

# REDRESS

*Ending Torture. Seeking Justice for Survivors*

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## **SUBMISSION TO THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN FOR CONSIDERATION OF THE COMBINED 6<sup>th</sup> and 7<sup>th</sup> REPORT OF THE DEMOCRATIC REPUBLIC OF THE CONGO**

**24 June 2013**

### **I. Introduction**

1. REDRESS is an international human rights organisation whose mandate is to seek justice and reparation for torture survivors and victims of other related international crimes. REDRESS welcomes this opportunity to submit a report to the Committee on the Elimination of Discrimination against Women (CEDAW) in the context of its 55<sup>th</sup> session considering the examination of the combined 6<sup>th</sup> and 7<sup>th</sup> report of the Democratic Republic of the Congo (DRC).
2. REDRESS' work includes supporting local organisations and lawyers in the DRC to assist victims of sexual violence in conflict, notably women and girls, in obtaining justice and reparation. Based on its experience of the many obstacles and challenges women face in accessing justice in the DRC and in light of the 2006 CEDAW Concluding comments on the DRC (CEDAW/C/COD/CO/5), the combined 6<sup>th</sup> and 7<sup>th</sup> report of the DRC ('State Party Report'), CEDAW list of issues and questions (CEDAW/C/COD/Q/6-7) ('List of Issues') and the related replies provided by the DRC (CEDAW/C/COD/Q/6-7/Add.1), REDRESS' submission focuses on the issue of access to justice for women victims of sexual violence committed in the context of the conflict in the DRC.
3. This report highlights a series of priority concerns related to access to justice and includes recommendations for each of those concerns, in order to assist the Committee in its examination of the DRC's report and its dialogue with the DRC delegation.

### **II. Priority concerns related to access to justice for women in the DRC**

#### ***Prevalence of rape and other serious crimes of sexual violence in the context of the conflict and pervasive impunity***

4. Rape and other forms of sexual violence are widespread in the conflict affecting the east of the DRC. Crimes of sexual violence have been and continue to be committed by all parties to the conflict, notably the Congolese armed forces (FARDC) and a number of armed groups in South and North Kivu provinces and in Ituri.<sup>1</sup>

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<sup>1</sup> See the State Party Report, pp. 22-23, and List of Issues, paras. 1-5. See further, US Department of State, 'Country Reports on Human Rights Practices for 2012: Democratic Republic of the Congo', available at: <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204107>.

5. Despite some progress made with the support of international NGOs and United Nations agencies to hold suspected perpetrators accountable, including through the organisation of mobile court hearings, impunity remains pervasive. In the context of the handful of prosecutions of members of the FARDC, most successful cases concern low-level officers or soldiers.
6. Impunity is the norm for crimes of sexual violence committed by the security forces. For example, despite investigations into rape and other acts of sexual violence committed by at least 100 FARDC soldiers who attacked Kalambahiro and Bushani villages in North Kivu province, between 31 December 2010 and 1 January 2011, no trial has taken place to date.<sup>2</sup> The mass rape allegedly committed by FARDC soldiers in Minova in November 2012 also illustrates the magnitude of the problem. While many soldiers were arrested soon after the incidents this was reportedly for not having obeyed orders to continue fighting.<sup>3</sup> In respect of human rights violations committed in Minova, a dozen FARDC soldiers have been arrested and are awaiting trial, but only two have been arrested on charges of rape and two on charges of murder.<sup>4</sup>
7. There is a similar lack of accountability for crimes of sexual violence committed by non-state armed actors, such as the mass rape committed by a coalition of armed groups in Walikale territory, between 30 July and 2 August 2010.<sup>5</sup>
8. The exclusive jurisdiction by military courts over crimes of genocide, crimes against humanity and war crimes in DRC raises a series of specific issues due to the inherent limitations of a military justice system. As stressed in the UN Mapping Report on DRC, this system is not capable of dealing with international crimes, including crimes of sexual violence. In addition victims have a limited right of access to military justice, compared to civilian courts.<sup>6</sup>

### ***Lack of adequate and effective remedies for victims***

9. The State Party Report deals at length with legislative provisions in place to implement the Convention, including the 2006 law against sexual violence. However, key barriers to an effective remedy for victims of sexual violence in DRC remain. They relate both to fundamental weaknesses of the DRC justice system concerning impunity and the administration of justice as well as to the specificity of cases of sexual violence.
10. Despite numerous programmes funded by international donors aimed at improving the DRC justice system, there is still a lack of sufficient resources for the police, prisons, judiciary and associated administrative structures to allow for access to justice. This ranges from issues such as having enough resources to house prisoners, insufficient

<sup>2</sup> See MONUSCO and OHCHR, 'Report on the Investigation Missions of the United Nations Joint Human Rights Office into the mass rapes and other human rights violations committed in the villages of Bushani and Kalambahiro, in Masisi Territory, North Kivu, on 31 December 2010 and 1 January 2011', July 2011, available at: [http://www.ohchr.org/Documents/Countries/ZR/UNJHROReportMassRapesBushani\\_en.pdf](http://www.ohchr.org/Documents/Countries/ZR/UNJHROReportMassRapesBushani_en.pdf).

<sup>3</sup> See MONUSCO and OHCHR, 'Report of the United Nations Joint Human Rights Office on human rights violations perpetrated by soldiers of the Congolese Armed Forces and combatants of the M23 in Goma and Sake, North Kivu Province and in and around Minova, South Kivu Province, from 15 November to 2 December 2012', May 2013, available at: [http://www.ohchr.org/Documents/Countries/ZR/UNJHROMay2013\\_en.pdf](http://www.ohchr.org/Documents/Countries/ZR/UNJHROMay2013_en.pdf).

<sup>4</sup> *Ibid.*

<sup>5</sup> See MONUSCO and OHCHR, 'Final Report of the fact-finding missions of the United Nations Joint Human Rights Office into the mass rapes and other human rights violations committed by a coalition of armed groups along the Kibua-Mpofi Axis in Walikale Territory, North Kivu, from 30 July to 2 August 2010', July 2011, available at: [http://www.ohchr.org/Documents/Countries/ZR/BCNUDHRapportViolsMassifsKibuaMpofi\\_en.pdf](http://www.ohchr.org/Documents/Countries/ZR/BCNUDHRapportViolsMassifsKibuaMpofi_en.pdf).

<sup>6</sup> UNOHCHR, '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', August 2010, para. 968, available at: <http://www.ohchr.org/EN/Countries/AfricaRegion/Pages/RDCProjetMapping.aspx>

files, transport issues, and lack of capacity of administrative staff and adequate documentation of cases.<sup>7</sup>

11. Political interference and lack of independence of the military justice system as well as endemic corruption and extortion within the judicial system also constitute significant obstacles.<sup>8</sup> Systemic corruption in the administration of justice can prove a key barrier to justice for women, who often do not have the financial resources required to pay bribes. Corruption can lead to difficulties or added expense in accessing judicial mechanisms, pressure to withdraw claims, concerns about protection of victims and witnesses and the violation of the right to a fair hearing. Furthermore, in cases where judicial officials create unnecessary delays or impose other obstacles to prosecution, lawyers are often unwilling to strongly challenge or oppose these as antagonising the prosecutor might put their legal career in jeopardy.<sup>9</sup>
12. Barriers associated with the specificity of crimes of sexual violence against women include community and traditional practices to resort to settlements and the stigma suffered by victims of sexual violence that limits their ability to bring legal claims.<sup>10</sup>

### ***Inadequate legal framework to addressing mass rape***

13. Many of the cases of sexual violence committed in conflict in DRC are directed at groups of individuals. However, the DRC judicial system does not provide avenues to reflect the collective nature of the crime, and makes it difficult for victims to mobilise as a group.
14. The judicial system does not allow for collective complaints and even in cases of mass violations, victims must bring their complaint individually. This applies in both criminal and civil cases. The ability of NGOs to file complaints on behalf of individuals in military courts is a recent development, but this is as yet not permitted in civil cases.<sup>11</sup>
15. There are also obstacles to establishing of victims' associations, which may take years, hindering the ability of such groups to represent the interests of victims in the legal process. For an association to be officially recognised, the victims must first apply to the Ministry of Justice who in turn must seek the opinion of another Ministry. In the meantime, the association is compelled to work on the basis of a temporary authorisation which does not give it standing to appear before a court.<sup>12</sup> In cases where there are a large number of victims, mobile courts have at times been set up to enable individual cases to be heard in a timely way, however the funds for their effective implementation are lacking.<sup>13</sup>

### ***Lack of disaggregated data on prosecution***

16. In the List of Issues, the Committee requested the DRC to provide data on the number of persons prosecuted and punished for violence against women during the conflict.

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<sup>7</sup> Amnesty International, 'Democratic Republic of the Congo: The time for justice is now: New strategy needed in the Democratic Republic of the Congo', August 2011, available at: <http://www.amnesty.org/en/library/info/AFR62/006/2011>

<sup>8</sup> See further, US Department of State, 'Country Reports on Human Rights Practices for 2012: Democratic Republic of the Congo', available at: <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204107>.

<sup>9</sup> REDRESS and FIDH, 'Impediments to justice for gender-based violence in Africa: Report from a training workshop on strategic litigation for conflict-related gender-based violence in Africa', forthcoming, (hereinafter 'Impediments to justice report').

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*

Although the DRC submitted in its replies that it was unable to gather this data due to security situation in North Kivu, this generally reflects the absence of consolidated and disaggregated statistics on this issue that prevents the assessment of progress made in tackling the problem of impunity regarding sexual violence in the country.

### ***Lack of protection for victims, witnesses and lawyers***

17. The stigma related to the crimes of sexual violence, with victims being ostracised by their community, and the risks associated with bringing a claim against security forces constitute significant obstacles for women to access justice in the absence of a protection system in place for victims, witnesses and lawyers.
18. While some protection measures exist under the law, these are not implemented and in practice there is no mechanism to protect victims. In many cases of sexual violence and rape, victims have faced threats from perpetrators and their families. Some NGOs have tried to ensure that such victims are protected by relocating them and their families, but those efforts to compensate the failure of the State are limited due to the costs of such measures. Real fears of reprisals by perpetrators play a significant role in preventing victims of sexual violence from coming forward and the lack of victim and witness protection is a serious barrier to justice for many victims of sexual and gender crimes.<sup>14</sup>
19. Similarly in the context of the conflict in DRC, several human rights defenders have faced threats and other challenges and had to be relocated to neighbouring countries for protection. The biggest challenge is the paucity of financial resources to fund such protective measures. Furthermore, in DRC there is a lack of trust towards the police and the army to provide protection as members of those security forces are often the ones against whom claims are brought.<sup>15</sup>

### ***Evidentiary issues with regard to crimes of sexual violence***

20. Victims have been informed through, for example, NGO awareness campaigns, that they must present themselves within 72 hours of crimes of sexual violence for the best chance of preserving medical evidence. However, due to the distance many victims must travel to get to medical centres, they sometimes arrive too late. In some cases, victims are also hindered in pursuing justice as families attempt to resolve the issue within the community, and only come forward after several months.<sup>16</sup>
21. Another problem is the fact that in some cases, witnesses refuse to testify before the court. There are legal procedures in place to address defaulting witnesses. Yet those procedures are not available during the preliminary investigation and there are hardly any options to deal with uncooperative witnesses. There have been reports of witnesses simply not responding to queries and of others working hand in hand with perpetrators. Fear of retribution remains a common deterrent for witnesses, notably when the perpetrator owns the land they live on. Furthermore, in the DRC, family members' testimonies are heard simply as an additional piece of information as opposed to testimony under oath. The issue of the preservation of evidence in some parts of the DRC affected by the conflict is also particularly acute.<sup>17</sup>

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<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.* See further, US Department of State, 'Country Reports on Human Rights Practices for 2012: Democratic Republic of the Congo', available at:

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204107>.

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*

### ***Lack of implementation of reparation awards to victims***

22. Even where there have been successful prosecutions of perpetrators of crimes of sexual violence in the DRC, the total lack of implementation of reparation awards passed by courts and tribunals against the State constitutes a major problem.
23. Under DRC law, when a State agent has been convicted, the State can be held responsible *in solidum* and if the perpetrator is indigent the State must pay the compensation awarded to the victim. While cases of prosecution have been heralded as successes in the fight against sexual violence, to date none of the judgments passed have been enforced with regard to reparation awards.<sup>18</sup> Victims in this situation can access a separate legal procedure to pursue enforcement, however this is a very complicated procedure and costly as victims must pay up to 8 per cent of the compensation awarded to initiate the process.<sup>19</sup> In addition, if successful there is no possibility under DRC law for the courts to order a forced implementation against the State, this can only be made on a voluntary basis.
24. The absence of any payment of compensation is not only in breach of international law on victims' right to reparation but it results in further victimisation for the survivors. Women who suffered sexual violence and who have had the courage to come forward despite the pressure of their family and community return home without obtaining any compensation, bringing further stigma against them. This situation worsens the existing widespread lack of trust towards the DRC justice system as whole on the part of the victims who prefer to resort to informal settlements that offer more certainty. In the rare cases where prosecution has been successful, this lack of enforcement means that reparation cannot relieve the suffering of victims, nor begin to address underlying inequalities which led to the violation in the first place.

### ***Lack of progress in transitional justice, including vetting mechanism***

25. In the context of the widespread patterns of sexual violence that characterised the two decades of armed conflict in the DRC, ensuring adequate and effective reparation for victims poses a particular challenge. Taking into account the weaknesses of the Congolese justice system and the large number of victims with a range of rights and needs, policies and specific administrative programmes to deal with reparation for mass claims have been recommended. To date the only initiative in this regard consists of a draft law for the establishment of a public compensation fund for rape victims under consideration by the Government of DRC, as mentioned in its replies to the Committee's list of issues and questions. Such fund could only ever complement rather than substitute access to the courts as victims of violations, particularly of a serious nature, have a right to a judicial remedy. On the other hand, a draft law to set up a mixed specialised court to try most serious crimes committed in the DRC has been rejected by the Senate and is now under review by the Government.<sup>20</sup>
26. Despite the recommendation made by seven of the thematic special procedure mandate holders that the Government put in place a vetting mechanism to remove identified

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<sup>18</sup> See Amnesty International, 'Democratic Republic of the Congo: The time for justice is now: New strategy needed in the Democratic Republic of the Congo', August 2011, available at: <http://www.amnesty.org/en/library/info/AFR62/006/2011> and ICTJ, 'Judgment Denied: The Failure to Fulfill Court-Ordered Reparations for Victims of Serious Crimes in the Democratic Republic of the Congo (French)', February 2013, available at: <http://ictj.org/publication/judgement-denied-failure-fulfill-court-ordered-reparations-victims-serious-crimes-0>

<sup>19</sup> Impediments to justice report, forthcoming.

<sup>20</sup> HRW, 'World report 2012: DRC', available at: <http://www.hrw.org/world-report-2012/world-report-2012-democratic-republic-congo>

perpetrators of serious human rights violations, including sexual violence, from its ranks highlighted in the List of Issues, the Government replied that this was a matter for the political authorities. This constitutes a major reason for the continuation of crimes being committed by the Congolese security forces. To date, however there is no proper screening process to remove existing suspected perpetrators of serious human rights violations from official positions within the security forces and to prevent further integration into the police and army of individual members of armed groups against whom credible information exist of their involvement in international crimes. This greatly contributes to persisting impunity in the rank of the security forces.

### **III. Recommendations to the Government of the DRC**

#### ***27. On the prevalence of rape and other serious crimes of sexual violence in the context of the conflict and pervasive impunity***

- Adopt concrete measures to ensure perpetrators of past and recent crimes of sexual violence, notably within the security forces and irrespective of their rank, are prosecuted and punished.

#### ***28. On the lack of adequate and effective remedies for victims***

- Undertake comprehensive reform of the justice system, including through providing adequate resources, to ensure crimes can be prosecuted and that women have effective remedies to address alleged violations;
- Take positive steps to overcome barriers that women face in accessing those remedies, such as improving access to free legal aid;
- Ensure training for prosecutors and members of the judiciary regarding the domestic and international laws and norms that should be considered in cases of rape and sexual violence; and
- Adopt legislation as may be necessary to ensure that victims whose cases have been stalled by prosecutors or the judiciary have alternative avenues for legal recourse, such as the possibility of judicial review or bringing cases to higher courts, and that funding is provided by the state party to cover the legal costs of such actions.

#### ***29. On the inadequate legal framework to addressing mass rape***

- Adopt legislative amendments as necessary to allow for collective complaints in cases involving large numbers of victims;
- Allow the formation of victims' groups, and remove restrictions on their operation; and
- Allow victims' groups and NGOs standing before the Courts on general matters, and in relation to collective complaints, subject to necessary safeguards to ensure individual victims' rights.

#### ***30. On the lack of disaggregated data***

- Establish a consolidated and disaggregated data system on response to allegations of sexual violence, including complaints made, prosecutions completed, reparation awarded and awards implemented.

**31. *On the lack of protection for victims, witnesses and lawyers***

- Establish a victim and witness protection unit with adequate resources and trained staff and conduct related training of relevant judiciary staff and security forces;
- Draw up policies on victim and witness protection following consultation with experts and victims/NGO representatives, taking into consideration international standards and best practices; and
- Ensure training of police and prosecution services on best practices for the protection of victims and witnesses.

**32. *On evidentiary issues with regard to crimes of sexual violence***

- Ensure there are sufficient numbers of doctors who are qualified to medically examine victims of sexual violence and complete the necessary documentation, and that victims are not required to travel long distances from their homes or pay in order to have these forms completed in a timely way;
- Ensure training for clinical officers, doctors and nurses to complete medical forms documenting from a medico-legal perspective, for the purpose of being used as evidence;
- Ensure that medico-legal forms are easily accessible and free of charge in all medical facilities and police stations; and
- Train police, prosecutors and the judiciary on the use of medico-legal documentation, including psychological evidence, in cases of rape and sexual assault and ensure that members of the judiciary do not resort in practice to discriminatory evidential hurdles on proving rape or sexual assault.

**33. *On the lack of implementation of reparation awards to victims***

- Reform the legislative provisions regarding the procedure on the enforcement of judgments to remove obstacles for victims to obtain reparation and provide funding to cover the costs of any action required to implement reparation awards; and
- Designate a government authority responsible for coordinating implementation of reparation awards passed by courts, including those in favour of victims of sexual violence.

**34. *On the lack of progress in transitional justice, including vetting mechanisms***

- With full participation of victims, design and implement an administrative gender-just reparation programme that is inclusive and responsive to needs of victims, to complement individual judicial remedies;
- Ensure the draft law for the establishment of a public compensation fund for rape victims is in line with international standards including on consultation and participation of victims and on the right to reparation that must be adequate, effective, appropriate and proportionate to the gravity of the violation and the physical and mental harm suffered; and

- Immediately remove identified perpetrators of serious human rights violations from official positions, and set up a comprehensive and adequately resourced secondary screening mechanism to vet each officer or proposed officer for their past human rights record, excluding any who fail from the military, police and intelligence services.

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