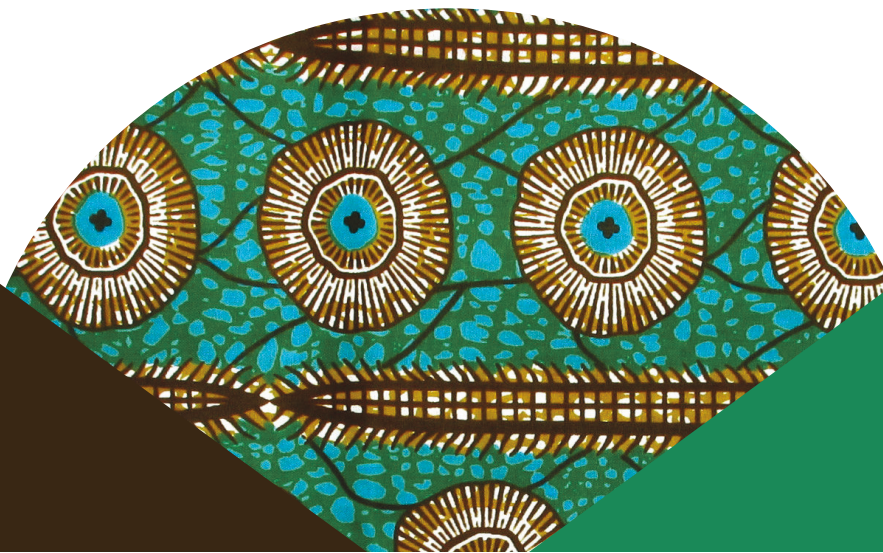


MAKING JUSTICE WORK FOR WOMEN

*Summary of Democratic
Republic of Congo Country Report*

RITA SHACKEL
& LUCY FISKE



Making Transitional Justice Work for Women:
Rights, Resilience, and Responses to Violence
Against Women in Democratic Republic of the
Congo, Northern Uganda, and Kenya



THE UNIVERSITY OF
SYDNEY

IN CONJUNCTION WITH



MAKING JUSTICE WORK FOR WOMEN

Democratic Republic of Congo Country Report

Rita Shackel and Lucy Fiske

Making Transitional Justice Work for Women: Rights, Resilience, and Responses to
Violence Against Women in Democratic Republic of the Congo, Northern Uganda, and
Kenya

August 2016

SUMMARY REPORT

CHAPTER 1: INTRODUCTION AND BACKGROUND

1.1 Background to the project

In a series of reports,¹ we present the findings of the project, *Making Transitional Justice Work for Women: Rights, Resilience and Responses to Violence Against Women in Democratic Republic of Congo, Northern Uganda and Kenya* (Grant ID: G160214). This is a summary report of the findings from DRC. The full report provides a significantly more detailed discussion.² Funding for this project was granted by the Australian Department of Foreign Affairs and Trade (DFAT), under the discontinued Australian Development Research Awards Scheme (ADRAS) 2012.

The research was designed to investigate transitional justice processes for addressing women's rights and justice priorities in three countries in sub-Saharan Africa: Democratic Republic of Congo (DRC), Uganda, and Kenya. This regional focus reflects the priority accorded by the international community to transitional justice, as a means to address past human rights violations experienced during civil war and other mass violence, and to promote lasting peace and stability. The countries for study were selected because: each has transitional justice processes in place; Gender Based Violence (GBV) is significantly prevalent in each conflict; and the researchers had existing partners on the ground who could facilitate a logistically feasible, meaningful, and culturally- and gender-sensitive research process.

1.2 Project methodology

1.2.1 Introduction

This research sought to identify women's priorities for justice, their experiences when seeking justice, and both enabling factors and obstacles in justice processes, in the three focus countries. Justice was defined in a fluid, broad, and holistic way to include legal, health, economic, social, and psychological elements (Olsen et al. 2010b, 983; Fischer 2011, 412; Szablewska and Bradley 2015, 261). The project has developed a rigorous, reliable, and substantive evidence base of the experiences, views, and opinions of women affected by violence in the research sites. The project entailed researchers travelling to multiple locations within each country, including major regional towns and villages in remote and difficult to access areas. This was done to enable women who are rarely, if ever, able to participate in research, consultations, and decision-making processes to contribute to this project.

¹ Rita Shackel and Lucy Fiske, "Making Justice Work for Women: Kenya Country Report" (August 2016) <http://opac.library.usyd.edu.au:80/record=b5334992~S4>; Lucy Fiske and Rita Shackel, "Making Justice Work for Women: Uganda Country Report" (August 2016) <http://opac.library.usyd.edu.au:80/record=b5336181~S4>; Rita Shackel and Lucy Fiske, "Making Justice Work for Women: Democratic Republic of Congo Summary Report" (August 2016) <http://opac.library.usyd.edu.au:80/record=b5365440~S4>; Rita Shackel and Lucy Fiske, "Making Justice Work for Women: Kenya Summary Report" (August 2016) <http://opac.library.usyd.edu.au:80/record=b5365443~S4>; Lucy Fiske and Rita Shackel, "Making Justice Work for Women: Uganda Summary Report" (August 2016) <http://opac.library.usyd.edu.au:80/record=b5365444~S4>.

² Rita Shackel and Lucy Fiske, "Making Justice Work for Women: Democratic Republic of Congo Country Report" (August 2016) <http://opac.library.usyd.edu.au:80/record=b5332962~S4>. Please see the full DRC Country Report for references cited in this summary report.

The extensive fieldwork, conducted over a two-year period and engaging 274 women affected by violence, provides unique insights into women's access to justice, and the efficacy of different justice strategies and mechanisms in conflict and post-conflict sites. Fieldwork in DRC was conducted in multiple sites in the territories of Goma (along the Rutshuru–Nyiragongo axis, and the Masisi–Sake–Bweremana–Kamuronza axis) and Bukavu (along the Hombo–Bunyakiri axis, and the Kalehe–Minova axis); a total of 113 women in eastern DRC participated in the research – 41 through individual interviews and 72 through focus group discussions. Women participants were married, cohabiting, never married, separated, divorced, and widowed, and most also had children (ranging from 1–12 births); their education levels were also varied (ranging from no education to diploma level), but the majority had no formal schooling. These insights are extended further by both individual, semi-structured interviews and focus group discussions with 68 key informants (28 in DRC), including: community leaders, health and non-governmental organisation workers, police, prosecutors, court, judicial officers, and international experts.

1.2.2 The research questions

The research addressed the following key research questions:

1. What do women in northern Uganda, Kenya, and eastern DRC identify as their priorities in relation to justice?
2. What efforts have been made to provide justice and rights protection for women who have experienced violence in northern Uganda, Kenya, and eastern DRC?
3. How have women responded to these justice interventions, and what impact have these had on addressing women's rights and justice priorities?
4. How can transitional justice interventions be adapted to better address women's rights and justice priorities, build resilience, and prevent violence against women?

1.2.3 Key methodological issues

In terms of its epistemology and paradigm, the research is qualitative, feminist, and phenomenological. The methodology recognises that the voices of women are often muted by social, economic, and political factors (which are further enlivened during war), and then systemically embedded in justice processes; thus, the phenomenological method employed for this project combines inquiries into individuals' accounts of a shared experience with key informant perspectives, existing literature addressing the histories and justice reforms of each country, and other thematic research into gender, human rights, development, poverty, and violence. Initially identified themes in the interviews included: legal, economic, social, political, and health justice; psycho-social and emotional well-being; traditional and/or informal justice mechanisms; roles of women in justice processes; and the effects of justice. By melding these insights with secondary research and analysis, a phenomenological enquiry can mediate the transition of private experience to public political concern, and thus enable the generation of knowledge with relevance beyond the anecdotal.

Furthermore, multidisciplinary and multi-country collaboration enhanced the quality of the research. It enabled us to draw on expertise in several different fields, including social and legal theory; legal frameworks; qualitative research methods; development work; and country- and culture-specific knowledge.

1.3 History and context of the conflict and transitional justice in DRC

Women affected by violence in this project were interviewed at multiple sites in eastern Democratic Republic of Congo (DRC), within the provinces of Nord-Kivu (North-Kivu) and Sud-Kivu (South-Kivu). The sites were chosen in consultation with local stakeholders, to ensure that diverse contexts and experiences were captured in the voices of women who participated in the research. Stakeholders, including the two provincial ministries of justice as well as national and international NGOs, were conscious of including women from areas recognised for recurring, brutal, and ongoing waves of violence, and sites where women are known to have had limited opportunities to speak about their experiences of violence and access to justice.

1.3.1 A snapshot of DRC and its people

DRC is a vast Central African country covering 2,344,858 sq km in size (UN Data Statistics 2014); it is one of the largest countries both in Africa, and in the world (Cusack 2005, 204). DRC today has a population of almost 75 million people (World Bank 2015a), consisting of over 450 different ethnic groups (Kasay 2013, 332; Karbo and Mutisi 2012, 381). The Human Development Index (HDI) – a standard measure of basic human development achievements in a country – places DRC at 186 out of 187 countries (UNDP 2014, 2). The majority of Congolese are living in poverty; according to the UNDP, 87.7% of the population in DRC live below the income poverty line; 46.2% live in severe poverty; and 15.5% in near poverty (2014, 6). According to the most recent DRC Demographic and Health Survey, 8% of children under the age of five suffer from acute malnutrition, and 43% suffer from chronic malnutrition. Child mortality rates are among the highest in the world (World Food Programme).

DRC shares borders with nine nations – Angola, Burundi, Central African Republic, Republic of the Congo, Rwanda, Sudan, Tanzania, Uganda, and Zambia – and is thus particularly susceptible to multiple cross-border influences, and the impacts of regional instability. DRC is known for its rich mineral and natural resources; “[w]ith 80 million hectares of arable land and over 1,100 minerals and precious metals, the DRC has the potential to be one of the richest countries on the African continent and a driver of African growth” (World Bank 2015a). However, foreign countries and corporations have taken economic advantage of its unstable conflict situation to extract minerals and other resources; militia also have an interest in maintaining disorder, to exploit resources (Banwell 2012, 52).

Importantly, women in DRC are disproportionately the targets of violence, especially sexual violence, and experience a multitude of adverse impacts associated with sexual and gender based violence (SGBV). Dubbed the “rape capital of the world” (BBC News 2010), rape and sexual violence have been extensively used as a tool of domination in DRC, to “terrorise the civilian population, enabling ... access to and control over regional mines which contain most of Congo’s mineral wealth” (Banwell 2012, 47), and as a tool for destabilisation (Meger 2010). The impunity for sexual violence in DRC is reflected in the large number of documented cases of sexual violence perpetrated by the military itself; this arguably has served to further normalise rape (Trenholm et al. 2011, 149), and contributed to the rise of civilian perpetration of sexual violence in DRC (Bartels et al. 2010, 38).

Clearly, management of its natural resources must be a priority in rebuilding and development in the DRC. Post-conflict rebuilding and development of effective modalities for transitional justice in DRC is challenged by a number of factors, including inhospitable terrain, and severely fractured and depleted infrastructure. Responses to violence against women, however, must recognise that the causes of such violence are multifactorial and complex. For example, idealised heterosexual masculinities and corresponding normative standards are recognised as perpetuating beliefs that men’s “sexual needs” must be satisfied (Baaz and Stern 2009, 509), with an attendant belief that there is a right to women’s bodies. Although this is exacerbated by the history of poverty and social conditions – which manifests itself in sexual violence and, indeed, violence more generally (Baaz and Stern 2009, 514) – it is not in itself endemic to the DRC; rather, it is informed by contexts of militarisation and hegemonic masculinity.

1.3.2 Context of conflict in research sites and surrounding areas

The research was conducted along several axes of Goma and Bukavu. While conflict in eastern DRC has been widespread, different townships have experienced diverse cycles of violence, with varied tactics employed.

Bukavu

Bukavu is the capital city of the province of South Kivu, with an estimated population of just over 800,000 people (MONUSCO 2015b, 1).

The recent wave of conflict in Bukavu can be traced back to the influx of refugees fleeing the Rwandan Civil War and Genocide in 1994. Refugee camps were targeted by a number of different military and paramilitary groups. Major acts of violence have occurred, including a mass rape in 2004 by forces loyal to General Nkunda and Colonel Mutebutsi, and by soldiers of the Tenth Military Region under the command of General Mbuza Mabe (HRW 2004, 2–3).

Women and communities in Bukavu have been deeply impacted by the conflict and its attendant violence. Evidence suggests justice processes in Bukavu are failing to deliver justice to women and the community. International aid agencies have also been criticised by some locals for fuelling hardships and injustices within the area; specifically, they were criticised for not properly assessing the needs of the local people, exploiting rape survivors as a “marketing” tool for money for other projects, and failing to follow up and to be accountable (Trenholm et al. 2011, 146). However, the local hospital was praised as a significant place for allowing the exchange of information and helping encourage self-care for rape survivors (147).

Several community-based NGOs operate out of Bukavu, including Panzi Hospital and Panzi Foundation, which serves more than 8000 women a year.

Bunyakiri

Bunyakiri is a remote town in South Kivu, about 70km north-west of Bukavu, and with a population of almost 137,000 (ACF International 2009, 5).

At various times, Bunyakiri has been occupied by Mai-Mai and Hutu combatants, as well as what eventually came to be known as the Front de Libération du Congo. Eventually, Rwanda-aligned RCD-Goma (comprised of the militarist wing of the original RCD, including former ADFL and Congolese Armed Forces soldiers, ex-Mobutuists, and the Bayamulenge Tutsi), gained control over a large part of eastern DRC, including the Kivus, from 1998 to 2003 (Mampilly 2011, 185). Both the RCD and their opposition committed a number of large scale acts of violence in the Bunyakiri region. In 1999, the RCD killed civilians and burned homes while moving through the northern Bunyakiri region. Rebel groups opposing the RCD attacked homes, killed civilians, and committed rapes on a number of occasions throughout 1999 and 2000, in the Kolonge area of Bunyakiri.

Bunyakiri has also been the site of multiple particularly brutal and well-documented massacres, including one committed in May 2012 by the Democratic Forces for the Liberation of Rwanda (FDLR); 37 civilians, including 9 children, were killed on May 9 in Kamananga, and 32 civilians, including 6 children, were killed in Lumenje on May 13 (UNICEF 2012).

Access to justice for the women and communities of Bunyakiri is remote and little documented. However, some initiatives have possibly seen results, including work with the mobile courts in Bunyakiri (Harris 2012b), and some health initiatives (Seck 2011). According to the agencies involved in these initiatives, this work is making a difference in women's lives, and is responding to some of their needs. This is also reflected in what some participants told us: *"They welcomed me. They gave me a document. They escorted me and went to ask for medicines for me at Bunyakiri... they gave me medicines; they also counseled and consoled us. Because I was not the only woman there. ... This was all free of charge."*³

Bweremana

Bweremana is a small town in North Kivu, with an estimated population of 16,000. Conflict in Bweremana raged between affiliates of the DRC national army (FARDC) and RCD-affiliated forces. Armed civilians also joined the conflict on various sides (HRW 2005). More recently, the FARDC occupied Bweremana following the M23's brief conquest of Goma (OHCHR 2013, quoted in Africa Focus 2013). 135 rape cases were reported in the first week of the army's occupation (Christian Aid 2014; HRW 2014a). After the defeat of the M23 rebellion, many soldiers were effectively dumped in Bweremana; soldiers were transferred to military bases, but not before numerous cases of rape and crop looting were reported (HRW 2014a). Human Rights Watch also reports that, by October 2014, 100 demobilised combatants, their wives, and children had died from starvation in camps at the military bases outside Bweremana (HRW 2014b); many of the surviving former combatants have since left the camps (HRW 2015d).

Goma

Goma is the capital of North Kivu province, connecting to the Rwandan border. Approximately 1 million people lived in Goma in 2012 (BBC News 2012). It has been described as having an "aid economy" – that is, the influx of a humanitarian presence in Goma as a result of the conflict is driving the economy, and creating new jobs and businesses (IRIN 2013).

³ Interviewed in Bunyakiri, September 25, 2014.

Goma was at the centre of the refugee crisis in the wake of the Rwandan genocide, and had very similar experiences to Bukavu during the First and Second Congo Wars. It was also one of the most intensely fought-over regions during the M23 uprising, and was captured in November 2012. Up to 200,000 people were displaced at this time (Rosen 2012), and the UN has estimated a further 130,000 fled the region between November 2012 and January 2013 (Tran 2013). Between March and July in 2013, M23 rebels summarily executed at least 44 people and raped at least 61 women and girls in the region, reportedly with the support of the Rwandan government (HRW 2013). Though M23 was defeated in late 2013, data from HRW suggests that more atrocities (including rape and the destruction of homes) have been committed by FDLR fighters (HRW 2015a).

Many survivors of violence and victims of crime from across eastern DRC have travelled to Goma to try and obtain justice. In 2008, an operational military court was set up in Goma to address acts committed by military officers during the course of military operations. However, it has faced problems, including insufficient staffing, an inability to conduct independent investigations, and an inability to hear high-level prosecutions. There are also concerns about whether due process is respected in the court (Bureau of Democracy, Human Rights and Labor 2010). Other local criminal justice processes are stifled by under-resourcing, corruption, and lack of expertise. These broader systemic problems in criminal justice in DRC are discussed more fully in Chapter 4.

Minova

Minova is a town in South Kivu province. In 2012, over 47,000 IDPs arrived in and around the towns of Minova and Bweremana over a period of two weeks (UNHCR 2012). Along with Bweremana, it served as a base for the FARDC during the M23 conflict.

After the fall of Goma in 2012, the Congolese army entered Minova. Violence perpetrated by the army continued over several days, including mass rape, pillaging and killings of civilians (Enough Project 2014b; Jones and Smith 2012; Reynolds 2015). Al-Jazeera put the number of victims of the ten days of rape and violence in Minova in November 2012 at 1000 (Zeyneb Alhinadawi 2014). 39 troops involved in these attacks were controversially tried in a military court in 2014 (the “Minova trial”), having been accused of raping 130 women; however, only two were ultimately convicted (Cordaid 2014).

Five local courts operate in the Kalehe territory, with one situated in Minova, and represent important vehicles for justice. However, they are under-resourced and marked by possible language barriers (Scheye 2011). Similar problems of under-resourcing and poor accessibility to justice processes exist throughout eastern DRC, as further discussed in Chapter 4.

Rutshuru

Rutshuru is located in North Kivu, and is the headquarters of the district Rutshuru Territory. It lies within 30km of both the Ugandan and Rwandan borders.

Conflict has occurred sporadically in Rutshuru since at least 1992. This includes an attack perpetrated by rebel forces under Colonel Nkunda’s control (HRW 2006), during which several towns experienced rapes and looting of civilian property; children were also recruited, with boys being forced to fight and girls forced into ‘marriages’ with soldiers (IRIN 2008).

MONUSCO was able to restore peace to Rutshuru in June 2011 (Padovan and Nyangi 2011), but the M23 had taken control of Rutshuru by July 2012 (Al Jazeera 2012). The DRC army retook Rutshuru in October 2013.

Rutshuru continues to struggle to rebuild a justice infrastructure.

Sake

Sake is a town located in North Kivu, approximately 25km north-west of Goma. In 2004, it had an estimated population of about 17,000.

It was attacked by Colonel Nkunda in 2006, with ensuing battles between his forces and the Congolese army, causing thousands of residents to flee (Gangale 2006). Sake was retaken by UN and government troops in November 2006 (IRIN 2006). The M23 rebels also occupied the town in November 2012, with attendant and atrocities (including summary executions, forced conscription of minors, and other atrocities) (McKenzie and Smith-Spark 2012).

Sake also continues to struggle to rebuild its justice infrastructure.

1.3.3 Transitional justice efforts in DRC

Despite the large UN peacekeeping presence, a new constitution in 2006, and the first free elections in 40 years, the government of DRC has had limited success in its transitional justice efforts. It still struggles with a failing justice system that cannot combat widespread corruption and impunity (ICTJ 2015b). Chapter 4 discusses attempts at institutional reform (such as the Truth and Reconciliation Commission, and the Ethics and Corruption Commissions) and their failings, as well as efforts such as referral to the ICC (expanded on in Chapter 4.4.3).

Despite negative views of formal justice in the DRC, many Congolese still believe in the possibility of justice and lasting peace (Vinck and Pham 2014). In particular, they seek government action in the following areas: fighting corruption; training judges and lawyers; paying staff and judges, and informing the population about justice (2014, 67).

Access to justice

For many women in eastern DRC and their communities, it is clear that access to services and justice is thwarted by many challenges (UN Secretary-General 2014, 9). These barriers are discussed in Chapter 4.

1.3.4 Conclusion

The conflict in the DRC is ongoing and the situation remains fragile and insecure. Though the wars have officially ended, various armed militia groups remain active. The reasons behind this are multiple and complex, including: ethnic tensions (Autessere 2010, 7), exacerbated by foreign and local economic interests in DRC's natural wealth (Montague 2002, 104); the decimation of traditional economies (Baaz and Stern 2009); and the lack of discipline within the army (Baaz and Stern 2008). For women in DRC, the potential threat of resurgence of

violence is stifling. The process towards rebuilding DRC is slow and remains a tentative one in the face of continued insecurity and lack of strong political commitment and action.

CHAPTER 2: WOMEN IN DRC SPEAK TO JUSTICE

*Justice means everyone has a place.*⁴

2.1 The research focus

In examining the efficacy of transitional justice strategies for women impacted by violence in DRC, this research project asked women participants some broad questions about what justice means to them, and how they feel justice is working for women within their communities. Understanding how women see justice, its role, and how they experience different justice processes, is important to inform development of justice mechanisms and strategies that are responsive to women's needs and priorities for justice; this is especially so within the context of communities that are rebuilding, after transitioning from conflict to post-conflict states.

This chapter presents their voices alone, so that they are clearly heard and not muted by other voices and views; the following chapters situate their voices within broader justice discourses.

2.2 Gender in context in the DRC

The women we spoke with in the DRC consistently talked about deeply entrenched attitudes within their communities that perpetuated multiple harms and inequalities for women; such attitudes led to women and girls being undervalued and often stigmatised, which in turn generates feelings of dehumanisation, isolation, and a lack of purpose. The normative values and practices that women described as pervasive within their communities were revealed, through their own voices, as constituting destructive sites that disabled women, negated their agency, and denied them their status as autonomous rights-bearing individuals: “[I]n our culture, women cannot be a leader and cannot talk when the men are there. Women do not have rights to anything from her father or her family. When they are sharing the goods of her father they are not going to give anything to a lady, to a woman, which is her right.”⁵

Sadly, some of the women we spoke with seemed resigned to a life of subordination. As one woman from Rutshuru explained, “If I’m a woman, I cannot change the situation. I cannot change my body, become taller or bigger.”⁶ This felt domination rendered many women impotent and voiceless in their pursuit of justice: “I am good for nothing... I would not have any opinion to give about doing this or that.”⁷ Many women, however, strongly contested the subordinate position accorded to women, recognising the increased burden that has been

⁴ Interviewed in Rutshuru, September 23, 2014.

⁵ Interviewed in Bunyakiri, September 26, 2014.

⁶ Interviewed in Rutshuru, September 23, 2014.

⁷ Interviewed in Rutshuru, April 21, 2014.

placed on women by conflict, changed gender roles, and changed social structures and norms (Lwambo 2011; Ohambe et al. 2005): *“Do you think that if you asked a man to carry pregnancy and deliver, he will make it? ... As a woman, I am the one to carry pregnancy, do household work and the husband is still there for his needs even when you are already very tired.”*⁸

Multiple sites of female disadvantage and disempowerment were identified by participants. Most notably, women talked about economic disempowerment, political invisibility, and lack of access to education, legal processes, and other social capital. These are all addressed below.

2.3 Women’s lived experiences of violence in DRC

Central to the lived experiences of women in DRC, and their rapport with justice, is the reality of widespread SGBV on a mass scale, and a widespread culture of impunity for such violence (Ohambe et al. 2005, 9; Meger 2010, 127). Many of the women with whom we spoke also recounted devastating histories of dispossession (including of property, land, and kinship), and an existence shackled by poverty, insecurity, uncertainty, and fear. Many women were struggling with the basic needs of survival: *“There’s no food, there’s no medicine, there’s nothing.”*⁹ A Rutshuru mother of seven, aged 34, described a precarious existence: *“You don’t feel safe here you have nothing, nothing. I have nothing, so you just have a small thing, and even the small thing they come and steal it, how are you going to be secure?”*¹⁰ Participants also spoke about their bodies, dignity, and spirit being stripped: *“They had broken my body. I had nothing left. I felt naked and felt I had had all the possible troubles.”*¹¹

Women commonly recounted living in a state of turmoil and unease – an indicator of their unresolved and ongoing trauma (Ohambe et al. 2005, 35). They consistently expressed an overwhelming sense of hopelessness, fear, and, for most, a profound desperation with their life situation. When describing her typical day, one woman revealed, *“I just stay at home, sometimes sleep, my mind goes far but what do I do and when I go to bed, I feel pain, weak, my body is not good... I don’t know what I can give my children to eat... I just... I don’t know what to do.”*¹² Another woman, in Bunyakiri, depicted a life burdened by bad memories and unresolved trauma: *“If I hear the sounds of guns, I feel like losing my mind and my heart begins beating so fast, and then I collapse.”*¹³ Others also spoke of being tired, and they were visibly so – physically, mentally, and emotionally: *“I cannot do anything. Even work. I cannot... I feel very exhausted. I am sick every day... I am just here enduring my unbearable sufferings. That’s it.”*¹⁴ An absence of ‘inner’ peace for women was further echoed by many of the women, and usually with profound impacts being recounted: *“[E]very day I have a headache because I think a lot about how I was living with my husband and he abandoned me, my kids are not okay, I don’t have peace in my heart and when I start thinking about it, I have a fever. I will get a fever and start trembling.”*¹⁵ In trying to rationalise their

⁸ Interviewed during Validation Workshop, June 15, 2015.

⁹ Interviewed in Sake, September 20, 2014.

¹⁰ Interviewed in Rutshuru, September 23, 2014.

¹¹ Interviewed in Rutshuru, September 23, 2014.

¹² Interviewed in Bweremana, September 20, 2014.

¹³ Interviewed in Bunyakiri, September 26, 2014.

¹⁴ Interviewed in Rutshuru, April 21, 2014.

¹⁵ Interviewed in Bweremana, September 20, 2014.

experiences, women questioned themselves and the very heart of their communities; one woman simply concluded that *“people don’t love each other.”*¹⁶

2.4 The distance between women and justice

Against this backdrop of women’s lived experiences, it is thus not surprising that the women in DRC overwhelmingly see justice as illusory, elusive, remote, and disconnected from their actual lives. Some women wrestled with the profound schism between their experiences of mass atrocities and violence, the aftermath, and the possibility of obtaining any justice. The dissonance between women’s lives at the moment and any notion of justice rendered some women reluctant (maybe unwilling), and some unable, to engage with or contemplate the contours of what might possibly be a realisable and more productive justice for women. Some women saw justice as clearly beyond the realms of their reach: *“We don’t know what can change. It is only leaders who know.”*¹⁷ Other women struggled to understand how justice could address their lived experiences, and the complex social configurations of power and injustices diffused throughout their society: *“Even to jail him is useless, to leave him free is equally useless because he is poor, he has nowhere to live.”*¹⁸ For some women, justice in whatever shape was deemed to have already fatally failed them: *“[T]here is no justice.”*¹⁹

Many women lamented their abandonment at the societal, communal, and political levels. This resulted in a profound and unbearable degree of neglect, and an absence of care, humanity, and respect. As one woman in Bweramana stated, *“They don’t respect me, everyone neglected me, just the way they [are speaking] to me, the way I am living in a house, I don’t have anything. If I have to eat, I have to go and beg.”*²⁰ A woman from Minova decried, *“The wars destroyed my life ... I have been raped. I never have peace in the area that I live in and my neighbours they don’t greet me, so I just found out that I am not a human being like others.”*²¹ Another woman described, in particularly stark terms, being *“a carcass walking in the streets. My spirit is like a thing tormented”*.²² For many women, this experienced neglect, abandonment, and ostracism symbolises how society (de)values them, and evinces the failures of justice for women. It even led some women to speak about themselves disturbingly as not only having nothing, but also *being* nothing: *“You are neglected so you feel like you are not in this world.”*²³

Some women clearly identified the connectedness of broader systemic and societal problems as a root cause of their disadvantage and maltreatment. Many women especially recognised poverty as a key determinant: *“Here in Congo we cannot ... help those who are suffering because we are all poor. And here in Congo they don’t care about poor people. If you want you can die because you are poor; they don’t care about you.”*²⁴ So many of their voices made apparent the mutually constitutive nature of gender, poverty, and violence – a complex dynamic that justice must recognise and address on multiple levels (Fiske and Shackel 2014).

¹⁶ Interviewed in Rutshuru, September 23, 2014.

¹⁷ Interviewed in Minova, September 21, 2014.

¹⁸ Interviewed in Rutshuru, September 23, 2014.

¹⁹ Interviewed in Bweremana, September 20, 2014.

²⁰ Interviewed in Bweremana, September 20, 2014.

²¹ Interviewed in Minova, September 21, 2014.

²² Interviewed in Minova, April 19, 2014.

²³ Interviewed in Minova, September 21, 2014.

²⁴ Interviewed in Rutshuru, September 23, 2014.

Other women expressed anger at their abandonment, the lack of action on the part of the government, and in failed processes of justice: “[W]e have the impression that they do not care about women’s rights. They behave as if they have abandoned us. They violate our rights.”²⁵ This sentiment was most acute with regards to the clear lack of justice afforded to women who have been affected by violence: “the Government does not care so much about justice referring as far as rape is concerned. After being arrested because of rape, people pay money and get released. This means that we victims of rape have no right.”²⁶

2.5 Women’s views on justice

Many women clearly expressed what justice is, what it should be, and what receiving justice would look like for her as an individual woman, and for other women within her community. As they did so, a number of strongly recurring themes and key elements emerged.

2.5.1 The pillars of justice

Women who participated in this research collectively identified several key pillars of justice, which shape what justice is and what it does (or should do) and what it can deliver to women.

Truth was identified clearly by many women as a key element of justice: “Justice is to say the truth.”²⁷ Other women viewed justice as a site for enabling the truth to be told: “We feel bad about her situation and the remedy is to help her and support her morally, telling her people can still live even after they have undergone situations like hers... She should not avoid people. If she sees two – three sitting together she has to join them and seek to get advice from them.”²⁸

Many women also identified equality as being central to justice: “[L]et us be brothers and sisters without discrimination. That is how things should be. That is more useful.”²⁹ Fairness and impartiality were also identified as hallmarks of justice, procedurally and substantively: “Everything needs to be done in a right way and agree to have the influence of someone else. People need to be punished when necessary regardless of the money they could have.”³⁰

2.5.2 The role of justice for women

Many women talked about justice not as an aspiration or an ideal grounded in principle, but rather as a functional tool – a fundamental resource that could serve women for practical and positive effect. Most commonly, women characterised justice and its purpose in either restorative and/or remedial terms: “My concern is to get back to a normal life as it was before to be able to take care of my children”.³¹ In post-conflict, many women saw justice’s role as “bring[ing] people together to bring peace, so you do not fight neighbours and you

²⁵ Interviewed in Rutshuru, April 21, 2014.

²⁶ Interviewed in Minova, September 21, 2014.

²⁷ Interviewed in Minova, September 21, 2014.

²⁸ Interviewed during Validation Workshop, June 15, 2015.

²⁹ Interviewed in Rutshuru, September 23, 2014.

³⁰ Interviewed in Goma, September 26, 2013.

³¹ Interviewed in Minova, September 21, 2014.

*share things with others. And [know] how to live with military and [they know] how to live with us.*³²

Importantly, women also saw justice as a vehicle for regaining their stature, and for obtaining a voice and a place in society. In echo, women explained that *“here at home, people always say that women have no right to speak among men or in the conference room. But justice helps us find a place.”*³³ From a remedial perspective, women also saw justice as a vehicle for reparations and women’s economic empowerment: *“To have justice is to be paid what is due to you.”*³⁴ Being productive, in particular, was seen as an important link to winning respect from communities: *“I would like to be respected ... we are so much neglected. I could be respected if I could have small commerce.”*³⁵

Some women viewed justice as a pathway towards forgiveness for wrongs done and harm suffered. With peace, reconciliation, and rebuilding constituting the most important goals for many of the women with whom we spoke, forgiveness was frequently identified as being more important than punishment: *“I am of the opinion that the only way out is to forgive him.”*³⁶ For some, a firm precondition to forgiveness and reconciliation was receiving acknowledgment from the perpetrator(s) of their wrong doing, the harms suffered by others, and asking for forgiveness; that way, *“the chance for them to be forgiven is always there; we cannot apply ‘an eye for an eye, a tooth for a tooth’.”*³⁷ Others, however, clearly viewed justice as a vehicle for punishment and retribution: *“Justice is when someone is condemned.”*³⁸ For many of this view, the role of justice in meting out punishment was not seen merely for its punitive function, but was considered also as important for protection, deterrence, and even rehabilitation of wrong-doers: *“The perpetrators of rape must be punished ... they must be taught lessons so that they can stop doing that and so that others can learn from there and fear to do evil.”*³⁹

Women in DRC almost universally craved a return to pre-conflict life (at least in part), reaching to justice to achieve *“a speedy end to this war forever and everything can be as before, we can be safe as it was before, we can go and dig without any problem. We want our children to be able to study.”*⁴⁰ For those women dispossessed and displaced by the conflict, justice was a means of restoring stability, security, and identity: *“A place to stay with my children. That is the most important thing that I’d like to have.”*⁴¹ Another woman declared her simple desire to have *“a place to stay or to be buried.”*⁴² These were strongly recurring themes – justice was seen as a conduit for reconnecting with their communities and restoring “normality.”

Yet other women viewed justice as an instrument for enforcing or protecting their rights: *“Giving you justice consists in ensuring that your rights are not violated.”*⁴³ Again, the vital

³² Interviewed in Bweremana, September 20, 2014.

³³ Interviewed in Bunyakiri, September 26, 2014.

³⁴ Interviewed in Rutshuru, September 23, 2014.

³⁵ Interviewed in Minova, September 21, 2014.

³⁶ Interviewed in Rutshuru, September 23, 2014.

³⁷ Interviewed in Rutshuru, April 21, 2014.

³⁸ Interviewed in Rutshuru, September 23, 2014.

³⁹ Interviewed during Validation Workshop, June 15, 2015.

⁴⁰ Interviewed in Rutshuru, April 22, 2014.

⁴¹ Interviewed in Rutshuru, September 23, 2014.

⁴² Interviewed in Minova, April 19, 2014.

⁴³ Interviewed in Bweremana, April 23, 2014.

role seen for rights (as part of justice) in rebuilding women's lives is clearly apparent. For many women, rights were often linked not to a social or political agenda, not to legal instruments or authority, but to their basic *felt* and *lived* human needs: *"My right is to be helped."*⁴⁴ Justice was also expressed to be a potential leveller in the community, by *"help[ing] us so that we can be like others."*⁴⁵ Many women also talked about the role of justice in enforcing women's economic rights. Compensation and reparations for survivors were seen to be an important element of the justice response: *"We women are neglected because of missing financial means. ... There is no financial means that life is becoming more and more difficult."*⁴⁶

Women commonly viewed justice as a potent site for opportunity. One theme almost unanimously talked about by women was the role of justice in creating pathways for education: *"And another thing I want to add on the list is someone to take care of my kids, to pay for their school fees. I don't want them to be like me. I didn't go to school."*⁴⁷ Justice was also conceived as a source or site for opportunity and transformation, to empower women in various other spheres of their life both by drawing on the past, and moving into the future: *"She should also be encouraged to study; send her to school so that she can develop the same intelligence as the man does; making her become as powerful ... She has to become apt to do all things."*⁴⁸

Ultimately, women saw justice as a pathway towards simply feeling happier, healthier, more productive, and (re)connected with their communities: *"When justice is done, you feel free ... and your heart will be at peace."*⁴⁹ One woman, echoing many, declared, *"To feel cured we need someone to look after us. This would help start life anew and help ourselves. ... This wound will not be cured as long as we still eat hardly, and there is no financial means. But if one could sit comfortably without being neglected by others this would cure the wound."*⁵⁰

2.6 Towards greater gender justice

In discussing justice, many women spoke about the barriers to justice for women, and the challenges women face in accessing justice. Many women expressed a lack of trust and confidence in the institutions responsible for the administration of justice, and in other actors that might play a role in delivering justice for women. This lack of trust was not confined to the government, but extended to the international community and to NGOs. Often, this lack of trust was borne of interactions with organisations that seemed to the women to be extractive, giving unfulfilled promises to return and aid women; this created a deep sense of betrayal and neglect: *"We are both direct and indirect victims when we are involved in advocacy."*⁵¹

Women described defective systems – processes of justice that lacked accountability, were vulnerable to corruption, were not gender sensitive, and simply failed to be responsive to the lived experiences of women. Women identified different pathways through which they might

⁴⁴ Interviewed in Bweremana, September 20, 2014.

⁴⁵ Interviewed in Minova, April 19, 2014.

⁴⁶ Interviewed in Minova, September 21, 2014.

⁴⁷ Interviewed in Rutshuru, September 23, 2014.

⁴⁸ Interviewed during Validation Workshop, June 15, 2015.

⁴⁹ Interviewed in Rutshuru, September 23, 2014.

⁵⁰ Interviewed in Minova, September 21, 2014.

⁵¹ Interviewed in Validation Workshop, June 15, 2015.

be able to access some form of justice – formal and informal (including traditional) avenues, legal and non-legal channels – but overwhelmingly, women viewed justice as disconnected to their lives and communities: “[Justice] is not with the people that I’m living with.”⁵² There was no sense of women’s presence, voice, or current ownership in any sites of justice in DRC.

Women time and time again documented their futile attempts in accessing justice: “By reporting to the justice institution every day, you will end up saying ‘I am wasting my time: I have already been raped and damaged; what then am I killing myself for?’”⁵³ Many women expressed extreme frustration and discontent with unresponsive and failing systems of justice at all levels: “So what will I go to the International Criminal Court if already at the local level I did not get a solution?” Importantly though, in coming together, women recognised their power as a collective force: “The solution we found as we discussed altogether, we saw that we women have to know our rights and have them respected ... Because once we are taught them, it requires that we, in our turn, have them respected ... [I]t is only after that that we can bring about some behaviour change.”⁵⁴

CHAPTER 3: WOMEN’S NEEDS AND PRIORITIES FOR JUSTICE IDENTIFIED

Women participants in eastern DRC were invited to speak about their justice needs and priorities. Although diverse experiences and views emerged, a number of common priorities for post-conflict justice and community rebuilding were discerned in the women’s voices. This chapter discusses these needs and priorities around six key themes distilled from interviews:

- Trauma, health, and well-being
- Peace, safety, and security
- Truth-telling and reconciliation
- Compensation and economic empowerment
- Equality and protection of women’s rights
- Justice for children

Discussion in this chapter also draws on key informant interviews, published literature, and other materials, to better understand how justice outcomes can be improved for women in DRC.

3.1 Trauma, health, and well-being

Women participants in this research overwhelmingly identified restoration of their mental and physical health and well-being as a priority for justice. As mentioned above, SGBV perpetrated against women is pervasive in DRC; this fact was unanimously attested to by women participants in this project. Every participant had experienced some form of sexual

⁵² Interviewed in Bweremana, September 20, 2014.

⁵³ Interviewed in Rutshuru, April 22, 2014.

⁵⁴ Interviewed during Validation Workshop, June 15, 2015.

violence, and many women told of multiple experiences: “[N]ow I am a member of the Associations of people living with HIV as a result of rape because I’ve already been raped three times.”⁵⁵

Recent data from the *Standard Demographic and Health Survey for the Democratic Republic of Congo 2013–14* revealed that 27% of women in DRC disclosed having ever experienced sexual violence, with 16% experiencing sexual violence in the preceding twelve months. Beyond conflict-related violence, widespread intimate partner and family related violence have also profoundly impacted on Congolese women’s health and well-being (Kidman et al. 2015; Decker et al. 2015; Peterman et al. 2011): “There are some husbands they go and drink and they come back home drunk, you’re the first person they take and then start beating you seriously. ... Maybe you run away, you skip for some time or he starts talking and you keep quiet so they don’t beat you. Because being beaten everyday, that’s not good.”⁵⁶

The rate of reported intimate partner violence (IPV) in DRC is the highest in the world. The number of women reporting intimate partner sexual violence (IPSV) has been placed at almost double those reporting rape (Myers Tlapek 2015, 2527; Peterman et al. 2011, 1065); this translates into 35% of women in DRC reporting IPSV, compared with 12% in Rwanda, and 15% in Kenya (Peterman et al. 2011, 1065). The most recent Congolese national demographic and health data indicates that 57% of married women in DRC have ever experienced emotional, physical, or spousal violence by a current or former husband or partner. Decker et al. (2015, 190–91) also report that 53% of partnered adolescents (15–19 years) and 64.7% of young adult women (20–24 years) are affected by IPV (physical or sexual).

3.1.1 The impacts of violence

The women with whom we spoke in this research described an array of mental, physical, health, and social impacts related to sexual violence:

*Sometimes you feel like dying because you are ashamed ... you feel abandoned, you cannot do anything to survive.*⁵⁷

*To be raped in my life it’s really changed my life because I cannot even talk in my house. Every time I want to talk to my husband, it will be like, keep quiet or follow your husband... the one [who] raped you.*⁵⁸

*I have become so much older than all the women of my age. I am suffering from hemorrhoids these last four days. I did not suffer from that before.*⁵⁹

While the impacts of sexual violence on women are well documented (WHO 2003; WHO 2002, 147–74; Liebling et al. 2012), there is also an abundance of data sourced directly from DRC studies. In a 2005 study in which female rape victims in South Kivu were asked about the impacts of rape, 85.4% reported leucorrhoea, 85.6% dyspareunia, 65% dysuria (difficult or painful urination), 56.9% dysmenorrhea (painful menstruation), 65.2% irregular periods,

⁵⁵ Interviewed in Rutshuru, April 22, 2014.

⁵⁶ Interviewed in Sake, September 20, 2014.

⁵⁷ Interviewed in Rutshuru, September 23, 2014.

⁵⁸ Interviewed in Minova, September 21, 2014.

⁵⁹ Interviewed in Rutshuru, September 22, 2014.

and 79.5% lower abdominal pain; over 91% of victims suffered from at least one rape-related physical or psychological problem (Ohambe et al. 2005, 39). In Bartels et al.'s study of 1851 women presenting to Panzi Hospital⁶⁰ for post-sexual violence care, 22% reported pelvic pain, 11% lumbar pain, 7% abdominal pain, and 6% pregnancy (2010, 40–41). Most of the women participants who shared details of their sexual violence in the present research documented many of these impacts; in particular, women described ongoing problems due to genital trauma and HIV/AIDS: “[M]any of the women kill themselves because sometimes when you have been raped you are old and you go to the hospital and they tell you that you have attained HIV and you decide directly to kill yourself as me, my age, I’m old.”⁶¹

Sexual violence is also associated with adverse mental health, social, and economic sequelae for women (Brown 2012, 33–5; Babalola et al. 2015, 182). Ohambe et al. (2005, 42) reported that 91% of women survivors of sexual violence interviewed in South Kivu had behavioural problems, including permanent anxiety, shame and self-loathing, excessive sweating, insomnia, nightmares, memory loss, and aggression. Johnson et al.’s study (2010) also found that, for those women that had experienced conflict-related sexual violence, 67.7% met the criteria for MDD, 75.9% for PTSD, 37% answered “yes” on suicidal ideation, and 32.8% answered “yes” to suicide attempts. In our research interviews, many women raped had considered leaving their communities due to pervading insecurity and the fear of stigma, exacerbating their social isolation and economic disadvantage: “[My husband] lost all the value he was giving me and started considering me as a worthless thing... Everyone is referring to us as ‘those who were raped.’ We no longer have value in the eyes of the community.”⁶²

Women participants in this research said that they were able (generally) to access basic acute medical care post-rape in conflict affected areas; for example, the majority of women indicated that they were able to access medical treatment (specifically, PEP) within 72 hours of being raped. However, some women said that they continued to be fearful about seeking medical assistance, due to fears that the rape might be revealed to their husbands, and lead to subsequent abandonment and stigmatisation (Scott et al. 2013, e205–7; Kelly et al. 2012, 290–91): “[T]hey tell themselves that if they go for medical care, their husbands will start asking them ‘where did you get these medicines from? How come you are taking them?’ They just shut up.”⁶³

Other research, however, suggests that for some women, the barriers in accessing health care may be greater than was indicated by women participants in this research. Ohambe et al. (2005, 41) reported that 70% of the women who were interviewed in their study did not receive any medical treatment after being raped. Kelly et al. (2011, 5), in a study of 255 women attending a referral hospital (Panzi) and two local non-governmental organisations in eastern DRC, also reported that “55% of women stated it took more than a day to travel to SGBV service locations; only 4.2% of the women received SGBV services within 72 hours of the attack”, and almost half of the women (44.6%) waited for more than a year before seeking medical care.

⁶⁰ Panzi Hospital is a hospital located in Bukavu. Although it is a general hospital, it is known for its work with and support of victims of sexual violence.

⁶¹ Interviewed in Rutshuru, September 23, 2014.

⁶² Interviewed in Minova, September 21, 2014.

⁶³ KI FGD, interviewed in Rutshuru, April 22, 2014.

3.1.2 Two priorities: Good physical and mental health

Given the far-reaching and profound impacts of sexual violence, it is not surprising that women participants in the present research repeatedly identified two priorities as essential for restoring women's well-being, and achieving justice for women: *"Women must be in good health. Women must have the right to good physical and mental health."*⁶⁴

The first such priority is the need for accessible, quality, and ongoing medical care, particularly for long-term health problems arising from sexual violence. As many women in DRC are living in extreme poverty, accessing treatment and medications is difficult due to a lack of financial means; a number of women told us that they could not afford travel to medical facilities to access specialised health services, such as surgical treatments. Moreover, women stated that the ongoing cost of medical care was burdening an already strained relationship with their husbands: *"what he finds unbearable is to have to pay for my treatment."*⁶⁵

Secondly, the women with whom we spoke in this project unanimously identified the need for psychosocial support and trauma counselling as a leading justice priority for the women of DRC. Women unanimously stated that, through de-traumatisation, they would *"recover good health; regain their mental stability, regain respect."*⁶⁶ Psychosocial support and de-traumatisation were seen by many women as a path back to "normalcy" and reintegration, and as a first step in rebuilding their lives: *"If she was de-traumatised, she ends up realising that all her problems are over and she feels herself as normal again as other people."*⁶⁷ However, most women had, at best, only received ad hoc counselling following an attack. Under-resourced and unspecialised services were identified as a problem: *"They are just ready to talk to me but they are not giving me what I need ... The problem is that we don't have any psychologist; furthermore, we need to reinforce counseling houses be well equipped!"*⁶⁸ Key informants echoed this; their concerns ranged from counselling houses lacking "consumables" which *"ensure patients' transport [and] observation"*,⁶⁹ to the need for *"counselling for months or possibly years and these local associations don't have the backing or the financing to do that."*⁷⁰ Other research confirms the gross lack of appropriate psycho-social and trauma counselling for women survivors in DRC; Liebling et al., in particular, identified the "inappropriate importation of western counselling methods for Congolese culture" (2012, 29).

The women interviewed in this research essentially posited that a two-pronged approach is needed for effective de-traumatisation of women survivors. There should be specialised trauma counselling appropriate to their experience of complex trauma, followed by (or in conjunction with) other psychosocial supports; this is consistent with recognised trauma counselling models and feminist therapy (Dass-Brailsford 2007). Women participants also recognised a need for more safe spaces to enable women to come together, share experiences and problems, support one another, and build their collective agency: *"Women should approach us. Because through our association, we can be relieved; because when you are*

⁶⁴ Interviewed during Validation Workshop, June 16, 2015.

⁶⁵ Interviewed in Bunyakiri, September 26, 2014.

⁶⁶ Interviewed during Validation Workshop, June 15, 2015.

⁶⁷ Interviewed during Validation Workshop, June 15, 2015.

⁶⁸ Interviewed during Validation Workshop, June 15, 2015.

⁶⁹ KI FGD, interviewed in Rutshuru, April 22, 2014.

⁷⁰ KI, interviewed in Goma, April 23, 2014.

with other women like you, only sitting with them for 2 to 3 days will clear your concerns about the life you are leading."⁷¹

Although women identified psychosocial support as a key priority, they also cautioned the need to ensure that such support was responsive to women's individual needs: *"When we have to do counseling, a woman may come in a given state ... they don't all come in the same condition ... she may come with problems which are visible/palpable while she is overwhelmed by others which are not visible/palpable at all."*⁷² Others spoke of the need to ensure that psychosocial support was coupled with initiatives that addressed some of their other needs as well (e.g. economic empowerment and education): *"Her concern is to have a start-up capital, start some activity because she has to be self-sufficient. But you... Oh! Words! Words! Words!"*⁷³

At the core of what women said they need to feel better is being recognised as a whole person with multiple needs – i.e. the need for justice to recognise that her needs are interconnected, and require a holistic response (HHI 2014, 13; Scott et al. 2013, e213): *"First of all, we need to provide counseling to her ... for her to get out of her current situation. Once this is done, we help her make income because if she has income, her thoughts will slowly and slowly be cleared away ... That way, she will also start feeling better because she will be happy in her heart."*⁷⁴

3.2 Peace, safety, and security

A key barrier identified by women to healing post-conflict, to resuming a functional and productive life, and to rebuilding communities, is the ongoing fear of further violence and conflict, and a lack of security regionally and within communities (Women for Women International 2010, 5). Despite the defeat of the M23 rebel group in 2013, the security situation in eastern DRC remains precarious as a result of the activities of numerous other armed groups. These include the activities of the Allied Democratic Forces in North Kivu; the attacks by the FDLR in South Kivu; the skirmishes between Mai-Mai Yakutumba and FARDC in Fizi territory; the activities of the Forces de resistance patriotiques de l'Ituri (FRPI) in Gety and Aveba in Ituri District, Orientale; the Lord's Resistance Army (LRA) in Haut-Uele and Bas-Uele; and the spillover of FDLR activities from South Kivu into Northern Katanga. IDP camps have also been attacked by Luba self-defence groups called "Elements katangais", and there continues to be broader regional instability in the Great Lakes area (UNSC 2015, 4–8).

3.2.1 Peace building from within communities

Many participants identified long-term peace and stability as the leading priority for justice for women, because it signalled a positive inflection point in resolving hardship and difficulties: *"We first requested that WAR ends and PEACE comes back. Because we have noticed that the war is at the gist of all other issues. If there is no war, women will not experience all these issues of rape, acute poverty; war is creating poverty. Children not going*

⁷¹ Interviewed during Validation Workshop, June 15, 2015.

⁷² Interviewed during Validation Workshop, June 15, 2015.

⁷³ Interviewed during Validation Workshop, June 15, 2015.

⁷⁴ Interviewed during Validation Workshop, June 15, 2015.

to school ... *If we have peace, we will have all we need.*"⁷⁵ Conflict in DRC has had a protracted history spanning over two decades, and many younger Congolese have only known deprivation and conflict (Bentrovato 2014, 9–10; Christman 2010; IRIN 2007, 43). Insecurity and the devastation of communities has created a "chronic condition of poverty, unemployment, famine and malnutrition" (Bentrovato 2014, 15). Furthermore, approximately 6.5 million people are estimated today to be in a situation of acute food insecurity in DRC (UN 2015, 7). Many women told of being driven off their land, losing their source of food and livelihood: *"Before the war, we were on our native land, digging and we had livestock and in case you are short of money, you may sell one goat or hen and get money but here in Minova we hardly get a land to dig, our desire is our native land can be secure so that we can go back to do our farm works."*⁷⁶

Some women said that if peace is to be achieved, it must be initiated from within the community, not imposed from outside; for these women, identifying and addressing the root causes of conflict, such as poverty, is key: *"It's our own kids who are destroying this country ... who decided to be rebels. ... It's because of poverty. There are some kids that go to school, finish their studies but they don't get job too. So they decided to go to the bush and started stealing, jabbering, so they can survive."*⁷⁷ Community-based approaches to peacebuilding recognise that the community is better placed to identify issues and needs, and to subsequently develop appropriate actions. This gives the community direct control over investment and planning decisions; such empowerment can lead to more sustainable solutions (Haider 2009, 4). The 2008–2010 project to integrate community empowerment and peacebuilding support in Ituri, backed by the UN Trust for Human Security, provides an illustrative example.

3.2.2 Ongoing insecurity and fears

Women participants frequently said that they wanted to return home, but could not do so in the face of insecurity; they feared for their safety, and feared that conflict could break out again at any time: *"[I would like] that we have peace and return to our home villages ... If there wasn't war anymore, we could have already returned."*⁷⁸ Women repeatedly described daily situations where they were fearful of being attacked, especially when they were collecting water or food, or tending to their land: *"Without peace, there is nothing one can do because if you see women in the countryside... You are constantly concerned about the time you will fetch water. You are hunted by fear that they will rape you."*⁷⁹ However, recent data suggests that many displaced people in eastern DRC have returned home; as of June 2015, the UNOCHA reported 1,491,769 IDPs in DRC, compared to 2,857,446 in March 2015 (OCHA 2015; UNHCR 2015).

Some women have formed "community-led initiatives for mitigating or removing the risk of exposure to rape ... For example, women often assemble in groups when travelling to their farms, reporting that this decreases the likelihood of violence against them" (D'Errico 2010, 62): *"[W]omen have started cultivating in groups. ... Even weeding your beans field, you have to do it that way because, in most cases, your field will be far away from the village."*

⁷⁵ Interviewed during Validation Workshop, July 15, 2015.

⁷⁶ Interviewed in Minova, April 19, 2014.

⁷⁷ Interviewed in Rutshuru, September 23, 2014.

⁷⁸ Interviewed in Bweremana, April 23, 2014.

⁷⁹ Interviewed during Validation Workshop, June 15, 2015.

You invite one another within the same group to go and weed one of your group member's fields."⁸⁰

Rebuilding essential infrastructure, such as roads, was identified by some women participants – particularly those from rural and remote regions in eastern DRC – as important to achieving peace and security: *"In our area, Bunyakiri, the road is in a very poor condition. Wars that we experience which are caused by armed groups ... when they come looting in the community and we have to request intervention from the Government, even if this support is deployed from Bukavu ... they may spend two days on the way and, in the meantime, those who came to loot have already looted, those who came to rape have already raped. [...] As far as [economic power] is concerned, we have a lot of goods stuck in Bunyakiri ... You may have harvested maize, peanuts, and they get rotten while still in Bunyakiri because the road is poor.*"⁸¹

It is clear that women in DRC consider peace and security as core to justice; indeed, without them, justice may well be illusory, both for those seeking justice and those responsible for its administration: *"We are requesting women's security for them to be able to advocate about problems affecting our mates at the grass root level.*"⁸²

3.3 Truth-telling and reconciliation

*She hides herself because she doesn't want other people to know about what had happened to her; because in the world, telling the truth turns out to be a problem for you.*⁸³

Truth-telling is well recognised as a key component in transitional justice, for reconciliation and rebuilding communities (Hayner 2011; Amnesty International 2010, 16). The "right to the truth about gross human rights violations and serious violations of human rights law is an inalienable and autonomous right, linked to the duty and obligation of the State to protect and guarantee human rights, to conduct effective investigations and to guarantee effective remedy and reparations" (OHCHR 2006, 2). Truth telling "is critical to analysing and understanding the reasons and underlying causes of the cycle of violence" (Amnesty International 2011, 16; OHCHR 2010, 476), and is an individual and collective right (ECOSOC 2005, Principle 2).

3.3.1 A muted truth of violence

Many of the women with whom we spoke in DRC felt that their stories of violence and victimisation had not yet been heard: *"You only need to shut up as you come back. You just don't say anything.*"⁸⁴ The truth about the conflict in DRC, the brutal treatment and mass atrocities committed against women, and divisions forged in society, were described as untold or muted: *"[B]efore the war we are all the same people. ... [A]fter the war they showed us that this one is this tribe, this one is this tribe, so when you try and talk you just limit your language, in fact, you don't talk everything to that person so that person doesn't report everything to their tribe.*"⁸⁵ Women also described both a lack of processes in DRC

⁸⁰ KI FGD, interviewed in Rutshuru, April 22, 2014.

⁸¹ Interviewed during Validation Workshop, June 15, 2015.

⁸² Interviewed during Validation Workshop, June 15, 2015.

⁸³ Interviewed during Validation Workshop, June 15, 2015.

⁸⁴ KI FGD, interviewed in Rutshuru, April 22, 2014.

⁸⁵ Interviewed in Sake, September 20, 2014.

which acknowledged the harms and injustices they have suffered, and little by way of effective mechanisms to hold perpetrators accountable (see Chapter 4): *“You see, she has to have a certain guarantee that is why most of the victims do not want to go to justice, prefer even not talking about it.”*⁸⁶

3.3.2 *The need for truth and to be heard*

A Truth and Reconciliation Commission (TRC) (2003–2007) was established in DRC to, in the words of the DRC Transitional Constitution (2003–2006), “promote consolidation of the national unity” (Article 155); to examine the political, economic, and societal conflicts from 1960–2003; and to contribute to compensating victims (Comprehensive Peace Agreement 2002). As discussed in Chapter 4, the TRC failed for numerous reasons; despite this, the people of DRC believe truth-seeking is critical to the nation moving forward post-conflict (OHCHR 2010, 475; Vinck et al. 2008, 48). This desire for renewed effort at truth and reconciliation was echoed by participants in our research: *“[T]hey tried to put in place truth and reconciliation, yes that failed for political reasons ... but if we work on that again, it may be able to work.”*⁸⁷

For many women, a greater openness about their victimisation and suffering will help facilitate women’s access to justice, and to other forms of essential support and care: *“As I arrived here, I heard women discussing similar stories. So I told him, ‘I will not hide that I got raped.’ I will go ask to the other women so that I can also access to medical care. And that is how we got medicines. ... [A]fter that, we have started telling the same thing to other women: ‘If such problems happens to you, please do not hide it because it is freely that you will get medical care if you go to the women who advocate for us.’”*⁸⁸ However, many women felt that social stigma and a lack of security operated to stifle truth and reconciliation in DRC: *“I am living in a hidden and isolated place; I can well relate all but to whom, and by whom and why. Because I know the truths but security wise, I cannot tell it.”*⁸⁹

There are numerous examples of other African nations that have implemented truth-telling mechanisms following damaging civil conflicts, during which SGBV occurred on a mass scale; these may offer lessons for DRC in its reformulation of truth and reconciliation mechanisms. For example, in Kenya following the 2007–2008 post-election violence, the Truth, Justice and Reconciliation Commission (TJRC) was established to investigate serious violations of human rights, and to put into place processes to address the needs of particular groups of vulnerable people (including women and children).⁹⁰ Although the Kenyan TJRC is not without criticisms, it offers valuable insights and lessons in thinking about truth-telling and reconciliation through a gendered lens (e.g. in conducting hearings, taking testimony, and counselling witnesses).

However, despite the overwhelming literature that supports the establishment of post-conflict truth-telling and reconciliation mechanisms for their healing effects, concerns have been raised, and should be considered, regarding the lack of empirical evidence on this causal link. In particular, a survey of women who testified in the Rwandan gacaca courts found that

⁸⁶ KI FGD, interviewed in Goma, April 18, 2014.

⁸⁷ KI FGD, *Advocats Sans Frontieres*, interviewed in Bukavu, September 26, 2014.

⁸⁸ Interviewed in Bweremana, April 23, 2014.

⁸⁹ Interviewed during Validation Workshop, June 15, 2015.

⁹⁰ See Rita Shackel and Lucy Fiske, “Making Justice Work for Women: Kenya Country Report” (unpublished report, 2016).

women survivors faced security issues in the form of harassment and threats, which only began after they testified (Brouneus 2008, 66). They also suffered psychological ill-health; for example, they would be ill in the days leading up to, and after, giving testimony, because they found it traumatic to relive the experiences again, and felt ashamed when they reacted emotionally in front of the public (Brouneus 2008, 68–9). Thus, although the social value of truth-finding and recording mechanisms is clear (HRW 2004, 5), such processes need to recognise the extensiveness of Congolese women’s (continuing) trauma, and their vulnerability to ongoing victimisation. Any truth and reconciliation mechanisms re-envisaged in DRC must be sensitive and responsive to women’s needs, offer women adequate support, protection and security, and must take serious account of social attitudes to rape which blame the victim.

3.4 Compensation and economic empowerment

Given that whole communities in DRC live in extreme poverty (UNDP 2014; Putman et al. 2014), it is unsurprising that women participants viewed economic empowerment as a core need in rebuilding their lives. Their aspirations for economic empowerment were varied, and included: greater support in developing business opportunities; training and skills acquisition; access to financial services; livelihood security; and access to land and property: *“I think that if you help me set up a business, I can provide for the needs of my children, they dress well, find school materials ... As I am here, I am powerless. ... But if I can set up a business, I can be able to raise the children to make them progress in life.”*⁹¹ Assistance with setting up a business was a particularly acute need for displaced women starting a new life in a new community: *“We are newcomers here in Minova and we are not known by people, we need loans to start a small business so that we can afford to meet the basic needs of the household.”*⁹²

Many women stated that the violence they had experienced had harmed them emotionally, mentally, socially, and physically, and had impacted on their capacity to gain a livelihood and be productive. Many in particular said that, following rape, they could no longer undertake the physical work to which they were accustomed, due to injury and illness; this fact is further exacerbated by fear of being raped when working in the fields, which has led to “spiralling malnutrition and economic loss” (Pratt and Werchick 2004, 6). Data from Ohambe et al. indicated that the women who were the main victims of violence and sexual atrocities in eastern DRC were those who were the most disadvantaged and vulnerable (2005, 29). Women farmers were among the worst affected (2005, 33), a finding reflected in the fact that 76% of the interviewed women for this research project were farmers; attacks on them contribute to reductions in their incomes, particularly if their ability to work is compromised by rape-related illnesses: *“Since I got raped, I have no longer felt strong to work. ... Before I would go to the field with other women, but today, when it gets 12:00, I feel very exhausted. I am sick every day; I am under medication every day.”*⁹³ Concurrent pillage also deprives them of both the means and the fruits of their production (Ohambe et al. 2005, 44). Also, 81% of interviewees had (at most) a primary school level education, marking their already-disadvantaged social position; this highlights the link between gender, disadvantage, and violence (Fiske and Shackel 2014), as losing the ability to work their land limits further opportunities for employment and gaining a livelihood (Feda et al. 2015, xiv).

⁹¹ Interviewed in Rutshuru, September 23, 2014.

⁹² Interviewed in Minova, April 19, 2014.

⁹³ Interviewed in Rutshuru, April 21, 2014.

3.4.1 Redress for harms done to women

Women in DRC have been widely subjected to brutal rapes and acts of sexual violence. Rape is “particularly aimed at humiliating and degrading victims” (Sow et al. 2011), and often involves cruel and inhumane acts (Ohambe et al. 2005, 33). The accounts of rape and sexual violence described by women participants attest to this, including being raped in front of their children: *“That time three soldiers came and started raping me in front of my daughter. After, they also raped my daughter in front of me.”*⁹⁴ Réseau des Femmes research also found that a staggering 79% of women interviewed had experienced gang rape, and that many rapes were accompanied by torture (e.g. genital mutilation or burning, or wounding with machetes) (Ohambe et al. 2005, 34–5). Many of the women participants in our research were also nursing multiple and severe injuries, as well as unresolved illnesses: *“I am affected with the disease, it has never stopped. Up to now, I have some, some yellow things coming out of my vagina, up to now”*;⁹⁵ *“I was beaten even with the handle of the guns and my hand was broken. I was trampled by feet ... I’m no longer bleeding but the pains are still present in my belly.”*⁹⁶

Given the extent of harm suffered by women in DRC, and the profound impact this is having on their quality of life and capacity to survive – let alone to thrive – it is not surprising that women survivors want compensation and reparation for their injuries and pain: *“[M]y girl who was raped. They could have paid for her treatment and school fees because up to now after this war ... she went to the hospital she was seriously sick.”*⁹⁷ Many women participants also stated that being productive and engaging in economic activity was an important step towards healing, and restoring dignity and respect: *“You might fail from time to time, but, at least, you will keep trying. And, in the end, you will start feeling well in your heart. ... [Y]ou will tell to yourself: ‘[T]he work I am doing is good!’ Then you can say: ‘[W]e are developing.’”*⁹⁸

Accordingly, for many women, development of sustainable strategies for women’s economic empowerment is a leading priority. Many women said that they want to be independent: *“A woman should work... she must be able to defend herself before men ... Facilitate her schooling in order for her to acquire the required intelligence for her to be able to work for herself.”*⁹⁹ Furthermore, economic well-being was viewed as an important part of regaining power and obtaining justice: *“If you can give me capital for business, I’ll feel free because I can provide for my own needs, pay for my own treatment ... I’ll say I’ve had justice.”*¹⁰⁰

3.4.2 Initiatives towards economic empowerment and reparations for women

A great deal is being tried by way of economic empowerment programs for women in eastern DRC. These are mostly run by NGOs and community-based agencies, as well as international bodies and organisations. For example, since 2004–2005, USAID has been actively funding a range of initiatives in North Kivu, South Kivu, and Maniema Province through the Office of

⁹⁴ Interviewed in Minova, April 19, 2014.

⁹⁵ Interviewed in Minova, September 21, 2014.

⁹⁶ Interviewed in Rutshuru, September 24, 2014.

⁹⁷ Interviewed in Bunyakiri, September 26, 2014.

⁹⁸ Interviewed during Validation Workshop, June 15, 2015.

⁹⁹ Interviewed during Validation Workshop, June 15, 2015.

¹⁰⁰ Interviewed in Rutshuru, September 23, 2014.

Foreign Disaster Assistance (OFDA), aimed at rebuilding economic, social, and political structures for women (Pratt and Werchick 2004). Women for Women International (DRC) has also served over 84,000 women in North and South Kivu since 2004, through job skills and rights education programs (Women for Women International 2015).

Economic empowerment programs of this type are certainly delivering women some assistance and benefits. However, some women participants indicated that these programs are sometimes only of limited and short-term benefit: *“If you get such a small amount, it can help you forget about your problems ... you will have temporarily managed to feed and clothe your children ... But when you have such a problem: the husband abandons because you have been raped, you remained with children whom you are unable to feed; and, at times, you get to a time when your landlord starts chasing you from his house ... you see that your problem will increase and the absence of an income generating activity will bring you more worries.”*¹⁰¹ It is clear, then, that women in DRC need systemic, large-scale monetary compensation and reparations: *“You have been chased from the village; may be your husband does not want you anymore; you have nothing at all to restart life. And that is why we can say: ‘Let us establish courts everywhere in the villages but as long as there is no repair, I don’t know if ... this is sufficient.’”*¹⁰²

There have been some initiatives to bring women in DRC financial compensation and reparations, but their efficacy remains tenuous; these are discussed in Chapter 4.

3.5 Equality and protection of women’s rights

Many of the women participants in DRC said it is critical for women to be better informed about their rights, in order to obtain justice, fight against oppression, and achieve greater gender equality: *“The woman must know and have her rights ... Because once she knows her rights, she will be aware that she should not be oppressed in the family. You see that traditional customs have kept us under oppression.”*¹⁰³ Considerable efforts have been made in DRC to promote women’s rights and gender equality (OHCHR 2014, 26; Mbabmi and Faray-Kele 2010, 1–2), including: steady increases in prosecutions of sexual violence; reform of laws that criminalise rape; the passing of a gender policy, and action plan approved by parliament; and capacity building activities started for the FARDC (UN Women 2012, 17).

However, despite these actions, many of the accounts provided by women participants in this research of how they are treated within their families and communities confirm that traditional social and cultural norms, and discriminatory practices, continue to oppress women in DRC today: *“So let us also speak what we do not experience: The right to work... the woman has no right to work; the woman has no right to education; she has no right to study; and to stand as a community chief; there is nothing of that sort at all which we have the right to.”*¹⁰⁴

There is widespread agreement in gender development and justice circles that more needs to be done to educate women about their rights – in particular, about sexual violence laws and issues of gender equality (Mansfield 2009, 407). The women in this project view education of

¹⁰¹ Interviewed during Validation workshop June 15, 2015.

¹⁰² Uboyo Anne Marie, MONUSCO, interviewed in Goma, April 24, 2014.

¹⁰³ Interviewed in Rutshuru, April 21, 2014.

¹⁰⁴ Interviewed during Validation Workshop, June 15, 2015.

women, children, and entire communities as being pivotal to the protection of women's rights: *"I would like to ask you to keep on teaching us, may be this rape issue will end. ... because if a neighbour was attempting to rape, a man or other people in the bush, when they hear the teachings or we, after being taught by you, may be this will be reduced in the area"*,¹⁰⁵ *"Those who are educated are busy with their jobs and take care of their families and don't have time for wrong doing. But others who did not go to school will do all sorts of bad actions."*¹⁰⁶

There is also a growing consensus within program development that men and boys need to be specifically targeted and involved in sensitisation programs on women's rights, to maximise their potential positive effects (Fanning and Hastie 2012, 9). Some argue that the reach of these programs need to go further, including making gender-sensitivity training "an ongoing aspect of professional development for all public servants", as part of the need for "a transformation in societal norms and attitudes towards women" (Medie 2012, 99–100).

3.5.1 Women's participation in public life

Recent data reveals that women in DRC are not well represented in many spheres of public and national life, with limited participation at decision-making tables. In 2013, only 8.3% of seats in the DRC Parliament were held by women (UNDP 2014). In the justice sector,¹⁰⁷ only 19.5% of employees were women. The District Courts and High Courts were 20.4% composed of women, while the percentage is 12% for the Appeal Courts and Department of the Prosecutor General, and 6% for the Supreme Courts of Justice and Department of the General Prosecutor. Thus, not only are women underrepresented in the judiciary writ large, this underrepresentation gets more severe the higher the level (GNWP 2014, 10–11).

Although women have a labour force participation rate of 70.7% – comparable to the men's rate of 73.2% (UNDP 2014, 4) – it is important to query the areas of employment. For example, women constitute less than 3% of state-waged employment, compared to 12% of men (Mbambi and Faray-Kele 2010, 2); instead, women are primarily employed in agriculture and the informal sector (ECOSOC 2009, 15), where there is little "legal protection, social security or other benefits" (OHCHR 2013, 10). Women also generally earn less than men (Mbambi and Faray-Kele 2010, 2; CEDAW 2013), and their exploitation in the mining sector has also been raised as an issue (CEDAW 2013); 1 in 4 women in mining towns identify as sex workers.

The status of women in DRC, as reflected in the data presented above, is inconsistent with DRC's national and international obligations to promote gender equality and women's and girl's advancement (Mbambi and Faray-Kele 2010, 2). Nationally, for example, the Constitution of the DRC mandates states to ensure equality of gender representation at national, provincial, and local levels (Article 14). Article 13.3 of the Electoral Law 06/006 also requires that candidate lists "take into account" gender equity; however, they are not rendered invalid if they fail to do so. Internationally, relevant obligations include the Convention on the Eradication of Discrimination Against Women (to which the DRC is a party), and the African Women's Protocol (ratified by DRC), a specific protocol to the

¹⁰⁵ Interviewed in Bweremana September 20, 2014.

¹⁰⁶ Interviewed in Rutshuru, September 23, 2014.

¹⁰⁷ The DRC justice sector includes the Supreme Court of Justice and General Prosecutory of the Republic, Appeal Courts and Prosecutory General, District Courts, and the High Court.

African Charter that covers several aspects of women's rights; these include a right to political participation (Article 8), and equal protection before the law (Article 9). The DRC has also committed to UN Security Council Resolution 1325, a resolution on women, peace, and security.

Women's poor participation in public life, including in political spaces, education, and employment, was a strong concern raised by many women and key informants in this research. Numerous women participants recognised the need for more women to be involved in political and decision-making spaces, and to fill higher-level and more powerful positions; they voiced their hope in seeing women as *Infirmier Titulaire* ('Senior Nurse') and managers of office work,¹⁰⁸ as "*magistrates, barristers, judges, legal advisors*",¹⁰⁹ and as "*ministers, provincial deputies as well as national deputies ... that continue to advocate for us at higher levels*".¹¹⁰

3.6 Justice for children

Every woman participant in DRC – indeed, in all three of the research countries – saw justice for women as being closely connected to justice for children. Therefore, the clear nexus between women's wellbeing and economic empowerment, and children's potential to thrive, must be addressed in transitional justice responses (UNFPA and UNICEF 2011).

3.6.1 Poverty, abandonment and the costs of children's education

Crippling school fees were widely mentioned by women participants as a site of injustice for women and children. According to research conducted by the World Bank Group, based on a Household Budget Survey (HBS) and at the primary level of education, families in the poorest quintile pay 42% of their per capita consumption per child educated, compared to only 6% for the richest quintile. International comparison also shows that the DRC's spending on education as a share of GDP (1.8%) is inadequate and lagging, especially compared to the sub-Saharan African average of 4.6% (Feda et al. 2015, 40). Investment in children's education is critical in a transitioning DRC, both to empower women and to rebuild healthy communities. Every extra year spent in education is associated with higher earnings, as well as increased chances of gaining more stable contract employment (World Group Bank Education 2015, xiv); for every year that a girl spends in school, she increases her family income by 20% (CARE 2015).

As mentioned above, the devastating impact of sexual violence often included abandonment by husbands, and consequent ostracism from the broader community. As a result, most women raped during the conflict in DRC have been left with sole responsibility for the care of their children, and sometimes the children of deceased family; they have been left to feed, clothe, and educate these children with no support (FIDH 2013, 67). Many women in DRC are today the head of their households – many children are born and reared in single mother families (Immigration and Refugee Board of Canada 2005). In many instances, women are caring alone for several school-aged children, including children born of rape: "*One of my brothers in law promised to bring me at his place but the day he heard that I was raped, he never come to my place up to now ... he does not know in which conditions my children are*

¹⁰⁸ Interviewed during Validation Workshop, June 15, 2015.

¹⁰⁹ Interviewed during Validation Workshop, June 16, 2015

¹¹⁰ Interviewed during Validation Workshop, June 15, 2015.

living because I have 6 children, all of them are girls, so he does not know the way I am living.”¹¹¹

It is clear in speaking with participants in this project that women are strongly committed to caring for their children, but most women described resultant extreme hardship. Women were very distressed by not being able to adequately provide for their children: *“And going mad for this woman is due to the fact that she has become poor. If she had some income, she would not be so traumatized because she would then be able to meet her children’s needs and make them grow well without difficulties.”*¹¹² Women are not offered much assistance by family members or the community, both because hardships generally prevail in communities, and because of the strong stigma attached to rape and fear of HIV/AIDS: *“There is rejection from the neighbours: ‘This one will infect us with Aids,’ they will tell one another.”*¹¹³ This link between financial constraints and non- or incomplete schooling is a matter of concern, as deprivation of education in children is associated with lifelong adverse impacts (OHCHR 2010, 326).

3.6.2 De-traumatisation of children

Women also identified an urgent need for children, like women, to be de-traumatised as a priority. Many children in DRC are deeply traumatised by having experienced and witnessed many forms of violence, for protracted periods of time; thousands have been traumatised directly fighting in the war as child soldiers (OHCHR 2010, 326–47). Trauma continues today because of ongoing violence in communities and families, discrimination, widespread poverty, and general poor living conditions. The impact of this trauma is far-reaching, and may “hinder the children’s ability to deal with and overcome emotions of hate and revenge. Likewise, the children with PTSD symptoms might regard acts of retaliation as an appropriate way to recover personal integrity and to overcome their traumatic experiences” (Pierre Bayer et al. 2007, 558).

Poverty creates immediate barriers to the development and wellbeing of children, and also affects the child’s capacity to realise their potential and contribute to society in the future. This engrains a vicious cycle, a *“hidden bombshell”*: *“People prefer children who go to school and view with suspicion those who don’t. They know that such children become easily bandits. These are the ones who rape around here.”*¹¹⁴ Many women also spoke of harsh mistreatment of children who are unable to attend school: *“OK, so kids that are in school are playing some game together, the one who is not in school tries to join the game. Are they rejected? Yeah they just insult him, discriminate him and there’s a way that they talk to him – ‘that you are just nothing, you just there a fool – you end up in the road.’”*¹¹⁵ Difficulties with discrimination and lack of education are particularly problematic for displaced children: *“They do not go to school because of poverty. We are getting nothing since the time we became internal displaced people”*;¹¹⁶ *“They are differently treated at school in comparison to those who are not refugees. They call them street children. This is not good for children.”*¹¹⁷

¹¹¹ Interviewed in Minova, April 19, 2014.

¹¹² Interviewed during Validation Workshop, June 15, 2015.

¹¹³ Interviewed in Bweremana, September 20, 2014.

¹¹⁴ Interviewed in Rutshuru, September 23, 2014.

¹¹⁵ Interviewed in Sake, September 20, 2014

¹¹⁶ Interviewed in Rutshuru, September 22, 2014.

¹¹⁷ Interviewed in Bweremana, April 23, 2014.

Even at school, children are faced with poor conditions which are not conducive to learning and well-being. Student-teacher ratios, by Western standards, are high; in 2013, the student-teacher ratio for primary schools was placed at 37.1:1, while the ratio in secondary school is 14.2:1 (due to fewer children being able to access higher education) (UNSECO 2015). Furthermore, classes are poorly resourced; students often are required to share textbooks and materials with a number of other students. Only 8.4% of public schools in 2013 had access to electricity; 40.8% to potable water; and almost 30% of schools lacked access to toilets (UNESCO 2015). Teachers are also poorly paid and work in difficult circumstances, adding to the troubled learning environment (Global Partnership for Education 2015).

3.6.3 Perpetuating cycles of disadvantage

Many women said that seeing their children educated is one of the most important things they would like to achieve: *“I would like to die seeing that they are already established so that they could say: ‘Even though our mother has died, she gave us the best.’”*¹¹⁸ However, due to financial constraints, they are often forced to make choices about which child(ren) will be schooled, which induces pain and guilt: *“Each child should have shoes, uniform, school bag while yourself have nothing to do. This makes it harder to the time that you decide that some of them give up while others keep on. The one you ask to give up, feels bad and thinks you hate him/her while you are yourself feeling bad when seeing him/her not going to school.”*¹¹⁹ Other women described “proportioning” school within household expenses, to ensure that each child has at least the opportunity to learn the basics of reading and writing: *“[T]he eldest one went to school. He stopped at five primary. The other one at fourth primary. Then I worried that both of them, they know how to write and how to read so I had to stop them so that others also could go to school to know at least how to write and to read.”*¹²⁰

Girls are disproportionately disadvantaged in such decisions, particularly if they have been raped: *“On seeing that the child has already been taken to the forest (raped), she will not be motivated to spend money on the child any more. There is discouragement on the part of the family and as for the child; she will be rejected by the community.”*¹²¹ The disadvantage and inequality faced by girls in education is exemplified in a swathe of statistics; among them, literacy at age 15 is documented as being 78.1% for boys, compared to 50% for girls, while the school life expectancy for males is 11 years, compared to 8 years for females (CIA 2015).

Dropping out of school for girls increases the risk of lifelong poverty, and is associated with early age marriage and pregnancy (UNICEF 2013b, 10). Ntoimo and Odinegwu (2014, 1154) reported that less than 1% of single mothers in Sub-Saharan Africa had a tertiary education. Low-level education is associated with low wage and income capacity, the majority of women in the present study were either not employed, worked in the agriculture sector, or as petty traders. This “stresses the precarious economic situation of women ... and highlights the need to empower women” (2014, 1154) and young girls.

The inextricable link that is revealed between the well-being of women and children points to the need for holistic well-integrated multi-system transitional justice policy that is

¹¹⁸ Interviewed in Rutshuru, September 23, 2014.

¹¹⁹ Interviewed in Bunyakiri, September 26, 2014.

¹²⁰ Interviewed in Rutshuru, September 23, 2014.

¹²¹ KI FGD, interviewed in Rutshuru, April 21, 2014.

responsive to the individual needs of women but which also recognises the broader context of women's lived experiences and the separate yet at times overlapping needs of women and children and the intergenerational impacts of conflict, violence and disadvantage.

CHAPTER 4: JUSTICE RESPONSES

*What you do for me, but without me, is against me.
(Ce que vous faites pour moi mais sans moi, vous le faites contre moi).*¹²²

This chapter provides an overview of the law and justice framework in DRC, and examines the barriers to accessing justice for women considering both formal and informal justice channels. More specifically, the chapter examines the efficacy of transitional justice strategies and mechanisms, implemented in DRC since 2006, in meeting women's justice needs.

4.1 Overview of law and justice framework in DRC

DRC's functioning as a civil law country draws many of its characteristics from the Belgian legal system, having received its law from Belgian colonialists. At the apex of DRC's sources of law is its Constitution (*Constitution de la République du Congo 2006*), which primarily draws upon French and Belgian laws. The current Constitution was brought into force on February 18, 2006, with amendments to eight articles made in 2011 that expanded the State's and the President's powers (Roberts 2011). Furthermore, under Article 220 of the Constitution, a number of legal structures have been entrenched, including: the republican form of the state and the representative form of the government; the principle of universal suffrage; the number and duration of presidential terms; the independence of the judiciary; political pluralism; and freedom of association. Other sources of law in DRC include international treaties and agreements; legislation (divided into 'ordinary' and 'organic' laws); case law; custom; doctrinal writings; legislation; and administrative regulations (Zongwe et al. 2015).

4.1.1 International obligations

The DRC is a monist state; article 207 of the Constitution states that duly ratified international treaties and agreements prevail over Congolese legislation. The DRC is a party and member to a number of regional human rights instruments, including several which specifically recognise and seek to protect the rights of women and survivors of sexual violence; these include the Pact on Security, Stability and Development in the Great Lakes Region (including a Protocol on the Prevention and Suppression of Sexual Violence Against Women and Children), and the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol). Furthermore, under the Rome Statute, the DRC government in 2004 referred the ICC to investigate and prosecute international crimes that had occurred in DRC since 2002 (ICC 2015a); to date, six DRC individuals have been prosecuted in the ICC, and two accused have been convicted and sentenced.

¹²² KI, interviewed in Rutshuru, April 21, 2014.

4.1.2 Customary law

Customary law operates alongside the civil law system in DRC; however, the Constitution has ascribed it a subordinate role relative to statute (Article 207). These customary laws only apply to the traditional or local communities from which they originate, and do not encompass criminal offences (IBAHRI and ILAC 2009, 25).

In trying to access formal justice, victims face many barriers, including complex impenetrable processes; procedural barriers (e.g. payment of transport, processing fees and legal services); the likelihood of perpetrators not being able to afford to pay damages even on court order; and the risk of shame and re-victimisation (Immigration and Refugee Board of Canada 2012). With so many barriers to formal justice, victims of sexual violence often elect (or are forced to use) customary law mechanisms rather than pursue formal legal actions; for example, arbitration or mediation involving community leaders and/or family may be used to settle a grievance between a victim and perpetrator. Following such processes, remedies may be offered, such as the giving of money, or other reparations to the victim or their family; this can include forcing the victim to marry the perpetrator, in order to repair the family's honour (Aho et al. 2013, 20–21): *“It all ends in disaster for her... She is no longer a person to live in/with the Society. She is rejected and when she has delivered, she will either be obliged to marry the perpetrator – her rapist – no matter whether she loves him or not, or she is asked to remain in her home but do farming work. ... ‘Getting pregnant is for her the end of the world,’ one would say.”*¹²³ These types of solutions are problematic to the rule of law, as they ignore the fact that there has been a criminal offence; furthermore, while the family receives the reparation, the forced marriage operates as a continuation of the punishment for the victim. Police often encourage victims to engage in such processes, and then receive payment for their role in such mediations (Aho et al. 2013, 21), what results is the perpetuation of a cycle of violence and inequality: *“[I]n some areas when the man has not the dowry, he arranges to rape a girl knowing that the raped girl will be given to him and then dowry will come maybe later and what is amazing is that parents agree with that. First there was rape and then forced marriage.”*¹²⁴

4.1.3 Penal law

Under Congolese criminal law, crimes are referred to as “infractions,” and, unlike in a common law system, a victim is able to pursue both a criminal claim and a civil suit (Aho et al. 2013, 12). The Penal Codes consists of two books – one for general infractions, and the other for specific infractions; these two books can be further subdivided into two sections – the ordinary penal code covering civilians, and the military penal code.

Criminal procedure rules are contained in the Penal Procedure Code. In 2006, amendments (Law No. 06/018 of 20 January 2006) to the Penal Code and the Code of Civil Procedure introduced more progressive definitions of sexual offences, in response to the sexual violence epidemic (Zongwe et al. 2015). Law No. 06/018 raised the age of minority in rape from 14 to 18 years of age, thereby providing a more comprehensive definition of rape. However, the amendments have not been effective, as they are at odds with other laws and cultural norms; most notably, the minimum age of marriage for girls under Family Code is 15 years of age

¹²³ KI, interviewed in Rutshuru, April 21, 2014.

¹²⁴ KI FGD, interviewed in Goma, April 18 2014.

(Article 352). Moreover, “the law covers sexual violence that may occur in the domestic sphere, but because Congolese culture does not recognize spousal rape, women do not report it” (Immigration and Refugee Board of Canada 2012). Article 467 in Book III of the Family Code also applies the infraction of adultery unevenly to spouses; while a woman is punishable in all circumstances, a man is only punishable if he induced the adultery (UNECA 2012).

Several key informants we interviewed in this project highlighted multiple areas where the penal law is deficient, and fails in its application to deliver women the justice to which they are entitled. As one key informant summarised: *“There has been the adoption of a new law, of a new legislation, that should complete not only the penal procedures but also the penal law ... [However] it has been observed that there were false victims ... [and victims] go there while all the community looks at them as false authors. The second fact, always regarding to massive violence, in the community, it is not easy to identify oneself as a victim of sexual violence for there are so many consequences... [Thirdly], reparation is almost null if not null when you have a look on all the condemnations that have been made by both the civil and military courts. ... Thus, it has been observed that this justice, as it has been tackled in this law, favours penal sanction than making reference to the recovery of damage and advantage mechanisms ... Then, people quickly were finding solutions in families than going to the court.”*¹²⁵

4.1.4 Private law

Private law is primarily covered by the Congolese Civil Code, which consists of three parts: the law of the persons, property law, and the law of obligations. The law of persons is covered by the *Family Code*, which consists of five books covering nationality, persons, family, succession, and ancillary matters. The object of the *Family Code* is to bring the rules around families and persons in line with Congolese culture which conceptualises the individual through his or her social group (Zongwe et al. 2015); as such, family law and the law of persons are contained in the same code. It is of note that the Code prohibits child marriages, but sets the minimum marriage age at 18 for boys and 15 for girls; this explicitly sits contrary to Article 11 of the Constitution, which provides for equal rights for all human beings.

4.1.5 Judicial system

DRC’s judicial system is one “which is struggling to meet the needs of the population” (IBAHRI and ILAC 2009, 7). The UN Special Rapporteur, reporting on the independence of the judiciary, identified a lack of resources and corruption to be the two key factors in judicial failure to follow up on judgments (UNHRC 2008a, 11–14). Article 149 of the Constitution states that the judiciary is independent of the Executive and Legislative Powers, while article 151 reinforces the division of powers by preventing the executive from issuing injunctions, such as orders to limit or halt an investigation. In practice, however, “justice is controlled by the executive: the government makes appointments and transfers magistrates as they see fit” (Amnesty International 2011, 37). The executive continues to instruct judges, and sometimes refuses to enforce court decisions; findings show that only about 30% of judgments are enforced (IBAHRI and ILAC 2009, 23). On severe underfunding, two female magistrates from Goma explained that *“there are no operating costs ... I just take an example ... the little*

¹²⁵ Mushekuru Mugeni Joyeaux, interviewed in Bukavu, September 26, 2014.

money of operating costs, the disbursement fees, it is with that money that we do everything, we purchase the pens, reams of papers ... we work with many difficulties."¹²⁶

The new Constitution in 2006 re-devised the judicial system. There are now three jurisdictions: Judicial (civil and criminal); Administrative; and Military. Appeals from these first instance courts go to their respective Courts of Appeals, before passing to the separate high courts. The previous Supreme High Court has now been reformed into three separate high courts: the Constitutional Court, the Supreme Court, and the Supreme Court for administrative matters. In 2009, new provisions also required that juvenile tribunals be established in each town and territory.¹²⁷ However, although the reformed version of the judicial system looks promising on paper, DRC has struggled to implement the changes due to severe underfunding, and the structure largely remains unchanged; the Supreme Court remains as the final court of appeal (IBAHRI and ILAC 2009, 17–18). Despite this lag in reform, however, the mobile court program (discussed below) has been of some success.

The military justice system is a broad jurisdiction; rather than being ad hoc, it is expressly established by Article 149 of the Constitution. Although Article 156 limits the jurisdiction to determining infractions of Armed Force and Police Nationale Conglaise members, the jurisdiction also captures civilians who have committed international crimes (crimes against humanity, war crimes, and genocide), as defined under the Rome Statute; this is due to the ill-alignment of the Military Judicial and Penal Codes with the Constitution (IBAHRI and ILAC 2009, 29; Aho et al. 2013, 13). The system follows its own military judicial code and military penal code, but suffers from similar problems to the civilian jurisdiction – it lacks funding, infrastructure, support from central government, and training (IBAHRI and ILAC 2009, 30; Amnesty 2011, 39). A high proportion of human rights infractions are committed by the national police and the armed forces (UNHRC 2008b), but conflicts are inherent:

Military magistrates are both army officers, who are subject to military command, and members of the Congolese judiciary. ... [Also], the Military Justice Code explicitly requires that the highest ranking judge on a bench must be of equal or greater rank than the accused. Since the highest ranking judge in the country is a Brigadier General, officers with higher rank in the army are in practice immune from prosecution. (Amnesty 2011, 38–39)

The Police Nationale Conglaise have jurisdiction over the entire nation, and are responsible for public safety, property security, law and order, and the security of senior government officials (Constitution, Article 182); however, reports suggest that national police lack the knowledge of how to handle criminal investigations. Where a sexual violence case has occurred, problems often arise at the outset, in the investigative stage; victims are often unable to recognise their attackers due to it being a gang rape, or they are unable to identify whether the attackers were from DRC armed forces, rebel groups, or international personnel (Aho et al. 2013, 23): *"I couldn't [report] because this happened at night. I did not know who to accuse because I did not know – I had not identified them. It was a night looting. I could not accuse people I did not know."*¹²⁸ Investigations are also often set back from the delay between the occurrence of the attack and investigators being able to enter the site safely; this can mean that vital evidence is lost or destroyed (Aho et al. 2013, 23). It has also been reported that victims are often unaware that their case has been tried and damages

¹²⁶ KI FGD, interviewed in Goma, April 18, 2014.

¹²⁷ *Law No. 09/001 of January 10, 2009 on the protection of the child*, Article 84.

¹²⁸ Interviewed in Rutshuru, April 22, 2014.

awarded; conversely, perpetrators may not know that they have been tried and convicted until sometime afterwards (Aho et al. 2013, 27).

4.2 Access to justice

Women participants in DRC identified numerous barriers to women's access to justice, particularly access to formal and legal justice. Justice generally was described by the women in this research as remote, both geographically and in design. They also described being shut out of justice processes due to financial barriers; corruption; a lack of accountability; lack of expertise and resources; and complex, intimidating, and gender insensitive processes.

4.2.1 Formal and legal justice

A 2004 audit commissioned by the European Union found that only 20% of the population had access to the formal justice system in DRC (cited in Savage and Kambala 2008, 337). Women participants who had accessed or tried to access formal legal justice in DRC repeatedly described a system unresponsive to women's needs that failed to engage with women: *"I do constantly ask myself: 'I am fatherless; they have taken/received letters and letters (written complaints), but I have never seen any reaction.'"*¹²⁹ The general weaknesses and deficiencies of the legal system, and of formal justice as a whole, have already been mentioned.

It is also well recognised that only a small proportion of perpetrators of rape and sexual violence in DRC are ever held to account for their wrongdoing. For example, data from Heal Africa showed that, of the 2672 victims identified, only 165 prosecutions (6 per cent) were initiated (cited in Mansfield 2009, 378); the proportion of prosecuted cases of sexual violence that end in a conviction represent an even smaller number of cases (Aho et al. 2013, 18). Furthermore, the number of cases prosecuted is only a small number of the actual cases of rape and sexual violence, as "many instances of sexual violence are not reported" (Mansfield 2009, 378).

4.2.2 Lack of knowledge and understanding of justice processes

As discussed in Chapter 3, many women participants said that they lacked knowledge and understanding of their rights, and of the complex and incomprehensible processes of justice more broadly. Consistently with these issues, Mansfield's study found that most interviewees did not know where their cases would be heard, and did not understand fundamental legal requirements such as the need for proof to succeed in a case (2009, 384–85).

Some women in this research described feeling alienated by a justice system and officials that lacked sensitivity to women's needs: *"Here the distance between where the woman lives and where she can go for justice ... let's take the case of a woman who was raped who has a problem. She is from Bunagana. For her to get to the OPJ Office ... Well ... the Rutshuru Office is 80 km far away."*¹³⁰ Many of the women we interviewed said that they felt unsupported in their attempts to access justice, at multiple levels and sites: *"It is not about being supported in one way only. It is rather through all ways meaning health support,*

¹²⁹ Interviewed during Validation Workshop, June 15, 2015.

¹³⁰ Interviewed during Validation Workshop, June 15, 2015.

mental support, and financial support. ... You know that in order for me to know how to read and write I have to pay! All that must be included in the pack required to support the woman in DRC.”¹³¹

Women’s alienation from the justice system in DRC is arguably exacerbated by the previously-mentioned weak participation by women as actors within justice processes; consequently, survivors who do interact with the justice system will infrequently interact with female justice professionals: *“Women to become magistrates, barristers, judges, legal advisors ... Those solutions that we identified must help us with regard to our complaints as women.*”¹³²

4.2.3 Stigmatisation and fear of reprisals

As previously mentioned, survivors of sexual violence often decide not to seek justice because of a fear of being stigmatised, as well as feelings of shame and humiliation: *“In our village, a woman who was raped is a stigmatized woman ... really! Every one mocks her; every one!”*¹³³ The lack of protection mechanisms in place for victims, such as judges’ failure to redact victim names from depositions, can only be detrimental to remedying this lack of reporting (UNJHRO 2014, 22). This feeds into a cycle in which a lack of outcomes are visible, and no reparations are being made, leading victims to often feel that the public exposure and shame risked by going to trial is essentially “for naught” (Aho et al. 2013, 29).

Additionally, many women also do not report or pursue justice due to a fear of reprisals from either the alleged perpetrator(s), and/or from police and corrupt justice officials (UNHCR 2010, [922]; HHI 2009, 48; FIDH 2013, 54): *“The justice system is really corrupted even if someone is arrested, he just says ‘I will give my money and be released and once released I will kill you.’”*¹³⁴ Almost half of the victims interviewed by Mansfield identified fear of reprisals as an obstacle to prosecution (2009, 395). Clearly, women need to be protected when they attempt to access justice; otherwise, they will continue to choose not to disclose, or to pursue justice.

4.2.4 Cost of justice and corruption

Many women described financial disadvantage and the high monetary cost of justice as barriers to accessing justice: *“People are discouraged because they know in advance that they cannot afford the justice fees and prefer to stay home and forget the case.”*¹³⁵ Survivors in Mansfield’s study also identified high costs as the most prevalent barrier to prosecution, with approximately 70% identifying it as an issue (2009, 392).

As documented by participants, the costs of justice arise from multiple sources. Firstly, there are “legitimate” costs imposed by the justice process, including costs attached to summonses and to securing evidence, such as medical reports and certificates (Mansfield 2009, 393). Post-trial processes can also be expensive; victims are required to first pay US\$15 for a copy of the judgment, and 6% of the reparation in order to enforce the judgment (FIDH 2013, 60).

¹³¹ Interviewed during Validation Workshop, June 16, 2015.

¹³² Interviewed during Validation Workshop, June 15, 2015.

¹³³ KI, interviewed in Goma, April 24, 2014.

¹³⁴ Interviewed in Goma, September 26, 2013.

¹³⁵ Interviewed in Goma, September 26, 2013.

Often, victims cannot afford the travel costs associated with attending various offices and courts, particularly if they have urgent expenses such as health care (Mansfield 2009, 393). Women are often unaware that some of these costs can be waived, and judicial staff may not encourage such practices because of their own shoe-string budgets (Amnesty International 2011, 31).

Additionally, women trying to access justice may be faced with additional costs borne of corrupt processes. Deep-rooted corruption in the judicial process in DRC is well documented, ranging from judicial staff taking bribes for the implementation of warrants, overruling sentences, changing decisions, and allowing escape from prison (Amnesty International 2011, 39–41); a key contributor to this corruption is the poor pay and working conditions of justice officials. Many women participants identified the resultant disadvantage, which favoured financially better off perpetrators. Accounts of accused persons buying their freedom were told over and over again by women participants: *“Your voice will never be heard ... they will not do anything to him because he has his money. He will give part of it and go back his way.”*¹³⁶

4.2.5 Distance of justice

As mentioned earlier, formal justice was not accessible to many women participants due to the physical distance between her and legal actors and organs: *“It is often times is so far away but it’s just not this, you can’t leave your family and go all the way to Goma and try to pursue a case because if you get here, where will you stay, who is gonna feed you where will you sleep?”*¹³⁷ Many women in DRC live in remote and isolated areas, for whom ongoing security issues can also present a challenge (Oxfam 2015, 1). This issue of distance is exacerbated by the fact that judicial proceedings are often fraught with delays. The duration of proceedings, from entry of the case into court until the delivery of the final judgment, lasted on average 142.9 days, despite legal stipulation that trials should only last three months (UNDP 2011, 50).

The distance to obtaining justice may also give rise to other challenges that may diminish the quality of justice processes, and ultimately impact on the outcome of justice for some. Judicial actors may be limited in their capacity to travel around the country to perform their duties, due to a lack of adequate resources (UNHCR 2010, [912]). Moreover, legal clinics and NGOs are generally located in towns, and may be inaccessible to those from remote areas (UNJHRO 2014, 21). Finally, distance may pose challenges for investigation, gathering, and preserving evidence; despite awareness campaigns around the fact that presenting for treatment within 72 hours of rape will give the “best chance of preserving medical evidence”, distance is one of the factors that can prevent victims from obtaining treatment within that time frame (Redress International 2012, 9). The majority of women in eastern DRC do not live within four hours walking distance of a hospital, or other medical facility (Johnson et al. 2010, 559).

4.2.6 No outcomes from justice

Many of the women participants stated that, even if they are able to access justice and have their case heard, justice failed them because it did not deliver anything to them: *“[W]e were*

¹³⁶ Interviewed during Validation Workshop, June 15, 2015.

¹³⁷ KI, interviewed in Goma, April 23, 2014.

out of energy, starving and finally you benefit nothing from the trial.”¹³⁸ MONUSCO reported that, in 2010–2011, fewer than one in ten prosecutions resulted in a judgment (2012, 20). Poor outcomes in a case pose difficulties for individual complainants, in terms of disappointment, upset, and lost time and costs: “[I]n the end, after victims have undergone a complex process and risked shame, humiliation and fear of reprisals, they ultimately receive nothing. This causes re-victimization and discourages other victims from filing similar cases” (Aho et al. 2013, 17).

4.2.7 Towards better access to justice for women – mobile courts

We now turn to what is arguably one of the most productive developments for gender justice in DRC, in closing the distance between women and justice – specialised mobile gender courts. While few of the women with whom we spoke had direct experience of the mobile court system, several key informants identified mobile courts as an opportunity for greater justice for women: “[T]he mobile courts which are now organized in the villages ... I think that that is a good opportunity because those women all alone could not have referred that matter to justice, but because it was these are things which happened to everybody’s knowledge, there were organizations in place which knew it and which denounced the cases. Today, these are proceedings going on in regular legal formalities. It is a real opportunity for women.”¹³⁹

With DRC’s rugged terrain, and many isolated areas unconnected by roads and infrastructure (OSISA 2012, 12; Khan and Wormington 2011, 17–18), a mobile court scheme which would enable formal judicial institutions to come to those most isolated from their workings was thus identified as a priority for justice in the Ministry for Justice’s 2008–09 “Roadmap” (IBAHRI and ILAC 2009, 26). Mobile courts are expressly authorised under the Constitution (Rispo 2014, 18; Khan and Wormington 2011, 19), and are wholly Congolese innovations, introduced into the legal system as early as 1979 (Rispo 2014, 9). The specific goal of mobile courts is to improve access to justice for women and communities in remote and regional areas; however, international donors have specifically developed and implemented mobile *gender* courts to prosecute SGBV; the most prominent donors include *Avocats Sans Frontières* (since 2004), and the American Bar Association Rule of Law Initiative (in collaboration with MONUSCO, HEAL Africa and Panzi hospitals) (since 2008). Mobile gender courts now operate in North and South Kivu, and Maniema (Maya 2012, 34; Rispo 2014, 9).

Trial procedures are the same between mobile and fixed courts (OSISA 2012, 19; Aho et al. 2013, 14), but mobile courts are formed on an ad hoc basis. Statistically, their work turnover has been impressive; for example, ABA ROLI conducted more than 80 mobile courts in rural areas of North Kivu, South Kivu, and Maniema provinces, between 2009 and 2014; this allowed more than 1100 cases to be heard (ABA 2015, 26). In 2008–2012, it facilitated nearly 900 rape trials in both mobile and “brick and mortar” courts. 60%–75% of the cases heard by these mobile courts are rape cases; other crimes include instances of robbery and pillaging (Rispo 2014, 10; Maya 2012, 34). The conviction rate has remained steady at roughly 60% in both military and civilian courts (Maya 2012, 34).

¹³⁸ Interviewed in Minova, April 19, 2014

¹³⁹ Interviewed in Goma, April 24, 2014.

Perhaps the landmark mobile court case, organised by the Tribunal Militaire de Garnison de Bukavu in Walungu, South Kivu, remains the 2012 trial for the Fizi rapes, during which a mobile court prosecuted the only defendant (Lieutenant Colonel Kibibi Mutuara) who might otherwise have attracted the attention of the ICC (Maya 2012, 35). However, the tale was not so optimistic in another major case, the Minova rape trial (2013), during which 14 lower-ranking officers and 25 rank-and-file soldiers of the FARDC were put on trial in Goma, on charges including war crimes, rape, and various other military offences. Despite over 50 days of hearings in Goma and Minova, only two of the rank-and-file soldiers were charged with a single rape each; the high-level commanders with overall responsibility were never charged, and the lower-ranking officers were all acquitted (HRW 2015c, 1–2).

For the purposes of considering gender-sensitive transitional justice initiatives, it is important to note mobile courts' active integration with other services. In addition to funding mobile courts, ABA ROLI supports 15 legal aid clinics in eastern and central DRC, which provide services primarily to survivors of SGBV. Between 2008 and September 2014, these clinics provided legal counselling to 18,081 survivors, and helped file 10,110 cases with local civilian and military authorities; this has resulted in 1748 trials and 1225 convictions (ABA 2015, 23–24). Mobile courts may also be linked with non-legal organisations, to provide medical, social, and economic assistance to victims and conduct community education activities; medical assistance, in particular, is usually provided to survivors through a series of partnerships with organisations such as HEAL Africa and Panzi Hospital (Khan and Wormington 2011, 19).

Mobile courts have been broadly praised as a whole for being professional and efficient (OSISA 2012), and “unquestionably deliver[ing] on their undertaking to bring justice to the remote reaches of eastern Congo” (Klosterboer and Hartmann-Mahmud 2013, 69). They are building judicial capacity in DRC more broadly, and have aided in the public image of the justice system as they are less likely to be susceptible to bribery and corruption, given that they are organised and monitored by international organisations (IBAHRI and ILAC 2009, 26–27). Importantly, it has also helped to sensitise communities to the issues and life challenges surrounding sexual and gender based violence, thereby helping to reduce stigma for women survivors of such violence (OSISA 2012, 28–30).

4.3 Informal and traditional justice

Many participants advocated that effective justice for women necessitated a more holistic and integrated approach which includes both formal and informal justice measures and responses, appropriate to women's needs. Indeed, participants frequently spoke about their interaction with informal sites of justice, including through health care and the church.

4.3.1 The role of the church in delivering justice to women in DRC

Many women viewed the church as an agent of justice, a core pillar of community, and a source of social support for women: “*I'm in a church, it's a group in the church. In that group we just pray, we pray for each other.*”¹⁴⁰ The church was also frequently depicted by women participants as a core pillar of community and a source of social support within the community for women “*I'm in a church, it's a group in the church. In that group we just*

¹⁴⁰ Interviewed in Rutshuru, September 23, 2014.

pray, we pray for each other ... and as I have that problem with my kids – they came to my house and they pray for my son and we pray for other people every Saturday.”¹⁴¹

Informal mechanisms established within churches have been seen to play a role in delivering justice within communities. For example, the *Comités des Sages* and *Communautés Ecclesiales Vivantes* in the Roman Catholic Church support community reconciliation (Kamwimbi 2008, 371); such structures “have the power to collect complaints from the victims and to help promote reconciliation,” borrowing from traditional mechanisms of mediations, negotiations, conciliation, and reparation (Kamwimbi 2008, 371). Kelly et al. (2012, 294) also found that assistance from the church (in such forms as micro-credit and counselling) was seen as helping couples stay together after sexual violence. That said, churches were also at times a site of ostracism for survivors, and both men and women highlighted the need for broader education, pointing to religion’s “potential to change the culture of repudiation” (Kelly et al. 2012, 294). The need for broader education was confirmed in the present study with some participants stating that at times some within the church had advised them to persevere and keep quiet about their experiences of rape and domestic violence. Other participants mentioned that churches sometimes excluded those from other denominations from assistance.

4.3.2 Customary and traditional justice in DRC

While the customary courts created under colonial rule were replaced with *Tribunaux de Paix* (Peace Courts), and magistrates replaced local people of import as judicial decision-makers (Kamwimbi 2008, 362), many areas in DRC – particularly rural areas – still use chiefs as judges. These tribunals have been criticised as using “retrograde” customs, discriminating against women, and lacking accountability in terms of compliance with international principles of law and justice (Kamwimbi 2008, 362–63). Other traditional systems of justice that operate in villages typically involve elders mediating and resolving disputes; these mechanisms focus on “reparative justice, forgiveness and reconciliation” (Kamwimbi 2008, 363).

Compared to participants in Uganda and Kenya in this project, relatively fewer women in DRC talked about their interactions with customary and traditional forms of justice. However, some women described traditional justice as antecedent to formal justice: “[W]hen you have conflict you can go to local leaders, such as those leading a group of ten families, Chiefs of quarters, chiefs of localities that hear you. If he cannot find a solution, you bring the case to police.”¹⁴² Women most often use traditional and community-based justice processes in relation to family and land disputes;¹⁴³ however, traditional justice practices may have been weakened by the displacement of people away from their homes and communities: “[R]eport to whom, we were displaced from the village and all the houses of the village were burnt.”¹⁴⁴

However, informal justice may be seen by younger Congolese women as a feature of the past, connected more to their parent’s generation than their own. Many women with whom we spoke expressed disappointment with the lack of support and assistance they received from

¹⁴¹ Interviewed in Rutshuru, September 23, 2014.

¹⁴² Interviewed in Bweremana, September 20, 2014.

¹⁴³ Interviewed in Goma, September 26, 2013.

¹⁴⁴ Interviewed in Minova, April 19, 2014.

within their communities in resolving disputes: *“If my community would help me, I wouldn’t come here and tell you again that I have this need.”*¹⁴⁵ Perhaps traditional, communal, and customary practices in DRC have themselves fallen prey to the effects of protracted violence, community disintegration, and corruption (Kamwimbi 2008, 363–64). Some women participants certainly described traditional justice processes as faltering, or sharing the same shortcomings as formal justice processes: *“The traditional system is there but it is not a clear system, it is the different processes within it... and the thing which make women difficult to access to the traditional system is money. I think you have to pay some of these people.”*¹⁴⁶

Traditional justice processes may also perpetuate social and cultural norms and practices that posit women as chattels, and serve to entrench gender inequalities. Female genital mutilation, discriminatory inheritance laws, and using cultural practice as a defence to crime (Kamwimbi 2008, 363; Fielder 2013), are just some of these norms and practices. As with formal justice, women also provided examples of their exclusion from informal justice processes: *“The king called the priests, pastors, and directors of schools, they went all there for the meeting but for us we can’t know what they talked about because we don’t have our husbands ... there was no women.”*¹⁴⁷ In response, some new informal community-based systems of justice have sprung up, with women banding together to address justice issues within their community: *“I will give an example. When we have discovered that there is a woman that wants to jeopardize our group, we call a meeting, we talk. There, we provide her with pieces of advice and if she finds that she were about to destroy the group, then she apologizes and conforms herself to the group’s norms.”*¹⁴⁸ However, even these processes – driven by women, for women – may sometimes exclude other women: *“I was in [a] women’s association and we were requested to cultivate onions and all of us cultivated the onions and during the harvest time, I was ill and they sold all the harvested onions, they did not give me anything, I was so disappointed and this is the reason that I decided not taking part to any women organization.”*¹⁴⁹

Women participants’ reluctance to use informal and community justice mechanisms accords with the findings of Scott et al. (2013), who found in their survey of 998 adults in four eastern DRC provinces, that the majority of respondents favoured the legal system over community mediation to obtain justice for SGBV; despite this, 61.1% of SGBV survivors nevertheless reported being forced to accept community mediation (2009, 391). An earlier study conducted by Oxfam, however, found that almost all the interviewees had more confidence in resolving their problems through local or traditional mediation mechanisms (including traditional authorities and civil society-supported structures, such as local peace committees and the Church) than through police and other justice institutions (2012, 22).

4.4 Transitional justice

Broadly speaking, transitional justice strives for accountability, reconciliation, and redress for victims in the aftermath of massive human rights violations, following periods of political turmoil, state repression, or armed conflict (Domingo 2012, 3; Olsen et al. 2010a, 11; OHCHR 2010, 447). Often, transitional justice operates within a context “marked by devastated institutions, exhausted resources, diminished security and a traumatised and

¹⁴⁵ Interviewed in Minova, September 21, 2014.

¹⁴⁶ KI, interviewed in Goma, September 26, 2013.

¹⁴⁷ Interviewed in Bunyakiri, September 26, 2014.

¹⁴⁸ Interviewed in Rutshuru, September 22, 2014.

¹⁴⁹ Interviewed in Rutshuru, April 22, 2014.

divided population” (OHCHR 2010, 447). A key concern of transitional justice is “to restore dignity to the victims of human rights violations through the establishment of provisions for justice, truth and reparation for the wrongs they have suffered” (OHCHR 2010, 447).

The DRC has had limited success in its transitional justice efforts, particularly when evaluating those efforts from the perspective and experiences of women impacted by violence (CEDAW 2013); indeed, participants commonly did not know what transitional justice was, or found it difficult to provide examples of successful transitional justice initiatives in DRC: “[W]hen there is conflict, the formal justice is really kneeling before and hardly works ... so there are no formal mechanisms organized to manage the transition until the restoration of the justice system ... which is why at the community level, there is still a malfunctioning justice system ... there are still wounds which are not yet healed because through the transitional justice, we can heal some wounds in the community but the transition failed.”¹⁵⁰ Even those who did have some knowledge or experience of transitional justice in DRC were of the predominant view that “[t]hose institutions are there but they have not performed well.”¹⁵¹ Factors that have rendered transitional justice efforts impotent at a national level include: non-recognition of the Government in some areas of the country; inadequate resourcing of transitional justice processes and mechanisms; diminished human resources resulting from low and lacking educational standards; power-sharing agreements in post-conflict security arrangements; and a lack of political will (Hall and LaRocco 2012, 5; OHCHR 2010, 450; Davis 2013, 289–90).

4.4.1 Judicial responses

As attested to by many women participants in this research, judicial responses have been inadequate. Only 39 prosecutions “connected with an armed conflict or committed as part of a widespread or systematic attack against civilian populations” have been identified over the period 2009-2014 (Candeias et al. 2015, 3). The majority of these cases (27) involved SGBV, charged as crimes against humanity and/or war crimes, and including rape, mass rape, and sexual slavery; however, only 11 saw a conviction and sentence follow (Candeias et al. 2015, 41–67). In many of these cases, investigations faltered or were suspended, and no trial resulted; even in those cases tried, the inadequacies of the judicial system in DRC are evident, with the Minova case (RP 003/2013 and RMP 0372/BBM/013) providing a key example of these multiple deficiencies. However, it should be noted that this trial did exhibit commendable aspects, including the fact that the military judges conducted proceedings effectively, and, together with prosecutors, applied relevant international laws and principles (HRW 2015c, 3). This is encouraging, given the concerns that have previously been raised about Congolese judges lacking knowledge on international law and human rights (UNHCR 2010, [915]).

Nonetheless, it is clear that if victims in the DRC are to obtain the justice they deserve, the prosecution of serious crimes (in particular, rape and sexual violence) needs to form part of a clear strategy directed towards ending impunity.

¹⁵⁰ KI interviewed in Goma, April 18, 2014.

¹⁵¹ Interviewed in Rutshuru, April 21, 2014.

4.4.2 Proposal for mixed chambers

Some of the challenges faced by the Congolese courts in prosecuting serious crimes may be addressed through the use of mixed chambers (HRW 2011, 3). There have been numerous proposals for such chambers in DRC, made by international donors, Congolese civil society organisations, the Human Rights Watch, and the UN High Commissioner for Human Rights.

According to both Human Rights Watch (2009a, 2) and the DRC Country Manager for the Open Society Initiative for Southern Africa (quoted in Lee 2012), the main rationale for using mixed chambers to try war crimes, crimes against humanity, and genocide is two-fold. Firstly, the nature and prosecution of these crimes is complex; consequently, “including international experts with knowledge about how to handle complex criminal investigations, prosecutions and trials” can help overcome the difficulties faced by national judiciaries that lack experience with these types of cases (HRW 2009a, 3). Secondly, existing attempts to prosecute these crimes have been plagued by political interference and institutional weakness. The integration of international expertise and resources is therefore seen as a means of promoting impartiality and fairness in the judicial process, and a way of supporting judicial reform within DRC.

The proposed structure and operation of mixed chambers in DRC

In support of a speech by President Joseph Kabila to both chambers of the DRC Parliament in October 2013, the cabinet of the Minister of Justice and Human Rights prepared a draft law on the use of mixed chambers (also referred to as “specialised courts”) (HRW 2014a). According to HRW (2014a), the proposed chambers: would be a domestic tribunal embedded in the nation’s appeals courts; would only have “jurisdiction only over war crimes, crimes against humanity, and genocide”; and, for the initial years of the chambers, would have present international staff with extensive experience in prosecuting international crimes. According to a U.S. Department of State (2014) briefing on mixed courts, there would be a majority of Congolese representatives on the court at both trial and appellate levels; international staff would provide on-the-job training to national staff, and reinforce the independence of the chambers from potential political and/or military influence.

Arguments for and against mixed chambers in DRC

Support for mixed chambers has not been unanimous. A report compiled by Rightslink (2011) for the Club des Amis du Droit du Congo (CAD) examined the experiences of mixed courts in Bosnia, East Timor, Cambodia, and Kosovo, and noted that the proposal for a mixed chamber in the DRC raises some concerns. In addition to previously stated concerns about the capacity of the DRC judicial system (for which mixed courts could present an additional burden and drain of resources), the Rightslink report noted the following issues. Firstly, there is the question of whether the court will possess jurisdiction over the armed forces; there exists a concern that Article 91 of the proposed legislation might be used to exclude jurisdiction over military personnel (HRW 2014a). Secondly, there is an issue of a lack of consistency between the text on the specialised court, and the draft legislation for the implementation of the Rome Statute (including on the permissibility of the death penalty). There is also a question regarding whether or not to include international judges, or if the chambers should be limited to Congolese nationals (Rightslink 2011, 71; HRW 2009a, 9).

Additionally, the UN Mapping Report 2010 highlighted that any such court should establish that amnesties granted for crimes under international law do not apply before it (OHCHR 2010, 473). To date, there have been three amnesty laws in DRC, and a presidential decree. It is unclear how many people in total have been granted amnesty in DRC, but at least a thousand have been granted amnesty under the 2014 laws (US Department of State 2014; AFP 2015a).

Whether mixed chambers will be implemented in DRC is yet to be seen. If the establishment of mixed chambers does eventuate, it is imperative that the court ensures it is gender-sensitive, and deliberately shaped to meet the needs of women.

4.4.3 *International Criminal Court*

Arguably some successes in prosecution of serious crimes in DRC have been seen at the international level. The Congolese government in 2004 referred to the ICC the investigation and prosecution of international crimes that have occurred on DRC soil since 2002. The ICC has to date prosecuted six individuals from the DRC (Thomas Germain Katanga, Callixte Mbarushimana, Sylvestre Mudacumura, Mathieu Ngudjolo Chui, Bosco Ntaganda, and Lubanga Dyilo), and two (Katanga and Lubanga) have been convicted. However, none have been convicted on the grounds of rape-related crimes, despite five of the six cases prosecuted including charges of rape; in Katanga's case, the acquittal on charges pertaining to rape and sexual slavery were seen as "a devastating result for the victims/survivors of the Bogoro attack as well as other victims" (Women's Initiatives for Gender Justice 2014, 1).

Some commentators have questioned the effectiveness and appropriateness of the ICC in delivering justice to the people of DRC, particularly to women survivors of sexual violence (Lake 2014, 25–27; Lee 2012). The ICC had up until earlier this year not convicted any individual of rape or crimes related to sexual violence. The DRC cases (especially the Katanga case) demonstrate the pragmatic difficulty of bringing prosecution for sexual crimes to the ICC. Arguably, they have contributed to the invisibility of sexual violence in the DRC; this risks further perpetuating discrimination against women (Breton-Le Goff 2010, 24–25). However the recent decision of the ICC in *The Prosecutor v. Jeane-Pierre Bemba Gombo* (ICC-01/05-01/08) offers new hope. In March 2016, former Vice-President of the DRC, leader of the *Mouvement de Libération du Congo* (MLC), and Commander-in-Chief of its military branch, the *Armée de Libération du Congo* (ALC) – was found guilty of a series of offences perpetrated in the Central African Republic (CAR) between October 26, 2002 and March 15, 2003, including rape, as a crime against humanity (Art. 7(1)(g)) and as a war crime (Art. 8(2)(e)(vi)) ICC-01/05-01/08-3343 [752]). Perhaps the judgment's greatest promise is in establishing a precedent for the ICC to prosecute sexual crimes in conflict settings marking "the first time that the ICC has convicted someone for rape as a war crime" (Amnesty International 2016; Women's Initiatives for Gender Justice 2016). The Chamber during sentencing was quick to point out that the highest sentences it imposed were the 18 year sentences for rape crimes (ICC-01/05-01/08-3399 [95]). The judgment has been praised for sending out a clear message,

that impunity for sexual violence as a tool of war will not be tolerated ... that military commanders and political superiors must take all necessary steps to prevent their subordinates from committing such heinous acts and will be held accountable if they fail to do so. (Amnesty International 2016)

Many of the women participants in this research were either unfamiliar with the ICC, or doubted its value: “[s]o, what will I go to the International Criminal Court if already at the local level; I did not get any solution?”¹⁵² This was a view also echoed by some key informants interviewed in this project: “[women] really feel discouraged about the ICC process because they are raped, they know that FDLR soldiers raped them but the ICC is saying that they don’t have evidence.”¹⁵³ Generally, however, key informants recognised that whilst “not important for local areas ... it is a good thing to have arrested rebellion heads such as Bemba, Ntaganda, and we wish others had been captured and judged ... [because] there is a culture of impunity here, so that is why the ICC could be useful.”¹⁵⁴

4.4.4 National reparations

As previously noted by women participants, reparations are an important part of transitional justice; they “provide justice to victims and contribute to the construction of justice and peace ... they can serve as an apology to victims, as a public acknowledgement of crimes, as an acknowledgement of state responsibility for such violations, as a way to subvert the structures of subordination that might have led to the violations of rights in the first place, or as services to victims to mitigate impacts of abuse” (Aho et al. 2013, 20). In the DRC, “the types of reparations awarded are always monetary or punitive. Victims in the DRC usually are not aware that apologies and non-monetary compensation are available to them as reparation, nor is it common for actors in the field to institute such options” (Aho et al. 2013, 21–22).

The DRC government has discussed a draft law for the establishment of a fund to allow the State to pay reparations to victims of rape and sexual violence (CEDAW 2013, 3); however, progress on this seems to have stalled indefinitely. Congolese courts have also ordered the government to pay victims compensation in at least eight cases in which those convicted were members of the Congolese military (Parmar and Mushiata 2012, 2). The only known payment of compensation for rape by the DRC government occurred in 2014, when 30 victims of the 2003 mass rape in Songo Mboyo received financial compensation from the Government; 29 victims received the equivalent of US\$5000 as compensation for rape, and US\$200 for looted property. The mother of one of the victims who died from complications of rape received the equivalent of US\$10,000 (UN Secretary-General 2015, 8–9).

Regardless of this breakthrough, post-trial administrative procedures (e.g. the requirement to pay 6% of the total reparations granted, in order to enforce the judgment) continue to present problems for issuing reparations. Furthermore, in 2013, the Minister of Justice told FIDH that she had requested 44,633 million Congolese Francs to discharge 150 cases; only 0.7% of the amount requested was made available (FIDH 2013, 61). However, the Trust Fund for Victims (TFV), created under Article 70 of the Rome Statute and funded by various states, offers some hope for future court-ordered reparations to victims in DRC cases before the ICC. A mandate for paying reparations is activated once there is a conviction, with a subsequent order for reparations. In the Lubanga and Katanga cases, the ICC also requested and heard submissions from the TFV on proposed implementation plans for collective reparations (ICC 2015b).

¹⁵² KI FGD, interviewed in Rutshuru, April 22, 2014.

¹⁵³ KI, interviewed in Goma, September 26, 2013.

¹⁵⁴ KI, interviewed in Goma, September 26, 2013.

4.4.5 Institutional reform and governance

Institutional reform (of police, armed forces, courts, monitoring bodies) is widely recognised as a key element of effective transitional justice policy because it dismantles the “machinery of abuses and prevent[s] recurrence of serious human rights abuses and impunity” (Domingo 2012, 4; ICTJ 2015a). In 2013, 11 countries in the Great Lakes Regions signed the Framework Agreement for Peace, Security and Cooperation in the Democratic Republic of Congo and the Region. This agreement committed signatories to taking concrete steps to put an end to recurring cycles of violence, and facilitate the administration of justice through regional judicial cooperation (Candeias et al. 2015, 1–2). It named five institutions to be established in DRC in its transition to democracy: a truth and reconciliation commission; a national human rights observatory; a high authority for media; a national electoral commission; and a commission for ethics and the fight against corruption. However, DRC’s attempts to establish these core institutional pillars towards democratisation have largely failed.

Truth and Reconciliation Commission

As previously discussed, a Truth and Reconciliation Commission (TRC), presided over by Bishop Jean-Luc Kuye Ndongwa Mulemera, was established in DRC (July 2003 – February 2007), with a mandate to “promote consolidation of the national unity” per Article 155 of the Transitional Constitution. Articles 154–160 tasked the Commission with deciding the truth among conflicting versions of history, and promoting peace, reparation, and reconciliation. However, it was criticised because many members had informal ties with those implicated in the crimes examined (US Institute of Peace 2003), and members’ vested interests in ensuring that the crimes and atrocities committed by their respective groups were overlooked inhibited the TRC’s functioning. Furthermore, it was “underfunded and largely ignored” (OHCHR 2010, 478), and it failed to discharge its duties: to negotiate reparations between different factions, under Article 41 of the Transitional Constitution; and to investigate atrocities, hold any public hearings, or take witness statements to establish the truth about the conflict and violence (OHCHR 2010, 478). Only recently have reparations been paid to any victims, and these are grossly inadequate (UN Secretary-General 2015, 8–9).

If a future TRC is to be established in DRC, its independence must be guaranteed and it must be resourced properly so as to be able to carry out its mandate. The UN Mapping Report (OHCHR 2010) suggested some basic principles for establishing a future TRC. Firstly, there must be broad consultation, including with victims and civil society. Secondly, the TRC should have a precise and realistic mandate, limited to periods of history where the most serious violations occurred; moreover, this mandate should not extend to providing mediation or reparations. The process of selecting members is also paramount, as this will determine the body’s legitimacy; it must command the trust of the people. On this, the possibility of a future TRC having international membership has been raised (OHCHR 2010, [68]). Its composition, structure, and processes must also be sensitive to the needs of women, and promote women’s participation, agency, and voice.

The National Human Rights Observatory

The National Human Rights Observatory (NHRO) was established under Law 04/20 of July 2004, as an independent and autonomous body with a judicial personality. However, “[p]olitical interference could be seen in almost all of its work and it was accused of being biased towards the government. The agency was only located in Kinshasa due to resource constraints and had few full-time staff. Staff appointments were based on political considerations. Periodic reports of the agency mainly documented human rights abuses rather than actions taken against such abuses by the agency” (African Democracy Encyclopaedia Project 2009). The NHRO did little by way of transitioning DRC to democracy, or recognising the rights of women survivors of sexual violence. It has been defunct since July 2006.

The Ethics and Corruption Commission

The Ethics and Corruption Commission (ECC) was established in 2003 to “raise awareness of ethical issues and fight against corruption, increase the capacity of national institutions to promote integrity; ensure that all national institutions involved in the fight against corruption have adequate operating capacity; investigate violations of ethical values and corrupt activities; and promote transparency in the political parties,” per Articles 154–155 of the Transitional Constitution (Chêne 2014). The ECC engaged in a series of activities, including conducting a survey of legal professionals that sought to ascertain their knowledge of current anti-corruption laws. It examined formal complaints or denunciations, and conducted investigations into allegations of corruption. It organised workshops to familiarise the public with the Anti-Corruption Law, and the Code of Ethics of Public officials. It also coordinated with other major state bodies to repress corrupt activities (including breaking up a corruption network, and uncovering tax evasion by state and private enterprises) (Kodi 2008, 57–62).

Like other attempts at institutional reform, the ECC was crippled by major resource and logistical problems, weak leadership, in-fighting between various bodies, nepotism, insufficient technical expertise, and lack of independence, so that it was not carried over into the 2006 constitution (Chêne 2014, 8).

4.4.6 Corruption and security sector reform

These failed attempts at institutional reform are clearly highlighted by the little mention made of any of them by the women participants in this project. However, widespread corruption and lack of accountability and governance at an institutional level were identified by many women in this project as a barrier to women and communities obtaining justice in DRC. Many of the women and key informants with whom we spoke recognised an urgent need for wide-ranging and effective institutional reform: “*There are no mechanisms in place to follow for justice officials, they can do what they want. ... There needs to be justice sector reform – the state needs to take this seriously, the international community needs to put a lot of pressure on the government to reform the system.*”¹⁵⁵ A number of key informants identified poor working conditions for civil servants and justice sector professionals as a major contributor to this corruption: “*The OPJ has no State matriculation number... His salary is just ‘Corruption.’ He, himself never receive those 60,000 Congolese Francs.*”¹⁵⁶

¹⁵⁵ KI, interviewed in Goma, April 23, 2014

¹⁵⁶ Interviewed during Validation Workshop, June 15, 2014.

One of the key pillars of action for DRC noted in the Sun City Agreement was “to continue, and deepen security sector reform, particularly with respect to the Army and the Police” (2). Security sector reform (SSR) is not only needed to address harms that the civilian population continue to suffer at the hands of the military, but has been identified as fundamental to eliminating human rights violations and ending the humanitarian crisis, stimulating growth and development, and keeping regional conflicts in check (Eastern Congo Initiative 2012, 8). Two overarching reasons have been identified as causing the ineffectiveness of SSR in DRC: firstly, a lack of political commitment from the Congolese government, and secondly, poor coordination of assistance from donors (Eastern Congo Initiative 2012, 8). Some of the main priorities for more effective SSR include streamlined coordination, vision, and oversight within the international community; a whole-government approach (including proper engagement by the DRC government with MONUSCO); appropriate disarmament, demobilisation and reintegration (DDR) processes; and devising practical and realistic plans and benchmarks that can be implemented to achieve sustainable peace (including addressing the issue of gender mainstreaming) (Eastern Congo Initiative 2012, 10–21).

It has been suggested that the Congolese government’s non-commitment to SSR comes down to the government not wanting a professional and effective military (EIC, 8). Given that, for a long time, military power equated to political power, military reform would pose threats to the entrenched interests of those wielding power, and to the government’s sovereignty (Clement 2009, 18; Eastern Congo Initiative 2012, 8; Davis 2009, 18). As a result, military justice has never ranked high on the SSR agenda (Clement 2009, 12). It has both failed to protect the civilian population, and manifested a cycle of corruption owing to insufficient funding of the army, poor prison facilities (Davis 2009, 15, 18), and lack of implementation of any strategic plan (Clement 2009, 13, 18; Eastern Congo Initiative 2012, 9). In fact, it is unknown how many members the armed forces has, or their identities (Davis 2009, 18). Inadequate wages for soldiers and police which are frequently unpaid (Eastern Congo Initiative 2012, 9) has also meant that these personnel often take matters into their own hands (e.g. by extorting the civilian population, illegal taxation, and forced labour) (Clement 2009, 13).

Prior to 2006, international efforts had been mostly coordinated by the International Committee to Accompany the Transition (CIAT). However, since then, the Congolese government has refused to establish a successor body, rejecting it as unacceptable (Eastern Congo Initiative 2012, 13). Since 2006, the efforts of international donors have been piecemeal, and thus unsustainable (EIC, 3); this failure to coordinate has been due to the culture of secrecy, different approaches to SSR, and refusal by the Congolese government to coordinate with its SSR partners (Clement 2009, 15–16; EIC, 10). Any cooperation that came about was usually ad hoc, bilateral, and related only to specific issues (Clement 2009, 15).

The piecemeal approach of SSR is also mirrored in the DDR process. What has resulted has been described as something of a “republican army,” where incompetent or abusive soldiers have been absorbed rather than dismissed (Clement 2009, 10). Vetting procedures, which are intended to screen and exclude those who have committed human rights abuses, have been mostly non-existent and have resulted in top ranks of the army being filled by perpetrators of human rights abuses (Clement 2009, 13; EIC 25). It has been suggested that the processes that have been employed have encouraged the worst perpetrators to elect to stay with the army, over demobilising (EIC, 17). Despite this, there has been surprisingly little in-fighting, given the different origins of the soldiers (Clement 2009, 20).

Another issue that has been highlighted as lacking in SSR approaches is gender mainstreaming (Clement 2009, 14). Given the high proportion of female victims and underrepresentation of females in the army, it has been suggested that increasing the number of female personnel in the Congolese army and within international actors, and implementing fast-track procedures for females to rise in army ranks, might help combat gender-based violence (Clement 2009, 14–15). Indeed, women participants and key informants in this research both strongly recognised the need for women to widely be recruited as part of broad institutional reform: *“As for the police, we have been giving favors to women as far as recruitment is concerned, we made sensitization campaigns asking the beautiful women that are already in the police to go to different universities so as to sensitize women so that they can enrol the police.”*¹⁵⁷

According to a key informant, however, some reforms are already underway in DRC within the security sector, to focus on ensuring police are well trained and sensitised to anti-corruption values and attitudes: *“But, we have initiated so much internal reform wishing to change the mentality of the police, reminding them that they are issued from the population, as I have come from the population, and that they will get back to the population at the end of their police career. So, I am not the population antagonist, but a servant of the population. ... We have observed that they understand and that there is already so much change as far as they are concerned and the population more and more trusts us.”*¹⁵⁸

CHAPTER 5: CONCLUSIONS AND RECOMMENDATIONS

This research project spoke to 113 women impacted by violence, from the Goma and Bukavu regions of the DRC. The methodology of this project was deliberate in situating women’s feelings, thoughts, and experiences of justice at the centre of the research, and in recognising women’s agency; this was to ensure that women could be heard, to have themselves and their experiences acknowledged and validated. By voicing women’s views and experiences regarding their justice needs, and highlighting such catastrophic consequences of violence as physical disability, discrimination, deprivation and social exclusion, a key message arose that *gender-sensitive justice, to be effective, must be holistic rather than atomistic.*

Justice must take account of the complex social, economic, cultural, and political context through which women are exposed to an intersecting web of harms; it needs to incorporate legal, psychological, economic, and politico-cultural remedies, as well as allow increased participation for women in the justice and political spaces of their society. Together, these will better enable women to live fulfilled, dignified lives, free from violence and with opportunities to nourish future generations. Accordingly, the following recommendations are proposed.

¹⁵⁷ KI, interviewed in Kinshasa, October 2–3, 2013.

¹⁵⁸ KI, interviewed in Kinshasa, October 2–3, 2013.

5.1 Recommendations

To the Government of DRC:

- The women of DRC need formal State commitment to the development of justice processes that are well resourced and supported in terms of expertise, personnel, and infrastructure. More specifically, barriers that impede women's access to justice – including the cost of justice, distance of justice, gender insensitive, and overly complex and corrupt processes of justice – need to be reformed. Justice should be made affordable, comprehensible, transparent, and in all respects accessible to all women.
- A strong political will to realise compensation and reparations for the women of DRC is required. Provision should be made for the immediate payment of court ordered compensation and reparations to women survivors. A national victims' compensation/trust fund should be established, from which reparations can be paid to women survivors of sexual and other conflict-related violence, in advance of future justice mechanisms.
- Investment in transitional justice processes that are gender sensitive, holistic, coordinated, and integrated towards meeting women's needs are also called for by the women of DRC.
- Peace and security must be prioritised by the Government of DRC, with a strong commitment towards ensuring non-recurrence of conflict and mass violence perpetrated against women, children, and communities. Management of its natural resources should be an important element in DRC's peace and security agenda.
- The culture of impunity for sexual violence must be urgently addressed.
- Ongoing institutional reform of government and the justice and security sectors should be pursued at all levels.
- Transparent, fair, and independent processes towards truth and reconciliation – processes which would enable women's voices and agency to be recognised – should be established. In establishing such a mechanism, the protection of women witnesses must be assured, and truth-telling mechanisms need to be linked to reparations and other transitional justice mechanisms (including prosecution where appropriate), lustration, and institutional reform.

To the international community:

- The ICC should continue its indictment of those responsible for the mass atrocities and breaches of human rights in DRC. The processes of the ICC and its outreach activities should be gender mainstreamed and sensitive to the impacts of violence on women.
- Governments of donor nations and inter-governmental organisations should maintain pressure and lobby the Government of DRC for more national prosecutions of perpetrators, as well as the development of compensation and redress schemes that recognise the harms suffered by women and their lived experiences.
- International agencies and NGOs should commit to delivering to women services and programs that feed sustainable economic, cultural, social, and political empowerment of women in DRC.
- Pressure should be applied by the international community towards the development of a robust truth and reconciliation process for the people of DRC.

For service delivery and programming:

- Quality psycho-social and trauma counselling services are needed to assist women and communities with healing and recovering from conflict and violence. Such services should be tailored to respond to the needs of women, both in terms of complex trauma intervention and less acute trauma, including depression and anxiety. These services need to connect and integrate with other types of services and programs (e.g. economic empowerment and training programs for women). There also needs to be recognition of the link between women's trauma and wellbeing, and the corresponding wellbeing of children.
- Women and children need to be supported in access to all levels of education.
- Programs that empower women, and which genuinely recognise women's agency and voice, need to be propagated. Women need and deserve sustainable services and programs that are tailored to their needs, not just to political or funding agendas.
- Service delivery and programming for women needs to be holistic – recognising women's multiple needs, and available to women in a coordinated and integrated way.

Transitional justice in DRC needs a strong, multi-levelled scaffolding, innervated by strategies to transform the lives of women towards improved health, well-being, empowerment, and self-fulfilment. Government, civil society, and communities must work together on multiple levels in policy development, law reform, service and program delivery, to ensure that justice is served for the women of DRC.