

disaster studies



Fond de commerce?

Sexual violence assistance in the
Democratic Republic of Congo

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This research brief contains the executive summary of 'Fond de commerce? Sexual violence assistance in the Democratic Republic of Congo.'

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Biographies

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Nynke holds two master degrees in Development Sociology/Disaster Studies (Wageningen University, Netherlands) and International Journalism (Cardiff University, United Kingdom). She works for her own company WHYZE (www.whyze.eu) as a consultant, evaluator and researcher for the international development sector. Since 2003 she has worked extensively in the DRC, spending between four to six months in the country each year (mostly in North and South Kivu provinces). Nynke has in-depth knowledge of the country's socio-cultural, political, economic and security context. Her expertise lies at the intersection of conflict prevention, development, sexual and gender-based violence, media and awareness raising. In DRC, Nynke worked on a number of research and evaluation projects on a variety of topics including sexual violence assistance, the implementation of UNSCR 1325 on the position of women, DDR and SSR, land-conflicts, mining and NGO capacity building. She has also been involved in the production of several documentary films and written media publications on Congo's conflict and sexual violence. Finally, Nynke has co-developed three ambitious educational film projects for use in DRC through mobile cinemas. All of these projects focus on different issues linked with sexual violence (community stigmatisation, the motivation of perpetrators, and the treatment of sexual violence cases by the justice system).

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Dorothea Hilhorst is professor of Humanitarian Aid and Reconstruction at Wageningen University. Her research concerns the ethnography of humanitarian crises and fragile states. Her publications focus on the everyday practices of humanitarian aid, disaster risk reduction, climate change adaptation, reconstruction and peace building. She coordinates research programmes in Angola, DRC, Afghanistan, Ethiopia, Sudan, Mozambique and Uganda. Her programme in DRC consists of research into community-drive reconstruction, livelihoods in the artisanal mining sector and research into basic services and livelihoods. Thea Hilhorst is the Director of the Netherlands MFA-funded IS Academy research programme: Human Security in Fragile States, and she is a member of the DFID-funded and ODI-led 'Secure Livelihoods Research Consortium'. Thea Hilhorst completed her dissertation in 2000 on a Philippine development NGO and its surrounding networks, clientele and donors (The Real World of NGOs. Discourses, Diversity and Development, Zedbooks). www.disasterstudies.wur.nl

Introduction

This report explores the unintended side-effects of sexual violence assistance in the Democratic Republic of Congo. While the high prevalence of sexual violence in Congo and the need to eradicate it is unquestioned, this research was initiated to address the growing discomfort about the effectiveness of programmes against sexual violence among staff members of involved agencies and Congolese actors more generally. The report concerns the unintended consequences of responses to sexual violence. These consequences risk undermining progress in addressing sexual violence, including the work to stop impunity, to raise awareness of sexual violence and to provide services offered to raped women and girls in DRC. An increasing number of people begin to refer to sexual violence assistance as a *fond de commerce* (business). As this might erode the Congolese constituency for combatting sexual violence, it is argued that sexual violence assistance needs to be reformed to become more effective within the Congolese context.



Billboard sensitizing against impunity, North Kivu.

The research focuses on how actors that provide sexual violence assistance interpret the problem, how this translates into interventions, and the negative side-effects that are observed. The judicial component of sexual violence assistance receives particular attention. The research was conducted by one Dutch and two Congolese researchers under the auspices of the Disaster Studies Programme of Wageningen University. It took place in North and South Kivu in September-November 2011. It is based on 58 semi-structured interviews with UN agencies, International NGOs, state actors and representatives of the legal system, and an analysis of 40 legal cases of sexual violence from six jurisdictions in South Kivu.

The conclusions are based on research focusing on North and South Kivu, where most of the funds for sexual violence are made available. They do not apply to other provinces of the DRC

The research relates to the ensemble of interventions and examines perceptions and societal responses to these interventions. The substantiation of the trends observed and the recognition

of diversity in objectives and quality of individual programmes require additional research at programme level. The research has been limited to the DRC and can therefore not be understood as valid for other countries. Additional research would be required in other countries where (war-related) sexual violence has triggered international responses, such as Northern Uganda.

The objective of the research is to understand how actors in the field of sexual violence assistance interpret the problem and define intervention strategies, and how these programmes trigger certain adverse societal responses.

These questions have been examined in four areas:

1. the framing of sexual violence in DR Congo;
2. the ways the understanding of violence is translated into programmes; identification of the activities; ways in which beneficiaries are identified; identification of the collaboration mechanisms and funding schemes;
3. the accumulated and unintended effects of medical, social and economic assistance to victims of sexual violence;
4. the accumulated and unintended effects of judicial sexual violence assistance.

Understanding sexual violence

International attention of sexual violence in Congo was generated during the 1996-2002 wars when Congolese human rights activists brought out the news of brutal mass rapes by (foreign) armed factions. Instances of armed violence continue until today and the 'rape as war crime' discourse continues to some extent to be relevant. However, it dominates perceptions of sexual violence, even though sexual violence currently mainly concerns acts between citizens. While sexual violence by civilians may be related to the legacy of war, it has additional causes in the 'normality' of gender relations in the DRC where women's positions in social, political and cultural domains are highly restricted.

In 2006, Congo adopted a law on sexual violence. The law on sexual violence does not recognise rape as a war crime and excludes cases against foreign armed factions. Legal attention has therefore mostly been geared towards the Congolese army, and more recently civilians, as important perpetrators. The law recognises a variety of sexual violence crimes. In practice, there is little or no attention paid to crimes other than rape, partly because a number of these crimes constitute socially accepted customary practices around sexual relationships and marriage. It also fails to acknowledge that men have also been abused and raped, in particular during conflict by armed groups.

Statistics and its role in problem definition

Interpretations of sexual violence trends rely on an overemphasis on statistics which are mostly based on case reporting. They are - largely on demand of donors - used for analysing the problem, raising awareness, project preparation, fundraising and reporting results. The limitations and shortcomings in data collection, analysis and interpretation are pervasive. Whereas the taboo on sexual violence was considered so stringent that this would lead to under-reporting of sexual violence, we also find the opposite in current practices. Among the factors contributing to inflated statistics are deliberate exaggeration for fund-raising, double counts for lack of transparency, medical treatment of non-victims in need of care, counting

of would-be victims, and multiple registrations by beneficiaries of programmes. Unwarranted extrapolation of numbers derived from highly violent areas to wider geographical areas also contributes to over-representation, as well as a lack of specificity about when cases have occurred. A number of recent research projects have investigated sexual violence through wider population research. The use of data with extrapolations and one-liner media representations reinforces the stereotypical notion of war-related brutal rape. The subsequent representation of the DRC as 'the rape capital of the world' undermines the constituency among DRC actors for the combat of sexual violence.

This image is further consolidated by international delegations that rely on a limited number of sources including famous spokes-persons, a selected number of health facilities, and interviews with victims that represent the most atrocious cases, often committed several years ago. Statistics should be approached with much more care, which is hampered by the strong prevailing images in which they are understood.

Actors, coordination and funding

Assistance for sexual violence survivors has in recent years mushroomed to incorporate an estimated 300-400 Congolese and international professional organisation and community-based organisations in North and South Kivu. Coordination proves to be a challenge. It lacks transparency about 'what, where and with whom' and reflection on strategic orientation of programming hardly occurs. Agenda setting and coordination is heavily dominated by the international community. As a result the motivation and engagement for coordination is fragmented, and local organisations feel overruled by international organisations. Government institutes hardly participate because of weak capacity and mutual distrust between them and international organisations. Coordination is also challenged by the presence of many organisations that are considered 'opportunistic'. They lack concrete expertise and mainly have an interest in securing funding.

From 2010 onwards, sexual-violence labelled budgets of Multi-Donor Trust-Funds (SRFF, Pooled Fund) and some of the biggest bilateral donor projects (for example USAID, SIDA, Netherlands, DFID) stand at USD 86.4 million. This figure does not include contributions from INGOs and private funds. Without a clear needs analysis, it is difficult to assess whether available funds are high or low. In comparison with other sectors, attention to sexual violence is high, which leads to frequent comments that the attention to sexual violence by the international community leads to the neglect of other problems. In comparison to other Multi-Donor Trust Fund themes, the SRFF sexual violence budget over a 24-month period (2010-2011) (USD 8.14 million) almost equals the budget for healthcare under the Pooled Fund (USD 10.4 million). Also, it is nearly twice the size of the budget for security sector reform (SSR trust fund) and education. The international contributions stand in contrast to the USD 7.9 million budget for the Ministry of Gender charged with sexual violence activities on behalf of the government (2011). Of this amount only 40% was actually paid out, and less than USD 1 million went into research on the status of women and coordination of sexual violence activities.

Types and characteristics of assistance

In the DRC, sexual violence assistance follows a multi-sectoral approach, related to the following activities: medical (physical rehabilitation, anti-HIV transmission treatment), psycho-social (de-traumatisation, family mediation to reduce rejection), economic (distribution of food/utensils in the form of a 'kit', skill-based training such as sewing, agricultural credits) and

judicial assistance (supporting the victim during the legal procedure, mostly in NGO-supported mobile courts). Multi-sectoral assistance is hampered by a lack of effective cross-referencing between organisations. Some want to offer 'the whole package' themselves (without specific expertise) and others do not accept victims that do not fall under 'their' donor-programme. A large number of victims drop out at a certain stage, as medical and economic assistance is a priority for most. A lot of attention has also been given to raising awareness, mostly on the 2006 law on sexual violence. Socio-cultural dimensions of sexual violence are little addressed by awareness raising.

Overall, activities are of a curative nature and largely geared towards female victims. Working on some of the root causes requires interaction with (military) perpetrators, which falls outside most mandates. The earmarking of medical and socio-economic services for victims of sexual violence, for example for fistula operations, causes victims with other health problems or non-victims with childbirth-related fistulas to fall outside of the assistance framework. As a consequence, women that are operated for a fistula from child-birth may add to the statistics on sexual violence. The Panzi Hospital affirms that of last year's 350 fistula operations, only 1 had a direct, reported link with rape. Heal Africa reports that less than 3% of its fistula operations have a link with sexual violence. Underlying problems with reproductive health care are not recognised and addressed. Reserving services for victims of sexual violence and the related assumption that assistance seekers are all victims of sexual violence clouds the analysis and results in lack of attention to preventing birth-related fistulas and addressing problems resulting from teenage pregnancies.

The curative approach to sexual violence can be understood in relation to the continuing dominance of short-term humanitarian funding frameworks and approaches based on post-conflict relief and early recovery imperatives. Only recently, development-sensitive funding for sexual violence with attention to socio-cultural dimensions of sexual violence and gender dynamics have started to receive attention.



Panzi Hospital Bukavu, South Kivu, known for fistula treatments.

Identifying rape victims as beneficiaries

Performance-based funding modalities put pressure on organisations to assist a certain number of victims. Most agencies work in relatively accessible areas in North and South Kivu that have become 'assistance-hubs' at the expense of other, underserved areas. Inter-agency competition leads to the 'appropriation' of victims and closed-circle referencing where victims are only referred to services funded by the same donor. In areas where reports of mass-rape occur, an influx of organisations competes over the registration of victims outbidding each other with promises of assistance. Such practices, combined with the common knowledge that funds for sexual violence are widely available, increasingly trigger a response among women to act as sexual violence victims. Vulnerable women in extremely poor conditions feel their only way to access aid is to claim rape. Most organisations turn a blind eye to this reality, because they assume that the social stigma associated with rape will deter women from reporting fake cases. None of the Congolese respondents to the research sustains this view, as they maintain that poor women in search of assistance see no other choice. Potentially, community-based approaches instead of victim-centred aid could reduce the number of fake reports.



Women waiting for the distribution of rabbits, South Kivu.

The legal domain of sexual violence assistance

Impunity is an important stumbling block to eradicating sexual violence, hence the growing number of programmes focusing on legal assistance and justice sector reform. Impunity is characterised by a lack of legal operating budgets disbursed by the government, tedious and costly procedures, a lack of knowledge on procedures, illegally-granted temporary bail, prison breakouts, and practices around corruption and political influence. As a result, many perpetrators of sexual violence never end up behind bars.

Under pressure to combat impunity, however, an increasing number of suspects are (sometimes innocently) convicted on the basis of flawed proof. A growing number of people misuse the law to settle other types of (family) conflicts. Framing somebody for rape has become an effective way to 'get somebody out of the way' or to claim financial compensation. This is, for example, the case with teenage love affairs that result in pregnancy. When the families cannot agree on marriage or compensation for the costs of the child, sexual violence accusations may result. Legal awareness raising has created 'public opinion intolerance' regarding sexual violence and, combined with pressure from NGOs and the government to strictly apply the law, the legal system has the tendency to punish severely.

As part of legal assistance programmes, NGOs fund mobile courts (*chambres foraines*). These are humanitarian mechanisms to bring justice to communities where no physical legal infrastructure exists. Although mobile courts should see all kinds of cases, they are almost uniquely organised around sexual violence cases and, linked with the predominant perception that sexual violence is caused by armed perpetrators, they are mostly targeting military justice. Mobile courts are set in limited timeframes (3-10 days) which compromises the correct follow-up of procedures. Since NGOs present the cases the court should deal with, they are buying in on the independence of the justice system. By consequence, judges face a moral obligation to convict, thus compromising the basic principle 'innocent until proven guilty'. This is exacerbated because legal personnel receive compensation (*primes*) during mobile hearings from the NGOs. NGOs pay for lawyers on the side of victims, while suspects are usually left with unpaid, and hence unmotivated, public defenders. This enhances the possibility for suspects to be convicted regardless of the evidence that is presented.



Mobile court case in Baraka, South Kivu.

The research examined the files of 40 legal cases. With over 40% of the accusing parties falling in the age-group of 14-18 years, and half of the suspects being under 25, and 25% of the cases involving pregnancy, the profile of a number of the cases fits with the trend identified by respondents of rape cases that are forwarded to court after teenage love affairs result in pregnancy. Thirty of the cases were brought before the court, and 19 of these resulted

in conviction. More than half of the files only contained procedural notes, such as police reports, including eight out of the 19 cases that led to conviction. None of the 19 conviction files contained the legally required medical report as evidence. Only one file made mention of the presence of physical proof. The legal examination of the cases resulted in the conclusion that 50% of the convictions lacked sufficient evidence. The cases concluded in acquittal are well argued, possibly out of fear on the side of judges to be criticised by public opinion. The convictions (19 out of 30 cases) all concern lower-class suspects and are much less motivated. Nine cases received between 5 and 10 years in prison and five cases the full 20 years. The 10 military cases all resulted in conviction in a mobile court.

While the culture of impunity is effectively changing, it has resulted in a system that is biased towards producing rape convictions while the rights of suspects are severely breached. Judicial actors feel pressured by the zero-tolerance policy of the government, the advocacy of NGOs, and public opinion to convict suspects. As a result they disregard actual evidence to support cases and become biased and subjective in their rulings. This is even more the case when NGOs pay for organising the mobile court hearings and select the cases to be heard.

Conclusion and recommendations

The different processes that we have observed are strongly inter-related and have set into motion a negative spiral in which sexual violence accounts evoke responses that are prone to abuse by organisations and misuse by victims and non-victims of sexual violence. This, in turn, leads to exaggerated figures that add to the statistics evoking responses. The negative spiral results in the increasing commercialisation of sexual violence, where sexual violence is considered a business for agencies and individuals. The consequences are grave. It erodes the Congolese constituency for combatting sexual violence. It directs attention away from the socio-cultural gender relations in which much sexual violence is rooted. It leads to an increasing cynicism towards the problem with the result that real victims of sexual violence are not heard anymore. It leads to biased problem statements, policies and programmes that fail to address the domestic character of sexual violence, the lack of reproductive healthcare, the prevention of teenage pregnancies and child abuse, the malfunctioning of justice and the dire poverty underlying requests for assistance. To break through this negative spiral, and live up to the intentions of the responses to sexual abuse to prevent impunity, assist victims and reduce sexual violence, the response system needs to be evaluated and reformed. This leads to the following recommendations to international and Congolese actors concerned with sexual violence:

- There is a need to move away from the predominant 'rape as a result of conflict' discourse. Instead, efforts need to be made to understand sexual violence in its context, with particular attention to its socio-cultural gender dimensions.
- As most of the assistance has focused on the relief of the consequences for victims, assistance programmes need to be more strongly embedded in longer-term development approaches that deal with root causes (while continuing to address remaining humanitarian needs). This involves addressing gender relations, strengthening the position of women, fostering women's leadership, increasing respect for human rights, intensifying security, justice and reform measures, and seeking community-based responses to sexual violence.
- To address the problem of would-be victims and its negative consequences, it is important

to recognise the underlying factors of poverty and lack of healthcare. The mandate of medical care must be broadened to incorporate reproductive health, especially to cater to and prevent women with fistulas from child-birth. Socio-economic interventions should be community-based and take into account the lessons learnt from programmes for ex-combatants.

- Interventions in the justice sector need to ensure the independent functioning of Congolese legal actors and should guarantee fair and equal procedures for all parties involved. Promoting convictions for sexual violence, especially through 'quick-fix' procedures in funded mobile courts, leads to severe biases in the justice system and the breach of the rights of suspects.
- The coordination of sexual violence programmes needs to be improved and made more integral to overall development planning. Parallel health and legal services targeting sexual violence victims should be avoided. The communication and coordination between international actors, Congolese government and civil society needs to be improved. The political and financial commitment of the Congolese government to reform measures necessary to combat sexual violence need to be concretised.

Disaster Studies focuses on conflict, natural disasters and development, and on the dynamics of aid interventions. It offers education, research, PhD supervision and policy advice. It contributes with qualitative research to multi-disciplinary approaches. Disaster Studies combines academic teaching and research with a desire to enhance policy discussions and local and international responses to disaster and conflict.