of these 43, 26 are also receiving socio-economic support.²⁸⁴ In addition to this emergency victim support, the Fund will shortly be launching additional programmes as part of the Draft Implementation Project (DIP).

Several difficulties are contributing to the slow pace of reparations proceedings in the context of what has already been a lengthy judicial process. These include: fundraising, the development and approval of concrete, detailed and accurate IDIPs and DIPs; the complexity of the procedures for identifying victims and determining the harm suffered; and the absence of a timetable for implementing reparations, within complex security contexts and with insufficient expert personnel.²⁸⁵ These factors jeopardise the

280 ICC, Press release, 'Ntaganda case: ICC Trial Chamber VI orders reparations for victims' (8 March 2021) <https://www.icc-cpi.int/news/ntaganda-case-icc-trial-chamber-vi-orders-reparations-victims> accessed 2 April 2024.

281 ICC, Press release, 'Ntaganda case: Trial Chamber II delivers order on reparations' (14 July 2023) <https://www.icc-cpi.int/news/ntaganda-case-trial-chamber-ii-delivers-order-reparations> accessed 2 April 2024.

282 TFV, 'Republic Democratic of the Congo, Updated information Q1-Q2 2022' (2002) <https://www.trustfundforvictims.org/en/updated-information-programme-activities-democratic-republic-congo-q1-q2-2022> accessed 2 April 2024.

283 TFV, 'Republic Democratic of the Congo, Updated information Q3-Q4 2022' (2002) https://www.trustfundforvictims.org/sites/default/files/Updated%20info-DRC-MBO3-Q4%202022_1.pdf accessed 2 April 2024.

284 Ibid. p. 9.

285 REDRESS, 'No time to wait: Realising the right to reparations for victims before the International Criminal Court' (2019) pp. 13, 15, 33, 61 <https://redress.org/news/no-time-to-wait-realising-the-right-to-reparations-for-victims-before-the-international-criminal-court/> accessed 2 April 2024.

guarantee of prompt, effective and adequate reparations, as demonstrated by the release of T. Lubanga in 2020, after 14 years in prison – when it wasn't until the following year in March 2021 that Trial Chamber II approved the implementation of collective reparations for his victims, in the form of services that were not yet 100 per cent funded.²⁸⁶ The same is true in the case of Mr Ntaganda, whose first court appearance took place on 26th March 2013, yet by 2023, only 72 of his victims in emergency situations had access to reparation measures.²⁸⁷

7.2.2. Assistance

Active in the DRC since 2008, the TFV has as part of its mandate to assist victims of crimes under the jurisdiction of the ICC in the provinces of Ituri, North and South Kivu. The first cycle of the TFV's assistance mandate ran until 2017 and benefited 58,439 direct victims²⁸⁸ and a total of more than 230,000 direct and indirect victims.²⁸⁹ The second cycle of the programme began in 2020, initially with 10 projects. However, due to budgetary and security constraints, as well as the evaluation of the impact on victims,

three projects were not extended beyond the third contractual year and ended on 30 April 2022.

Since 1st May 2022, the TFV's assistance programme in the DRC therefore comprises seven assistance projects in the Eastern provinces. These projects are being implemented on the ground by the following partner organisations: Association des mamans Anti Bwaki (AMAB), Cooperazione Internazionale (COOPI), Appui aux femmes démunies et enfants marginalisés (AFEDDEM), Solidarité pour la promotion sociale et la paix (SOPROP), Missionaries of Africa, World Relief, and Médecins du Monde (MDM). All the projects (with the exception of the Missionaries of Africa project) directly benefit survivors of CRSV. The projects provide support for physical and psychological rehabilitation, including individual counselling, family mediation and group therapy, as well as capacity-building activities and income-generating activities.²⁹⁰

The projects cost around €150,000 per year per partner (a total of €4,500,000 over the five years of implementation). They have benefited 10,138 survivors over the first three years, representing an investment of around €266 per person for this period.

TESTIMONIES FROM SURVIVORS

"I am a widow and mother of six children from Masisi territory in North Kivu. My husband was killed by the rebels, and we fled with the children to Goma to a site for displaced people. Life became very difficult to feed my children. I joined other displaced women to look for firewood to sell to meet the needs of the household. While looking for firewood in the bush, I was attacked by three armed men who took turns raping me. I was then referred to the NGO, SOPROP which provided psychological and medical care after a period of trauma that made me lose my mind. Thanks to SOPROP, I regained my dignity as a mother and learnt to sew. Today I wear clothes I've sewn myself and I get lots of customers who appreciate my talent. It's the income from this job that enables me to feed my family. I would like to thank the contributors to the Trust Fund for Victims for their support for the women affected by the war. Many other women who are suffering need your help to become like me."

286 ICC, Press release, 'Lubanga case: Trial Chamber II approves the implementation of collective reparations' (4 March 2021) <https://www.icc-cpi.int/news/lubanga-case-trial-chamber-ii-approves-implementation-collective-reparations> accessed August 2024.

287 TFV, 'Republic Democratic of the Congo, Updated information Q3-Q4 2022' (2002) p. 9.

288 TFV, 'Republic Democratic of the Congo', <https://www.trustfundforvictims.org/en/locations/democratic-republic-congo> accessed 2 April 2024.

289 TFV, 'Republic Democratic of the Congo, Updated information Q3-Q4 2022' (2002) p. 9.

290 For a detailed summary of the activities and participants of each project: Ibid., 10-12. See also: TFV, 'Visite conjointe en RDC, Rapport de la visite de suivi du programme du Fonds au profit des victimes par le Canada, les Pays-Bas et le Sénégal à Bunia, province de l'Ituri, 30 octobre – 3 novembre 2022' (2022) pp. 19-29 https://www.trustfundforvictims.org/sites/default/files/Rapport%20de%20la%20visite%20conjointe%20en%20RDC_Novembre2022.pdf accessed 2 April 2024.

"I am a widow and my husband was killed by armed groups in 2015 in the province of South Kivu. He left me with a pregnancy and after a few months I gave birth to a child. The weight of life forced me to go and fetch wood in the bush so that my child could go to school. Three men suddenly arrived and assaulted and raped me. I lost consciousness and woke up later. The news spread through the village and I became a laughing stock. In 2020, the NGO AFEDEM took me in and supported me with an income-generating activity. I'm currently trading in foodstuffs, which enables me to meet the needs of the household and make some savings. For the moment, I lead a normal life, I live well and my child is studying thanks to the support of the contributors to the Trust Fund for Victims."

"I was 15 in 2002 when men from the militia broke into our house. They killed my father and my two younger brothers. I hid under the bed and these armed men took me out of hiding and led me and other girls from the village into the bush. They made me their sex slave for a month in the bush, and that was my only role in their stronghold. One day, I asked for permission to go and fetch water from the spring, and I took advantage of it to escape. Suffering from pain in my genitals, I tried to walk to Kasenyi. Unfortunately for me, I realised that I was already pregnant. Despite the mental and physical suffering, I kept the pregnancy until I gave birth. I did the daily household chores: washing clothes, fetching water to buy food. It was in 2021 that the NGO COOPI, a partner of the Trust Fund for Victims, identified me and took charge of me and my child, who was given school supplies in addition to the bonus paid for one year. I learned to read and write in a literacy school thanks to the support of the NGO COOPI. I would like to thank the contributors to the Trust Fund for Victims for their sacrifice. My child and I are happy to be back to normal."

Source: Testimonies gathered by the TFV, Joint visit to the DRC, 16.

The TFV's assistance mandate and its impact are generally perceived positively by the international community, although the need to commence its activities in a more timely manner has been highlighted.²⁹¹ In the DRC, the security situation in the East makes it difficult for the local TFV Office to monitor project implementation, especially as it is understaffed due to a limited budget decided upon by the States Parties to the ICC Statute

and donors. The abrupt end of three of the 10 projects in progress is tangible proof of this. This leaves survivors who were recipients, once again without assistance.²⁹² Furthermore, *"the permanent state of siege in the provinces of Ituri and North Kivu continues to create tensions between the local population and the army, which could have an impact on the security of the Fund's programmes in the field."*²⁹³

291 REDRESS, 'No time to wait: Realising the right to reparations for victims before the International Criminal Court' (2019) p. 31.

292 Ibid.

293 TFV, 'Republic Democratic of the Congo, Updated information Q3-Q4 2022' (2002) p. 13.



Meeting with survivors in Kaniola, the Democratic Republic of the Congo, November 2022.
© Trinity Studios DRC



VIII. GSF'S INTERIM REPARATIVE MEASURES PROJECT

One of the pillars of GSF's work is to ensure that survivors of CRSV can receive interim reparative measures (IRM) in countries where the state does not implement administrative reparations programmes. This term, coined by GSF, refers to measures designed to meet the urgent needs of survivors of CRSV for a temporary period.²⁹⁴

GSF implements IRM projects in partnership with civil society organisations and survivors in the countries concerned. GSF adopts a survivor-centred approach and places survivors at the centre of the process, prioritising their rights, needs and wishes and ensuring that they are treated with dignity and respect. Within this framework, co-creation of the reparation measures involves a broad process of understanding and discussion on the conceptualisation, definition, implementation, evaluation and validation of IRMs and projects as a whole. This process is carried out with the understanding that survivors are rights-holders.²⁹⁵

In addition to co-creation, GSF adopts a contextualised and multi-stakeholder approach, in order to adapt the project methodology to each local situation, to ensure the involvement of several institutions and other key stakeholders and to foster active collaboration between them. This means that, as well as being designed and implemented with the advice and active participation of survivors, projects are implemented in partnership with local civil society organisations. In addition, a Steering Committee – made up of survivors, civil society experts and, in principle, representatives of the Government and the

international community – gives strategic direction to the project, vets the survivors and monitors all aspects of the project.

The ultimate aim of IRM projects, which include a strong advocacy component, is to influence government institutions to develop reparations projects and set up their own broader administrative reparation programmes, following the best practice demonstrated by IRM projects.

These projects therefore involve a multitude of players and actively engage the authorities. By testing the methods, measuring their impact and documenting the lessons learned, these projects aim to demonstrate that reparation for survivors is possible, urgent and financially feasible, despite the many challenges.²⁹⁶

| 8.1. The organisational structure

In 2019, GSF collaborated with the Panzi Foundation (Bukavu), which has been providing holistic support to survivors since 1999,²⁹⁷ to develop a pilot IRM project with and for Congolese survivors of CRSV. The MNSVS-RDC was also closely involved in setting up and implementing the project.²⁹⁸ The project, which ran from March 2020 to February 2024 in South Kivu, North Kivu and Kasaï Central, involved 1,093 survivors.²⁹⁹

Under the leadership of the Director of Programmes of the Panzi Foundation, and with the strategic and technical support of GSF, a multidisciplinary team of

294 GSF, 'Comment Agitit GSF. L'approche du Fond Mondial pour les Survivants.es sur les projets de mesures réparatives intérimaires' (November 2002).

295 Ibid.

296 All the information in this section has been compiled from the following source: GSF, 'Summary Note. Pilot Project in the Democratic Republic of Congo' (September 2002).

297 Its innovative and holistic approach with victims of sexual violence is based on four pillars to cover medical, psychosocial, legal and socio-economic aspects. IRM's joint project with GSF goes beyond the usual "survivor support" to include essential elements of reparation such as recognition, compensation and rehabilitation.

298 It is a network of survivor activists, one of whose main objectives is to lobby for reparations. Movement representatives are key players at all stages of the project: conceptualisation, design, implementation and monitoring, as well as advocacy. They are also members of the project steering committee.

299 GSF, 'Our Work' <https://www.globalsurvivorsfund.org/projects#congo-section> accessed 21 March 2024.

around 45 people was established.³⁰⁰ All participating staff undertook an in-depth training on the methodology and activities of the pilot project, such as using a survivor-centred approach and on the right to reparation. The project also opened small temporary offices in the various localities where staff worked on a daily basis, directly on the ground with survivors.

In addition, a multi-stakeholder Steering Committee oversaw the implementation of the project and provided advice on its main elements. The main decision-making and monitoring body, the Committee was made up of representatives of the MNSVS-RDC, professional experts (e.g. lawyers, psychologists) and representatives of national and international civil society.³⁰¹ Representatives of local authorities,³⁰² and UN agencies³⁰³ also played an advisory role on the Committee. The Coordination Team consulted regularly with the Steering Committee to discuss and agree on each stage of the project's implementation – including site selection, the plan for the community awareness-raising missions, the survivor identification and verification process, (including decisions made on the level of evidence required and the interview structure), and the IRM Implementation Plan. The inclusion of many survivors on the committee was essential to ensure that the approach was developed for and with those affected. As a result, the operational responses were much better adapted to their needs and expectations.

8.2. The process

8.2.1. Preparatory phase

The preparatory phase of the project began in March 2019.³⁰⁴ It consisted of a series of consultations with various civil society actors, including survivors in close collaboration with the MNSVS-RDC, judicial and administrative authorities at provincial and national level, and national and international

experts. The consultations focused on the nature and implementation of potential interim reparative measures, identifying associated risks and ways of addressing them. Survivors' wishes regarding IRM can be grouped into four categories: compensation, including to develop income-generating activities; support for children's education; access to housing and short- and long-term physical and mental health care. One of the main challenges of any project is to ensure that the interim reparative measures have a real, lasting, and transformative impact on the lives of survivors.

This initial phase also included an analysis of past advocacy initiatives in favour of reparations for survivors, as well as an analysis of case law in which civil parties were awarded financial reparations but never received them. These analyses helped to shed light on the obstacles encountered.

8.2.2. Exploratory missions: location selection for IRM project implementation

Based on the outcomes of this preparatory phase, along with information and analysis on the partner organisations' past and current casework, and in-depth exploratory missions to South and North Kivu, the Steering Committee determined a series of criteria for selecting the localities to be included in the IRM project. These criteria included logistical feasibility, security, the extent and nature of sexual violence in the locality, and the number of survivors.

The Committee decided to include villages that had experienced various patterns of sexual violence, either mass rapes or recurrent cases of CRSV over the years, including sexual slavery. It also decided to include places where survivors had different experiences of being able (or unable) to access the criminal justice system, including communities where victims had lost their cases against alleged perpetrators of CRSV, and others where survivors have never had access to justice.

300 A Project Coordinator, a Field Coordinator, a Project Assistant, a Socio-Economic Reintegration Specialist, a Field Coordinator for the implementation of interim restorative measures, a Data Manager, a Financial and Administrative Manager, Consultants. We also have a team of 35 Psychosocial Assistants and Psychologists (mainly deployed in the villages where the project is being implemented) to support survivors on a day-to-day basis and help them co-create the project at every stage, including responding to risks.

301 National and international NGOs such as SOS Information Juridique Multisectorielle, the Panzi Foundation, Trial International and Physicians for Human Rights.

302 The Head of the South Kivu Provincial Gender Division and the President of the South Kivu Military Court.

303 As the coordinator of the United Nations Joint Human Rights Office.

304 The results of the consultations carried out during this preparatory phase are those mentioned in section V.

As a result, a number of sites were selected by the Steering Committee to implement the project in March 2020. These included Bueremana, Minova, Kasika and Kaniola in the Kivu region, in relation to crimes committed since the late 1990s. In order to take into account some of the more recent CRSV, and in the absence of initiatives to support survivors in this region, the Steering Committee also decided to include survivors from the Kasai region. An exploratory mission took place in August 2020. On the basis of its findings, the Committee selected the localities of Mulombodi, Tubuluku and Ntambwe to implement the project.

8.2.3. Awareness-raising missions & consultations with survivors and community leaders

Awareness-raising missions were organised in the selected localities to explain the project and gain community buy-in, as well as to obtain initial feedback from survivors and communities on the proposed implementation process and methodology.³⁰⁵

Separate meetings were held with survivor groups, community leaders and other community members. These groups provided valuable information and guidance on how survivors should be identified, what is needed in terms of individual and collective interim reparative measures, and how these measures should be implemented.

These missions were the first step in an intensive and ongoing consultation process, carried out through other regular missions and, above all, the permanent presence of Psychosocial Assistants in close contact with the survivors throughout the implementation of the project. The Psychosocial Assistants were thus able to seek survivors' views on all aspects of the project, including – but not limited to – their protection, any necessary modifications needed, what the individual interim reparative measures should include, how best to implement them to limit risks, and the collective interim reparative measures that could be contemplated.

8.2.4. Identification and verification of victims

The exact criteria for selecting the people to be included were formulated at community level with the support of the Steering Committee. All stakeholders agreed that all identified survivors from the same selected locality should be included, in order to avoid giving priority to some over others and to avoid creating tensions between community members.

The identification process was also the subject of numerous discussions with the survivors and was widely debated by the Steering Committee, which – on the basis of survivor feedback – adopted the following procedure and stages:

1. Initial work in the office to cross-check the data gathered during consultations and exploratory and awareness-raising missions with information received from other stakeholders (UN, NGOs, official archives, etc.), in order to begin analysing the extent of sexual violence and identify survivors;
2. First contact between the Project Team and each survivor established through Psychosocial Assistants (who know the survivors), as well as by members of the MNSVS-RDC, with the support of partner organisations in the various localities;³⁰⁶
3. A Psychosocial Assistant and a Psychologist meet each survivor individually in a safe place to complete a questionnaire;
4. Survivors are invited to submit relevant documents to support the verification process;³⁰⁷
5. The Steering Committee analyses the questionnaires and documents submitted, stripping them of any personal information that might allow people to be identified, and could ask for additional information. The survivors then interviewed by a Steering Sub-Committee, including another survivor and/or an expert on the events in question;

305 Missions were organised with survivors and community leaders in Kasika, Kaniola and Minnova in August, September and December 2020, and in Kasai in November and December 2020.

306 In addition, the partner organisations in the various localities played a key role in contacting the survivors. These partner organisations had already provided estimates of the number of survivors in their past and present files, which made it possible to identify the project locations.

307 The list of these documents was defined by the Steering Committee. These include, for example, their status as a civil party, a judgment bearing their name, the fact that they appear on lists of survivors drawn up in previous documents on the crimes, etc. All the information gathered is transcribed securely and redacted. All the information gathered is transcribed securely and redacted.

6. All cases (those for which documentation was available and those for which a second interview was conducted) examined and verified by the Steering Committee.

It is important to note that throughout this process careful consideration was given to the methodology employed to ensure that the process itself was restorative in its methods. In addition to the intensive training of the team members and the presence of Psychosocial Assistants in the field to accompany the survivors on a daily basis, a great deal of attention was paid to the logistics of interviews. For example, the Steering Committee decided that survivors could not be contacted at home or in a place that would expose them to a further risk of stigmatisation (in line with the “*do no harm*” principle), but that contacts and interviews should take place in secure locations. All the data gathered was also transcribed securely.

In addition, the questionnaire, which had been developed under the auspices of the Steering Committee in accordance with international good practice, was applied in the form of a conversation rather than an interrogation. In addition, survivors were not asked to provide details of the circumstances of the sexual violence they had experienced, unless they wished to do so. This was the case for many of them, who were finding themselves in a compassionate and caring environment for the first time.

Finally, the Committee agreed that the level of proof required to attest to the CRSV suffered would be based on the principles of good faith and the presumption of victim status, and that the burden of proof should not fall too heavily on the survivors but rather on the Committee and the project coordination team itself. With this in mind, (and even though most of the survivors had a document attesting in one way or another to their status as victims), when these documents were missing, the Steering Committee set up four Sub-Committees,

made up of people recognised for their expertise and knowledge of the localities, and which always included other survivors.³⁰⁸ These Sub-Committees met with the survivors a second time, without any particular documentation, in order to gather their more detailed testimonies, to seek information attesting to the facts and to corroborate them with contextual analyses and the results of the exploratory missions carried out beforehand. Survivors could choose to be accompanied by a person of their choice (a family member, another survivor or a member of the community) for support if necessary. In addition, the project coordination team carried out various on-site missions to support the local teams in gathering information and in the identification process. When in doubt, cases were discussed at a Committee meeting. Psychosocial Assistants, other survivors and community leaders could be asked for additional information, given their knowledge of the geographic location, community demographics, and the history of attacks and violations perpetrated in their communities.

Following dialogue and awareness-raising with each community, specific challenges were brought to light with regard to the situation of male survivors of sexual violence. A different methodology was devised to enable them to come forward and to support those who decided to be identified as survivors as part of the IRM programme. Separate venues were set up to enable Psychosocial Assistants and male psychologists to meet them. In addition, specific support was organised because the male survivors did not want to meet other survivors. Thirty-seven male survivors were finally identified in the four project sites.

The process of identifying survivors and consulting on individual IRMs began in September 2020, with individual interviews taking place between December 2020 and March 2021. The first stage of the process, which was completed at the end of March 2021, identified the following survivors:

308 The Sub-Committees were made up of members of the steering committee, including at least one survivor, in some cases two, a lawyer and a member of the government (chief judge of the military court or head of the gender equality division). In addition to these members, a psychologist assigned to the project and already working with the survivor worked with the committee to support her and facilitate the exchange. In total, the four sub-committees met with nearly 80 survivors during this process. Around fifty of them were not validated by the committee.

Sites	Survivors identified by the Committee	Male survivors	Minor survivors	Survivors who met with a sub-committee
Kaniola	177	1		41
Kasika	121	9		7
Minova	241	0		74
Kasai	470	27	3	80
Overall project	1009	36	3	202, including 70 who were not ultimately identified as survivors

Source: Table produced by the IRM project coordination team - DRC.

Following this first phase, a second round of survivor-identification took place. Once the survivors realised that the project was real and not just another promise that would not be kept, and that they could observe the

methodology used by GSF – which prioritises building the confidence and protecting the safety of survivors – their reluctance was overcome and other survivors came forward. A total of 1,093 survivors were finally identified:

Sites	1 st phase	2 nd phase	Male survivors	Minor survivors	TOTAL
Kaniola	177	33	1		
Kasika	121	5	9		
Minova	241	19			
Kasai	470	27	27	3	
Overall project					1 093

Source: Table produced by the IRM project coordination team - DRC.

8.3. Implementation of interim reparative measures

Following the various stages of consultation, the survivors finally defined the following individual and collective interim reparative measures:

- Financial compensation, with financial management training, vocational training and employment support;
- Medical care;
- Psychological care; and
- Community or Survivor Centres that are open to all survivors of CRSV and provide a safe space for them to organise events and activities.

On this basis, the Project Team and the Steering Committee discussed different approaches for transferring money, monitoring implementation and

supporting survivors in developing their livelihood projects, and considered the role to be played by local organisations, local financial partners and community leaders. A range of steps were taken to implement the IRMs, depending on the locality and their specific context. One of the main challenges identified was to ensure that the IRMs had a real and lasting impact on the lives of survivors.

8.3.1. Financial interim reparative measures

Once the verification process had been completed by the Committee, the survivors each signed an agreement with the Panzi Foundation detailing the amount of financial IRMs they would receive and the payment schedule. The IRMs were to be paid in several instalments between September 2021 and December 2022.

Thanks to a partnership with the telephone operator Vodacom, each survivor received a mobile phone and a SIM card registered in his or her name so that the payments could be made. This allowed the Project Team to access the data for each money transfer and verify the date, amount and recipient of each payment, and thus ensure that each survivor had received the telephone and the various payments.

Steps were also taken to ensure the safety and confidentiality of survivors in this process. For those who needed it, workshops were organised to train them in the use of mobile money – in particular how to use their phone and receive payments. The misuse of the phones allocated to survivors could represent a security risk, so an important monitoring mechanism was therefore put in place to ensure that the survivors were in fact the people receiving and benefiting from the payments.

8.3.2. Training

Between July and December 2021, the survivors accepted into the IRM programme chose their livelihood projects. Collaboration with 49 Community Cooperatives (*Mutuelles de la solidarité* or MUSO)³⁰⁹ enabled survivors to start contributing to collective savings funds. In terms of IRMs, the survivors all receive the same amount of financial compensation to cover their different needs. Most of the women accessing the MUSO are survivors of sexual violence (but not all) – thus contributing to the MUSO enables survivors to help improve the lives of other vulnerable women in their communities, which in turn aims to strengthen survivors' social reintegration and restore their dignity. AVEC has a similar approach but can work with a larger amount of money injected by the survivors.

The survivors also received training related to their career aspirations, as well as local support from trainers or community experts who could guide them in their new activities.

Socio-economic Reintegration Specialists (*responsables de réinsertion socio-économique* or RSE) were first recruited in September 2021, consisting of a trainer and an agricultural mentor at each project site. Through meetings with these managers survivors could be mentored on the development of their livelihood projects – giving them the opportunity to receive feedback on their original idea or modify their Action Plan if they wished to. On this basis, the managers developed a curriculum – adapted to the survivors' level of education – on basic business and management skills, savings management and human rights, with a focus on women's rights, citizenship and positive masculinity. More than 500 sessions were organised with almost all survivors up until March 2023.

Finally, vocational training was provided by master craftsmen and women rather than academic or theoretical training. Nearly 600 survivors received practical training in cutting and sewing, IT, cooking, soap-making, basket-making, pastry-making, car mechanics and driving, etc. for three to six months. Nearly 100 other survivors have been following the same training since September 2022. To make it easier for survivors to take part in the training courses, they were consulted about time slots and childcare arrangements were made.

8.3.3. Medical and psychological care

Individual, family and group therapies have all contributed to the rehabilitation of the IRM project participants. In order to offer therapy tailored to the survivors' psychological needs, individual psychological assessments were carried out by psychologists from August to October 2021. In addition, the psychologists organised home visits (sometimes jointly with the APS) for therapy and/or to check on the mental health of the survivors. Over 5,000 individual and group therapy sessions were organised with survivors. Some involved family

309 The so-called "*Mutuelles de la Solidarité*" (AVEC or MUSO) programme is a socio-economic reintegration approach similar to a village loan system, in which members collectively save money and receive a larger sum in turn.

members to help them understand their past and build resilience. Nearly 70 survivors were given access to advanced psychological or psychiatric care following individual psychological assessments.

In addition, the Panzi Mobile Clinic has helped to identify the psychological and medical needs of the survivors and to organise medical support. To this end, several visits by the Mobile Clinic were organised to the Kasai region (September–October 2021) and to the Minova region (August and December 2021). Throughout this process, survivors requiring more extensive medical or psychological care were referred to appropriate medical facilities.

In total, more than 900 survivors saw a specialist doctor at least once and nearly 200 were referred for surgery or specialist care (such as treatment for fistulas, prolapses, STDs and gynaecological complications due to rape).³¹⁰

8.3.4. Social and family support

As survivors had expressed a fear that they could be exposed to criticism, rejection or stigmatisation by their immediate family and community as a result of the IRM received, the Psychosocial Assistants worked closely with the survivors' families and communities to mitigate this.

It was recommended that an Inter-Family Seminar be organised in the survivors' communities to ensure understanding, support and guidance for their families. The main objective of this activity was therefore to reduce the risk of conflict within households, thereby facilitating the implementation of individual IRMs.

Survivors were given the opportunity to invite anyone they wished. They invited their spouses, brothers/sisters, children, parents, etc. Discussions focused on what conflict-related sexual violence is, what reparations are, what IRMs are, but also on how reparations are supposed to transform survivors' lives. An important awareness-raising point was made about positive masculinity in the specific context of the project. Survivors felt that this activity enabled them to reconnect with their spouses and/or other family members who finally understood what had happened to them.

8.3.5. Interim collective reparative measures

A series of focus group discussions with survivors, as well as individual discussions with Psychosocial Assistants took place at all sites. Some survivors suggested organising public hearings to draw attention to the CRSV issue and stimulate government investment in formal justice initiatives. Others proposed the creation of *one-stop centres*.³¹¹ The results of the in-depth collective consultations were unveiled at a public feedback meeting attended by a number of government and community leaders, including the Director of the Cabinet of the Ministry of Justice and Gender Equality in Kasai and the local Administrators in Kasika and Kaniola.

Finally, following the results of the in-depth collective consultations and in accordance with the wishes of the survivors, the collective interim restorative measure selected was the construction of Community Centres for survivors in Kasika, Kaniola, Minova (Kivu) and Kananga (Kasai).

³¹⁰ In Kivu, cases were referred to and treated at the Panzi hospitals (Mulamba and Bulenga), which specialise in these different types of care. The most serious cases (gynaecological complications) were referred to Panzi general hospital. In Kasai, where survivors' access to care was very limited, several survivors were treated, referred and sometimes examined by doctors trained at Panzi. Thanks to the mobile clinics in Kasai, Panzi also shared its medical expertise with specialists in Kananga. Surgery was carried out by Panzi with technical support from the Tshikaji hospital.

³¹¹ Centres designed to provide a full range of assistance to survivors under one roof.

As the survivors put it, the community centres will give them “an address” as well as “a place to do different tasks and meet each other”. According to them, the centres will be a “rest home” for women who are still suffering violence in their homes or families. “It will be their place of transit while they wait for care and support”.

In these Centres, survivors will be able to learn a trade to meet their needs. At the same time, the Centres will be able to accommodate certain survivors suffering from stigmatisation whilst they find their feet.

The building plots have been purchased and construction began in August 2022. At the time of writing, the Kasika, Kaniola and Minova centres have been completed.

8.3.6. Support for survivors from local teams and other survivors

Once the survivors had defined what they considered to be reparative measures likely to change their lives, systematic support was put in place. This was provided both by members of the project team (Psychosocial Assistants, psychologists and socio-economic reintegration specialists) and by other survivors:

- Support from the project team took the form of home visits and visits to survivors carrying out related activities (Incoming generating activities, farming, livestock rearing, training, etc.). The teams met with survivors at their convenience, in secure locations, to discuss the progress of their activities as well as their psychosocial well-being and reintegration into their communities. By identifying the challenges the survivors faced in carrying out their livelihood projects, advice was given to them and changes were sometimes made as needed;
- In terms of support between survivors, the project organised Peer Mentoring sessions during which survivors shared their experiences of economic, psychological and social resilience.

8.4. Monitoring and evaluating the implementation of interim restorative measures

GSF worked in collaboration with the Netherlands Institute for the Study of Crime and Law Enforcement (NSCR) to assess the impact of the project and the interim reparative measures on the lives of the survivors. The evaluation used a mixed-methods approach, combining *Photo Voice* and *Concept Mapping* methods, in which survivors played a key role.

The provisional reparative measures have had a significant impact on the lives of survivors. Overall, survivors reported an improvement in their quality of life as a result of their participation in the project: 98 per cent felt that their participation had changed their lives. The average quality of life score rose from 25.77 before the start of the project to 70.92 at the end.

89 per cent of survivors felt a sense of recognition thanks to taking part in the IRM project, (which establishes co-creation as one of its fundamental principles) – in this case ‘recognition’ was understood by survivors as the fact of being considered a person who contributes to society. In this manner, the project has enhanced their sense of dignity: 81.5 per cent report an increased sense of dignity after participating. More specifically, survivors’ mental, physical and economic well-being improved. The impact evaluation measured a drastic reduction in serious psychological problems, with survivors reporting fewer symptoms of depression, anxiety and post-traumatic stress disorder at the end of the project. Survivors reported feeling a greater sense of dignity, happier and more confident.

8.5. Advocacy

Numerous advocacy actions were organised by GSF, the Panzi Foundation and MNSVS-RDC from the start of the IRM project. Between August and November 2020, several missions enabled GSF to meet the various actors involved in the development of a

National Reparation Policy for survivors of CRSV, and/or to be directly involved ourselves. Meetings that GSF took part in included with the President's Special Adviser on Youth and Violence against Women, the Ministers for Human Rights and Gender, the President of the National Assembly and the First Lady of the Republic. These missions seemed to reveal a nascent political will but a lack of effective dialogue, or even coordination.

In March 2021, GSF, the Panzi Foundation and MNSVS-RDC organised a conference in Kinshasa bringing together civil society, survivor groups from all the regions in conflict, government representatives and the international community to discuss the feasibility and urgency of setting up a National Reparations Fund in the DRC. High-level discussions took place between the participants and recommendations were made on the operating, funding and support mechanisms for survivors. Representatives of the Congolese Government and diplomatic actors pledged their support and commitment to the initiative.

At the same time, consultations were held with civil society organisations and representatives of the United Nations Joint Human Rights Office in the DRC (UNJHRO) and the United Nations Stabilization Mission in the DRC (MONUSCO) on the issue of reparation. This dialogue has helped to greater align the perspectives of stakeholders with a view to creating a single, consolidated National Fund for Reparation, as well as to raise awareness. Stakeholders made a formal commitment to provide technical and/or financial support for the creation and operation of the Fund, including consultation with survivors and mapping. The IRM Project Team has been in regular dialogue with government representatives, including the Office of the First Lady, who has committed to working towards the creation of such a fund. GSF participated in the launch of this initiative in October 2021 at a round table organised by the Office of the First Lady. Following this, an *ad hoc* Commission was set up in February 2022 to work on the foundations of FONAREV. The work of the *ad hoc* Commission led to the drafting of Law 22/065, analysed in section 6 of this study.



Validation workshop for the Global Reparations Study, Kananga, the Democratic Republic of the Congo, November 2023.

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IX. CONCLUSION

In the DRC, survivors of CRSV not only have to cope with the physical, psychological and social consequences of the crimes committed against them – including stigmatisation, ostracism and the serious economic consequences that follow – but they also have to endure the frustration and disappointment associated with almost absolute impunity, whether in terms of punishment for the perpetrators of sexual violence or reparation for the harm suffered: *“Victims rarely obtain justice and never reparation”*, as the International Federation for Human Rights (FIDH) rightly entitled its 2013 Mission Report. In 2023, the situation has changed little. It has even worsened in view of the normalisation and trivialisation of sexual violence beyond situations of armed conflict and the resurgence of localised conflicts.

This situation is all the more worrying given that a multitude of international, national and local actors have been working actively for decades to combat CRSV, to reform the judicial and security systems to overcome impunity for these crimes, and to provide holistic care and full reparation to survivors. The situation of sexual violence in the DRC is high priority for the mandate of the United Nations Human Rights Council and the UN Secretary-General’s Special Representative on Sexual Violence in Conflict. The ICC has been investigating cases including war crimes and crimes against humanity since June 2004. MONUSCO and the UNJHRO have stepped up initiatives to consolidate peace, combat CRSV and facilitate access to justice and reparation for victims of sexual violence.³¹²

GSF’s work in demonstrating that reparations are urgent and possible, and its advocacy for the establishment of a National Reparations Fund based on the lessons learned from its IRM Project, have recently gained some traction. In addition, recognition by the President of the Republic of the suffering and needs of survivors of sexual violence, and initiatives by the Office of the First Lady, the Ministry of Human Rights, the Ministry of Gender and the Ministry of Justice, have enabled the gradual creation of a legal and institutional framework for developing a comprehensive Reparation Policy. Today, there is considerable momentum and synergy between the various state actors to make concrete progress on this issue. This momentum has also given new impetus to the actions of civil society organisations, victims’ groups, individuals and committed actors. At the beginning of 2023, more than 50 of them came together during the National Advocacy Alliance for the Reparations of Victims of Conflicts in the DRC (ANPR), which was created upon GSF’s initiative as a permanent and informal strategic tool for information exchange and advocacy on the need for the provision of full reparations to victims and survivors of serious human rights violations linked to conflicts in the DRC.

The efforts made to put in place a legislative framework for reparations are certainly a step towards gaining recognition and respect for the rights of Congolese victims, who have not to date received an adequate response from governments. However, it has to be said that this framework contains a number of flaws and inaccuracies that need to be

312 OHCHR, ‘OHCHR in the Democratic Republic of Congo’ (2008) <https://www.ohchr.org/en/countries/democratic-republic-congo/our-presence> accessed 2 April 2024.

corrected if its implementation is to be fully in line with international obligations and standards, and if the DRC is to capitalise upon the opportunity to position itself as a regional and international model. More specifically, a significant commitment is lacking to place survivors at the heart of this process and to facilitate the implementation of mechanisms and measures focused on them, in order to ensure that reparations have a transformative effect and that a participative process of individual and collective recovery can begin.

The widespread, systematic and persistent nature of sexual violence throughout the many armed conflicts since the 1990s represents a major challenge to

the implementation of a gender-sensitive National Reparation Policy.³¹³ This is further compounded by the trivialisation of SGBV beyond situations of armed conflict, the proliferation of gender-based discrimination, women's socio-economic vulnerability and their unequal position in society. At a time when the withdrawal of MONUSCO has begun in South Kivu, political instability has also ramped up with the formation of a new Government and a difficult electoral process, security has worsened and the Eastern region of the country continues to see an escalation of conflict and sexual violence since 2023, particularly in camps for displaced persons. In this context, there are worries that any reparation process could run the risk of being politicised and instrumentalised.³¹⁴

313 OHCHR, 'Report of the Mapping Exercise documenting the most serious violations of human rights and international humanitarian law committed within the territory of the Democratic Republic of the Congo between March 1993 and June 2003' (2010).

314 France 24, 'Après 25 ans de présence, la force de l'ONU en RD Congo amorce son retrait' (28 February 2024) <https://www.france24.com/fr/afrique/20240228-apr%C3%A8s-25-ans-de-pr%C3%A9sence-la-force-de-l-onu-en-rd-congo-amorce-son-retrait> accessed 2 April 2024.



X. RECOMMENDATIONS

| 10.1. To the Congolese authorities

- Adopt and implement a comprehensive Transitional Justice Strategy in line with international standards, including: truth-seeking, preservation of memory, prosecution, reparations, and institutional reform.

10.1.1. Legal and political tools for preventing and punishing SGBV and CRSV

- Ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, accepting the procedures for individual complaints and enquiries before the Committee of the same name;
- Ratify the Optional Protocol to the Convention on the Rights of the Child, accepting individual complaints and enquiry procedures;
- Accept the individual complaints procedure of the Convention against Torture;
- Recognise the jurisdiction of the African Court on Human and Peoples' Rights to receive applications lodged directly by NGOs and individuals;
- Ratify the Protocol on the Statute of the African Court of Justice and Human Rights;
- Ratify the Protocol relating to the amendments to the Protocol on the Statute of the African Court of Justice and Human Rights;
- Ensure that domestic law aligns with and reflects the provisions of correlating international law;
- Further align domestic law with the Rome Statute of the ICC, its Rules of Procedure and Evidence and the Elements of Crimes;
- Ensure cooperation with the ICC in its investigations and prosecutions, as well as the deployment of the activities of the Registry and the TFV;

- Strengthen the implementation of the National Strategy to combat sexual and gender-based violence by allocating an annual budget to AVIFEM;
- Implement the commitments made in the Joint Communiqué with the United Nations on combating conflict-related sexual violence and its Addendum;
- Put in place legal and community mechanisms that explicitly protect survivors against discrimination, with a particular focus on protecting children born as a result of CRSV.

10.1.2. Access to justice

- Increase the budget allocated to the judicial system, ensure its effective management and strengthen the operational capacity of the courts responsible for investigating and prosecuting sexual violence and international crimes;
- Plan and ensure the organisation of public hearings capable of handling cases of sexual violence and international crimes;
- Guarantee training programmes for lawyers, police force personnel and the judiciary on Laws 06/018 and 06/019 and, in general, on the definition and prosecution of sexual crimes under international criminal law, international human rights law and the right to full reparation;
- Adopt and implement a Victim and Witness Protection Programme;
- Design and implement an integrated computerised system for the judicial system and improve access to technology for legal actors;
- Specify the method and ensure payment of the legal aid provided by law at all stages of the procedure for victims of sexual violence;
- Reform current legislation to eliminate the costs of going to court;

- Assume the indigence of victims of CRSV as a baseline;
- Guarantee that the procedure for obtaining a Certificate of Indigence is free of charge;
- Make evidence-gathering mechanisms more flexible and extend the list of acceptable evidence beyond a Medical Certificate. For example: official documents, expert reports, photographs, reconstructing patterns of conduct during the commission of certain violations to build up systems of presumption, taking statements and testimony from different types of informants (not just victims, individual perpetrators, eyewitnesses, etc.).
- Promulgate the Decrees pertaining to the implementation procedure for Law 22/065;
- Circumscribe the material scope of Law 22/065 by clearly stipulating the list of crimes to be compensated, by means of a precise enumeration of what is understood by “conflict-related sexual violence and serious crimes against the peace and security of humanity”;
- Define the scope of Law 22/065, starting from the definition in the United Nations Basic Principles and Guidelines on Reparations, specifying the exclusions to this notion and establishing the list of individual victims (their dependents) and collective victims, in accordance with the list of crimes previously listed;

10.1.3. Access to judicial reparations

- Amend current legislation to broaden the concept of reparations beyond compensation and bring it into line with international norms and standards by including restitution, rehabilitation, satisfaction and guarantees of non-repetition;
- Guarantee the status of direct victims to children born of CRSV;
- Specify the method and ensure the remuneration of doctors and psychologists required to draw up Medical Certificates;
- Establish remuneration scales and tables for assessing the damage resulting from sexual crimes to ensure consistency and objectivity;
- Repeal the requirement to pay a tax proportional to the damages before claiming compensation;
- Simplify the procedure for enforcing judgments ordering reparations by reforming the corresponding provisions of domestic law;
- Adopt a payment schedule for compensation owed by the State to victims of sexual crimes under judgements ordering reparations.
- Recognise children born of CRSV as direct victims and guarantee their access to child-centred, gender- and age-sensitive reparation;
- Specify and clarify the powers and decentralised structure of the bodies created by Law 22/065;
- Define reparations measures that 1) comply with international obligations and standards; 2) differ from judicial reparations (i.e. that do not involve a detailed assessment of the harm suffered – moral, physical, material, etc. – or a determination of the amounts to be allocated to each type of harm); 3) distribute standardised packages of reparations measures to all individuals within particular categories, determined by the type of violation and the amount of money to be allocated to each type of harm; and 4) distribute standardised packages of reparations measures to all individuals within specific categories, determined by the type of violation, and organised around thematic programmes, for example:
 - a. Education and vocational training;
 - b. Physical and mental health support;
 - c. Financial compensation;
 - d. Collective reparations;
 - e. Programme of symbolic reparations and the preservation of memory;
 - f. Housing and restitution of personal property;
 - g. Restoration of citizens’ rights, including access to legal identity and nationality for children born of CRSV;
 - h. Any other approved programme.

10.1.4. Administrative reparations

- Repeal article 4 of Law 22/065, which would make victim status conditional on a first instance decision by the High Court of the place where the offence was committed;

- Ensure that the principle of good faith and the presumption of victim and survivor status prevails in the process of identifying, qualifying and registering recipients of reparations, and that the burden of proof rests with the body responsible for the registration.
- Design and implement a decentralised programme for victim participation and consultation, both in the identification phase and in the formulation of reparations measures and their implementation. To this end, build strategic alliances and action networks with civil society organisations and other community players;
- Carry out communication and awareness-raising campaigns on reparation programmes and the criteria for accessing them;
- Put in place support and protection mechanisms for applicants, as well as data protection measures;
- Continue to mobilise resources and secure funding through traditional and innovative funding mechanisms, both for the institutional and operational structure, as well as for reparation programmes and measures. Other sources of funding – including the confiscation and redistribution of the assets of perpetrators of gross human rights violations – should also be considered;
- In addition to taxing conflict-related industries, to promulgate due legal process for the confiscation and redistribution of the assets of perpetrators of gross human rights violations and their accomplices;
- Increase transparency with regard to the exact methods and mechanisms for collecting and managing the various sources of funding.

Lessons from the interim reparative measures pilot project

1. Give priority to testimonial evidence over documentary evidence and other forms of evidence, and allow alternative means of providing testimony, including oral, written or electronic evidence via audio or video. Local context and culture should be taken into account in determining the accepted modalities, in consultation with victims:
 - a. Request documents establishing the alleged violation and any formal complaint lodged with an authority or made public at the time when the events occurred (complaint, judgement, medical evidence: documents proving that they received medical treatment from medical institutions following/because of the violence suffered, registration on recognised lists of victims, membership of a Victims' Association, etc.);
 - b. If it is not possible to obtain these documents, ask for a sworn statement from qualified witnesses (e.g. witnesses present at the time of the event, family members or community members, people who have taken part in recognised legal clinics, social workers, civil society organisations that support and care for victims of CRSV etc.);
 - c. Other relevant documents:
 - i. Proof of ownership of land/housing (in the event of destruction of property or illegal expropriation, etc.);
 - ii. Membership of Victims' Associations;
 - iii. Alternative evidence such as statements from local authorities/church registers (baptismal certificates or similar).
2. In cases where it is impossible to obtain documents and/or witness statements directly proving the alleged violation, consider other elements. For example, those that have been collected and digitised in a global map of conflicts and violations drawn up beforehand;
3. Analyse and cross-check the existing documents, the complaint or statement and all sources of information in order to verify their internal consistency and their external consistency with the time and place where the alleged facts occurred. This analysis of the data by the entity responsible for the LUC should take into account whether or not there is reasonable evidence to presume the existence of the violation and the condition of the victim.
4. Determine alternative means of proving the identity of victims who do not have identity cards or personal identification documents, as these may not be accessible in the context or for certain victims (displaced persons, refugees, etc.). These may include statements from local authorities, religious documents such as baptismal certificates, school reports or other documents.
5. Set up partnerships with local organisations that can help victims with the administrative process and reimburse victims for any costs associated with obtaining, securing, sharing or transporting evidence.

10.2. To the ICC and TFV

- Continue to monitor the situation and prosecute crimes within their jurisdiction, in particular crimes of a sexual nature;
- Strengthen their awareness-raising campaigns on the ICC's procedures concerning crimes of a sexual nature, on reparation orders and on the TFV's assistance mandate;
- Consider victims of sexual violence as a priority in reparation orders for the purposes of emergency plans;
- Accelerate the development and approval of the initial implementation of reparations projects and the concrete, detailed and precise implementation of reparations;
- Simplify the procedures for identifying victims and determining the harm suffered;
- Adopt schedules for implementing reparations and support activities;
- Guarantee a sufficient number of expert personnel;
- Strengthen fundraising activities with State Parties and donors on a regular basis.

10.3. To the States party to the ICC Statute

- Strengthen the Court's budget for the implementation of victims' right to reparation by increasing the number and value of States' contributions to the TFV, with a particular focus on unreserved funds;
- Commit to freezing assets and to have perpetrators prosecuted to obtain compensation.

10.4. To the international community and donors

- Reinforce concerted action to provide logistical, financial and technical support to strengthen the judicial system and reform the justice sector;

- Provide material and financial support to the organisation of public hearings capable of handling cases of sexual violence and international crimes;
- Support the implementation of a Victim and Witness Protection Programme;
- Support the introduction of an integrated digitised justice system and the upgrading of local courts' IT systems, by donating equipment and providing training in electronic classification and file systemisation methods;
- Broaden support for investigations, prosecutions and trials in cases of international CRSV crimes to include systematic monitoring of judgments and the implementation of reparations, as well as funding lawyers and defenders to help victims during the post-trial phase;
- Support training programmes for lawyers, police force personnel, the judiciary and civil society representatives on Laws 06/018 and 06/019 and, in general, on the definition and prosecution of sexual crimes under international criminal law and international human rights law, as well as on the right to full reparation;
- Support the creation and operation of *one-stop centres* providing legal, medical, psychological and social support to victims of sexual crimes in all regions of the country;
- Support awareness-raising and training programmes for community leaders in the traditional justice system on the rights of survivors in terms of criminal justice and reparation, and on combating the stigmatisation of children born of CRSV;
- Support access for children born of CRSV to their fundamental rights, in particular education and medical and psychological care;
- Increase advocacy of the national authorities, in particular the Ministries of Human Rights, Justice, Finance and the Budget, to guarantee the payment of compensation owed to victims and the implementation of a comprehensive Reparation Policy;
- Support the National Advocacy Alliance for the Reparation of Victims of Conflicts in the DRC;

- Support the introduction of a decentralised framework for the participation and consultation of victims in the development and implementation of the National Reparation Policy.

| 10.5. To national civil society

- Systematically, critically and constructively monitor government progress in the light of international obligations and standards;
- Develop concerted and decentralised advocacy initiatives with the national authorities on the implementation of a policy for comprehensive individual and collective reparations centred on victims and survivors, and the other pillars of the transitional justice process;
- Develop awareness-raising and support initiatives for survivors to facilitate their access to legal and administrative reparations;
- Promote the participation and consultation of victims and survivors throughout the process of approving, identifying and implementing the policy of full reparations;
- Organise awareness-raising and training activities for lawyers, civil society representatives and Victims' Associations on administrative reparation;
- Organise awareness-raising and training activities for community leaders in the traditional justice system on survivors' rights related to criminal justice and reparation, and on combating the stigmatisation of children born of CRSV.



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