

**Report of the Panel on Remedies and Reparations  
for Victims of Sexual Violence in the Democratic Republic of Congo to the  
High Commissioner for Human Rights**



**March 2011**

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*The photo on the cover page is of a memorial to women victims of war in Shabunda (South Kivu)*

## EXECUTIVE SUMMARY

1. In August 2010, a high-level panel was convened by the United Nations High Commissioner for Human Rights to hear directly from victims of sexual violence in the Democratic Republic of the Congo (DRC) regarding their needs and their perceptions of remedies and reparations available to them. The High Commissioner tasked the panel to assess the functioning of existing judicial mechanisms for remedies and reparations for victims of sexual violence, and to make recommendations on the strengthening of these mechanisms as well as the need for additional mechanisms, particularly to provide access to remedies for victims whose perpetrators are not known. The panel was chaired by Kyung-wha Kang, the Deputy High Commissioner for Human Rights, with Elisabeth Rehn, former Minister of Defense of Finland and co-author of the UNIFEM report on Women, War and Peace, and Dr. Denis Mukwege, Medical Director of Panzi Hospital in Bukavu (South Kivu) serving as members. The panel worked in consultation with the Government of the DRC.

2. From 27 September to 13 October 2010, the panel conducted its in-country work, travelling to Kinshasa, Bukavu, Shabunda, Bunia, Komanda, Mbandaka and Songo Mboyo, and meeting with a total of 61 victims, some individually and some in groups, ranging in age from three to sixty-one years old. Groups included victims who had contracted HIV/AIDS as a result of rape, victims who had become pregnant and had children as a result of rape, victims whose husbands had rejected them following their rape, child victims of rape, victims of rape who had taken their cases to court seeking justice, and victims of rape by civilian perpetrators. In each locality, the panel also met with provincial and local government officials, and convened roundtables with officials in the justice sector, members of civil society and UN representatives.

3. The Panel was informed about efforts undertaken by the Government to address sexual violence, including the adoption of a National Strategy to Combat Gender-Based Violence and the passing of two laws against sexual violence in 2006. The panel found that the needs of the victims of sexual violence it interviewed are largely unmet, particularly in remote areas. The lives they knew have been largely destroyed, and they are suffering greatly - physically, psychologically, and materially. This victimization continues and is compounded by the stigma they often face in families and communities. Their husbands abandon them, and they are socially ostracized. Often this rejection is further compounded for victims who suffer from fistula, victims who become pregnant and bear children as a result of rape, and victims who contract sexually transmitted diseases, including HIV/AIDS. Shifting the stigma from the victims to the perpetrators would have a great impact on the ability of victims to reclaim their dignity and rebuild their lives.

4. For those victims the panel interviewed from North and South Kivu, where armed conflict continues to plague the civilian population, the restoration of peace and security was the highest priority - their "first prayer," their "big dream," and their "greatest hope." Peace and security are seen as the precondition to any restoration of normal life, and victims expressed concern that whatever they are given now to restore their lives can be again destroyed if there is no peace. Among the recommendations of the panel is a call for intensification of efforts to restore peace and security in eastern DRC, with support from countries in the region and from the international community and with equal participation of women, in implementation of Security Council Resolution 1325.

5. Health care and education were among the highest priorities conveyed to the panel by victims, who expressed concern first and foremost for their children. They are determined but in many cases unable to send their children to school. Those who have contracted HIV/AIDS are deeply troubled by concern over what will happen to their children when they die. Many victims who met with the panel have been displaced from their homes, some as a result of the armed conflict and others as a result of rejection by their husbands and families. They expressed the need for socio-economic reintegration programmes, with attention to ensure that they are sustainable and tailored to the economic context.

6. The panel was struck by the difference between the urban centres and the villages it visited in each province. In remote areas there is so little infrastructure that access to any form of assistance or reparation is virtually non-existent. Most women outside the cities are unable to get medical assistance within 72 hours of rape. Nor are there prisons and courts within reachable distance, making detention and trial of perpetrators very challenging and rendering justice unattainable. Shabunda is not accessible by road. Transport is a critical need for law enforcement, as well as healthcare. Even in Bukavu, the panel noted that the police officer responsible for sexual violence investigations has only a motorcycle, which makes it impossible for her to transport arrested persons to detention facilities. Similarly in Mbandaka, the police unit for sexual violence and protection of children has no vehicle.

7. The panel met with victims of sexual violence who have been able to overcome the many challenges of bringing a case to court and getting a judgment that condemns the perpetrators and awards them reparations in the form of damages and interest. These victims expressed great frustration because their perpetrators have escaped from prison while they have not been paid the damages and interest awarded to them by the court, even in those cases where the state has been held liable *in solidum*. This is a matter of widespread concern to judicial officers and provincial government authorities, as well as civil society and the victims themselves. The failure to pay these awards is undermining the judiciary and the confidence of victims in the justice system. The panel recommendations call on the Government of the DRC to take immediate action to pay the damages and interest that have already been awarded to victims by the courts, in installments if necessary, and to make greater efforts to bring perpetrators to justice, including officers with command responsibility. The panel found that widespread sexual violence perpetrated with impunity by illegal armed groups as well as national security forces has led to a widely noted increase in sexual violence perpetrated by civilians as a result of war.

8. Most victims interviewed by the panel are unable to seek justice through the courts because they cannot identify their perpetrators, or in some cases their perpetrators have not been arrested, leaving these victims with no possibility of access to reparation through judicial proceedings, as the justice system does not provide for reparations in the absence of the perpetrator. Victims have a right to reparations, which include restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. There is a need to highlight the responsibility of the government in this regard, with support from the international community. The conflict in DRC is transnational and there is a commonly held view among victims, civil society, and government authorities that there is an international responsibility as well as a national one to address the resulting harm.

9. The panel registered a clear call - from victims, NGOs and government authorities - for reparations. The creation of a reparations fund mechanism for victims of sexual violence whose perpetrators are unidentified or insolvent is envisioned by the National Strategy to

Combat Gender-Based Violence, as a component of the fight against impunity. The panel heard many views on the relative benefits and drawbacks of individual vs. collective reparations, and repeatedly the suggestion was made that both collective and individual reparations should be provided for. Certain needs are more readily dealt with on a collective basis, whereas other needs can only be addressed on an individual basis. Depending on the nature of individual reparations, different levels of victim qualification might be required, if not through judicial proceeding then through an administrative process. The panel noted the distinction to be drawn between humanitarian assistance and reparations, or between development programmes and reparations, reparations being characterized by an element of redress, which acknowledges the harm suffered and provides benefits to remedy that harm, with some component of state responsibility.

10. The panel recommends that a fund to support reparations for victims of sexual violence in the DRC, the need for which is foreseen in the National Strategy to Combat Gender-Based Violence, be established as a matter of priority, with the governance of the reparations fund to include representatives of the Government of the DRC, the United Nations, donors, civil society, and survivors themselves, to best ensure accountability for the allocation of funding and the expenditure of funds. Such a fund should benefit victims of sexual violence in all parts of the country, not just eastern DRC. While there must be some element of government contribution to a reparations fund in recognition of its responsibility to the victims, this participation could take various forms including in-kind contributions, percentage allocation of costs, public statements and other forms of symbolic reparation that recognize the harm suffered by victims. The reparations fund should have the flexibility to respond differently to different needs in different places, and the panel recommends that a decentralized model that allows for reparation projects to be formulated at the local or provincial, as well as the national level, would be more effective in tailoring reparations, particularly collective reparations, to the needs of the victims. A reparations fund should be restricted to Congolese-led initiatives so as to help build national capacity, and the design of a reparations fund should be formulated in close consultation with victims of sexual violence, as well as civil society.

## I. INTRODUCTION

### Terms of Reference/Summary of Mission

1. In August 2010, a high-level panel was convened by the UN High Commissioner for Human Rights to hear directly from and engage in a dialogue with victims of sexual violence in the Democratic Republic of the Congo (DRC) regarding their needs and their perceptions of remedies and reparations available to them. The terms of reference called on the panel to:

- (a) assess the functioning of existing mechanisms for remedies and reparations and other support measures put in place to assist victims of sexual violence;
- (b) in light of this assessment, consider how support measures and mechanisms for providing remedies and reparation in the formal justice system could be improved; and
- (c) make recommendations as to additional mechanisms that might be established, particularly to provide access to remedies for victims whose perpetrators are not known and whose claims therefore cannot be pursued through the formal justice system.

2. Chaired by Kyung-wha Kang, the Deputy High Commissioner for Human Rights, the panel was comprised of Elisabeth Rehn, former Minister of Defense of Finland and co-author of the UNIFEM report on Women, War and Peace, and Dr. Denis Mukwege, Medical Director of Panzi Hospital in Bukavu (South Kivu). A small secretariat led by Jessica Neuwirth, Special Advisor on Sexual Violence to the High Commissioner for Human Rights, assisted the panel in all phases of its work. The panel conducted its in-country work from 27 September to 13 October 2010, with logistical support from Panzi Hospital and the Joint Human Rights Office (JHRO)/MONUSCO.<sup>1</sup> The panel worked in consultation with the Ministry of Justice and Human Rights, and the Ministry of Gender, Family and Children, with authorization of the Prime Minister.

3. Prior to the formal launch of its work in Bukavu, the panel was briefed in Kinshasa by the Special Representative of the Secretary-General in DRC, and other senior officials of MONUSCO, including the staff of JHRO. The panel was also briefed by the Coordinator of the National Strategy to Combat Gender-Based Violence from the Ministry of Gender, Family and Children and by the President of the Congolese Women's League for Elections.

4. From 30 September to 10 October, the panel travelled to Bukavu and Shabunda in South Kivu Province, Bunia and Komanda in Orientale Province, and Mbandaka and Songo Mboyo in Equateur Province. On 30 September 2010 the panel began its hearings with a formal launch event in Bukavu, attended by the Vice-Governor of South Kivu, who warmly welcomed the panel and expressed support for its work.

5. The panel met in closed session with 61 victims in total, some individually and some in groups. Victims ranged in age from three to sixty-one years old, and included four male victims. In Bukavu, the panel included an additional day to meet with seven victims from

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<sup>1</sup> MONUSCO is the United Nations Stabilization Mission in the DRC. The Joint Human Rights Office was created in 2008 as a joint venture between the Office of the High Commissioner for Human Rights and MONUSCO.

North Kivu. In each locality, the panel also met with provincial and local government officials, and convened roundtables with officials in the justice sector, members of civil society and UN representatives. In Bukavu, the panel was joined in several of its meetings with victims by the Secretary-General's Special Representative on Sexual Violence in Conflict, Margot Wallstrom, and his Deputy Special Representative in the DRC, Leila Zerrougi.

6. The panel based its work on a broad understanding of reparations, drawn from the United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the General Assembly in 2005. It asked survivors of sexual violence and other stakeholders to share their experience of the various judicial, medical, psycho-social and socio-economic reintegration measures available and their opinions on existing mechanisms and the need for any additional mechanisms to address their needs and to ensure access to justice and reparations.

7. On 11 October the panel returned to Kinshasa, where it met with the Legal Advisor to the President. On 12 October, the panel shared its preliminary findings with government officials, civil society, UN representatives, and survivors of sexual violence at a day-long forum, which provided preliminary feedback and additional input to the panel on its work. On 13 October the panel held a press conference at MONUSCO.

### **Methodology of the Panel's Work**

8. The panel adopted a victim-centered approach, drawing its conclusions and recommendations primarily on the basis of its discussions with victims about their needs and their perceptions of the remedies and reparations currently available to them, complemented by discussions with government authorities, justice sector officials, and representatives of civil society.

9. The organization of the hearings, including the identification and selection of victims who met with the panel, was undertaken jointly by the Office of the High Commissioner for Human Rights (OHCHR) and the Panzi Hospital, in consultation with the Joint Human Rights Office of MONUSCO (JHRO). The potential security risks to each victim were assessed, and measures were taken to ensure their safety and confidentiality. Psychologists were hired to pre-screen each witness and to be available to the witnesses before, during and after the hearings. The psychologist, as well as the technical assistant who coordinated the selection of witnesses in each province, were present during the hearings.

10. In each province, a survivor/activist was identified as a resource person to support the victims during the hearings and to help the panel understand the broader context of its discussions with victims. Each resource person met individually with the panel as a witness and remained present for its meetings with other witnesses, interjecting to expand on or answer questions from the panel about some of the statements and comments made by victims.

11. The panel met with some victims individually and others in group discussions. Groups included victims who had contracted HIV/AIDS as a result of rape, victims who had become pregnant and had children as a result of rape, victims whose husbands had rejected them following their rape, child victims of rape, victims of rape who had taken their cases to court seeking justice, and victims of rape by civilian perpetrators. Among the victims with

special needs whom the panel met were a girl with sensory disabilities, a young woman who is blind, and four men, two of whom were raped and two of whom were sexually assaulted in other ways. The panel does not purport to have interviewed a statistically based sampling of all victims of rape and sexual violence in the DRC. However, efforts were made to ensure that the panel met with victims representing a broad spectrum of cases: known and unknown perpetrators, national security forces, illegal armed groups and civilians as perpetrators, and diverse ethnic background of victims and perpetrators.

12. In each province, the panel travelled to a remote area for hearings and roundtable meetings to assess the situation for victims of sexual violence located far away from city centers. Efforts were also made to meet with victims of the recent mass rapes that took place in remote villages in Walikale territory in North Kivu and Shabunda territory in South Kivu in late July and August 2010.

13. All victims met with the panel on a voluntary basis, without payment. The costs of their transport and accommodation, if needed, were paid for. They were briefed in advance to prevent the creation of unrealistic expectations about participation in the hearings, and the panel itself also explained to each witness that its purpose was not to offer immediate assistance or reparations, monetary or otherwise, but rather to convey the voices of victims to those responsible for assistance and reparations.

14. Efforts were made by the panel to prevent further traumatization of victims. At the beginning of each hearing, the panel advised victims that they did not need to recount the details of the sexual violence they had experienced – that these details, which had been shared with the secretariat during the preparatory process, had been conveyed to the panel beforehand – and that the focus of the discussion should be on how their lives have been since these events, what services they have had access to, what their current needs are, and what type of remedy or redress might help them get back to the life they had before, restore their dignity, and give them some sense of justice. Still, most victims began by describing the details of their horrific experiences of sexual violence. Sharing their stories with the panel was clearly important to the victims.

15. The panel's meetings with victims were undertaken in closed, secure settings, with members of the secretariat and others kept to a very small number. The hearing rooms were set up in a manner designed to promote informal dialogue between the panel and the witnesses, with all sitting around a small table. The discussions were taped by audio and video for archival purposes, with the consent of the victims. Some of the victims authorized public use of the footage, in some cases with the distortion of their voice or the masking of their face to prevent recognition. A short video with excerpts from the discussions, using authorized footage, was produced with support from the MONUSCO Video Unit and presented at the forum on October 12<sup>th</sup> in Kinshasa, as part of the panel's preliminary briefing on its work.

16. The panel gained much information and insight from its roundtable discussions with civil society, the judicial sector of the government, international NGOs and UN agencies. In particular, it relied heavily on NGOs and other actors with longtime experience working on site with victims.

17. The panel notes that numerous studies have been done and reports written on the challenges of combating impunity for perpetrators of sexual violence in the DRC. There is



widespread understanding throughout the country and in the international community that the difficulties faced by the justice system in the prosecution of perpetrators are largely due to lack of resources and capacity, including lack of infrastructure and access, as well as lack of sufficient political will. The victims who met with the panel as well as the participants in the roundtables fully shared this perception.

18. This report is divided into sections that include detailed accounts of the panel's activities in each of the six localities it visited, as well as the forum in Kinshasa on October 12<sup>th</sup>. A substantial portion of this report is devoted to the messages heard directly from victims, in their own words as much as possible. By recording and giving voice to their experiences, thoughts, hopes, concerns, and ideas as to how their needs and entitlements can best be addressed, the panel hopes to contribute to strengthened efforts to support the victims and start to turn the tide against sexual violence in the DRC.

## II. THE KIVU PROVINCES

### BUKAVU

19. Bukavu is the capital of South Kivu. It has a 2010 calculated population of 707,053 inhabitants.<sup>2</sup> It has an influx of displaced persons who have fled from armed attacks. Many of them live without safe shelter. In both South Kivu and North Kivu, there is ongoing armed conflict, and a number of illegal Congolese and foreign militias have operated largely with impunity, in particular the Democratic Forces for the Liberation of Rwanda (FDLR) and the National Congress for the Defense of the People (CNDP). The Kivus are rich in mineral resources, illegal exploitation of which has made the provinces a zone of violent rivalry among armed groups. Operations by the Congolese National Army (FARDC) against the FDLR have received support from MONUSCO.<sup>3</sup> Members of the CNDP have been integrated into the national army but there are continuing reports of sexual violence and other human rights violations committed by them, as well as other members of the FARDC. Alliances between FDLR, Mayi-Mayi, and residual Congolese armed groups have resulted in increased attacks on civilians. In both North and South Kivu provinces there are ongoing attacks, in which villages are pillaged and burned and women raped. In both provinces mass rapes committed by FDLR and Mayi-Mayi Cheka elements were reported in July and August 2010 – in Walikale, North Kivu and in Shabunda, South Kivu - just a month before the panel arrived. On 20 September 2010, the Government formally suspended mining operations in South Kivu, North Kivu and Maniema.

#### **Provincial Government Authorities**

20. On 29 September 2010, the panel met with the Vice-Governor of South Kivu and other provincial officials of South Kivu, including the Provincial Minister of Health, Gender and Social Affairs. The importance of addressing impunity was discussed, as well as the challenges of addressing impunity in a situation where the government is struggling for control of the territory and restoration of peace and security, and where access to certain areas is very difficult. The Vice-Governor expressed concern over the use of rape as a weapon of war and the need to support victims of sexual violence. At the launch of the panel's work on 30 September, the Vice-Governor spoke publicly about the harmful consequences of sexual violence and stressed that its victims are not to blame.

#### **Hearings with Victims**

21. In Bukavu, the panel met with victims from both South Kivu and North Kivu. The recent attacks on the civilian population have amplified a widespread sense of fear, and the victims and others conveyed their concern that the provinces remain in a situation of active armed conflict. Rape is seen by all as a tool and consequence of this conflict.

22. Many victims have been displaced by violence. Many of the women who were raped were then rejected by their husbands and their families. Some of the women and girls became pregnant and bore children as a result of the rape. Many are afraid to return to their villages and some had returned to their villages only to be raped again. As one victim explained:

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<sup>2</sup> World Gazetteer, retrieved January 2009. See: "Congo (Dem. Rep): largest cities and town and statistics of their population.

<sup>3</sup> See Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo, 8 October 2010, S/2010/512.

With these *interahamwe*, you can go back to your village and grow your crops. And when they are ripe and ready for harvest, they come to take the crops. And when they come they don't only take the crops. They also shoot, they kill, they burn. They also rape. And when they do this the population is scattered and everyone is displaced.

23. The violence is widely attributed by victims and others to the influx of foreign forces from Rwanda in the mid-1990s, and virtually every victim urged the panel to help bring peace to the country and return these forces to their own country. Peace and security was for the victims in the Kivus their "first prayer," their "big dream," and their "greatest hope." It is seen as the precondition to any restoration of normal life. As one victim put it, "whatever you give me, if there is no peace it can be destroyed."

24. Almost all of the victims whom the panel met had been able to get access to medical services, many of them at Panzi Hospital. Several of them shared their concern with the panel, however, that so many other women who were raped with them or whom they know have been raped, have serious health problems and cannot access medical care because they live in remote areas or because they are afraid to come forward. The panel met with two women who had contracted HIV/AIDS as a result of rape. Their greatest fear is to die and leave their children helpless and without a home. The victims spoke of and manifested signs of severe trauma. While some have benefitted from counseling, the ongoing difficulties faced by the victims, compounded by stigmatization, are a source of ongoing trauma for them. One witness told the panel that she never thought that she would be able to stand in front of them. In 2002, she had been abducted with her uncle by the FDLR. They were each tied to a tree by their hands and feet, and she watched while he died after they cut off his genitals. She remained tied to the tree for two weeks, raped at will by her abductors repeatedly, and she became pregnant as a result of the rape. Another witness described waking up every morning, before she got psychological counseling, and reliving her traumatic experience of being raped during an FDLR attack on her village in 2004. Now she is trained to help other victims with their trauma. She suggested that psychological support is even more important than medical assistance for victims in the aftermath of rape, adding that it is not enough to just go for one day to treat victims in the countryside. More sustained intervention is needed.

25. The panel met with a group of four girls, aged 12 to 14 years, all of whom had been raped. One girl, whose parents had been killed in the war, was taken and held for four months earlier this year as a sex slave. She is pregnant as a result of rape. Another girl was raped after her father was killed and her mother fled during an attack by the FDLR in 2004. She now suffers from incontinence and is mocked by her friends. Two girls had been victims of rape by civilians. In one case, in January 2010, a man had asked the girl to come to his home to help him feed his child and then locked the door, gagged her and raped her. Afterwards, she had rejected his offer to pay her money not to report him to anyone, and she spoke courageously to the panel about her refusal to conceal what had happened. "What is 5,000 francs," she said, "when I have lost all dignity?" The girl told her uncle and her brother, who went to the police, leading to the arrest of the perpetrator.

26. The panel met with a woman whose three-year-old baby daughter had been raped during an FARDC attack on her village in 2008. The witness had been attacked and ran with her husband to escape, leaving the infant asleep on the bed. Her husband was shot dead and she remained in hiding until the next morning when she went back to find that her baby had

been raped and was bleeding. She said her daughter, now nearly five years old, is feeling ashamed because her friends know that she was raped at such a young age. When asked whether young children understand the meaning of rape, the witness explained that rape happens often to young children and mentioned the recent case of a young boy who was raped by shepherds in a nearby field. “All this happens,” she said, “because of lack of peace, because these bandits and rapists are still in the forests. Shepherds have learned from them to rape, and the government is too weak to punish them.”

27. Most of the victims who met with the panel were unable to identify their perpetrators. Many had been raped at night and couldn't see them. Several victims who had been abducted and held for some time as sex slaves said they would be able to recognize their rapists and would be willing to testify against them. But they did not know their names as the soldiers had used code names. One victim said it would be her first prayer for her attackers to face justice but she could not identify them. She only knew what they had done to her and what language they spoke. For this reason she prayed daily that they would just go back to their country. Most victims said that if they could identify them, they would want to see their perpetrators brought to justice. There was some recognition of the deterrent function as well as the retributive element of prosecution. As one victim explained:

Our right is first of all to punish our rapists so that what happened to us should never happen again. If there is impunity for our rapists, even though they are sent back to their countries, they can rape there because no justice was done. And new generations who have seen their fathers raping, they will rape.

28. The mother of another victim gave several reasons for justice. She felt that perpetrators had to be punished because what they did was bad, and they should spend time in prison thinking about the bad thing they did. “Maybe when they are released,” she said, “they will have learned that what they did was really evil and not do it again.” She also noted the psychological impact on the victims of continually seeing the rapist of their daughter or their own rapist. “Jailing these people would give you time,” she said, “as a victim, not to see your perpetrator. This would help you not to have bad thoughts about it.” One witness who would have wanted to seek justice but was unable to identify her perpetrator told the panel that because of her trauma she thinks that every soldier of Rwandan origin that she sees is a rapist.

29. The panel sought to elicit from victims a sense of what their most pressing needs are and what might help restore their dignity and give them some sense of justice beyond prosecution. Further to the paramount need for peace, almost all of the victims identified medical care and education for their children and in some cases for themselves, as their greatest needs. Education was seen by mothers as the key to their children's future and self-reliance. In thinking about compensation for victims, one woman suggested that the number of schools be multiplied for the great number of orphans, to help rescue their lives, suggesting that one of them might grow up to be President of the country if they could only go to school. Another woman suggested that those who went to school would be supportive rather than evil, like the other men doing all this harm. Yet some of the victims could not afford to go to school or send their children to school. One sixteen year-old, who at the age of fourteen had been abducted by the FDLR and held as a sex slave for six months, as a result of which she became pregnant, told the panel that she would have liked to continue her studies. Her parents had been killed by the *interahamwe*, and there was no one to support her

school fees after the child was born. She was trying to learn vocational skills to make a living, and she hoped to have the possibility to send her child to school.

30. The wish to be treated with dignity was put plainly by one victim, who said, “Our right that we ask is to be respected and considered as other people because we did nothing to deserve what happened to us.” The impact of stigmatization in its many forms, undermining the dignity of the victims, was repeatedly expressed in the hearings. One victim described herself as a “half-person.” Another, when invited to take a photo with the panel, asked whether the panel wouldn’t be ashamed to be in a photo with her. Several victims talked about their desire for relocation, going somewhere else and starting somewhere new or sending rape victims to relatives elsewhere, where people would not know their past. Stigmatization by husbands, families and communities was described by several victims as an “internal wound.” One woman told the panel that what she really needed was her husband, who had rejected her. The panel spoke with a young woman who had been abducted in an attack by the FDLR in 2002 and became pregnant as a result of rape. Stigmatized by all and fleeing a second attack on her village, she went into labor in the forest. Her baby died, delivered by some unskilled women who burst her bladder, which caused her to develop fistula. She knows that she will never get married - no one will even sit next to her - and this is what she described as the wound she has inside.

31. One of the male victims of rape who met with the panel lost his fiancée as a result of the rape. She left him when she learned what had happened to him. He described the mockery he undergoes:

Some people were my friends, some were my colleagues – they ask me to tell them how it was that I was raped like a woman. They meet me with other victims of rape, the majority of whom are women, and they look at me and laugh at me.

32. This man had lost his father and was taking care of seven young brothers and his mother when he was abducted by the FDLR in April 2010 and forced to march through the forest carrying loot, during which he was repeatedly gang-raped. He is pained to see that his young brothers have turned into street children, and he knows he could earn lots of money as he did before, if only there were peace and security. For him security meant the ability to have a job and a home, but when he was asked by the panel what could be done for victims, beyond prosecution of perpetrators, to help them return to their former lives, he had trouble understanding the question. His expression turned blank as if he were reliving the experience, and after a moment of silence he started to cry. He described what happened to him as having created an “internal wound,” one that he was not able to cure.

33. The panel talked to a 12 year-old victim who had dropped out of school because of shame after she had been raped by a neighbour in January 2010. The girl told the panel that if there were no stigma she could go back to school and that this is something that would make her feel better. She never thought she would drop out of school, and she had wanted to become a nurse or a doctor. One victim attributed the homelessness she had suffered to stigma caused by her rape, and by the HIV and fistula that resulted from it. In 2004 she was gang-raped in the forest by FDLR militia. She described community reactions to her as follows:

Everyone is cursing me, saying that one suffers from HIV. Another says ‘she is a rape survivor’. Another one says ‘she is smelling bad’ because of the clothes she puts to stop her leaks. All these things trouble me. And I have to tell you true, the truth is

that people not only are saying all this, they also refuse to share with me. They refuse to sit next to me because they say I don't deserve to sit near them. That is what I have to say. I hope all this will end.

A powerful example of courage and resilience, this woman has managed, despite the ill treatment, to get a microloan of \$20, which she has used for petty trade in the markets and turned into \$850. She has managed to build a house and is hoping to replace her mud walls with brick walls. When she gets to \$1500, she is hoping to get a passport and travel to Uganda.

34. With two of the victims and the resource person, the panel had a discussion about the status of women in marriage and the normal peacetime relationship between husband and wife. The resource person explained that in the bush culture, men considered women as objects more than human beings. She said once the dowry is paid to her parents, the wife becomes a kind of slave to her husband in the household. He gives her a home on a plot of land. She cultivates the fields, cooks the food, cares for the children, and at night is used sexually. Women have no right to refuse sex, and men don't accept their wives back after they have been raped. The two victims confirmed that this was their experience of marriage. When asked if they wanted to return to this life, they did not respond. They said merely that men should be told it is not women's fault when they are raped.

### **The Bukavu Roundtable**

35. The roundtable in Bukavu included presentations by the Military Prosecutor, from the police officer in Bukavu responsible for sexual violence, from several NGO representatives, a representative from the Goma-based hospital Heal Africa, and from several survivor-activists. The presentations were followed by a charged discussion relating to various aspects of reparations and broader issues relating to sexual violence.

36. Several speakers suggested the benefit of collective reparations and noted the challenges of individual reparations, and many speakers, including the government officials present, called for the creation of an extra-judicial reparations fund, as well as payment by the State and/or the perpetrators of indemnities awarded to victims by the courts. The need for extra-judicial compensation was based on the fact that some victims do not have access to justice, particularly in remote areas, because they cannot identify their perpetrators, or because they fear retaliation. It was noted that there are no courts or prisons in many areas, and that many places are not accessible by road. It was said that in these places "justice doesn't exist at all."

37. While there was a common call for compensation to victims, there was some debate over the responsibility for a reparations fund. Several speakers noted the transnational nature of the conflict, the ongoing presence of the FDLR in the country, and the involvement of neighbouring countries. For this reason some felt the international community should set up a fund to help victims, in particular those who cannot identify their perpetrators. The establishment of a national fund was also suggested, to help victims access justice and to follow up on the non-payment of indemnity awards, which deters victims from seeking justice. The responsibility of both the State and the international community was highlighted.

38. The nature of compensation was also discussed. It was noted that no compensation can erase the suffering of victims. Individual reparation was seen by some as linked to

monetary compensation, whereas collective reparation would be more public and development-oriented. A fund to facilitate health care, education and economic empowerment was suggested, and forms of collective reparation suggested included the construction of roads, hospitals, memorials, as well as psycho-social support programs. The need to develop a structure in remote areas to ensure victims access to health care within 72 hours was noted, as well as trainings of doctors, particularly to deal with fistula. The suggestion was made that a reparations fund was needed to deal with both individual and collective reparations.

39. The issue of stigmatization was raised by a survivor-activist, who talked about the need for survivors to speak out and the challenges they face as a group dreaming to recover their freedom. But instead of being defended they are stigmatized. She spoke of the training she had received, which at first she was very reluctant to engage in, but through the training, she had discovered she was a human being and had value. As a trainer herself, in her experience it is helpful for survivors to have other survivors talk to them. She said she was sure that if survivors took their problems together, and the community took their problem as its own, there would be change.

40. Following the roundtable, the panel made site visits to the Panzi Hospital, to Dorcas House, an affiliated rehabilitation center, and to the City of Joy, a community for survivors of sexual violence that is currently under construction, a project of V-Day and Panzi Foundation, in partnership with UNICEF.

## **SHABUNDA**

41. Shabunda is the biggest of the eight territories of South Kivu and encompasses two collectivities: Bakisi and Wakabango. Shabunda center has a 2010 calculated population of 20,761 inhabitants.<sup>4</sup> It is an isolated town, reachable only by air. FDLR, Mayi-Mayi and Raya Mutomboki are among the armed groups which operate in remote areas of the territory. Increased attacks against civilians by armed groups and national security elements have been reported in Shabunda, including reports of mass rape in August 2010.

### **Local Government Authorities**

42. The panel met on its arrival in Shabunda with the Deputy Administrator, who welcomed them and shared some background with them on Shabunda. He noted the problems of water and access. Shabunda is accessible only by air, due to the fact that there are no roads. Because of the thick forest terrain, even helicopters have difficulty as there are few landing sites in the territory. Many places can be reached only by foot. The Deputy Administrator said the security situation was relatively calm, a view also expressed by the MONUSCO battalion commander, although he noted that there had been a number of FDLR attacks on villages in August, with reports of rape, abduction, looting, killing, and burning houses. The Deputy Administrator attributed sexual violence and other human rights violations to the war and to armed groups such as the FDLR.

43. Shabunda has a monument in the center of the village, pictured on the cover of this report, which the panel visited with the Deputy Administrator. It was built recently by a local

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<sup>4</sup> World Gazetteer, retrieved January 2009. See: "Congo (Dem. Rep): largest cities and town and statistics of their population.

priest, as a memorial to women victims of war. The panel informally asked some of the women gathered around in the street what they thought of the monument. Several women explained that it symbolized all the problems women have. They said the woman of the statue, facing east where the foreign soldiers came from, was crying for all of the atrocities suffered in war, and in war women suffer. It was in memory of all the women who had been raped, abandoned, and all the women who had died leaving orphans. They said the monument was there so that people wouldn't forget what happened.

### **Hearings with Victims**

44. The panel met with seven survivors in Shabunda, including a couple who had been abducted together as they tried to flee from their village when it was attacked in 2005 by Mayi-Mayi soldiers. The wife was burned when the attackers set her leg on fire, and she showed the panel her severely scarred foot. She lost consciousness and said she didn't know the number of her rapists because she was "not alive." When her husband yelled to the attackers to leave his wife alone, they turned towards him. They beat him until he was almost dead. Then they dug a hole in the ground and put water and pepper in the hole. They made him put his penis in the hole and "have sex" with the hole. Then they took a machete, forced open his mouth, and beat him in the mouth, causing him to lose twelve teeth. They slapped his ears until he couldn't hear, and he couldn't see because of the beating. After the attack, their six children came and took their parents to Shabunda. There she and her husband were able to get medical care. Her husband told the panel that some people told him he should reject his wife, but he asked them why he should do that and told them he could not leave her. He told them that what had happened was not her fault.

45. Several of the victims interviewed by the panel said they had not been stigmatized by their families or communities, and none of them had been abandoned by their husbands as a consequence of rape. One witness who had been raped twice – first by government forces in 2007 and then more recently by FDLR forces - told the panel that her husband was not supportive. She explained that as a result of pain and bleeding caused by the more recent rape she was unable to have sexual relations with him, and that had caused a problem. He had not left her, and she felt that medical care and recovery would resolve the problem between them. She said others in the community were supportive and gave her and her husband advice. One young girl said that some people laughed at her when they saw her going to the hospital to get medication. "They laugh at us," she said, "because they haven't had that experience. They don't know what we have suffered." Generally, though, when asked, the witnesses said they had not been stigmatized, they had been supported. One noted that without her relatives she would not survive.

46. Only one of the witnesses knew any of her perpetrators. She fled when her village was attacked by the Mayi-Mayi in 2003 but left her child behind. She came back for him, and that is when they caught her. They gang-raped her in front of her child, one after the other with two men holding her legs apart, until she lost consciousness. When they saw that she was no longer reacting, they pounded pepper and put the ground pepper in her vagina. The pulling apart of her legs caused one of her legs to become paralyzed, which has made it impossible for her to carry anything. Her child had to drop out of school last year because she can no longer afford the school fee of three dollars per month. The witness knew two of the three men who had raped her but said they had since died. With regard to the third, when asked several times about prosecution she finally said that if they could find him, she would wish him to be punished, the way he had punished her.



47. One victim, when asked whether if her perpetrators were caught would want to see them taken to court, seemed to have difficulty understanding the question. When it was explained to her, she replied that they could be killed or brought back to where they came from, that whatever could be done to them should be done. She did not seem to have a concept of judicial process. The young victim of a recent FDLR attack in August 2010, who was raped by six men and anally penetrated by sticks, told the panel when asked what should happen to her perpetrators if they were caught, that they should suffer death. “Seeing what they did to me,” she said, “just a little girl, I personally feel so angry I could even eat the flesh of one of them.” When asked what she needed to help overcome this anger and restore her sense of dignity, the girl replied “security and peace”.

48. One victim, a widow with no children to take care of her, was particularly critical of the government’s failure to ensure safety and security. She had been taken for six days and gang raped by the Mayi-Mayi in 2004 at the age of 61. She was in need of medical and psychological care, as well as economic support, but when asked about the importance of bringing the perpetrators to justice, she dismissed the idea. She said it would only be possible if they were from her country but they were from the FDLR. She said she was losing hope in the government because rape and other atrocities were the reality on a daily basis, and the government was not responding. She mentioned the recent attacks in August as an example and expressed the hope that maybe other governments from friendly countries could help. When asked about the monument in Shabunda, a tribute to women such as her, she said the government does not even acknowledge the difficulties they face. She said even if they came and just made a declaration, to support them psychologically, it would be very significant as a recognition of their plight.

49. From all the witnesses came a cry for peace. “The first thing would be to free the village from the enemies,” one witness said, “This is the most important thing.” When asked about her psychological troubles, the witness replied, “What troubles me more is the presence of the enemies. We can be given support, but if the enemies are still present here, the problem is not over.” She said her mind would be at peace once the enemies were gone. The young girl who was recently raped in August when her village was attacked is suffering greatly from the trauma of her experience. She has problems eating and sleeping and is having frequent and severe flashbacks, during which she feels the need to flee, thinking the attackers are coming again to rape and destroy. Her brutal gang rape, which caused her to suffer uterine prolapse, had been her first and only sexual experience, but she told the panel she knew what was going to happen when the village was attacked: “We were cooking in the kitchen in the evening when we heard the footsteps of soldiers coming. We knew what was going to happen. I thought, ‘yes, it is our turn now to be raped.’” The girl expressed the hope that she could go back to school, but she has been displaced with her family, who lost all when their house was burned, and they are just managing to survive. The widow whose paralyzed leg made it difficult for her to manage daily survival first answered when asked about her needs, “Before all, my wish is for peace and security in Congo.” Only when asked again did she subsequently list her three primary needs as a home, food, and her child’s education.

50. A number of the women who met with the panel belonged to associations that were collectively engaged in microcredit activities. The associations were not specifically for survivors. One victim said she was the only rape survivor in her association. When asked for her views, a witness in a microcredit program expressed a preference for individual rather than collective microloans, but the few programs the panel heard about – one for growing

crops, another for breeding pigs – all seemed to be in preliminary stages of activity, and so the women had not yet directly benefitted. A victim who described her life as having been “totally destroyed” as a result of the rape she experienced and highlighted her need for psychological care, suggested that economic empowerment would be a remedy for her terrible thoughts because these thoughts come when she feels unable to find ways to address her problems. She belongs to an association of widows, but they do not have a microloan program. She is doing agricultural work, which she is not used to, and she feels weak and unwell. She would like to engage in trade but noted that microloans were problematic because there is no security. To do trade successfully, she noted that you have to travel and that as there is no security, she would be unable to make trips to buy and sell goods.

### **The Shabunda Roundtable**

51. The NGOs at the roundtable in Shabunda had worked together in advance of the panel’s visit to develop a set of recommendations, which they presented collectively to the panel. The recommendations covered four areas of engagement:

#### ***Psycho-social support***

While there are three support centers in Shabunda (*maisons d’ecoute*) that provide victim support, they do not have enough resources for adequate facilities, equipment and staff who are paid and properly trained. To reach victims, they also need vehicles for transport. Given the vast territory to be covered and the large number of victims, more centers are needed.

#### ***Medical support***

While they welcome the support they have from Panzi Hospital, which is operating mobile health clinics, they suggested that the Shabunda Hospital be provided with adequate resources for equipment and staff who are properly trained and paid. They recommended that Panzi Hospital activities be developed in the four medical areas of the province.

#### ***Judicial support***

There is no prison in Shabunda and no court. Perpetrators who are arrested by the police need to be transferred to Bukavu, the competent jurisdiction, which is 300 km away. A court of peace (*tribunal du paix*), being established within the framework of STAREC<sup>5</sup>, is welcome but it will not be competent to deal with crimes of sexual violence, as its jurisdiction is limited to more petty crimes. The NGOs, who said they had not been consulted on the decision to establish the tribunal, would have preferred and asked the panel to call for the establishment of civil and military tribunals in Shabunda that can address sexual violence, as well as a jail for perpetrators. To allow justice to function, there is also a need to improve access by road for transport of victims and perpetrators. They suggested there should also be an exemption from the airport tax of \$36 for victims who need to travel to Bukavu for assistance. The NGOs also noted the need to strengthen the capacity and resources of the legal clinics. Two are in place, one of which has stopped activities for lack of funding. At least four are needed to cover the area.

#### ***Socio-economic support***

Agriculture is the main economic activity in the area. To further assist victims, there is a need to provide associations with more equipment to enable victims to exploit existing natural resources, such as rice and palm oil. Such equipment would include mills and the

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<sup>5</sup> Stabilization and Recovery Plan for Eastern Congo

equipment needed to transform palm oil into soap. One participant noted that a large number of women and girls are raped when they are carrying water to the village. It was suggested, and added to the group recommendations, that access to water be developed closer to the villages, which would increase safety and security. It was also suggested that a community radio should be established to cover the entire territory to raise awareness, as the current radio station has limited coverage.

52. The panel raised the issue of stigmatization and asked the NGOs for their views. One participant noted that stigmatization is a problem but suggested that war is the fundamental element and destroyer of peace. He suggested that as long as the war continues, there could not be progress and expressed the hope that the panel would bring the message of the importance of ending the conflict to the highest officials. He said that when it comes to reparations, while NGOs can support victims, the soul of the victims will always remain affected and unsafe because of the war.

### III. ORIENTALE PROVINCE

#### BUNIA

53. Bunia is the capital of the Ituri District of Orientale Province. It has a 2010 calculated population of 327,837.<sup>6</sup> The Ituri District has been marked by conflict between the two main ethnic groups: the agriculturalist Lendu (which identified themselves with the Hutus) and the pastoralist Hema (which identified themselves with the Tutsis). While there have been many phases to the conflict, the most violent attacks took place from 1999 to 2003, with low-level conflict continuing until 2007. The conflict was characterized by fighting between various militia groups and Uganda-based forces, over control of natural resources, in particular gold mines. Militia groups of the Ituri District were not signatories of the peace agreement signed by the Congolese parties in April 2003. However, in 2004 the main groups operating in the District signed a peace agreement with the transitional government, although some failed to disarm. More than 50,000 people have reportedly been killed in the conflict and hundreds of thousands displaced. Farming, fishing and mining are among the main economic activities of Ituri District.

#### Provincial Government Authorities

54. The panel met with the District Commissioner of Ituri, as well as the Deputy District Commissioner and the Chief of the Gender, Family and Child Bureau. The District Commissioner thanked the panel for coming to Bunia, and noted that Ituri is now secure. He spoke with passion of the plight of victims of the sexual violence that had come with the many wars and told the panel he was appalled by the scale of such violence. He said the government was fighting against this phenomenon and suggested that perpetrators should be put in jail for life. He noted the need to support rape victims who are rejected by society and by their families. “We have to put ourselves in the shoes of these women to defend them,” he said, “Women must find their honor and dignity again. Women have the right not to be treated that way.” He said that during the conflict the district virtually ceased to live, but that now there is much hope among the population for a new life, and a belief that the future will be better.

55. In response to a question from the panel relating to stigmatization of sexual violence, the District Commissioner explained that culture and tradition condemn rape but also humiliate women who because they have been raped are considered shameful to the family and the society. However, with regard to public authority, these women have the right to assistance – medical, psychosocial, judicial and material. He expressed his belief that perpetrators should be severely punished, and that husbands should have love and compassion and take their wives back. The Gender Chief stated further that husbands must understand that their wives did not plan to get raped, that it is something that just happened. She cited a recent case during the war where a woman submitted herself to rape to save her husband’s life and secure their release when they were both abducted by militia forces. Afterwards, her husband rejected her because she had been raped.

56. With regard to reparations, the District Commissioner noted and the Gender Chief reiterated that while there had been cases where perpetrators were sent to jail, damages awarded by the courts are never paid. For this reason, she said, there are many cases of

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<sup>6</sup> World Gazetteer, retrieved January 2009. See: “Congo (Dem. Rep): largest cities and town and statistics of their population.

amicable agreement. These settlements are generally not beneficial to the victim herself, but rather to her father or to the community leaders. The District Commissioner recalled that the justice system did not recognize these customary arrangements but that lack of faith in the justice system had led to an increase in their use. He stressed the need to make the reparations system work and highlighted the need for support at the district level for outreach to the villages. In the city when there are cases of rape, there are mechanisms that function, but in the villages it does not happen this way, which is why people resort to amicable agreements. He said a reparations fund would reinforce the capacity to fight sexual violence and mentioned that the district and province were currently in transition. When the district becomes a province he would like to see a budget allocated to the provincial government for such a fund, with support from the international community.

57. The panel also met with the key justice officials in Bunia – the Presidents and Chief Prosecutors of both the civilian court and the military tribunal. These officials shared statistics with the panel documenting the increase in cases of sexual violence that had come before the courts from 2006 to 2009, with a decrease in 2010. The increase is related to the adoption of the 2006 law, which increased the age of sexual consent from 15 to 18 years old. It was noted that most of the cases related to minors, and that the majority of cases led to conviction. However, because damages awarded by the courts are not paid, they said people prefer to go the route of amicable agreements. Although amicable agreements do not lead to conviction of perpetrators, they are easier because they do not require resources, whereas court cases involve payment of fees. The military prosecutor suggested that the decline in cases in 2010 could be because victims do not get satisfaction from the judicial system. The decline in numbers of legal cases registered is not matched by a decline in the number of cases registered by medical centers. The President of the military tribunal said he had never seen damages paid by civilian perpetrators or by the state, which has weakened the justice system and undermined the trust of victims. The officials said they were aware of the national strategy on sexual violence and its impunity component, which they welcomed. However, they stressed that if there is no payment of damages there can be no justice.

58. With regard to cases where the perpetrators cannot be identified but they are known to belong to certain armed groups, the possibility of holding commanders responsible was discussed, and a recent case in August of 2010 was noted, where a militia chief was held responsible for the rape perpetrated by those under his command. The justice officials discussed the need for more synergy between the judicial and medical sector, both for the provision of medical evidence to be used in prosecutions but also to address the needs of women who do not access the justice system but are in need of medical care. It was suggested that doctors could also play a greater role in referring cases to the justice system, or making victims aware of legal avenues of recourse.

59. In conclusion the officials reiterated the need for adequate resources to enable the justice system to work. The question of resources was noted in a MONUSCO briefing as well, where a representative of UNPOL informed the panel that the police unit for sexual violence and protection of children has no vehicle and is therefore unable to travel to many villages and arrest perpetrators.

### **Hearings with Victims**

60. In Bunia the panel met several groups of victims, including a group of three women who had each been abducted and held in sexual slavery, beaten and raped repeatedly by many

men in armed militias. Two of the women were held for five days in 2005 and the other woman for two weeks in 2002. All three of the victims were afterwards rejected by their husbands. One is taking care of seven children by herself, none of whom is going to school. Her husband has married a second wife, and the witness has no money for her children's education. Another victim has eight children, three of whom are going to school. Although their father occasionally comes from the village to visit them, he never brings any money for them. The third victim has ten children, three of whom are going to school. She told the panel that when she first came home, her husband left her and went somewhere else to live, but he had finally decided to return and was again living with her.

61. Despite the atrocities endured by these women, they all called for forgiveness and reconciliation. One witness told the panel that she didn't know who her perpetrators were but even if she could have identified them, after the incident she decided to forget about it. Another victim told the panel that if the perpetrators had been punished right after the acts they had committed, it would have been better. But now it is long ago, and she just wishes for improvement in the conditions of her life. As much time has passed, when she now meets people from her village, they talk to her as they did before the incident and don't seem to stigmatize her as they used to. When asked whether justice might be helpful to reconciliation, as well as deterrence for the future and next generation, the witnesses reiterated their call for forgiveness so that people can live together as they used to.

62. When asked about reparations, several different groups of victims suggested that the construction of hospitals and schools would be a good monument to women who have suffered from rape as a consequence of the war. Recalling the statue in Shabunda, the panel asked one group whether symbolic reparations such as this would be meaningful to them. One witness welcomed the idea of a statue to memorialize their suffering and suggested that such a monument would allow people always to remember what happened. However, they all liked the idea of a statue only if it were to be in addition to the hospitals and schools they would like to see in their memory.

63. The panel met with a group of victims who had contracted HIV and unknowingly transmitted it to their husbands. One witness had been beaten and raped in 2003 by five soldiers from the Congolese forces. She was raped in front of her eldest daughter, who begged the attackers to rape her rather than her mother, which they did. The victim then tested positive for several sexually transmitted diseases, for which she was treated, after which her husband agreed to take her back. She did not know that she was HIV+. Her husband contracted the virus and recently died. Her daughter has also died, and she herself is weak from the HIV. She has seven other children who will be orphaned. She said the children blame her, and her eighteen year-old son is always threatening her and accusing her of killing their father.

64. Another witness, abducted in 2001 and held as a sex slave for two days by the FNI (*Front des Nationalistes Intégrés*), tested positive for HIV after her husband died of AIDS in 2005. Following his death, her husband's family threw her out of her home with her three children, accusing her of having killed him. Being infected with HIV, the witness expressed concern that she would never be able to get another husband. What she felt she needed to reclaim her dignity was to be able to take care of her children, and to leave her sons with a home of their own. A teacher, she knew that she had legal rights to the house from which she had been expelled, but when the panel pointed out to her that she could pursue its recovery through the justice system, she demurred. She said she felt powerless from the time she was

raped and became infected. Having been rejected by her husband's family, she wants to stay far away from them and is not willing to deal with them in a court case. Even if she could get legal assistance to help her reclaim her house through the court, she would prefer to let it go.

65. The panel met with a group of women who became pregnant and have children as a result of rape. They told the panel that there are many, many children born of rape and asked whether schools and churches could be built for them. None of these victims has a husband helping her to care for the children. One's husband was killed in the war, and she has three children to take care of. Another one was not married. After she was raped and became pregnant her family allowed her to stay, but she said there are many problems because of the child. A third witness, with only the one child resulting from her rape, manages by herself without support from her parents or her family. She told the panel that the community does not welcome her and she faces much discrimination.

66. When asked about reparations, these women spoke of education for their children and themselves, as well as support for medical care and shelter. Several have been living in IDP camps for many years and said they would like to have a home. When asked whether they thought it might be a good idea for the government to give them land on which they could build, the victims became visibly animated. They said if they had land, they could get building materials. One witness asked, "What does the President think about raped women because I have never heard any word from him mentioning this." Another witness explained why a land grant from the government would be helpful:

It would be a good idea because we feel we are rejected by our government, and we think that if the government could do this it would show us that they are taking care of us and it will help us feel more dignity.

67. The victims with children as a result of their rape have suffered severely from stigma. One told the panel that she has been "completely abandoned." She was rejected by her father, her brothers and sisters, and everyone in the family, where even her name could not be mentioned. She was obliged to leave her home and seek accommodation with a neighbor.

68. The panel met several girls who had been raped by civilians, including a 14 year-old girl who is deaf and mute. She became pregnant as a result of the rape, and because of her young age had to deliver the baby by Caesarian section. She came to meet the panel with her older sister, who takes care of her and her baby. She is having trouble breastfeeding, but her sister explained that they could not afford to buy milk every day for the child. With communications being difficult, the family had not been able to learn from the girl who the perpetrator was. Her sister explained that they did not pursue a legal case for this reason, and also because they are not accustomed to taking cases to court. If they knew who was responsible for the rape, she said she would want him to take care of the baby, or marry her sister.

69. The panel also met with a 9 year-old rape victim, together with her mother. The girl had been raped in her neighborhood by a teenage boy, whose family was protecting him and refusing to provide any information about him. The girl's mother had learned about the rape when she was helping her daughter to take a bath, and when her daughter told her what had happened she fainted. She felt forced to move and told the panel her daughter had been stigmatized by the neighbors. She felt the government should do more to fight against rape and punish the perpetrators, and she noted that even when perpetrators are arrested, within a

few days they are walking the streets, a concern mentioned by several other witnesses. She said that mothers and women who are victims of sexual violence become useless in society. They are shameful and have no value. She referred to her own daughter as having been “spoiled.”

70. While many of the witnesses who met with the panel in Bunia had benefitted from medical treatment, very few had benefitted from any form of economic assistance and none had benefitted from microloan programs. One witness had gotten some seeds from a local NGO to cultivate beans, peanuts and maize. However, it was a one-time distribution which took place during the dry season, so the seeds did not grow well. Many of the women, displaced for years by the war and having lost or been rejected by their husbands, long for a home for themselves and their children. They want to rebuild their lives with schools and hospitals, and for the women who met with the panel, justice through prosecution was not a priority, while they expressed much hope for reconciliation.

### **The Bunia Roundtable**

71. Several government officials participated in the Bunia roundtable, including the Head of the Office on Gender, Family and Children. The meeting, with many in attendance, was opened by the Deputy District Commissioner, who noted the consequences of sexual violence, felt by all, as a reason for such a large turnout. The meeting lasted into the evening, despite darkness in the hall.

72. The Head of the Office on Gender, Family and Children spoke of the sexual exploitation of minors, noting poverty and early marriage as problems, as well as prostitution and domestic servitude. She described the efforts of her office to do awareness raising campaigns in the community with respect to these issues and highlighted the need for support to ensure holistic assistance to children. The Director of the Internal Affairs Division provided background on the District of Ituri and described the legal and cultural aspects of rape, stressing that in Ituri, custom does not accept rape at any age. He characterized rape as an act of aggression and a shameful and dishonourable act, noting that sexual relations must be authorized. With regard to reparations, he described the harm as a harm to the community and spoke of a tradition in which animals are given to be slaughtered and eaten by everyone as a sign of restoration of dignity. He also gave an example of one ethnic group who require the perpetrator to give a cow and during the settlement beat the perpetrator with a stick as punishment. He affirmed that all ethnicities severely condemn rape because it is a disgraceful act.

73. NGO interventions included the *Association de Mamans Anti-Bwaki*, whose Coordinator described the different categories of victims of rape including those subjected to early and forced marriage, sexual exploitation, prostitution and conflict-related rape. She noted the medical and psychosocial consequences of rape, as well as the children born from rape and the stigmatization of victims, leading to their rejection and immediate need for income to support themselves and their children. She expressed concern over the lack of continuity and sustainability of programs run by NGOs, as well as concern that sometimes survivors chose socio-economic activities that do not correspond to their capacities, and these activities then are not successful. She noted illiteracy as a limitation on victims. She also suggested that NGOs sometimes propose activities without having conducted an assessment of needs and effectiveness and suggested that problems also include multiplicity of actors with lack of coordination and duplication of activities. Suggesting that much attention given



to sexual violence victims is fueling jealousy and further stigmatization, she proposed that donors take all victims into consideration, not only those of sexual violence. She also urged that project interruptions be avoided and that interventions be adapted to local needs, taking the needs of victims into consideration and ensuring proper coordination and follow up.

74. A representative of *Medecins Sans Frontieres* (MSF) noted that stigma and shame prevent victims from seeking needed medical support. Fearing rejection by their husbands, adult women prefer to be silent about rape and most of the cases where a complaint is filed with the police are filed by the parents of raped children. MSF has difficulty providing shelter to those victims who are rejected. Lack of coordination among different actors was noted as a concern. There is little understanding of legal procedures among victims and there is a lack of judicial structure in remote areas. The lack of medical structures in remote areas and need to travel long distances for medical support prevents most victims from getting care within 72 hours.

75. The *Centre d'Intervention Psychosocial*, which provides medical, psychosocial, socio-economic and legal support described its activities, as did *Justice Plus*, which had done an assessment together with the International Center for Transitional Justice on what type of reparations victims wanted. In some cases, amicable arrangements have been made because victims and most members of the community do not trust the justice system. Arrested perpetrators are often provisionally or even permanently released. *Justice Plus*, which provides legal support at all stages to avoid customary arrangements, urged that the government make some provision in its budget for indemnification, and that legal prosecutions be undertaken rather than amicable agreements.

76. The ICC Trust Fund for Victims has an office in Bunia, to provide support to victims of crimes within the jurisdiction of the ICC but unrelated to the judicial mandate of the ICC. The Fund has provided support for rehabilitation of victims and their families, funding sustainable self-help projects designed to reintegrate victims into their communities. It seeks to involve victims in the definition and implementation of the most appropriate means of rehabilitation. Of the 16 projects funded, 8 concern survivors of sexual violence. These projects are not seen as reparations because there is no official recognition of harm. With regard to collective vs. individual reparations, the majority of victims want both but the question is whether victims really feel an element of reparations in conjunction with something like the construction of a hospital. The need to differentiate reparations from humanitarian assistance and development projects was highlighted, posing the question of whether programmes for reparation and rehabilitation are sustainable in conflict zones or whether they can only come after stabilization.

77. The discussion was wide-ranging. Points made included the responsibility of the government to compensate victims, as most perpetrators are insolvent, although it was also noted that perpetrators who cannot pay the indemnities awarded somehow have the means to get released on bail. One participant noted that in Ituri, in most of the non conflict-related cases, perpetrators of rape are known but communities push for reconciliation rather than prosecution. Another participant noted that lengthy procedures, long distances, fees, and protection problems for victims lead to impunity. The need to reinforce the capacity of health structures in remote areas was mentioned, as well as the need to fight poverty and illiteracy. It was suggested that there should be a national policy on reparations with decentralized programmes.

## **KOMANDA**

Komanda is a town located 75 km south of Bunia, in the Irumu territory. Its estimated population is 44,670 inhabitants. The population is composed of different ethnicities including Bira, Hema, Lendu and Ngiti. Komanda is a destination point for internally displaced persons from the surrounding area. The population lives mainly on agriculture.

### **Local Government Authorities**

78. The panel was welcomed in Komanda by the Chief of the Collectivity and other local authorities. The Chief noted that the issue of sexual violence was linked to the war and that women who had been raped by armed militia often lost their husbands. The chief medical officer of the Komanda zone raised the concern that women do not have access to health care in remote villages and that generally it is difficult to get adequate care. Of the 103 cases of sexual violence registered to date in 2010, 59 of the victims did not access medical services until more than 72 hours after they were raped. He said that the number of victims of sexual violence registered by the hospital had gone down since the war but that it remains a serious problem. The police officer noted that there was a decrease in cases of sexual violence referred to the police, which he attributed to the fact that victims are increasingly resorting to amicable agreements. He also highlighted the lack of resources, and in particular means of transport for the police to carry out their work. The competent court for cases from Komanda is in Bunia, and it is very difficult to transport perpetrators there. The medical officer noted that most of the NGOs in Komanda focus on medical support, and that there is an absence of NGOs working on legal assistance.

### **Hearings with Victims**

79. The panel learned from the victims in Komanda of the tremendous difficulties they faced in getting access to much needed medical care after they were raped. Many had been in villages far from Komanda when they were assaulted. One witness who was pregnant when she was raped by two FARDC soldiers in April 2010 lost her baby as a result of the rape. She waited for three days to get emergency health services from a mobile clinic that was not scheduled to be in her village on the day she needed care. Another witness raped in 2008 by three unidentified armed men was brought back to her village afterwards by some women who found her on the road, but there was no medical facility in her village. Her husband went to find medicine, but when he reached a clinic the nurse told him he needed to bring his wife there to get the treatment she needed. The panel met one young woman who had been to a health center, which had given her medication and asked her to come back in three to four months for further testing. She had not returned because she could not afford the transport fees to get back to the clinic, which is 45 kilometers away.

80. Although the silence of victims caused by stigmatization was evident in what many witnesses said about the rape of other women, the panel met several victims whose husbands had been supportive of them. The husband who travelled to look for medicine for his wife tried to explain to his family, when pressured by them to reject her, that she had been raped because she left from hiding in the forest to go to the field to get food for their children. Because he did not want to leave her, they decided to move to another place. One victim told the panel that although her family was not supporting her, her husband had given up his phone and his bike to pay for her medicines. She had been raped three times, twice by the FARDC and once by armed militia. The trauma experienced by this victim seemed

particularly acute, and she remained reticent. When asked if she was able to talk about her suffering with anyone, she said there was no one and that she only prays in church. Whenever she sees a soldier wearing a uniform she fears that she will again be raped.

81. When asked whether it would be helpful to have an association in the community for victims of rape, two victims the panel interviewed together said it would be helpful but there were only two of them, not enough for an association. None of the victims asked by the panel knew of any association for rape survivors. When asked whether other women who had been raped might be afraid to say anything, they said there might be other women but they are probably ashamed. Another witness noted that rape victims are only identified when they come to the medical center for services. She thought there were many, many such victims but said they are ashamed to come even to the medical center.

82. The panel met with two male victims in Komanda who had been abused by the FARDC. One had been sexually tortured in May 2010 with a rope that was tied to his genitals and pulled, leaving him temporarily impotent. The other had been assaulted in March 2010 by a female soldier who tried to force him to have sex with her. He had been unable to get an erection and was seriously beaten, kicked repeatedly in the stomach until he lost consciousness. He told the panel that he was not expecting to undergo this kind of sexual assault by a woman. He thought maybe she had some disease and had decided to infect him. The men did not know of other men who had undergone sexual abuse, although they did know each other. They had told their wives, who were supportive in both cases, and one of the men, who had been assaulted by the female soldier, had felt comfortable sharing what happened to him with his family and his neighbors. The other told the panel that no one other than his wife and the medical staff knew what had happened to him.

83. When asked about justice, many of the victims noted that their perpetrators were difficult to identify or no longer around. In a number of cases, where the perpetrators were FARDC soldiers, the victims seemed very reluctant to pursue legal remedies against them, or their commanders. One victim said he was too weak to file a complaint after his abuse and couldn't even walk. He said he didn't know the names of the perpetrators and the incident happened at night when it was dark. When asked whether he might have tried to contact their commander, he told the panel he was afraid that he would be put in jail for nothing if he went to report the incident. The victim who had been abused by a female FARDC soldier also said initially that he did not file a complaint with the military because he was suffering after the incident and unable to take action. He said he didn't know the name of his perpetrator, and when it was pointed out to him that it might not be difficult to identify a woman soldier as there probably were not too many, he noted that people were frightened during the war.

84. The panel met with two girls who had both been victim of rape by civilian perpetrators, and both had become pregnant and had children as a result of their rape. Both of these girls, who knew their perpetrators, had sought justice yet been unsuccessful in their efforts. One of the girls had been raped in 2004 when she was 14 years old, by a man who had asked her several times to marry him. She had refused, and one day he took her by force to the forest, undressed her and raped her. The other girl was raped in 2001 at the age of 15 by a boy from her village. He was walking with her and asked her to stop in at his house, where he locked her in his room and raped her. Both girls seemed anxious to hold their perpetrators accountable in part because of their resulting pregnancy and the burden of childcare. In both cases, the boys involved had denied the rape, and in neither case had any prosecution been initiated. In one case, the girl had tried to get an amicable arrangement but

gave up after they went to his family three times and he was never there. She also went to the local police, but the police had been unable to capture the boy, even though they knew where he lived. They had turned the case over to the local chief, who was also unable to capture the boy, and so they decided to give up. The boys' parents had helped the girl but only during her pregnancy. In the other case, the girl's parents had wanted to go to the police but were advised that it would be better to go to the local chief. The local chief called in both sides, but when the boy and his parents had denied the rape they felt there was no way to go ahead with the case. Both girls wanted to see their perpetrators in jail, and one of the girls said she wouldn't mind if her rapist stayed there forever and died in prison.

85. The first wish expressed by both girls was for assistance in developing skills to generate income so they could be independent and able to care for their children. When asked about reparations, both girls wanted child support. The younger girl also wanted support to continue her education, which had been interrupted, causing her much distress. Another young victim interviewed by the panel was raped by armed militia in 2002 at the age of twelve, in the village she had moved to so she could go to school. When fighting broke out, the schools were closed. She decided to come to Komanda, where she resumed her education and completed grammar school. She continued with high school and is now in her last year. Her father died in 2007, and she has no one to support her. Her mother is old and weak, and frequently gets sick. After school, the girl tries to make money to pay her school fees. She is hoping to go to university and study medicine. Now 20 years old, this bright young woman told the panel that she thought it was normal to be angry after what had happened, but that if she could get some assistance for her education, it might compensate.

### **The Komanda Roundtable**

86. The focal point for sexual and gender-based violence from Programme for Promotion of Health Care (PPSP), an NGO in Komanda, delivered a collective statement on behalf of the civil society group. He noted that sexual violence is a serious problem that affects society as a whole. It destroys families and communities when women and girls are dishonoured and violated. Efforts have been developed by NGOs and the local authorities to address the problem and facilitate the reintegration of women in their families and communities through mediation and counselling.

87. National and international organizations as well as religious and community leaders are working together to assist victims and develop prevention measures. An early warning committee comprised of local authorities, religious leaders, police officers and members of civil society has been established at the community level to sensitize the local population and follow up on cases. The weakness of the judiciary in the "assistance chain" was noted. The focal point noted that few perpetrators are arrested and prosecuted – "less than 10% of the cases identified by NGOs", and victims of sexual violence have no access to reparations. Victims remain silent, fearful of rejection by their husband and families, or fearful of retaliation by their perpetrators. For cases where perpetrators are known, this fear makes it difficult but more cases might be identified if justice followed. For those cases where the perpetrator is unknown, there is no way to pursue justice.

88. Increasingly, sexual violence is being committed by civilians rather than military forces, an estimated two-thirds of all cases. Most rape takes place in homes or in the fields, and the long distance women and girls go to bring water increases their vulnerability to rape.

Only 38% of victims who access medical services are able to do so within 72 hours. The coordinator also highlighted the need for psychological counselling, which is not available.

89. On behalf of civil society, recommendations were made for the government to ensure the health and security of its citizens; to strengthen the judicial system; to provide a minimum level of assistance to victims of sexual violence in public as well as NGO-supported structures; to train medical staff; and to engage in greater sensitization of communities to ensure that the law is implemented at all levels. With specific reference to reparations, it was noted that reparation is different from and more profound than assistance, and there is a need for reparation. Funds for reparation should be mobilized so that victims can get assistance. However, a mechanism must be found to ensure that cases are real and can be distinguished from false claims.

90. In discussion, the panel asked about education, and the PPSP focal point concurred that education was important in the fight against sexual violence. He noted that more than 80% of girls and women are illiterate, which is undermining their potential role in society. Through education, women and girls could be empowered, and he recommended that education be free and universal. Less than 50% of children have access to education, and children whose mothers are victims of rape, or who themselves are victims of rape, get pushed out of school by stigma. Some NGOs assist with school fees, but generally they are only able to help for one or two years and then support for the child is abandoned. It would be better if education were free for all.

91. In addition to formal education there is informal education, or vocational training, which is focused mostly on sewing and small trade. Regret was expressed that vocational training is not tailored to the needs of victims or the context in which they are living. There are also issues of sustainability with regard to NGO programmes, due to lack of resources. It would be more sustainable if NGOs started these programs and then turned them over to the community. The President of one NGO acknowledged the efforts of international NGOs but noted that local NGOs are not getting support. They walk for many days to reach victims and would welcome means of transportation to ensure that they can carry out their work properly. Moreover, they don't know whether these international NGOs will remain, and she asked what will happen when they close their doors and leave.

92. The medical officer suggested that it would be advisable to focus on all forms of violence against women, not limited to sexual violence. He mentioned forced marriage, and also said that many women are beaten by their husbands. Domestic violence is a huge problem that is not being addressed. There are no statistics because no one thinks it is important.

## IV. EQUATEUR PROVINCE<sup>7</sup>

### MBANDAKA

93. Mbandaka is the capital of Equateur Province. It has a 2010 calculated population of 324,236 inhabitants.<sup>8</sup> During the conflict, the Alliance of Democratic Forces for the Liberation of Congo-Zaire<sup>9</sup> (AFDL) and the Movement for the Liberation of Congo<sup>10</sup> (MLC) were active in the province. In 2009, inter-communal clashes took place, in which the Enyele insurgent group emerged. It is reported that nearly 200.000 people remain displaced in the province. In addition to shipping, Mbandaka's main economic activities are agriculture and forestry.

#### **Provincial Government Authorities**

94. The panel met with the Vice-Governor of Equateur, as well as the provincial Minister of Interior, Justice and Human Rights, the provincial Minister of Gender, Family and Children, and the Mayor of Mbandaka. The Vice-Governor welcomed the focus of the panel's work on sexual violence, which had been committed on a large scale in the province, and cited the mass rape in Songo Mboyo as an example. He highlighted the various programmes that have been developed since these cases were drawn to the attention of the international community, such as the project on sexual violence funded by the Belgian Government. While grateful for this assistance, he noted that reparations had not yet been addressed and therefore real assistance had not yet reached victims, who are still waiting. Although the Belgian-funded project has ended, the scourge of sexual violence is still present and the authorities have tried to support victims despite the lack of resources. They have also continued to advocate with the national authorities for their right to payment of indemnities. He highlighted the need for reparation and the need to fight against impunity. He urged that work to assist victims should be carried out with synergy, and that the Governor, UN agencies, and the international community should all work in close cooperation. He noted the concern that victims not be exposed, which could create stigmatization, but said they needed help on a daily basis to recover their rights. He noted the need to implement the law and the need to intensify efforts to assist victims of sexual violence. Thanks to the joint efforts of authorities and NGOs, he felt there was more awareness and greater willingness of victims to bring cases to court. He recalled the national campaign slogan denouncing sexual violence and suggested that the campaign would succeed if people spoke out more. The Minister of Gender, Family and Children agreed with the Vice-Governor and urged the panel not only to focus on the victims of Songo Mboyo but to hear other victims as well, including in Mbandaka.

#### **Hearings with Victims**

95. In Mbandaka the panel met with a group of five women who had all been victims of a rampage by FARDC soldiers which took place in July 2005, following the killing of an FARDC soldier by a civilian. The killing, beating and rape of local residents, and the looting

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<sup>7</sup> Due to the death of his father, Dr. Mukwege had to return home and could not participate in the meetings of the panel that were held in Mbandaka and Songo Mboyo

<sup>8</sup> World Gazetteer, retrieved January 2009. See: "Congo (Dem. Rep): largest cities and town and statistics of their population.

<sup>9</sup> The AFDL brought Laurent Kabila to power during the First Congo War (1996-1997).

<sup>10</sup> Rebel movement established by Jean-Pierre Bemba Gombo. The MLC, backed by Uganda, controlled vast areas in the north of the country during the 1998-2002 civil war.

of homes and stores lasted several days. Each of the five victims had been raped in their home after soldiers forced their way in and plundered their belongings. Several of the women were gang-raped, and several of the women were raped in front of their young children. Many of them suffered severe medical consequences from the attack, with one of the women subsequently spending a year in the hospital. Several of the victims were rejected by their husbands and thrown out of their homes, one with eight children and one with nine children. Several other victims whose husbands remained with them told the panel their husbands had taken second wives.

96. These victims had all gone to court seeking justice, with support from lawyers to whom they had been referred when they went to the hospital for medical treatment. More than fifty women raped by the FARDC soldiers during this attack went to court, and thirty-one succeeded in getting judgments against their perpetrators, who were convicted for crimes against humanity, and indemnity awards of \$5,000 each. Forty-two soldiers were convicted, five of whom were acquitted on appeal. Thirteen commanders were sentenced to life imprisonment, but in July 2007 all the convicts escaped from prison in a mass jailbreak. None has been recaptured. The women have not received any payment of the indemnities awarded to them from either the perpetrators or the State, which was held liable *in solidum*.

97. The victims in this group shared with the panel their tremendous frustration over the lack of enforcement of judicial decisions with regard to the indemnities awarded to them by the court. As one of them explained:

The judgments came out and we won the case. We had done nothing. The local soldiers just came and killed people. They looted and they raped, and they made us suffer. We wanted the government to pay back what we have lost. Some of the women lost their husbands. Some of the women were rejected by their husbands. Some of the husbands understood that what happened was just an accident. But from that time to today, although they said they are going to pay back, we have received nothing, not even a single dollar. We are in the fifth year and we have suffered a lot. Some of the women have died. They said they would give us reparations but until today nothing has happened. We have gone to MONUC. We have gone to the Provincial Assembly. We have gone to the Governor, and we have gone all over the town of Mbandaka seeking intervention, so that we can be repaired. Nothing has happened.

98. The victims told the panel that they are stigmatized. “Wherever I go,” one said, “everyone is pointing their finger at me.” They sometimes see their perpetrators who have gotten out of jail and come to laugh at them or to intimidate them. They have financial problems, and in some cases the women do not have the money to send their children to school, or in one case to continue her own education. A number of them have been given training by a local NGO in sewing, but this generally has not been helpful to them. Some of them sold the sewing machine they had been given in an effort to try to make ends meet or send their children to school because there was not enough clientele to make a living in this trade.

99. The deep anger expressed by this group of victims evidenced a clear understanding of the legal framework and the importance of the rule of law. Their concept of justice equally encompassed punishment of perpetrators and compensation for victims. As one of the victims said:

There is no justice in Congo. In this country we don't have rule of law. Everyone can behave as they want. We need the rapists to be punished and these violations ended.

100. With regard to reparations, these victims have a strong sense of entitlement flowing from the judgments they have gotten in court, and a great sense of injustice over the non-payment of the damages and interest awarded to them. When asked what they thought about hospitals and schools to be built by the government as a form of compensation, they replied that such initiatives would benefit everyone and would not sufficiently recognize their suffering, and their children's suffering, and more generally the suffering of victims. They were concerned that their individual entitlements not be displaced by collective reparations. To help other victims who may not be able to go to court, the witnesses suggested that maybe the names of these victims could be inscribed on any hospitals built, showing that they have been built for these women.

101. Woven throughout their testimony was the great distrust that the victims have with respect to the government. Talking about education, one witness angrily suggested that "trying to get a solution from the government is a waste of time." She noted that the children of government officials are studying abroad, while their children cannot even go to school. When asked whether an apology from the government would be meaningful, they noted that since the time all this happened to them, no one has apologized to them and said an apology would be welcome. As one witness put it, no one has spoken to them to help them "just to cool down their minds."

102. The panel met a number of other victims in Mbandaka who had not taken their cases to court. The failure of the government to ensure justice for the women who were able to get judgments has clearly sent a message to these other victims. One woman, a victim of rape in February 2008, told the panel that perpetrators who are arrested escape after a few days and victims see them walking around town. She observed that the rule of law does not exist in the country and said that punishment of perpetrators was needed to bring it back. When asked why she had not reported her rape and sought justice, she said "I learned by example from those people raped before me that there is no justice." She told the panel that is why many people don't bother to report. "There is no point in making an accusation," she said, "as nothing will come of it." Another witness, raped by FARDC soldiers in March 2010, also cited all the women who had been raped and gone to court without results to explain why she did not pursue her case.

### **The Mbandaka Roundtable**

103. The Mbandaka roundtable was attended by government officials, UN agencies, international and local NGOs. The difficulty of access to medical care in remote areas was highlighted, with an NGO representative from the medical sector noting that victims are unable to reach medical services within 72 hours of rape, which denies them needed emergency care and hinders the collection of evidence. The UNFPA representative also addressed these concerns, noting that projects have been developed for assistance only in the main cities such as Mbandaka. A large percentage of victims do not get proper medical assistance, and it is difficult for UNFPA to reach these victims. A sensitization campaign on the issue of stigmatization was undertaken but similarly limited in its ability to reach many places. Last year there was a campaign to eliminate fistula, but this year there are no funds to continue the campaign. Medical staff are not adequately trained and there are few doctors accredited to provide legal certifications to the court.



104. The coordinator of a legal clinic echoed these concerns. He also noted the lack of access to judicial structures in the province. The dearth of magistrates results in the failure to address many cases, and in some areas there are not even any prosecutors. While in the cities fees are paid for victims who cannot pay their lawyers, elsewhere victims do not benefit from this assistance. He urged the panel to ensure government support for the functioning of the justice system so that it could effectively assist victims. On the issue of reparation, he highlighted the failure of the government to pay the indemnities awarded by the courts to victims, which has weakened the confidence of victims in the justice system and encouraged them to resort to amicable agreements instead.

105. The military prosecutor outlined the difficulties they face in pursuing cases, including a lack of authority to make arrests. Requests for arrest must be made to troop commanders, who refuse to transfer perpetrators to the courts. Even though they are bound by law to cooperate fully, these commanders are higher in the military hierarchy than the prosecutor, and so prosecutors cannot oblige commanders to transfer the perpetrators. In fact sometimes the commanders help relocate the perpetrators. He also noted that these difficulties have resulted in an increase in the use of amicable agreements and a lack of confidence in the justice system. The civilian prosecutor highlighted the lack of detention facilities, together with the failure to enforce court judgments, as having led to a growing sense of impunity. There is a claim to be fighting impunity, but the justice system is not being provided with the means and tools to do so. He detailed the lack of resources in his own office – human, logistical, and financial – that he needs to carry out his work, and he suggested that what victims most expect is not monetary compensation but to see their perpetrators arrested and in jail. The prison in Mbandaka is a building in ruins, and the victims who see their perpetrators walking freely in the streets are discouraged, re-victimized, and deeply concerned for their safety.

106. In the discussion, the inability of military prosecutors to ensure the arrest of soldiers accused was considered further, and it was suggested that the justice system should be reformed to enable the civil courts to deal with these cases during peacetime, which could help overcome the limitations created by the military hierarchy. The increase in rape as a result of the war was noted, and concern was expressed that no response has been developed to address sexual violence. The termination of the sexual violence project funded by Belgium was regretted, and it was noted that the province is not covered by the STAREC programme, which is limited to the Eastern Congo. A sense that the international community does not care about Equateur was expressed, as attention and funding are focused in the eastern part of the country.

107. Statistics were cited by the civil prosecutor to underline the seriousness of the problem of sexual violence. Most of the cases that have been registered since July 2009 are cases of victims who are minors. Among these cases are those in which the victims consented to sexual relations but in accordance with the law, sex with a minor under eighteen years of age is prohibited as statutory rape. He urged that more adult women should register cases of rape, which they refrain from denouncing because they are afraid of rejection by their husbands and families.

108. With regard to reparations, it was noted that victims had been encouraged to bring their cases to court but nothing has been done to ensure the enforcement of the judgments they were given. Some lawyers have even been threatened by victims who thought they had

been exploited by their lawyer because they never received anything although they won their cases. NGOs proposed that the international community should assist victims by establishing a fund to pay indemnities when perpetrators are not able to pay. For the cases where rapes were committed by state agents, the government should have a budgetary line dedicated to the payment of indemnity awards and these funds should be made available to provincial authorities. This budget line should cover both perpetrators who have been identified and those who have not been identified but for whom the government should be held responsible. The NGOs have been discussing compensation in cases where the perpetrators are foreigners, but they do not yet have a solution for this. It was suggested that collective reparation might be preferable to individual reparation as it would benefit all. Access to education was mentioned as one form of such reparation. It was noted that in addition to monetary compensation, the arrest of perpetrators gives victims an important form of moral reparation. NGOs have prepared and are submitting to the Provincial Assembly a request that they include a budgetary line for reparations.

109. Finally, the importance of preventing sexual violence and addressing its root causes, as well as assisting its victims, was noted, with poverty and lack of education highlighted as root causes.

## **SONGO MBOYO<sup>11</sup>**

110. Songo Mboyo is a small village located in the Bongandanga territory of Equateur Province. In December 2003, at least 119 women were victimized by mass rape in Songo Mboyo, committed by FARDC soldiers.<sup>12</sup> Investigation and prosecution by a mobile court that conducted a trial in the village led to an historic judgment in 2006, convicting six perpetrators of crimes against humanity and awarding damages to twenty-nine rape victims.

### **Local Government Authorities**

111. The panel was given a prominent welcome on arrival in Songo Mboyo, accompanied by the Vice-Governor of Equateur and the provincial Minister of Interior, Justice and Human Rights. Amidst music and dance, the Vice-Governor spoke to the crowd and introduced the panel delegation.

### **Hearings with Victims**

112. All of the witnesses the panel met in Songo Mboyo had been victims of a rampage on 21 December 2003 by soldiers who had been stationed around the village for many years awaiting integration into the FARDC forces. The troops were expecting to receive payment from their commander in an amount equivalent to \$6/soldier. But when the money arrived, each soldier was given \$4 rather than \$6. Anger exploded, and the soldiers tore through the village - killing, looting and raping. One witness described the scene as follows:

They were shooting doors, forcing their way into houses - not only my house, the same thing happened to all the villagers. They started looting the houses. I hid under the bed, taking my son with me. They found me under the bed, and I begged them not

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<sup>11</sup> For health reasons, Elisabeth Rehn was unable to travel to Songo Mboyo. Jessica Neuwirth, Special Advisor on Sexual Violence to the High Commissioner for Human Rights, joined the panel Chair as an interim panel member for the hearings that were held in Songo Mboyo.

<sup>12</sup> 9<sup>th</sup> Infantry Battalion, 39<sup>th</sup> Brigade

to kill me. They told me to come out from under the bed. They were heavily armed. I begged them not to kill me. They told me to take off my clothes. My son was crying. They threw me down on the bed, and tore off all my clothes. I was naked, and they started to rape me. They smelled of alcohol, and they were drunk. They did many bad things. I don't know how many there were, there were so many. When they started I knew there were three but then I lost consciousness. There was another woman and they were raping her. She was two months pregnant, and after the rape she lost her baby. All the women in the village were facing the same thing at that time. One soldier told me to run away. He said if I stayed they would kill me.

113. Following these events, a preliminary investigation was done by the Joint Human Rights Office of the High Commissioner for Human Rights and MONUC (JHRO), which led to a military investigation and trial in Songo Mboyo, supported by JHRO. Not all of the victims of this mass rape filed cases, and some of those who filed cases were not able to proceed to trial because their perpetrators were not identified and arrested. In 2006, six perpetrators were convicted of crimes against humanity and 29 women were awarded damages and interest to be paid by the perpetrators, with the state liable *in solidum* for payment of these awards.<sup>13</sup> The awards were in the amount of \$5,000 for each victim of rape, with one award of \$10,000 for the mother of one of the victims, whose daughter had been eight months pregnant when she was raped and died as a result of the attack. Not long after the judgment was rendered, the convicted perpetrators escaped from prison, and to date none of the women has received any payment of the indemnities awarded to them by the court.

114. In Mbandaka, the panel met with the mother whose pregnant daughter was raped during the attack on Songo Mboyo and subsequently died, for which loss she was awarded compensation by the court for \$10,000, to date unpaid. Her daughter had been married to the commander of the troops in the village and was therefore made a particular target by the soldiers when they received \$2 less than they expected. The witness herself had been brutally gang-raped in the late 1990s by Ugandan soldiers, who then forced her father to have sex with her after she had cried out to him for help when she was being raped. Through tears, the witness told the panel how much she has suffered in her life and still suffers. She cares for her granddaughter but does not have money to send her to school. She has testified before many others, even the former UN Secretary-General Kofi Annan, but nothing has come as a result of these hearings and she is still waiting for payment of the indemnity she has been promised. Because she has been outspoken, she is very much at risk and lives in hiding.

115. Like this long-suffering grandmother, there are a number of victims from Songo Mboyo who came to Mbandaka for medical treatment after the attack and remained there. Initially they were all placed in a compound together behind a UN facility, but when soldiers found out they were there, they came and threatened the women. One victim told the panel that her mother was killed in Mbandaka by soldiers who came to loot, and the victim, who had been raped in Songo Mboyo, was raped again by these soldiers. Her husband, who witnessed her rape, rejected her because he was ashamed of what had happened to her. He moved away and sent her a message telling her that he could not have a wife who had been raped by the military. This victim, a friend of the commander's pregnant wife who had died following her rape, told the panel that after the second time she was raped she wondered why she didn't die, as she had wished to die. Because she was raped, rejected and stigmatized, she

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<sup>13</sup> The trial court judgment was rendered by the *Tribunal Militaire de Garnison* of Mbandaka on 12 April 2006 and the appeals court judgment was rendered by the Military Court of Equateur on 7 June 2006.

has nowhere to go with her children. She cannot go back to the village because of shame, and she has become a beggar in Mbandaka. She said she would like to go somewhere where no one knows her, and maybe there she could find a husband. Meanwhile she continues to come across soldiers on the street who threaten her, and she believes if she were to testify against them they would come after her.

116. In Songo Mboyo, the panel met with two groups of women. In the first group were six of the 29 women who succeeded in getting judgment against their perpetrators but have failed to get payment of the damages and interest awarded to them. This group is extremely frustrated and angry. As one of them explained:

According to the law and the judgment, we won the trial. The perpetrators have been condemned. Now that judgment has been pronounced, the perpetrators should be arrested and the damage awards paid. But the perpetrators are free. The soldiers arrested have escaped from jail and they have returned to the army. Now we are living in insecurity and cannot travel. After the trial the government promised to pay the damages, but the damages have never been paid. We have been waiting since 2006. Every time we see a helicopter we have hope, but this is a mockery.

The victims shared with the panel the humiliation they feel because the indemnities awarded to them by the court have never been paid. They told the panel that everyone is looking at them, and their shame is revived with every visit that leaves them empty-handed. They noted that some of the victims who were granted compensation by the court have already died without ever having received it. The panel tried to encourage these women, expressing admiration for their courage and tenacity, and urged them not to give up hope that the indemnities owed to them would be paid.

117. The second group of women the panel met with were among those victims who have filed cases but whose cases are still pending because the perpetrator was not arrested. These witnesses are also extremely frustrated and angry but for different reason. As one witness explained:

The soldiers committed terrible atrocities. They tortured our husbands, they looted the village, and they raped the women. After these events, the military prosecutor came to investigate. He said he would arrest all the perpetrators. But when they came with the court we realized very few perpetrators had been arrested and our perpetrators had not been arrested. We wondered why, from the huge battalion that committed these rapes, only twelve soldiers were arrested. Our perpetrators were not arrested, so how could we go to the court? How are we as victims going to continue the legal process if they don't arrest our perpetrators? After these events, all the women were so desperate. They were suffering inside. Some could no longer get pregnant, others were rejected by their husbands. How are we going to end that suffering? When the judgment was pronounced, the victims in the process had won the trial. But the entire village was raped. So to take away the shame and to recognize the pain of each one of us, we should also have similar treatment.

118. One victim, who is blind, told the panel that she has moved from Songo Mboyo to another village because of stigmatization. She was raped in the rampage together with her mother, and became pregnant as a result of the rape. Her mother subsequently passed away. She told the panel that she lives in "constant sadness" and sometimes thinks of committing suicide. She has four children, and she cannot afford to send them to school. Another victim highlighted the insecurity felt by the women as their perpetrators are in the army. She noted

the tremendous suffering of the victims and expressed her hope that the panel would realize that everyone has been affected by what happened. With others around her weeping, she told the panel, “Reparations should help all the victims.” Noting that the events of December 2003 had humiliated all the women of the village who were raped and then subjected to stigmatization, another victim referred to reparation as a right to which victims are entitled. She said it should be provided by the government and that it would help take away their shame.

119. The women who were raped in Songo Mboyo in December 2003 have formed an association, the *Association des Mamans Reinserrées de Songo Mboyo* (AMRS). As a token of solidarity in support of these women, who are distressed by the failure to date of their efforts to secure justice, the panel facilitated the donation by UNIFEM of a *baliniere* to the association, a boat to transport their goods down the river to the market. The women work in the fields but currently have no means to sell the food they harvest for lack of transport, using temporary constructs that are unsafe and fall apart causing them to lose their cargo in the river. The women gratefully and enthusiastically welcomed the news of the *baliniere*, which is being built and will bear the name of the association.

### **The Songo Mboyo Roundtable**

120. The roundtable in Songo Mboyo took place in an outdoor clearing in the centre of the village to accommodate the hundreds of villagers who attended. The medical director of the hospital in Bongandanga, a town 90 km away, described many of the adverse health consequences suffered by the Songo Mboyo survivors, including sexually transmitted infections, fistula, and pregnancy. He noted that support for victims is not satisfactory and recommended that necessary medical services be provided. The Coordinator of the Bongandanga Centre for Psychological Intervention noted the humiliation that victims in Songo Mboyo have suffered and called on the community and the local authorities to support their reintegration.

121. Both the civilian and military prosecutors from Lisala, a town 225 km away from Songo Mboyo, spoke of the need for reparation and the need for payment of the indemnity awards. The military prosecutor mentioned several cases in which police officers were condemned for rape but the victims have received nothing to date. He suggested that amicable agreements should be prohibited. The civilian prosecutor highlighted the remoteness of the district and lack of access by road to some places. In these places he described the law as “simply absent” and said respect for the rule of law was therefore difficult, outlining the many challenges for victims seeking judicial reparation.

122. It was noted that there are no NGOs in Songo Mboyo. The need to make people aware of their rights was mentioned, as was the hope that some money could be brought for the victims. The Chair of the panel spoke to the crowd in closing and reaffirmed the entitlement of the victims to be paid the indemnities awarded to them. She also spoke of the stigmatization suffered by the victims of sexual violence in Songo Mboyo. She said that these women should not be shamed, that their survival in the face of so much suffering and their care for their children in such difficult circumstances is tremendously courageous. She characterized the rejection of these women by their husbands as an abrogation of marital and parental responsibility, and added that the shame should be on those who abandon these women, those who raped them, and all those who do not support them.

## V. THE KINSHASA FORUM<sup>14</sup>

123. On 12 October 2010, the panel convened a forum in Kinshasa to share its preliminary findings with government officials, civil society, UN agencies, and the diplomatic community. The forum was opened by MONUSCO DSRSG Leila Zerrougi and the Vice Prime Minister, His Excellency Simon Bulupiy Galati.

### **Presentation of Preliminary Findings**

124. The panel noted the clear call it had heard again and again – from victims, civil society and government officials alike – for remedies and reparations. The victimization of women by sexual violence, particularly in the context of armed conflict, has largely destroyed the lives they knew before. The physical, psychological and material harms they suffer are greatly compounded by the stigma they face in families and communities, which is further compounded by fistula, pregnancy, and sexually transmitted diseases including HIV/AIDS. The panel noted that health care and education were among the highest priority needs conveyed to them by the victims they met, together with socio-economic reintegration and recalled that the goal of reparations is to restore the victim, although there is no way to undo entirely the impact of the atrocities they have suffered. It suggested that justice might be best served by different responses to different circumstances.

125. The panel noted that most victims are not able to seek justice through the courts because they cannot identify their perpetrators. Even for those who do overcome the many challenges to succeed in getting a judgment condemning perpetrators and awarding them reparations in the form of damages and interest, there is great frustration because the perpetrators escape from prison and the damages and interest are not paid, even when the state is held liable *in solidum*. The panel noted that judicial officers, as well as government authorities in all the provinces it visited, expressed concern that the failure to pay these indemnity awards is undermining the judiciary and the confidence of victims in the justice system, leading them to turn increasingly to amicable arrangements, a family-driven tradition which does not effectively benefit victims.

126. The panel noted that the Kivus are still plagued by ongoing armed conflict, and victims of sexual violence have urgent and desperate basic needs for medical care, housing, and a means of support for themselves and their children. Yet when asked what could be done to help them restore their lives and regain their dignity, virtually every one started with peace and security as their first and most immediate personal need, pleading with the panel to carry this message to the rest of the world and explaining that without peace and security, the restoration of all else they had lost would have no meaning as it could be lost again at any time.

127. On behalf of the Minister of Justice and Human Rights, the Vice Director of his Office, Ms. Marie-Therese Kenge Ngomba noted that after the Inter-Congolese dialogue in 2003, a joint initiative had been set up between the government, NGOs and the UN system to address the needs of victims – for medical treatment, psychological care, socio-economic reinsertion, and justice. As a result of this joint initiative, victims of sexual violence in Mbandaka and Songo Mboyo were able to access the justice system. She noted that many hospitals had been supported and that if victims are now able to talk without fear it is because

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<sup>14</sup> Due to the death of his father, Dr. Denis Mukwege was unable to participate in the Kinshasa forum. He was represented by Christine Deschryver, Vice-President of the Panzi Foundation.

much work has been done on the ground to support them to express themselves. The 2006 laws against sexual violence and the National Strategy to Combat Gender-Based Violence are evidence of the commitment the government has made. She noted that there remains much to be done to ensure the implementation of the 2006 laws, and the fight against impunity is a priority for the Minister of Justice.

128. With regard to reparations, Ms. Kenge Ngomba mentioned several initiatives of the Ministry of Justice including a Plan of Action in the Fight Against Impunity in Cases of Sexual Violence, which has as one of its main objectives reparations for victims of sexual violence; a 2009 workshop on the implementation of the 2006 laws, co-organized with UNDP, which recommended the creation of a reparation fund; and the preparation of a draft decree to create such a reparation fund. In relation to this fund, she noted that there are numerous questions as to who should manage the fund, and where the funds should come from.

### **The National Strategy to Combat Gender-Based Violence**

129. The Principal Advisor on Sexual Violence from MONUSCO presented the National Strategy to Combat Gender-Based Violence. She noted that the UN Comprehensive Strategy to Combat Sexual Violence in the DRC, which was adopted in April 2009, had been integrated into the National Strategy adopted in November 2009, and she explained that the aim of the coordinated approach was to strengthen national ownership, harmonize programming on sexual violence and create complementary interventions. The five components of the UN strategy are all in the National Strategy, including the fight against impunity, and she noted the adoption by the government of a zero-tolerance policy on sexual violence. She described the coordination mechanism for implementation of the strategy, which includes working groups for each of the components both at the national and the provincial level. Each working group includes relevant ministries, UN entities, and NGOs.

130. The impunity working group is led by JHRO, together with the Ministry of Justice, and its aim is to improve access to justice for victims of sexual violence. The budget is \$778,000 and projected activities include establishing units for judicial data collection in South Kivu and Ituri, organising training seminars on collection of judicial data, producing records on criminal statistics, and opening eight new referral centres to improve access to justice and provide free assistance. Training of the police on referral of sexual violence cases and information campaigns on how victims can access justice are also planned.

131. The protection and prevention working group is led by UNHCR, together with the Ministry of Social Affairs. Its budget is \$1,631,855, and it will work to raise awareness, train community leaders, and study the causes and dynamics of sexual violence. \$ 1,250,054 is funded for security sector reform, led by MONUSCO together with the Ministry of Defense, to sensitize the FARDC on prevention and reduction of sexual violence. \$2,262,173 is allocated to multi-sectoral assistance, coordinated by UNICEF and the Ministry of Public Health, with the aim of ensuring access of victims to quality services. Projected activities include the rehabilitation of four healthcare structures, provision of medical equipment and medical and psycho-social support to more than 2,000 victims of sexual violence. \$5,638,472 is allocated for data collection on prevention and response to sexual violence, led by UNFPA together with the Ministry of Gender.

132. Funds for the implementation of the National Strategy are channeled in part through the Stabilisation and Reconstruction Plan for Eastern Congo (STAREC). Selection of projects are made by the working groups and submitted to the Joint Committee for approval by the provincial government. Approved projects are sent to the Technical Committee at the national level for review, and final decisions are made by the Funding Board, which is chaired by the Prime Minister.

133. In discussion following the presentation of the National Strategy, concern was expressed by NGOs that victims are not getting the assistance they need, that civil society has been excluded from the design and implementation of the strategy, and that much of the funding goes to support international salaries and missions. It was explained that in the effort to move forward quickly, high minimum grant amounts were established, which effectively excluded local NGOs, but in the second allocation efforts will be made to ensure that Congolese civil society can apply for funding. Civil society representatives called for more emphasis on socio-economic reintegration because it is more sustainable, and for the creation of centers for psychological counseling of victims. The hope for partnership between the government and civil society was expressed.

### **Reparations Programmes in the DRC**

134. The Chair of the JHRO Task Force on Sexual Violence presented the concept of reparations in relation to different categories of victims, differentiating some victims of rape as victims of violations of international human rights or humanitarian law from victims of rape by civilian perpetrators. For this first group of victims, a holistic response has been established by the joint initiative and carried over into the National Strategy financed by STAREC. The various components of the strategy are sometimes referred to as reparations. The weakness of existing assistance programmes was noted, including the lack of access to medical assistance within 72 hours of rape, and the lack of specialized psycho-social support for rape victims. With regard to economic reintegration programmes, the assistance given to victims is sometimes not helpful. The women of Songo Mboyo, for example, were given training in sewing and sewing machines, but there is not a sufficient market in the village of Songo Mboyo for twenty women to earn money through sewing. The many obstacles to judicial remedy were noted including the fear of reprisal, the cost of justice, the lack of access to judicial structures and legal aid, as well as the sense victims have that they will not receive payment of indemnities awarded. The mapping report of OHCHR was mentioned, and it was suggested that in next steps to follow up on the report, any efforts to create transitional justice mechanisms should include a gender dimension. The significant extent to which stigma multiplies the needs of victims in many ways was also noted, and yet it was pointed out that stigmatization is hardly mentioned in the strategy and that there is little work being done to address stigma.

135. A representative of the International Center for Transitional Justice (ICTJ) suggested in his presentation that the justice system needed to be changed to make it more accessible to victims, especially those in remote areas. He characterized reparations as a way to recognize the suffering of victims and proposed that something should be given individually to victims, as they have suffered individually, even if their perpetrators cannot be identified. A representative of ACCORD reported on a workshop that had been organized with NGOs to look at the question of reparations, both who should pay and who should be paid. He suggested that the concept of victims is too limited, as it does not include indirect victims who suffer trauma, and that the concept of liability is too limited in holding only the



perpetrator liable. He suggested that other countries such as Canada, which has a broad definition of victim, might serve as a model.

136. The UNDP representative suggested a distinction be made between perpetrators from armed forces and civilian perpetrators. She suggested three types of reparation: individual reparation, reparation to individuals as part of the community, and reparations to the community itself, which recognize the community as a victim. Ensuring that the individual is supported rather than rejected by the community is an aspect of reparations that has not been considered. With regard to formal justice, she questioned the idea that victims do not go to court because they do not get payment of indemnities, as this is not the only aim of formal justice, and she noted that amicable agreements play an important role as there are only four tribunals in the Kivus. Amicable agreements are part of the explanation as to why victims do not access the formal system, and she suggested that in communities where the individual is not as important as the community, further research on traditional justice should be done.

### **Next Steps**

137. The Special Rapporteur on the Rights of Women in Africa of the African Commission on Human Rights noted that a resolution had been passed in 2007 by the African Union on the right to remedy and reparations in DRC. She noted that the DRC has implemented a number of reforms, including legislative reform and the adoption of the National Strategy. She also noted that the DRC has ratified the Protocol to the African Charter of Human Rights on the Rights of African Women. However, she said there has been no response from the government to many urgent appeals that have been sent with regard to women's rights and sexual violence in the DRC. The commitment of the government is needed, and she suggested that a regional approach should be integrated into the UN efforts.

138. The UNIFEM representative spoke of the normalization of rape that happens when rape is committed on a massive scale. She spoke of the need for a woman-centered approach and said the fight against impunity must be matched by assistance to victims, with reparations including state responsibility, truth, security and guarantees of non-repetition, compensation, acknowledgement, respect and non-stigmatization. She recalled that in Sierra Leone what women wanted was an apology, but it never came. She mentioned the challenges in qualification of victims to access reparations - if not through the judicial system, then how - and quantification of damages, as there is a wide variety of needs which change over time. She also noted the threat of repetition, questioning whether there can be reparation without peace; the potential predation by perpetrators or husbands who return when the victim receives monetary compensation; and the contradictions of authorities granting reparations yet not arresting perpetrators. Having enumerated these challenges, the UNIFEM representative noted that they should not be a bar to change. She cited successful reparations programs in a number of countries including collective reparations in Morocco, individual reparations in Sierra Leone, and community as well as individual reparations in Algeria.

139. The day ended with a presentation from Honorata Kizende, a survivor/activist, who expressed hope that solutions would come from the villages up to the big cities. She noted that there are many rural victims in Bukavu who don't like living in the city, but they know that if they go back to their villages they will be attacked. She expressed concern that local NGOs are neglected, and that of the millions of dollars of funds that come in, only thousands go to those actually implementing the programmes. She spoke of these programmes being done without survivors but for survivors, with the consequence that the programmes do not

always address the needs. She also noted that organizations often speak of survivors as “their” rape victims and reminded all that survivors are human beings and capable women. Another survivor then shared her story of a brutal rape she suffered while pregnant with twins who were cut from her and killed. She urged the inclusion of survivors in conferences and meetings, and she urged that all victims be taken care of, in the West as well as the East.

140. The panel welcomed all the ideas and experience that had been shared, as well as the testimony of the survivors, and thanked all the participants for their invaluable input into its work.

## VI. REPARATIONS

141. As the normative framework to guide its discussions on reparations, the panel has relied on the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, adopted by the General Assembly in 2005.<sup>15</sup> The *Basic Principles and Guidelines* outline the duty of states to provide effective remedies, including reparation, to victims of these violations, and it defines victims as those who have individually or collectively suffered harm resulting from gross violations of international human rights law or serious violations of international humanitarian law.<sup>16</sup> The *Basic Principles and Guidelines* further provide that a person shall be considered a victim regardless of whether the perpetrator is identified, arrested, prosecuted, or convicted.<sup>17</sup>

142. Most of the victims interviewed by the panel were raped by government soldiers or by other armed militia in the context of widespread attacks on civilians, circumstances which clearly fall within the legal framework defined by the *Basic Principles and Guidelines*. The panel also noted the connection between rape by civilian perpetrators and armed conflict, and the widely held view that the unprecedented scale of rape in the DRC, including rape by civilians, is a consequence of the war. As the witness who recounted the case of a young boy raped by shepherds said:

All this happens because of lack of peace, because these bandits and rapists are still in the forests. Shepherds have learned from them to rape, and the government is too weak to punish them.

The impunity with which rape has been used as a weapon of war has permeated society as a result of which women collectively suffer harm. This nexus between armed conflict and rapes committed by civilian perpetrators, some of whom may be demobilized soldiers, would justify a broad and inclusive interpretation of the scope of victims falling within the framework of the *Basic Principles and Guidelines*.

143. The African Union Protocol on the Rights of Women in Africa, adopted in 2003 and ratified by the DRC in 2009, calls on states to “establish mechanisms and accessible services for effective information, rehabilitation and reparation for victims of violence against women.” This obligation is framed in the Protocol as a component of the right to life, integrity and security, without limitation to victims of armed conflict.<sup>18</sup>

144. Five forms of reparation are delineated in the *Basic Principles and Guidelines*<sup>19</sup>:

- **Restitution** to restore the victim as much as possible to her/his original situation before the violations occurred. This would include the return of property, reinstatement of employment, and return to one’s place of residence. The *Basic Principles and Guidelines* also mention the restoration of “family life” as part of

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<sup>15</sup> See *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of the International Humanitarian Law*, A/RES/69/147/, adopted on 16 December 2005 (see par. 3d).

<sup>16</sup> *Basic Principles and Guidelines*, par. 8.

<sup>17</sup> *Basic Principles and Guidelines*, par. 9

<sup>18</sup> *Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa*, adopted on 11 July 2003.

<sup>19</sup> *Basic Principles and Guidelines*, par.18 to 23.

restitution. For victims of sexual violence in the DRC restitution might include helping victims recover the jobs they have lost, the homes they have lost, and even the family ties they have lost as a result of stigmatization.

- **Compensation** for any economically assessable damage for physical or mental harm, for lost opportunities, including employment and education, for material damages and loss of earnings, for moral damage, and for costs incurred for legal, medical, psychological and other services. For victims of sexual violence in the DRC compensation might include support to cover the cost of medicines and surgical procedures, the cost of schooling for the children of victims as well as for the victims themselves, and compensation for the value of houses burned, property looted, and lost income.
- **Rehabilitation** including medical and psychological care, as well as legal and social services. In the DRC there is universal acknowledgment of the tremendous unmet need for rehabilitative services, in particular medical and psychological care.
- **Satisfaction** including *inter alia* truth-seeking measures, public apologies, judicial and administrative sanctions, commemoration and tribute, as well as measures aimed at cessation of continuing violations. For victims of sexual violence in the DRC whose perpetrators can be identified, satisfaction would require the arrest, prosecution, conviction and imprisonment of perpetrators. Addressing the lack of access to justice, particularly in remote areas, would require additional resources for a variety of urgent needs such as transport for law enforcement personnel, establishment of detention and court facilities within reachable distance, and budgetary provision for payment of indemnities. Victims who met with the panel also expressed interest in commemorative measures, such as the dedication of hospitals and schools to victims, as a form of public recognition of their suffering. Many witnesses expressed the sense they have that no one knows or cares about what happened to them. As one witness remarked, no one has apologized to them and such an apology would be helpful even “just to cool down their minds.”
- **Guarantees of non-repetition** are what so many victims in the Kivus urged the panel to highlight as their greatest need in the process of recovery. Strengthening and reform of institutional structures, such as the judicial system and the security sector, is envisioned in the *Basic Principles and Guidelines* and would help deter sexual violence. For victims of sexual violence in the DRC, the ultimate guarantee of non-repetition would be the restoration of peace and security. Addressing the underlying gender dimensions and root causes of sexual violence would also be an integral component of any meaningful and sustainable guarantee of non-repetition.

145. The right of victims to reparation may give rise to some level of state responsibility to ensure that they have access to reparation even in cases where direct responsibility of the state cannot be established. In those cases where the state can be held directly responsible for the violation, such as rape committed by armed forces of the government, courts have held the state liable together with individual perpetrators *in solidum*. In other cases as well the *Basic Principles and Guidelines* provide:

States should endeavour to establish national programmes for reparation and other assistance to victims in the event that the parties liable for the harm suffered are unable or unwilling to meet their obligations.<sup>20</sup>

146. The right to reparation is recognized by the following provisions of Congolese law:

Civil Code, Article 258: Any act whatsoever that causes harm to another obliges the person by whose offence the harm was caused to make amends for this harm.

Civil Code, Article 259: A person is responsible not only for the harm caused by his/her own action, but also the harm caused by acts committed by persons answerable to him/her, or matters that are within his/her responsibility.

In numerous discussions, victims and others raised with the panel the issue of the failure of the government to carry out its responsibility to protect its citizens. To the extent it has failed in this responsibility, it may have some responsibility for reparations in cases where direct responsibility of the state is not established. The responsibility of the international community was also raised with reference to the transnational dimension of the conflict that has given rise to the violations.<sup>21</sup>

147. The panel heard many views on the relative benefits and drawbacks of individual vs. collective reparations. Some considered the benefit of collective reparations, such as the building of a hospital or a school, to be that the entire community would benefit, with some recognition that the community as a whole had suffered harm. For others who had been through the justice system and were frustrated by their inability to execute the judgments awarded to them, collective reparations seemed inequitable precisely because of its collective nature, which failed to distinguish and could be seen as minimizing the particular harm done to individual victims. On the other hand, for individuals who were unable even to secure a judgment, despite their efforts to do so, the indemnities awarded to other victims seemed unfairly selective and inequitable to them, as they had been subjected to similar violations and experienced comparable suffering.

148. Certain needs are more readily dealt with on a collective basis, whereas other needs can only be addressed on an individual basis. Repeatedly the suggestion was made that both collective and individual reparations should be provided for. Collective reparations may not require the qualification of victims. In the village of Songo Mboyo, where there is an association of survivors of sexual violence, the contribution of a boat to help them transport their goods and support their income-generating activity is an example of the type of benefit that could constitute collective reparation, which requires little or no screening.

149. With regard to individual reparations, depending on the nature of the reparation, some process of qualification for victims would be required. For in-kind benefits addressing individual needs, such as medical procedures or psychological counseling, a lighter and less demanding process might be required, whereas for monetary compensation, the risk of fraudulent claims would be higher and a higher burden of proof would be merited, if not through judicial proceeding then through an administrative process. Access to judicial

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<sup>20</sup> *Basic Principles and Guidelines* par. 16.

<sup>21</sup> In a decision issued on 19 December 2005, the International Court of Justice ordered Uganda to pay reparations to the DRC for serious violations of human rights and of international humanitarian law committed by its armed forces on DRC territory. ICJ, *Armed Activities on the Territory of the Congo (DRC v. Uganda)*, 19 December 2005, para. 259-260.

reparations in the DRC is currently limited to those who can identify and secure the arrest of their perpetrators. It was suggested by some that monetary compensation could raise security concerns for beneficiaries and that credit-based methods of delivery might be safer than the dispensation of cash.

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

151. As there are services available to victims in the DRC as well as ongoing efforts to build needed infrastructure, particularly in urban centers, a distinction should be drawn between humanitarian assistance and reparations, or between development programmes and reparations. The medical services and psychological counseling sought by so many victims are currently delivered in the context of humanitarian assistance, while similarly the construction of hospitals and schools is a component of ongoing development work. Humanitarian and development programmes deliver basic goods and services to which all citizens are entitled. When these goods and services are given to victims, what might distinguish them as reparations would be an element of redress, which acknowledges the harm suffered and recognizes that these goods and services are being given to remedy that harm, as well as some component of recognition of the state's responsibility to protect its citizens. It was suggested that the public dedication by government officials, for example, of a hospital to victims of sexual violence, or a school to their children, could render the school or hospital a form of collective reparation that brings victims some sense of justice and restoration of dignity. These efforts should go hand in hand with truth seeking exercises, the fight against impunity, and long-term efforts to ensure access by the entire population to *inter alia* health care and education.

152. It has been suggested that reparations programmes should not be limited to victims of sexual violence, and the argument made that highlighting sexual violence and singling out its victims could foster resentment and promote stigmatization. One of the key aspects of sexual violence in the DRC is the stigmatization of victims. The reparation needs of victims of sexual violence may be caused more by the stigmatization than the sexual violence itself. A woman displaced from her home by her husband needs a home because of stigmatization. Similarly, her loss of income and inability to pay school fees and care for her children results from the loss of her marriage, rather than the sexual violence she suffered. These additional consequent harms are unique to sexual violence and should be addressed not only in terms of the needs they create but also in terms of their root cause, which is stigmatization. The cost of not addressing stigmatization directly is far greater than the cost of addressing it. Stigma is noted by the Mapping Report of the Office of the High Commissioner for Human Rights as one of the criteria that can be used in defining the scope of a reparations programme to benefit those who have suffered the most and have the greatest need of assistance. Other criteria include the seriousness of the violation and the physical or mental health consequences of the violation for the victims.<sup>22</sup>

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<sup>22</sup> *Report of the Mapping Exercise documenting the most serious violations of human rights and international humanitarian law committed within the territory of the Democratic Republic of the Congo between March 1993 and June 2003*, August 2010, para 1104.

153. More than financial resources, political will is needed to end the stigmatization of victims and restore their dignity. As the Special Rapporteur on Violence Against Women has noted:

[A]cts of violence against women are part of a larger system of gender hierarchy that can only be fully grasped when seen in the broader structural context. Therefore, adequate reparations for women cannot simply be about returning them to where they were before the individual instance of violence, but instead should strive to have a transformative potential.<sup>23</sup>

This need to raise the status of victims of sexual violence and publicly shift the blame from victims to their perpetrators is integral to the reparation of victims of sexual violence and adds a unique dimension to the task. The reparations fund envisioned by the National Strategy to Combat Gender-Based Violence in the DRC is a fund specifically for victims of sexual violence.

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<sup>23</sup> Report of the Special Rapporteur on Violence against Women, its causes and consequences, Rashida Manjoo, A/HRC/14/22, 19 April 2010, para. 31.

## VII. FINDINGS AND RECOMMENDATIONS

### Findings

1. The panel registered a clear call - from victims, civil society, and government authorities – for reparations. On a massive scale, women have been victimized by sexual violence in the context of the armed conflict that has plagued and in some parts of the country continues to plague the DRC. The lives they knew have been largely destroyed, and they are suffering greatly - physically, psychologically, and materially. This victimization continues and is compounded by the stigma they often face in families and communities. Their husbands desert them, and they are socially ostracized. Often this rejection is further compounded for victims who suffer from fistula, victims who become pregnant and bear children as a result of rape, or victims who contract sexually transmitted diseases, including HIV/AIDS.

2. Despite all their own often desperate personal needs, the victims who met with the panel expressed concern first and foremost for their children. They are determined but in many cases unable to send their children to school. The rejection by their husbands, or in some cases the death of their husbands, has left women without the means of support they had relied on, and often without shelter. Displaced, they do not have any means of survival or the ability to care for their children. Victims the panel met with who have contracted HIV/AIDS are deeply troubled by concern over what will happen to their children when they die.

3. While there are some programs that directly support victims of sexual violence, notably medical services and particularly in the urban centres, the tremendous needs of these victims are largely unmet. Health care and education were among the highest priorities conveyed repeatedly to the panel by the victims. Many victims who met with the panel expressed the need for socio-economic reintegration programmes, although some who had accessed such programmes indicated a need to ensure that they are sustainable and tailored to the economic context.

4. The panel was struck by the difference between the urban centres and the villages it visited in each province. In remote areas there is so little infrastructure that access to any form of assistance or reparation is virtually non-existent. The hospitals in Shabunda and Komanda are very poorly equipped, and in Songo Mboyo, a very remote village, the panel was apprised of medical needs that simply could not be met. Most women in rural areas are unable to get medical assistance within 72 hours of rape. There is no court in Shabunda, and the court of peace that is under construction will only deal with minor cases, with no jurisdiction to try rape cases. When the nearest prisons and courts are hundreds of kilometres away, justice is inaccessible and effectively denied. For the legal system to operate properly, certain structures need to be in place. Transport is a critical need. Even in Bukavu, the panel noted that the police officer responsible for sexual violence investigations has only a motorcycle, which makes it impossible for her to transport arrested persons to detention facilities. Similarly in Mbandaka, the police unit for sexual violence and protection of children has no vehicle and is therefore unable to travel to many villages. The panel was very heartened by the engagement and commitment of provincial and local authorities, but they do not have the resources they desperately need to address the various needs of victims of sexual violence.



5. The hope expressed by victims was that their suffering should not be forgotten, that it should be recognized and acknowledged. Public apologies and other forms of tribute would be welcomed by victims of sexual violence. Not only would such gestures of support be helpful to them psychologically, they would be helpful in promoting their acceptance by the community and reversing the stigmatization they suffer. Victims would particularly welcome monuments that memorialize their suffering by providing tangible benefits that address their needs, such as schools and hospitals.

6. For those victims of sexual violence who are able to overcome the many challenges of bringing a case to court and getting a judgment that condemns the perpetrators and awards them reparations in the form of damages and interest, there is great frustration. The perpetrators escape and do not serve their sentences, and the indemnity awards are not paid, even in those cases where the state has been held liable *in solidum*. This is a matter of widespread concern to judicial officers and provincial government authorities, as well as civil society and the victims themselves. The failure to pay these awards is undermining the judiciary and the confidence of victims in the justice system. As a result, in search of justice, victims are increasingly turning to the informal tradition of amicable agreements, a family-driven system that does not generally benefit victims. The National Strategy to Combat Gender-Based Violence calls for the payment of indemnities awarded by the courts, but there is virtually no budgetary provision for this payment, and the panel is not aware of any immediate plans to secure funding within the budget for these payments, which are a legal obligation of the government.

7. Most victims are unable to seek justice through the courts because they cannot identify their perpetrators, or in some cases their perpetrators have not been arrested, leaving these victims with no possibility of access to reparation through judicial proceedings as the justice system does not provide for reparations in the absence of the perpetrator. Yet the harm suffered by these victims is the same or comparable to the harm suffered by others who do have access to the courts. The denial of recourse to victims who do not know or cannot find their perpetrators is perceived by them as unfair.

8. The Kivus, unlike the other provinces visited by the panel, are still plagued by ongoing armed conflict, which continues to victimize the population. The victims from North and South Kivu interviewed by the panel have the same basic needs as victims elsewhere – for health care, psychiatric counselling, housing, and a means of livelihood. Many lost everything when their villages were looted and their houses burned to the ground. All are deeply traumatized by the atrocities to which they have been subjected. Yet to restore their lives and regain their dignity, they start with peace and security as their first and most immediate personal need. Without peace and security, the restoration of all else they have lost would not have meaning to them for fear that they could lose it all again at any time. The continuing destruction must stop before rebuilding can begin. The panel notes Article 10 of the African Union Protocol on the Rights of Women in Africa, which provides: “Women have a right to a peaceful existence and the right to participate in the promotion and maintenance of peace.”<sup>24</sup>

9. Countless young men have grown up in the bush, without proper care and education. These men have continued to rape and kill, rather than learn to read and write. Government forces have also continued to violate the civilians they are mandated to protect. Evident

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<sup>24</sup> African Protocol on Women’s Rights, Article 10, para. 1.

factors include lack of training, inadequate salaries, and the integration of other armed groups into the national army without proper vetting.

10. In Orientale Province, there is a greater sense of security and more of a post-conflict context than in the Kivus. More time has passed since the victims interviewed by the panel were subjected to mass rapes and other atrocities. There is more talk among these victims of reconciliation and forgiveness, although there are many displaced victims and the needs of all victims remain great. In Bunia, as well as Komanda, the panel met a number of victims who have been raped by civilians. There seems to have been a significant increase in the incidence of rape since the war, and many victims related this increase to the war, as having created an environment in which rape was committed routinely with impunity. Victims of rape by civilian perpetrators suffer much of the same harm as victims of rape by armed forces. Their husbands reject them, they become pregnant as a result of the rape, they have medical concerns, and they are stigmatized by the community, left often to fend for themselves and their children alone, without any support.

11. In Equateur, victims of sexual violence have had greater access to legal recourse, thanks mainly to the activism of NGOs offering victims legal support. A synergy between the medical and legal service providers led to the two court judgments reviewed by the panel, in Mbandaka and Songo Mboyo respectively. Access to courts, however, has not yet delivered justice to the women who sought legal remedies. Their victories to date are hollow, as they have seen their perpetrators escape from jail and they have not yet received any payment of the indemnities awarded to them. In this context, the panel noted a greater sense of rights and entitlement to reparations than elsewhere, but the inability to realize these rights has led to a high level of frustration and anger. Expectations have been raised and dashed, and the women who had the courage to bring cases and bear witness in court find themselves mocked, particularly by elements of the armed forces, who frequently confront them and sometimes threaten them.

12. The panel noted that among plaintiffs who have obtained court judgments, there is not the same interest in collective reparations as there is among other victims of sexual violence. Some of these plaintiffs are concerned that collective reparations will benefit everyone, and not particularly those who have been victimized. This is understandable due to the toll that their individual cases have taken on them. In Songo Mboyo, there seems to be some tension between the women who have judgments awaiting execution and the women who filed cases at the same time, which are yet to be tried pending arrest of the perpetrators. These women all suffered from the same rampage, and yet they have received differential treatment in their efforts to secure justice due to circumstances beyond their control. To them it is virtually a matter of chance that their perpetrators were among, or not among, those arrested and brought to trial. Meanwhile, for other victims, the outcome to date for both of these other groups – failure to secure a judgment or failure to secure implementation of the judgment – serves as a deterrent to potential plaintiffs.

13. There are a number of male victims of sexual violence in the DRC, and it is difficult for them to come forward and speak about what happened to them. Like the women who have been raped, men who have been raped suffer from stigmatization, which can take a somewhat different form. The male victims interviewed by the panel talked of being raped as being treated “like a wife,” and they are humiliated by others for identifying or being identified with a group of victims who are virtually all women.

14. Although the victims who met with the panel did not for the most part articulate a conscious right to reparation, they are very clear on what they need to try to restore their lives and dignity. The impact of the violation differs from victim to victim, and for this reason there is not one solution that would work for all victims. Justice would be better served by different responses to different circumstances. For the woman whose husband rejected her and who is deeply troubled by the fact that she can no longer afford to send her children to school, school fees or free schooling for her children will restore in some part what she has lost. For the girl who became pregnant as a result of rape and has now left school to take care of her child, child support and the ability to go back to school will restore some part of what she has lost. For the woman suffering from fistula, which causes everyone in her community to shun her, an operation to repair the damage will restore some part of what she has lost and mitigate the stigma she feels. For the woman who unknowingly infected her husband with HIV/AIDS, and was thrown out of her own home with her children when her husband died, a house where she and her children can live in peace will restore some part of what she has lost and help her begin to rebuild her life.

15. While there is no way to erase the harm that has been suffered by victims, addressing their losses is the starting point for reparations. While many of the needs are costly and require resources, there are other forms of reparation that would cost almost nothing and have a great impact in restoring dignity and giving some sense of justice to the Congolese women and men who have suffered the stigma of sexual violence. Public recognition of the harm and public support for them, particularly at the highest levels of government, will go a long way to help change the culture that blames victims of sexual violence rather than blaming their perpetrators. This is a second victimization that continues to cause harm and greatly increases the suffering of these women. Sexual violence and the stigma of sexual violence are by no means unique to the DRC. They are manifestations of the culture of gender discrimination that persists around the world.

16. The panel was deeply moved by the many Congolese men who spoke strongly in support of victims of sexual violence – by the old man in a village who refused to leave his wife after she was raped even though he was urged to do so by other men, by the Vice-Governor of South Kivu who clearly and publicly stated that victims of sexual violence are not to blame, and by the District Commissioner of Ituri who expressed great concern for rape victims who are rejected by their family and by society, saying “we have to put ourselves in the shoes of women to defend them and help them find again their honour and dignity.” These voices must be amplified and these men seen as a model of change for all to follow.

17. The stigmatization of victims often generates re-victimization in the aftermath of sexual violence and a second wave of harm, as a result of rejection by husbands and communities. When victims most need support, the withdrawal of all sources of support and the isolation of the victims can be as damaging as the sexual violence itself. Shifting the stigma from the victims to the perpetrators, as well as all those who do not support the victims, would have a great impact on the ability of victims to reclaim their dignity and rebuild their lives. Yet this issue does not seem to be centrally on the agenda of those working to address sexual violence. While stigmatization was often mentioned at the roundtables, the panel did not learn much about concrete programs or actions that have been taken to address it. As pointed out in the Kinshasa forum, stigmatization is barely mentioned in the National Strategy to Combat Gender-Based Violence. It is one of the most difficult but one of the most important challenges, and the panel considers that there is tremendous potential, without any additional resources, for political leaders as well as community leaders

to have a great impact in the reduction of the harm caused by stigma. There is clearly a critical role for men to play in this effort, and the panel noted that its roundtables were comprised mainly of men. Given a chance, Congolese women can lead the country in post-conflict recovery. Although they have suffered unimaginable indignities, they have maintained their strength and courage. It is recognition and respect of others that they are lacking.

18. Listening to victims directly can itself be of significant value, giving them an opportunity to tell their stories and share their many burdens. In welcoming the panel, many victims conveyed their appreciation for the affirmation they took from its presence that what was happening to them was of concern to others, including the international community. There are many acts of solidarity and compassion that would cost little or nothing and go a long way in reversing the sense of shame that victims are made to feel and restoring the sense of dignity to which they are entitled.

19. There is clearly an enormous need for psychological counselling to which few victims have had access. While there are some groups of victims and informal mechanisms of support, some victims told the panel that they had no one to talk to about what had happened to them and its aftermath.

20. Victims are as much a source of solutions as a source of information and have many ideas to contribute to the dialogue on reparations and effective delivery of much needed support and services. Victims of sexual violence know their needs best, and are best placed to address concerns regarding the distribution of reparations, including the need to ensure that reparations programs are equitable as well as the security needs for victims who might receive monetary payouts and possible credit-based alternatives. Key stakeholders in civil society and the judicial sector are actively engaged in a dialogue that offers clear analysis of the challenges faced and constructive thoughts on ways in which to enable victims to gain access to remedies and reparations. Provincial authorities also expressed commitment to the protection of victims of sexual violence, manifesting significant political will to try to address their needs and an interest in reparations programming at the provincial level.

21. The creation of a reparations fund mechanism for victims of sexual violence whose perpetrators are unidentified or insolvent is envisioned by the National Strategy to Combat Gender-Based Violence, as a component of the fight against impunity.<sup>25</sup> There is widespread support for the creation of such a fund, and many thoughts and questions under discussion as to how it should work – where the funding would come from, who would administer the fund, how victims would be qualified, and what benefits would be given to them – in-kind or monetary compensation or both, individual or collective reparations or both. But there does not appear to be a formal, structured discussion taking place that would address these questions, in consultation with key stakeholders including the victims themselves, and lead to the actual creation of the fund. The timeframe for the creation of the reparations fund set forth in the Plan of Action developed for the National Strategy is 2009-2010, but to date no

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<sup>25</sup> Section D.2 of the National Strategy Plan of Action on indemnities encourages garnishment to guarantee payment of damages and interests by civil parties (D.2.2), calls for simplification of the procedure for execution of compensation (D.2.3) and augmentation of the capacity of victims to claim compensation (D.2.4). Section D.3 on "other forms of reparations to be put in place" calls for the implementation of statutes for reparation (D.3.1) and execution of payments *in solidum* by the State (D.3.2) and the creation of a reparation fund mechanism for victims who don't know their perpetrators and victims whose perpetrators are insolvent (D.3.3.).

funding from STAREC or other sources has been allocated for implementation of this deliverable.

22. Victims have a right to reparations, which include restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. There is a need to highlight the responsibility of the government in this regard, with support from the international community. The conflict in DRC is transnational and there is a commonly held view among victims, civil society, and government authorities that there is an international responsibility as well as a national one to address the resulting harm. States have a responsibility to ensure that victims have access to effective remedies, including reparations. Sexual violence has been perpetrated with impunity by illegal armed groups, as well as by national security forces, and a culture of impunity has been created which has led to a widely noted increase in sexual violence perpetrated by civilians. Rape on an unprecedented scale in DRC is a product of the war, and women are collectively suffering harm as a result.

### **Recommendations**

1. The panel urges the High Commissioner to continue her advocacy on behalf of victims of sexual violence in DRC, integrating the need for reparations with ongoing efforts to combat impunity. The voices of victims reflected in this report should be amplified, and the panel hopes that the High Commissioner will share this report widely and support implementation of its recommendations, in consultation with the Government of the DRC. Engagement with the Government of the DRC should continue and efforts undertaken to find practical ways in which to help deliver justice, including restorative justice, to victims of sexual violence. The panel makes the following general recommendations to support such efforts.

2. The restoration of lasting peace and security in all of the DRC is an imperative in itself. It is also urgently needed to begin to restore the lives of countless victims of rape and to curb the rampant sexual violence in the country. Efforts to restore peace and security in eastern DRC should be intensified, with support from countries in the region and from the international community. Women should participate equally and be fully involved in all efforts to resolve the conflict, in faithful implementation of Security Council Resolutions 1325 and 1820, which underscore the important role of women in the maintenance of peace and security. The demobilization of armed groups should be given the highest priority, and efforts should be made to address the needs and future of former combatants so as to ensure their successful reintegration into civilian life in the interest of peace and security. The armed forces and national police should be vetted, properly trained, and adequately paid.

3. Greater efforts should be made to bring perpetrators to justice, including officers with command responsibility. Even in those cases where the perpetrators are unknown but can be identified as belonging to a particular group of armed forces, group commanders should be held responsible for the conduct of their troops. The Government of the DRC should ensure the timely arrest, investigation and prosecution of those who have been named as perpetrators, as well as engagement of command responsibility. The efforts of MONUSCO to reinforce the proper functioning of the formal justice sector should continue and be reinforced.

4. Greater access to medical care, psychological counseling, and legal recourse should be provided to victims of sexual violence, particularly in rural areas, by the construction of

hospitals, courts, and prisons, supplemented by mobile health clinics and mobile courts and staffed by properly trained and equipped medical and law enforcement personnel. Access would be facilitated by the building of roads, as well as the provision of means of transport. In a place like Shabunda, for example, there should be a court with jurisdiction to try cases of sexual violence, a prison to detain perpetrators, and a road to enable access other than by foot or by helicopter.

5. Funding to support victims of sexual violence should go directly to victims of sexual violence to help them address the basic needs they have as a result of the harm they have suffered. These needs include health care, housing, education for themselves and their children, and a sustainable means of livelihood. All forms of support should be provided in a manner that is empowering to victims and helps them regain the ability to take charge of their lives, and survivors of sexual violence should be given the opportunity and encouraged to play a leadership role in efforts to support other victims of sexual violence.

6. The Government of the DRC should take immediate action to pay the damages and interest that have already been awarded to victims by the courts, in installments if necessary.

7. A fund to support reparations for victims of sexual violence in the DRC, the need for which is foreseen in the National Strategy to Combat Gender-Based Violence, should be established as a matter of priority. The governance of a reparations fund should include representatives of the Government, the United Nations, donors, civil society, and survivors themselves, to best ensure accountability for the allocation of funding and the expenditure of funds. Such a fund should benefit victims of sexual violence in all parts of the country, not just Eastern Congo.<sup>26</sup> There must be some element of government contribution to a reparations fund in recognition of its responsibility to victims. This participation could take various forms including in-kind contributions (such as land for building homes), percentage allocation of costs (for example in paying indemnity awards granted in court cases), and symbolic reparations that publicly recognize the harm suffered by victims (for example by dedicating schools, hospitals, or other monuments to the victims).

8. The reparations fund should have the flexibility to respond differently to different needs in different places. Because the context varies from province to province, a decentralized model that allows for reparation projects to be formulated at the local or provincial, as well as the national level, would be more effective in tailoring reparations, particularly collective reparations, to the needs of the victims individually as well as collectively. A reparations fund should be restricted to Congolese-led initiatives so as to help build national capacity, within civil society and the government, particularly at local and provincial levels, and to help maximize the funding that reaches the victims themselves. The design of a reparations fund should be formulated in close consultation with victims of sexual violence, as well as civil society. OHCHR should partner with an entity such as UN Women, which has experience with in-country funds that support nationally based initiatives, in the process moving forward to further consider the creation of a reparations fund, in consultation with the Government, the SRSG on Sexual Violence in Conflict, and other relevant UN entities including the Joint Task Force on Sexual Violence in the DRC.

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<sup>26</sup> While a reparations project could be funded within the framework of STAREC, as it is part of the National Strategy Action Plan, such funding would limit the scope of the fund to Eastern Congo.

9. Husbands, families, and communities, as well as religious and community leaders, and government authorities up to the highest level should speak out clearly and strongly in support of victims of sexual violence and against their stigmatization. The zero-tolerance policy of the Government of the DRC should be expanded to include zero-tolerance of stigmatization, and civil society should give greater attention and priority to this issue. Men in particular should be encouraged to speak out and play an active role in reversing the stigma which shames victims of rape rather than perpetrators. Breaking the silence and mobilizing public support for these victims could be the single-most important form of reparation.

10. The Government of the DRC should be encouraged by the United Nations and by the diplomatic community to give greater priority to the issue of sexual violence. The Government, with support from the international community, should take concrete steps, such as payment of indemnity awards and public messaging against stigmatization of victims, to demonstrate its commitment to victims of sexual violence. Efforts at the local and provincial levels of government to this end should be supported.

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