



Report on violence against women in North and South Kivu, in the Democratic Republic of Congo

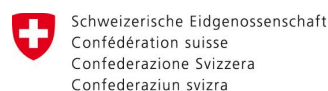
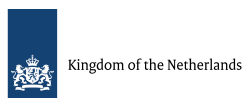
Alternative report for the Committee on the elimination of all forms of discrimination against women
55th session
July 8 – 26, 2013

This report is the result of the joint work of 20 NGOs from South and North Kivu, the Democratic Republic of Congo, who took part in a training session in April 2013, organised by the World Organisation against Torture (OMCT) and Women's Synergie for Victims of Sexual Violence (SFVS).

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This report has been realised with the support of Cordaid, the Dutch Ministry of Foreign Affairs, l'Organisation Internationale de la Francophonie and the Swiss Confederation.



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Contents

Introduction	1
1. The status of women in the Democratic Republic of Congo, the source of violence against women.....	2
<i>1.1. Customary Law</i>	<i>3</i>
<i>1.2. The feminization of poverty.....</i>	<i>3</i>
<i>1.3. Education</i>	<i>4</i>
<i>1.4. Women in the workplace</i>	<i>4</i>
<i>1.5. The political representation of women.....</i>	<i>5</i>
<i>1.6. The status of women in the peace-building process.....</i>	<i>5</i>
2. Violence against women.....	6
<i>2.1. Sexual violence.....</i>	<i>6</i>
<i>2.2. Domestic violence</i>	<i>7</i>
<i>2.3. Women's reproductive rights</i>	<i>8</i>
3. Recommendations	9

Introduction

For over two decades, serious human rights violations have been perpetrated in the Democratic Republic of Congo (DRC). The Congolese army (FARDC), the police (PNC) and the security forces, as well as national and foreign armed groups, are responsible for many abuses against the Congolese civilian population, including killings, looting, torture and acts of sexual violence against women. The problem of sexual violence in DRC has been the subject of particular attention from the international community since the wars that took place between 1996 and 2002, when a large number of women and girls were victims of rape perpetrated by the parties to the conflict.

In North and South Kivu, the civilian population is still facing these atrocities and many girls and women continue to be victims of sexual violence. Abuses by armed groups take place within a context of lack of security which has been exacerbated by desertions from the ranks of the army in April 2012; the creation of the M23 armed group and the redeployment of the FARDC.

South and North Kivu are regions rich in mineral resources. Armed groups and the FARDC vie for control of mining areas, which has transformed this region into an area of violent rivalry. Armed groups and the FARDC use sexual violence as “a weapon of war” to control the region and destroy families and communities.

Women survivors of sexual violence are often reluctant to report these crimes, out of both fear and shame. In most cases, it is the victims who are stigmatized and the perpetrators are not prosecuted. Indeed, a woman raped in the DRC may be expelled from her home and community. Added to this risk is the difficulty for many women to access justice and compensation, particularly in some remote parts of North and South Kivu. The perpetrators of these crimes also take advantage of the general climate of impunity to continue to commit their atrocities. Currently, impunity is a major factor in the perpetuation of these crimes.

Violence against women, including sexual violence, is not only perpetrated by armed groups and rebel groups, but also by civilians. Although sexual violence perpetrated by civilians is inherent to armed conflict, it should in addition be understood as part of a *continuum* of violence against women and girls in peacetime, during conflict and in post-conflict situations. This violence is part of a wider context of discrimination and inequality, which victimizes women. During armed conflict, gender inequalities and methods of discrimination are further exacerbated. In the DRC, women remain under-represented and are often excluded from many areas of society (political, economic, social and cultural) and from decision-making bodies.

The aim of this report is to present the main causes of violence against women in the DRC, particularly in North and South Kivu. Firstly, the report examines the status of women in national legislation as well as their under-representation in certain sectors of society (Chapter 1). Subsequently, the report analyzes the different forms of violence suffered by women at the family, community and state levels (Chapter 2). Finally, a set of recommendations are made to end violence against women in North and South Kivu.

1. The status of women in the Democratic Republic of Congo, the source of violence against women

From a legal point of view, efforts have been made to promote equality between men and women and to improve the status of women in society. Article 14 of the 2006 Constitution establishes that:

“The public authorities see to the elimination of all forms of discrimination against women and ensure the protection and promotion of their rights.
They take in all areas, and most notably in the civil, political, economic, social and cultural areas, all appropriate measures in order to ensure the full realization of the potential of women and their full participation in the development of the nation.
They take measures in order to fight all forms of violence against women in their public and private life.
Women are entitled to equitable representation in national, provincial and local institutions.
The State guarantees the achievement of parity between men and women in said institutions.
The law determines the conditions for the application of these rights”

Article 15 stipulates that:

“The public authorities are responsible for the elimination of sexual violence.
International treaties and agreements notwithstanding, any sexual violence committed against any person with the intention to destabilize or to displace a family and to make a whole people disappear is established as a crime against humanity punishable by law”.

Several laws have been adopted or amended with the aim of reinforcing the legal status of women, namely:

- Law of July 20, 2006 on the prohibition of sexual repression and violence;
- Amendments to the Family Code;
- Amendments to the Labour Code;
- Equality Law (in process of being adopted by Parliament).

Nevertheless, equality between men and women is not yet effective in the Democratic Republic of Congo. One explanation for this lies in the contradiction between certain sections of the law and the Constitution. For example, Article 467 of the Family Code establishes that if a woman is convicted of adultery, she may face a sentence ranging from six months to a year in prison while the husband would only face this “if the adultery is surrounded by circumstances which make it abusive”. However, the law does not determine the “abusive” nature of adultery committed by a man. Thus, the offence of male adultery is difficult to establish. The discrimination inherent in this article is not related to the penalties for adultery, but to the constituent elements of the offence in the case of men.

Articles 444-448 of the Family Code also perpetuate inequality between men and women and increase the vulnerability of women, as they establish that men have authority over the household and demand that women obey this authority. Article 448 in particular states that a woman must ask her husband’s permission before performing any legal act, such as the sale or lease of movable property, opening a bank account, applying for a visa, taking legal action, etc.

It is also important to mention the impact of customs and traditions that limit the role of women to housework and childbearing; their low level of education and limited participation in decision-making bodies.

1.1. Customary Law

Traditional society has dictated particular severe behavioural norms related to women, establishing taboos and prohibitions to which women must submit under penalty of unleashing the fury of the guardians of tradition, and even the ancestors. Cultural practices attribute a privileged position for men over women; and their explanations and justifications for the order of things, right down to forbidden foods and labour, are still in force today. “Women are not associated with the ancestors and the knowledge transmitted by them, but they are associated with uncontrollable forces from the non-human world (witchcraft and magic attack)”.

The rite of widowhood perfectly illustrates the persistence of customary law. This ritual involves the internment of the widow for several weeks while her in-laws take over the property left by their son and simply abandon the widow with her children. She therefore carries on her back the burden of the whole family. She does not even enjoy the property she had acquired with her late husband, the fruit of their combined efforts. Her eldest son, improperly termed the heir, in adulthood tends to expel her from the house which he then uses at his discretion, in violation of the Family Code which protects the widow. In some cultures, the widowed woman is subjected to torture due to the presumption that she must have caused the death of her husband.

In other societies, the practice of wife inheritance, which obliges the widow to marry a generally very elderly relative of her late husband, is commonplace. If a widow resists this practice she suffers reprisals such as loss of custody of her children, the obligation to repay the dowry immediately and leave the home without any rights. In principle, this practice aims to protect the widow by not leaving her alone. However, this is a violation of the freedoms accorded to every person, including the freedom to choose a marriage partner.

Other customs in the DRC also discriminate against women and girls. For example, women cannot inherit and have no access to land. In addition, a boy's marriage is determined by his sister's dowry, a situation that forces women to get married quickly so that the boy can also marry.

1.2. The feminization of poverty

The DRC is characterized by the feminization of poverty which has been aggravated by armed conflict. However, one of the most significant effects resulting from this period of instability is the change in gender roles. This is illustrated by the fact that today 80% of households owe their survival to women. Despite their now undeniable role in the survival of the majority of the population, women are faced with many problems to access resources, basic services and social services. The deprivation in which women live also prevents their access to justice.

Studies on poverty in North Kivu show that 61.2% of women live below the poverty line compared to 59.3% of men. This proportion is even higher in rural and semi-urban areas. In addition, 61.15% of households headed by women live below the poverty line compared to

54.32% of households headed by men.¹ This feminization of poverty is caused by discrimination found in all areas of development, including education, health, law, access to resources, governance, decision-making, employment, the environment and others.

1.3. Education

Article 45 of the Constitution guarantees access to education in equal conditions, without discrimination. However, the rate of schooling for girls remains low. The percentage of girls in education is 52% in primary schools, 39% in secondary schools and less than 20% in universities (data from North Kivu). The gap between girls and boys increases as the school curriculum advances. Thus, the male / female ratio is 1.2 at the primary level and 1.9 at the secondary level. At university and postgraduate level, the boy / girl ratio is 3.5 in the public sector and 1.6 in the private sector (data from North Kivu).² The reasons for this low school attendance by girls are the lack of local schools, school fees, teenage marriages and pregnancies, and the idea of the inferiority of women which is instilled in young girls from a very young age. In addition, parents show a preference for boys and are more concerned about their education than about the education of their daughters.

Illiteracy affects many women, especially in rural areas. One adult woman in two is illiterate compared to one adult man in five.³ In 2007, the illiteracy rate among women was 41.1% compared to 14.2% for men; and the literacy rate of the population aged 15 and older was 58.9% for women in comparison to 85.8% for men.

The lack of access to education suffered by Congolese women and girls has the effect of keeping them in ignorance of their rights and excluding them from any decision-making process.

1.4. Women in the workplace

Advances in the Labour Code date from 2002, when men's right to express opposition to their wives' engagement in labour contracts, was eliminated. However, working women account for only 2.8% of salaried workers compared to 12% of men. They represent only 2% of mining workers, 3% of industry workers, 3% of service workers and 8% of entrepreneurs (data from North Kivu). The majority of working women are concentrated in agricultural labour (70% in traditional agriculture) and in the informal sector (60%), including commerce. These two areas, in which women are the main actors, lie at the heart of the real economy, sustaining the majority of the Congolese people.

¹ SFVS Report « Analyse Juridique de la CEDEF par rapport aux lois Congolaises dans le cadre de la protection de la Femme », 2011

² SFVS Report « Analyse Juridique de la CEDEF par rapport aux lois Congolaises dans le cadre de la protection de la Femme » 2011

³ SFVS Report « Analyse Juridique de la CEDEF par rapport aux lois Congolaises dans le cadre de la protection de la Femme » 2011

In addition, the difference in the distribution of domestic and educational tasks between boys and girls, from an early age, helps to perpetuate gender stereotypes. Within the household, the responsibility of caring for children falls more to women. This responsibility is not shared with men.

1.5. The political representation of women

Of the eleven presidential candidates in 2011, no female candidates were registered. This represents a step backwards since the 2006 elections, in which four women were registered as candidates (12.12%) compared to 29 men. According to the preliminary results published by the Independent Electoral Commission (now the Independent National Electoral Commission - CENI) of the 483 elected deputies, 47 are women, representing approximately 9% of the total.⁴

In the province of South Kivu, of the 32 seats allocated to this province, the CENI registered 881 candidates including 76 women (8.6%) and 805 men (91.4%). According to final results published by the Supreme Court of Justice, of these 32 seats, only two were won by women (6.25%).⁵

In North Kivu, of the 47 seats allocated to the province, the CENI recorded 1,459 candidates including 145 women (9.9%) and 1314 men (90.06%). According to the final results published by the Supreme Court of Justice, of, only three of these 47 seats were won by women (6.25%).

Despite the norms established in section 14 of the Constitution, the participation of women in public life and their representation at senior decision-making levels remains very low. One single woman (Popular Movement of the Revolution - *Mouvement Populaire de la Révolution*) is the president of a political party out of a total of more than 400 existing political parties in the DRC. In spite of the adoption of the equality law, which states that women should occupy 30% of seats, this quota has not been met. The presence of women at decision-making levels of the administration remains weak.

Moreover, women are only represented minimally in the following spheres:

- Government: three ministers and three deputy ministers out of 39 ministers
- National Assembly: 52 women out of 500 MPs
- Governors: no women

1.6. The status of women in the peace-building process

Resolution 1325 of the United Nations Security Council on women, peace and security requires all states and armed militias to ensure that women are protected and fully participate in peace negotiations and post-conflict reconstruction.

Unfortunately, Congolese women have very little involvement in the peace negotiations. Only two women on the side of government and two women on the side of the M23 - as observers -

⁴ Gender and Elections 2010-2013, Preliminary analysis of the provisional results of the legislative elections of 28/11/2011 (in French)

⁵ *SOS Information Juridique Multisectorielle*, Report on the observation of the electoral process in the DRC 2011-2012, Bukavu, February 2012 (in French).

took part in the Kampala negotiations (Kampala III) in delegations of more than 50 people. It should be noted that no women participated in the Kampala I or Kampala II negotiations. Finally, no woman was involved in the negotiations that took place recently in Addis Ababa in February 2013.

The absence of women at the political level and in the context of the peace negotiations has led to a failure to take women's issues into account, contributing to denying women the enjoyment of their human rights.

2. Violence against women

2.1. Sexual violence

Although statistics on sexual violence are difficult to obtain, available data highlights the extent of this problem, which has been the subject of numerous reports from independent experts and national and international NGOs. In 2012, the SFVS assisted 1086 people (including 15 cases of sexual violence against men), compared to 708 in 2011, in its health facilities for victims of sexual violence.⁶ This increase is due to the intensification of the conflict in the North Kivu province. Among the victims were 567 adults and 517 minors.⁷

Through its Fund for emergency assistance to victims of torture, the OMCT has helped many women victims of sexual violence in North and South Kivu in recent years. The crimes were reportedly committed by the armed forces, armed rebel groups and also the police. For example, there were several cases in which the OMCT assisted, where emergency medical assistance was provided to the victims involved.

In June 2011, an armed rebel group entered several villages and arrested large numbers of women on charges such as "resistance to rape", "disrespect for the army", "disobedience" and "attempting escape when the forces entered the village". The victims were tortured, including being repeatedly raped in their homes or in the street. Some victims were raped in front of their family and neighbours in order to humiliate them and thus cause their exclusion from the circle of family and community. In addition, some of them were taken away and later abandoned more than 10 kilometres from their village.

In July 2011, a 29 year-old woman was arrested in Kanguli I-Fizi on charges of "witchcraft" and "collaboration with the enemy". Several soldiers interrogated and sentenced her. She was imprisoned overnight without water or food, was forced to undress and then raped.

In July 2012, a woman was raped in her home, in front of her children, by six members of the M23 in Busanza, Rutshuru, North Kivu. Her husband was killed and their home was destroyed.

In October 2012, in the village of Rugege, Uvira, South Kivu, a woman was arrested by an armed group composed of both members of the FARDC (Armed Forces of the Democratic Republic of Congo) and FNL (National Liberation Front) from Burundi. She was arrested as

⁶ Women's Synergy for Victims of Sexual Violence (*Synergie des Femmes pour les Victimes des Violences Sexuelles* SFVS), Annual report of activities, 2012 (in French).

⁷ Women's Synergy for Victims of Sexual Violence (*Synergie des Femmes pour les Victimes des Violences Sexuelles* SFVS), Annual report of activities, 2012 (in French).

she attempted to flee when soldiers entered the village, and was detained by soldiers for four days. During her detention, she was repeatedly raped; shot and wounded in her left leg; forced to eat leaves and drink stagnant water. She was held blindfolded, gagged and naked.

In terms of legislation, a new law on sexual violence was adopted in 2006 as a result of the activism of national and international NGOs. It should be noted with satisfaction that under this law new forms of sexual violence have been criminalized which were not previously covered; including sexual slavery, sexual harassment and forced pregnancy, among others. However, there are major defects in this law including the non-sanction of marital rape and the absence of sanctions against judges and judicial police officers who do not meet the time-scale for preliminary investigations, and the pre-trial and trial phase, of four months and two days. It has been observed that legal actions brought outside this time period have not been declared to be void. Disciplinary sanctions are only possible when a judge or a judicial police officer does not meet this time-scale.

The 2006 law also failed to deal with rape committed by foreign armed factions as an international war crime. Although the Military Penal Code establishes and punishes international crimes listed in the Rome Statute, the Congolese military and civil jurisdiction do not have the means to seriously investigate, arrest and prosecute the perpetrators of these crimes, especially when they are foreigners. The government has failed to prosecute and punish the perpetrators of crimes committed by foreign armies on Congolese soil.

For this reason it is important to establish a mixed court. However, the bill providing for the establishment of such a court is currently stalled in the Senate. The new law on judicial organisation and competencies empowers the civil courts, including the Court of Appeal, to try international crimes. However, the effectiveness and implementation of the law is hampered by the lack of an effective judiciary. For example, in Bukavu, the Court of Appeal has only four judges, although the law establishes that the Court shall be composed of five judges to be responsible for international crimes.

To date, the Congolese authorities have not shown the political will necessary to enforce this law. National institutions have also failed to prosecute and punish perpetrators of sexual violence, due to the weakness of the judicial system, the lack of infrastructure (particularly in rural areas) and of trained staff as well as the lack of implementation of legal decisions. Added to this is the fact that some victims favour amicable arrangements and others are forced to marry the perpetrator.

Impunity is one of the major factors contributing to the perpetuation of violence against women, including sexual violence.

2.2. Domestic violence

Domestic violence is a serious problem in the DRC. There is, at present, no measure of state protection for women victims of domestic violence. Moreover, there are no centres where women can seek refuge and escape the matrimonial home. Nor does existing legislation establish the possibility of removing the alleged perpetrator to prevent such acts from happening again. There is thus a reigning climate of impunity, in most cases the perpetrators remain unpunished, and the victims do not dare, for the most part, to report these crimes. In addition, the Penal Code does not prohibit marital rape. In a context such as this, it is worrying that many people think that marital rape is not a crime.

It is important to consider a specific law criminalizing domestic violence, including marital rape.

2.3. Women's reproductive rights

The extremely high rate of sexual violence in the DRC poses serious challenges, both in political, legal and socio-economic terms and for the public health system. The consequences of sexual violence against women are numerous, including infection with sexually transmitted diseases including HIV-AIDS, gynaecological complications due to injuries caused by rape, and pregnancy. In addition, all victims suffer severe psychological trauma.

Despite the large number of unwanted pregnancies observed in the DRC as a result of rape, the Penal Code prohibits abortion. Moreover, any person involved in an abortion is severely punished by law. The Penal Code (Book II) establishes a penalty of 5 - 10 years in prison for anyone who has an abortion and a sentence of between 5 and 15 years' imprisonment for anyone involved in an abortion (Articles 165 and 166 the Penal Code). These laws have never been repealed.

Although the Penal Code does not contain any exception to the prohibition of abortion, it is recognized that an abortion can be performed when the life of the pregnant woman is at stake. However, when a woman becomes pregnant as a result of rape or incest, abortion is not allowed.

This highly restrictive abortion law often forces women to resort to illegal abortions; they then run the risk of suffering from post-abortion complications, infertility and even death due to these interventions.

The maternal mortality rate in the DRC remains very high compared to other African countries with a ratio of 1,289 deaths per 100,000 newborn children⁸.

⁸ Map of health and sexual and reproductive rights in Africa and Spain (Network of African and Spanish Women for a Better World - *Réseau de femmes Africaines et Espagnoles pour un monde meilleur*, December 2011). (In French)

3. Recommendations

Modifications to legislation

- Adopt a specific law criminalizing domestic violence, including marital rape.
- Amend the Penal Code to allow rape victims to be able to abort so that they do not resort to clandestine abortions.
- Reform all discriminatory provisions in the Family Code and the Penal Code in order to bring domestic legislation in line with the Convention on the Elimination of All Forms of Discrimination against Women.

Participation of women in decision-making processes

- Guarantee and promote the full and equal participation of women in all peace and disarmament negotiations and processes, as established in UN Security Council Resolution 1325, so that their interests and concerns are fully integrated and taken into account.

Access to justice

- Establish mixed courts to prosecute the perpetrators of crimes of sexual violence committed during the armed conflicts in the DRC.
- Guarantee the independence of justice and equal enjoyment of rights by women.
- Ensure and improve access to justice for victims of sexual violence, by addressing the issue of the lack of courts, providing free access to justice and strengthening the training of judges and other judicial personnel.
- Ensure the effective enforcement of judgments and guarantee that victims receive adequate compensation.
- Create compensation and reparation funds for women victims of violence, including sexual violence.
- Raise awareness about and promote a culture of reporting violence against women.
- Investigate promptly, independently and effectively all acts of violence against women and punish the perpetrators of these crimes, whether they are committed by the State or private persons.

Respect for women's fundamental rights

- Guarantee access for girls and women to education and health, including in rural areas.
- Guarantee the protection of women human rights defenders, especially in times of conflict.
- Eliminate discriminatory cultural practices and stereotypes.