

Perceptions of justice and hierarchies of rape: Rethinking approaches to sexual violence in Eastern Congo from the ground up

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Perceptions of justice and hierarchies of rape: Rethinking approaches to sexual violence in Eastern Congo from the ground up

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Manuscripts

Review

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6 **Perceptions of justice and hierarchies of rape: Rethinking approaches to sexual**
7 **violence in Eastern Congo from the ground up¹**
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10 **Introduction**

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12 Espoire a rape survivor from Idjwi, in eastern DRC sat with me on the floor sharing
13 her painful story of hardship, rejection and lost dreams. Espoire was attacked, and
14 repeatedly stabbed by two unknown assailants while walking back from her sister's
15 home. She was left for dead but miraculously survived and found out later on that she
16 was pregnant with twins. Espoire said that justice for her can only be delivered
17 through economic assistance. While she has no objection to the perpetrators being
18 prosecuted she also sees no benefit in it for her and has no desire to take any actions
19 to pursue it. Espoire said:
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28 I think if it is possible for the assailants to be imprisoned as per the law, I
29 would not mind it but I cannot see what this would bring me. For me, justice
30 must be about helping and supporting the survivor. If I were not raped my life
31 would have been a good one. I would have continued to study and perhaps
32 even go to university. I would have been married with a loving husband and
33 children and living in my own house rather than at my parents place. Today,
34 my priorities are about finding a job to survive with my children. I currently
35 work in agriculture, I get work once or twice a week and sometimes once or
36 twice a month for less than a dollar a day. I have to survive with my twin
37 children for days and days with very little money. My biggest worries are my
38 children. I would like to send them to school to study, to have a better life
39 and to grow up to be good people and not bandits like their fathers but I
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54 ¹ Funding source.
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5 cannot afford it [she cries]...I have since left all of this in the hands of the
6 lord. Vengeance belongs to god. The bible says that people have to forgive
7 each other. What happened to me was bad but it is not for me to punish these
8 people or to wish them bad things.
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14 Espoire explained that her tears were caused by her fear for the future of her children.

15 Espoire's story is typical of many other survivors of rape in South Kivu and beyond.

16
17 During the past few years, sexual violence in the east of the Democratic Republic of
18 the Congo (DRC) has attracted considerable international attention. The DRC was
19 often described in the media and advocacy literature as the rape capital of the world
20 where sexual violence is committed by armed actors on a large scale, driven and
21 funded by the 'conflict minerals'.² This came at a time of increased securitisation of
22 rape following the adoption of a series of Security Council resolutions on women,
23 peace and security whereby rape as a weapon of war was recognised as a threat to
24 international security that requires strong responses from the international
25 community.³ Over the last few years, the question of justice for survivors of wartime
26 rape has become one of the international community's key concerns in the east of the
27 DRC.⁴ The Security Council in resolution 1794 in 2007 specifically requested the
28 support and cooperation of States and all relevant actors in bringing to justice
29 members of armed groups and the Congolese government forces who are responsible
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48 ² Séverine Autesserre, 'Dangerous Tales: Dominant Narratives on the Congo and Their
49 Unintended Consequences,' *African Affairs* 111 (443) (2012): 202–22.

50 ³ For instance, see United Nations Security Council resolutions 1820 (2008) and 2106 (2013).
51 For a discussion on these see Sahla Aroussi, 'Women, Peace and Security and the Democratic
52 Republic of the Congo: Time to rethink sexual violence as gender based harm?', *Politics and
53 Gender* 12(3) (2016): 1-28.

54 ⁴ Ibid.

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5 for rape.⁵ As a result, the international community has responded by investing heavily
6 in funding, designing, and supporting transitional justice programmes in the east of
7 the DRC aimed at improving the capacity of the Congolese justice system to
8 prosecute crimes of sexual violence particularly those committed by armed groups.
9 Such efforts included setting up prosecution support units (*Cellules d'Appui aux*
10 *Poursuites*) and Task Forces on military justice,⁶ providing training on international
11 legal standards and rules of evidence,⁷ funding for mobile courts hearings⁸ and the
12 provision of technical, logistical, material and financial support in terms of
13 rehabilitation of buildings, scientific police laboratories, office equipment, transport
14 and resources.⁹ Despite, all of these efforts, little progress has been achieved on the
15 ground and the number of prosecutions of crimes of sexual violence in eastern DRC
16 remained very minimal, particularly when taking into consideration the prevalence of
17 sexual violence in the region.¹⁰

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In this study, the researcher conducted interviews with 76 survivors of rape by armed groups, including as a weapon of war and by other known and unknown civilians, in

⁵ Security Council resolution 1794 of 21 December 2007, <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/DRC%20SRES1794.pdf> (accessed 14 December 2017).

⁶ Mission de l'Organisation des Nations Unies pour la Stabilisation en RD Congo (MONUSCO), 'Cellules d'Appui aux Poursuites', 08 February 2012, <https://monusco.unmissions.org/cellules-d%E2%80%99appui-aux-poursuites> (accessed 14 December 2017).

⁷ Anonymous interviews with civil society organisations and legal professionals in South Kivu.

⁸ See UNDP, 'Evaluation of UNDP's Support to Mobile Courts in Sierra Leone,' the Democratic Republic of Congo, and Somalia' (2014) <http://www.undp.org/content/undp/en/home/librarypage/crisis-prevention-and-recovery/evaluation-of-undp-s-support-to-mobile-courts-in-drc--sierra-leo.html> (accessed 14 December 2017).

⁹ For instance, in 2009 France funded a laboratory for the scientific police with 10 regional offices across the DRC at a cost of 1.2 million Euros and rehabilitated the school for training for the judicial police; Similarly, the European Union funded project Uhaki Safi donated office equipment, five 4X4 cars, one armoured vehicle for the transport of prisoners and 14 motorbikes for the various courts and tribunals in South Kivu (Anonymous interviews in South Kivu, July 2015 and June 2016).

¹⁰ Aroussi, supra n 3.

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6 South Kivu focusing on their perceptions and experiences of justice. During the
7 fieldwork the researcher quickly realised that for the vast majority of the participants'
8 access to formal justice and the prosecution of the perpetrators were not considered a
9 priority. This was in fact, the case among the survivors of rapes committed by armed
10 groups as well as by other known or unknown civilian perpetrators. Rape survivors
11 are typically not just reluctant but also often resistant to the idea of pursuing formal
12 justice. Instead most participants emphasised that justice for them primarily meant
13 economic assistance and development oriented remedies with a particular focus on
14 basic needs such as medical treatment, livelihood support, and access to wage earning
15 activities and educational opportunities. This in fact, has led some civil society
16 organisations, including international NGOs operating in the east of the DRC, to
17 consider closing down their legal assistance services and to concentrate instead on
18 providing relief and other services that vulnerable survivors' require.¹¹

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31 Listening to survivors' articulate such broadly conceptualised and locally relevant
32 notions of justice revealed the huge gap between international practices of delivering
33 justice in post conflict societies and survivor's priorities and perceptions of what
34 justice is. Notions of justice are locally relevant and context specific. In order to
35 improve the efficiency and responsiveness of transitional justice initiatives in a
36 manner that fulfils both the expectations of survivors and at the same time addresses
37 the problem of impunity, it is important to understand not only how justice is
38 conceptualised in a local context but also what influences survivors' perceptions of
39 justice.
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53 ¹¹ Anonymous interviews with members of two local NGOs and one international NGO in
54 June 2016 in Bukavu.
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6 In this article, based on extensive research with victims of rape, I argue that
7 survivors' perceptions of justice in the context of rural South Kivu are primarily
8 shaped by three factors: first, the extensive economic harm that they experience as a
9 result of rape; second, local practices of justice and third, the inaccessibility of the
10 Congolese formal justice system. The article aims to contribute a deeper
11 understanding of justice for victims of sexual violence grounded in local context and
12 lived realities. In addition to interviews with survivors, this article is also informed
13 by interviews, focus groups discussions, and informal conversations with another 125
14 participants including community and religious leaders, local community members,
15 government officials, legal and health professionals, staff of international
16 organizations, and members of various local non-governmental organizations
17 (NGOs). This article is divided into six sections. In the first section, I briefly discuss
18 the methodology used in this study, in the second section I examine the nature and
19 prevalence of sexual violence in eastern DRC beyond the phenomenon of rape as a
20 weapon of war. Drawing closely on the data from survivors, in the third section I
21 argue that survivors' interest in economic assistance is justified by the extensive
22 economic harm that sexual violence has on victims. In sections four and five I argue
23 that survivors' lack of interest in pursuing criminal prosecution can be explained by
24 local understanding and practices of justice among the traditional rural communities
25 and the failure of the Congolese criminal justice machinery to play a positive role in
26 the lives of the rural population. In the last section I conclude by discussing and
27 reflecting on the implications of this study for transitional justice scholarship and
28 programming and providing recommendations for transitional justice actors working
29 in eastern DRC.
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Methodology

Conducting research with survivors of sexual violence in Eastern Congo is ethically and methodologically very complex not only due to the sensitivity of the topic but also to the volatile security context and lack of infrastructure.¹² This article is the result of two years research collaboration in South Kivu with a local NGO with extensive networks across rural areas. This research was conducted following the World Health Organisation (WHO) guidelines and after full-ethical clearance was obtained from the author's institution.¹³ The 76 survivors in this study were adult women who have experienced rape by armed groups, armed forces, bandits, unidentified civilians, and community or family members on at least one occasion in the areas of Kasika, Idjwi and Kamanyola. These areas were purposefully selected to capture the diversity in terms of patterns of rape. Kasika is located in the territory of Mwenga where various armed groups were present at varying times and continue to be active. In this area, women have suffered considerably from repeated strategic and widespread mass rapes as well as opportunistic rape characterised by extreme violence and brutality. Kamanyola, is a town located in the fertile Ruzizi Plain bordering both Rwanda and Burundi. The frequent movement of criminal gangs, traffickers, armed groups and foreign armies across the borders in Kamanyola has meant that women live in constant fear of opportunistic rape at home and in the field. In contrast, Idjwi is a secluded island in Lake Kivu that has been largely spared the presence of armed groups. While in Kasika and Kamanyola, rape by civilians,

¹² For details about the research methods and data collection process see Author's (forthcoming article in the journal of *Violence Against Women*).

¹³ WHO, 'Ethical Guidelines for Researching Violence against Women in The Context of Emergencies,' (2005); WHO, 'Putting Women First' (2001) and WHO, 'Ethical and Safety Recommendations for Intervention Research on Violence against women' (2016).

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5 including known community members, is still common, in Idjwi almost all rapes are
6 committed by civilians and many involve customary practices that amount to rape.
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8 Because of its geographical inaccessibility and reclusiveness, local traditions and
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10 customary practices on the island of Idjwi remain very strong.
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13 The researcher, is female feminist scholar with significant expertise on sexual
14 violence in conflict and specialised training on the ethics and methods of conducting
15 research with survivors of rape. Having a local partner in this research, without doubt
16 was essential not only to allow the researcher's access to the participants in remote
17 rural areas but also to guarantee the safety of the research team in the volatile context
18 of rural South Kivu. The researcher worked along a local research assistant from the
19 partner organisation with considerable experience in providing counselling and
20 assistance to survivors of rape and trained by the researcher on the ethical principles
21 of autonomy, non-maleficence, beneficence and justice.
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24 The researcher used a feminist methodology aimed at reducing the hierarchy between
25 the participants and the researcher and humanising the research process through
26 informality, dialogue, empathy and respect.¹⁴ Due to the sensitivity of the topic but
27 also to allow the participants greater control over the research situation, what is being
28 disclosed and in what order and to help minimise the power imbalance between the
29 researcher and the researched storytelling and personal narratives techniques were
30 used instead of traditional interview questions. The conversations with the
31 participants were conducted in private, in a designated safe space, usually a church
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47 ¹⁴ Rebecca Campbell et al., "What has it been like for you to talk with me today?" The impact
48 of participating in Interview Research on Rape Survivors,' *Violence Against Women*, 16(1)
49 (2010): 60-83. Heather R. Hlavka, Candace Kruttschnitt and Kristin C. Carborne-Lopez,
50 'Revictimizing the Victims? Interviewing women about interpersonal violence,' *Journal of*
51 *Interpersonal Violence*, 22(7) (2007): 895- 920.
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6 outbuilding and in local languages. The data collected from the participants was
7 translated into English and analysed using grounded theory by the researcher. The
8 names used in this article are not the real names of the participants.
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11 **Disentangling sexual violence in the east of the DRC**

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14 Sexual violence in the east of the DRC has been framed as a weapon of war used by
15 armed groups strategically to intimidate and punish local communities, prey on their
16 possessions and achieve control over the conflict minerals.¹⁵ While rape by armed
17 groups and government forces has been a defining feature of the conflict from the
18 beginning of the Congo global wars, sexual violence in the eastern DRC is a complex
19 societal phenomenon that that cannot be reduced to a strategy for warfare or to the
20 struggle over the control of the minerals.¹⁶ The work of scholars such as Baaz and
21 Stern, Freedman and Aroussi on rape in the DRC highlighted the largely
22 opportunistic nature of rape by armed actors and civilians.¹⁷ In the east of the DRC,
23 sexual violence by civilians is very prevalent but is seldom reported to the authorities
24 particularly when the perpetrator is a known member of the community or the family.
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26 While certain kinds of sexual violence are considered as crimes others are tolerated if
27 not encouraged by customary practices.¹⁸ Though marital rape in South Kivu is
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43 ¹⁵ See Jill Trenholm et al., 'The Global, the ethnic and the gendered war: women and rape in
44 Eastern Democratic Republic of the Congo', *Gender, Place and Culture* 23(4) (2015): 484-
45 502; Susan Bartels et al., 'Militarized Sexual Violence in South Kivu, Democratic Republic of
46 Congo,' *Journal of Interpersonal Violence* 28(2) (2013): 340– 358; Sara Meger, *Rape, Loot,
47 Pillage The Political Economy of Sexual Violence in Armed Conflict* (Oxford: Oxford
48 University Press, 2016).

49 ¹⁶ Autesserre, supra n 2; Jocelyn T.D. Kelly, Alexandra King-Close, and Rachel Perks,
50 'Resources and resourcefulness: roles, opportunities and risks for women working at artisanal
51 mines in South Kivu, Democratic Republic of the Congo,' *Futures* 62 (2014): 95–105.

52 ¹⁷ Maria Eriksson Baaz and Maria Stern, *Sexual violence as a weapon of war?* (London: Zed
53 Books, 2013); Jane Freedman, *Gender, Violence and Politics in the Democratic Republic of
54 Congo* (London: Routledge, 2015); and Aroussi, supra n 3.

55 ¹⁸ Freedman, *ibid.*, 16
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6 endemic, it is not legally or socially recognised as a crime.¹⁹ Practices such as the
7 *rapt marital* which involves the kidnapping and raping of a girl by a man who wishes
8 to marry her also remains widely practiced in Idjwi and Shabunda. In most of rural
9 South Kivu, child and forced marriages also remain very common and sexual
10 exploitation and transactional sex are widespread.²⁰
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16 Buss pointed out that the hyper-visibility of wartime sexual violence paradoxically
17 renders other experiences of harm un-visible resulting in multiple exclusions.²¹
18 Despite the diversity in the nature of sexual violence in South Kivu, everyday rapes
19 particularly by civilians have been notably absent from the narratives of rape in the
20 DRC. In the DRC, the prioritisation of rape as a weapon of war in international
21 discourse and policies has led to one-dimensional, narrowly conceptualised and
22 ineffective interventions when it comes to delivering justice for survivors of sexual
23 violence.²² Feminist researchers have for long time discussed the interconnectedness
24 between different forms of gender harms and the continuum of violence that women
25 experience in peace and conflict.²³ Scholars have also criticised the narrow framing of
26 rape in conflict as a weapon of war.²⁴ Feminist scholars such as Ni Aolain, Haynes
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39 ¹⁹ Amber Peterman, Tia Palermo, and Caryn Bredenkamp, 'Estimates and Determinants of
40 Sexual Violence against Women in the Democratic Republic of Congo,' *American Journal of*
41 *Public Health* 101(6) (2011): 1060-1067.

42 ²⁰ Kelly, King-Close and Perks, supra n 16

43 ²¹ Doris Buss, 'seeing sexual violence in conflict and post conflict societies: the limits of
44 visibility,' in *Sexual violence in conflict and post-conflict societies International Agendas and*
45 *their African Contexts*, ed. Doris Buss et al. (New York: Routledge, 2014), 3-27; Doris E.
46 Buss Rethinking 'Rape as a Weapon of War,' *Feminist Legal Studies* (2009) 17:145-163.

47 ²² Aroussi, supra n 3

48 ²³ Caroline O.N. Moser, 'the gendered continuum of violence and conflict: An operational
49 framework,' in *Victims, Perpetrators or Actors?: Gender, Armed Conflict and Political*
50 *Violence*, ed. Caroline O. N. Moser and Fiona C. Clark (London: Zed Books, 2001), 30-51;
51 Doris Buss, 'Performing Legal Order: Some Feminist Thoughts on International Criminal
52 Law,' *International Criminal Law Review* 11 (2011) 409-423.

53 ²⁴ Aroussi supra n 3; Laura Heaton, 'The risks of instrumentalizing the narrative on sexual
54 violence in the DRC: Neglected needs and unintended consequences,' *Review of the Red*
55 *Cross*, 96(894) (2014): 625-639; Aisling Swaine, 'Beyond Strategic Rape and Between the
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6 and Cahn have condemned the failure of the international community to recognise the
7 large spectrum of sexualised and non-sexualised gender based harm in conflicts.²⁵
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10 Conflict and post-conflict environments are known to create additional opportunities
11 to commit sexual violence with impunity. The violent masculinity sustained by
12 conflict typically encourages a culture of violence against women within
13 communities.²⁶ Rape during conflicts even when committed by civilians, cannot be
14 easily separated from its enabling context of violence and insecurity and simply
15 excluded from the spectrum of conflict related sexual violence.
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22 In practice, the prioritisation of militarised sexual violence establishes a hierarchy of
23 victims, crimes and areas for interventions that inevitably translates into differential
24 access to justice and services targeted for survivors of rape²⁷. For instance, in South
25 Kivu where access to justice is difficult for all of the rural population, the majority of
26 mobile courts funded by donors were set up to deal with military cases that primarily
27 involve rape by armed actors that constitute war crimes and crimes against humanity.
28 Moreover, in South Kivu, remote areas such as Idjwi where armed groups have not
29 been active but where rape is prevalent had no NGOs presence or donor funded
30 programmes for survivors of sexual violence. Other places such as Wallungo, where
31 armed groups have been active, have a concentration of services, NGOs and legal
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43 Public and Private: Violence Against Women in Armed Conflict,' *Human Rights Quarterly* 37
44 (3) (2015): 785- 786.

45 ²⁵ Fionnuala Ní Aoláin, Dina Francesca Haynes, and Naomi Cahn, *On the Frontlines: Gender,*
46 *War, and the Post-Conflict Process* (New York: Oxford University Press, 2011); Sahla
47 Aroussi, *Women, Peace, and Security: Repositioning gender in peace agreements* (Antwerp:
48 Intersentia, 2015); Fionnuala Ní Aoláin, 'Advancing Feminist Positioning in the Field of
49 Transitional Justice,' *The International Journal of Transitional Justice* 6(2) (2012): 205- 228.

50 ²⁶ Meger supra n 15 at 17; Susan Bartels et al., 'Patterns of sexual violence in Eastern
51 Democratic Republic of Congo: Reports from survivors presenting to Panzi Hospital in 2006,'
52 *Conflict Health* 4 (9) (2010), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2883538/>;

53 ²⁷ Aroussi, supra 25; Nynke Douma and Dorothea Hilhorst, 'Fond de commerce? Sexual
54 violence assistance in the Democratic Republic of Congo,' Disaster Studies Occasional Paper
55 02 (2012) Wageningen University. Baaz and Stern, Supra n 17.
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6 outreach programmes available to survivors provided and funded by different
7 organisations. Several survivors of rape by known and unknown presumably civilian
8 perpetrators in this study often expressed that they felt doubly marginalised and
9 silenced. As such in this study to counter the narrative hierarchy of rape as a weapon
10 of war, the research included both survivors of rape by civilians and armed groups
11 whether these were committed strategically, opportunistically or customarily. Despite
12 the breadth of the data collected, due to space constraints only a limited number of
13 victims' stories were included in this article.
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22 **Revisiting rape as an economic harm**

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25 In 2016 Human Development Report, the DRC ranked 176 globally in terms of its
26 Human Development Index and assigned the highest level of multidimensional
27 poverty and intensity of deprivation.²⁸ In rural South Kivu, a region affected by
28 decades of conflict and under-development, the intensity of poverty and deprivation
29 is much higher than the rest of the DRC. Many of the participants in this study were
30 visibly malnourished and extremely poor. While, the link between economic
31 vulnerability and sexual violence has not been fully explored in the literature, in
32 South Kivu, poverty exposes women and their children to additional risks of sexual
33 violence. Having to work the land in remote areas, to walk unaccompanied in the
34 early or late hours, to transport goods across the border, to collect firewood from the
35 forest, and living in insecure huts and mud houses all increase the risk of
36 opportunistic attacks by armed groups and civilians alike. Many of the participants in
37 this study were raped in these circumstances.
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53 ²⁸ United Nations Development Programme, 'Human Development Report' (2016)
54 <http://hdr.undp.org/en/indicators/38506#> (accessed 14 December 2017).
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5 Rape, irrespective of whether committed by armed groups or civilians, triggers
6 devastating, lifelong and intergenerational economic consequences for survivors.
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8 These are better understood as ripple effects that include not only damages but also
9 lost opportunities over the course of a life time.²⁹ To illustrate this, I use the story of
10 Merveille, a survivor who used to earn a living selling vegetables. She was the
11 treasurer for a village saving initiative set up by a group of women in her area. She
12 told her story as follow:
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19 One night I was at home with my husband and my children when four armed
20 men from the military came to our house...I had 2000 dollars that belonged
21 to the women group. When they arrived they tied the hands of my husband
22 behind his back ...then all four of them raped me and my daughter. They
23 have also taken all the money, our phones and all of our valuables including
24 all my dresses...
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31 Merveille survived the attack but she lost her source of income and was rejected by
32 her husband. She continues:
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35 After the rape, my husband said that he could no longer live with me. He
36 built another house and married a new woman. I no longer had money to
37 work as a vegetable seller and so I was obliged to start working in
38 agriculture. One day last year, while I was working the land, I was raped by
39 a group of armed men. (...) When my husband found out about the second
40 rape. He decided to deny me access to his land. He even demolished the
41 house where I lived with my children. I was then forced to become a porter. I
42 get around a 1000 francs or so a week to eat and survive. My health is not
43 like it was years ago and I am often sick. Today I am too unwell to work. My
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54 ²⁹ Aroussi, supra n 3
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6 life is difficult... In the village, people make fun of me saying this is the
7 woman who is always raped. There are times where I feel so sad and cry all
8 the time. I live in uncertainty.
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11 Merveille mentioned that there was a man in her village who is helping her with the
12 children's school fees and clothing. This relationship is understandably a form of
13 transactional sex, which in South Kivu is considered different and less stigmatising
14 than prostitution.³⁰ The story of Merveille serves to illustrate the tremendous
15 economic impact on survivors who are often forced to quit their wage earning
16 activities, denied access to farming land, rejected by husbands, suitors and families,
17 lose access to financial support and resources and pushed to hardship and exploitation
18 including to transactional sex.
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21 Rape often results in the interruption of education of young girls and the inability of
22 raped women like Espoire and Merveille to pay the school fees for their children and
23 hence severely impacts on future access to economic opportunities and resources for
24 the victims and their offspring.
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27 Rape also often lead to ill-health. Merveille mentioned that she was physically unwell
28 to work. Many of the participants in this research complained of sexual and
29 reproductive health problems and some have sustained severe physical injuries as a
30 result of being shot, stabbed or severe beating during the attacks but most of them had
31 not received any medical treatments. In rural South Kivu, access to healthcare is very
32 limited and expensive. Without budget or funding support, local health centres expect
33 the patients to pay for the full cost of their treatments in order to keep the health
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³⁰ Isumbisho Mwapu et al., 'Secure Livelihood research Consortium report on women engaging in transactional sex and working in prostitution: Practices and underlying factors of the sex trade in South Kivu,' 10 (2016) Wageningen University.

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5 centres running.³¹ Donor funding support to health institutions is often limited to the
6 provision of Post Exposure Preventive Kit and with the exceptions of hospitals such
7 as Panzi, does not usually extend to covering the full cost of treatment, medications
8 or surgical interventions.³² The cost of medical treatment required after rape can
9 exacerbate the poverty of survivors and their families. The failure to pay the medical
10 bill often result in rape survivors being prevented from leaving the hospitals as the
11 researcher witnessed in the area of Kasika.

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19 The stigma and rejection that survivors experience necessarily impact on their
20 economic and social wellbeing and their ability to earn a livelihood.³³ Rape victims
21 are often viewed as damaged, unworthy, dirty, promiscuous and untrustworthy. In
22 closely tight communities, trust, social status and good relationships with the
23 community are essential to pursue most of the economic activities whether
24 commercial or agricultural. Due to low self-esteem and feelings of rejection victims
25 often isolate themselves from the community and stop their economic activities which
26 reinforces the cycle of poverty and vulnerability. In South Kivu, the stigma and
27 rejection, can affect all survivors of rape irrespective of their age, education, ethnicity
28 or religion and irrespective of whether they were raped by civilians or members of
29 armed groups but it is higher among women who have children born as a result of
30 rape.³⁴ Due to the fear of rejection and loss of status many participants in this study
31 did not disclose their rape to their families or communities with some refraining even
32 from seeking primary healthcare.

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³¹ Aroussi, supra n 3

³² Anonymous interviews with health professionals in South Kivu, July 2015.

³³ Katherine Abutt, et al., 'Stigmatisation and rejection of survivors of sexual violence in eastern Democratic Republic of Congo,' *Disasters*, 41(2) (2017): 211-227.

³⁴ *Ibid.*

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6 In this section, I argued that rape has devastating economic consequences for
7 survivors who are already living in a context of extreme poverty and under-
8 development. It is then not surprising that the vast majority of the participants in this
9 study argued that for them justice primarily meant economic assistance and
10 development oriented remedies and particularly subsistence, access to education,
11 healthcare and livelihood. Economic assistance was perceived by survivors not only
12 to possess reparative capacities but also as empowering. This view was also shared by
13 other interviewees from civil society organisations and international agencies.
14 Merveille described the potential of economic remedies in countering stigmatisation
15 and restoring survivors:
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26 Raped women are generally poor and destitute with nothing and so people
27 here look down on them and stigmatise them saying hurtful and disrespectful
28 things. But if raped women were economically independent and able to
29 support themselves and their children this would help counter the
30 stigmatisation and earn them respect within society... If you look at my case
31 for example, if one day I find a way of rebuilding my house and putting a
32 roof over my head even my husband and all the other members of my
33 community who now despise me would say yes this woman was raped but
34 she is capable of doing good things in her life and for the community and that
35 that can give survivors back their self-esteem, respectability and confidence.
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46 **Local practices and understanding of justice**

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49 While the emphasis on economic remedies as justice can be explained by the hardship
50 that survivors' experience, the limited interest in criminal prosecutions among
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5 survivors of sexual violence must be understood in the light of the local culture and
6 practices of justice on the ground. In rural South Kivu, conflicts are resolved through
7 traditional mechanisms at the level of the customary chief and the *Mwami* (traditional
8 King) rather than through the criminal justice system. The question of repairing the
9 harm and restoring the victim is at the heart of communities' understanding of what
10 justice is. This is not unique to eastern DRC but is in fact characteristic of many other
11 African contexts.³⁵ In cases of rape by a known person and particularly a member of
12 the community, the customary chief would often help the two families reach what is
13 traditionally known as a friendly settlement (*arrangement à l'amiable*). This
14 settlement typically involves the payment of reparation and other measures that are
15 aimed at the restoration of the victim. The practice of friendly settlements in cases of
16 rape in rural areas of Idjwi, consists of giving two cows or their equivalent in value to
17 the family of the raped girl and exchanging each child born out of rape for 4 or 5
18 goats or their equivalent in value according to the *Kogombola* practice. Raped girls
19 are also often married off to their rapists, after a dowry was agreed. For instance,
20 Therese a twenty-four years old woman from Idjwi was raped at the age of seventeen
21 by a known member of the community when she was walking back from the market.
22 She described the process of friendly settlement as follows:

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After what happened {the rape}, the people from the village took me to the
customary chief who then decided that this guy should be apprehended and
handed to the police until an agreement is reached on my situation. He was
held there for 3 days but then released. While he was at the police station, the
two families got together to try and find a friendly settlement. The chief was

³⁵ Niels Nagelhus Schia and Benjamin de Carvalho. "“Nobody gets justice here!” Addressing Sexual and Gender-based Violence and the Rule of Law in Liberia". NUPI Working Paper 13 (2009): 761-86 at 16.

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5 the one who ordered the other family to pay the two cows and six goats and
6 the other party accepted the agreement. The two cows were handed to my
7 mum as reparation for the wrongdoing...The six goats were in exchange for
8 my daughter so that she is recognised as their own...After the agreement, I
9 also agreed to live with the man who raped me as a husband.
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16 The participants argued that this practice offered them at least a solution albeit
17 imperfect. For instance, Venansia, an eighteen years old from Idjwi who was raped at
18 the age of seventeen by a local man and as a result gave birth to a baby girl argued:
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22 I personally did not want to report what happened to me to the police and I
23 did not want this man to go to prison for what he has done. I just wanted the
24 two families to get together to agree on a friendly settlement because this will
25 lead to a better solution. Here people prefer to resolve these issues within the
26 family and to find an arrangement instead of going to the police and getting
27 tired for nothing.
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35 During the interviews, many participants explained that in their culture only the
36 payment of reparation in the form of dowry, *Kogombola*, and damages by the
37 perpetrator and his family following a friendly settlement is capable of repairing the
38 social harm and countering the stigma of rape. They argued that reparation paid
39 through friendly settlements would allow the victims to remain in their family homes
40 and communities, instead of being abandoned, and to eventually get married in the
41 future. Without such payment, the harm is not repaired and the consequences for the
42 survivor are socially and economically devastating. Participants were also concerned
43 that when the perpetrator is sent to prison, they will not be able to receive any
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6 financial support from him or his family. Therese, the twenty four years old
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8 participant from Idjwi argued:

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10 It was actually me who asked that the police release him even though I was
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12 pregnant at that time. I told my mum what would happen if he stays in
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14 prison? That I will not get any anything and that my child would get nothing
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16 in terms of support. And so I wanted him released. For me I prefer friendly
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18 settlements because with this kind of arrangement the girl can go and live
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20 with the man's family and so she would have the status of a married woman
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22 like it was in my case.

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24 In many cases the victims' families, use the police to pressurise the perpetrators and
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26 his family to settle the case. As seen in the cases of Therese, the customary chief is
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28 the one who often orders the police to detain the perpetrator until a settlement is
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30 reached. One of the police officers from Idjwi explained:

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33 The families here only use the police to put pressure on the man's family for
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35 finding a friendly settlement. When the families do not want to pursue the
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37 cases and withdraw their complaints, there is nothing that the police can do
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39 and we often have to release the accused. Rape cases are often dealt with and
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41 resolved at the level of the Chief. So the Chief who is the representative of
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43 the customary authority here, is the one who mediates these friendly
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45 settlements... We cannot intervene or insist on criminal prosecutions of the
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47 rapist for fear of reprisal. Customs and traditions here rule everything... In
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49 cases of rape, the tradition is to get a friendly settlement and so we the police
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51 we do not want to interfere with the customs and tradition.

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6 It must be noted that of the participants who argued that what they preferred to see in
7 their case was ultimately a friendly settlement, many argued that they felt compelled
8 to use the system because of the absence of alternatives and the dire consequences of
9 not doing so for survivors in terms of rejection, loss of potential for marriageability
10 and economic hardship. Survivors also pointed out that the final decision on what to
11 do in cases of rape is taken by the parents and particularly the fathers often after
12 discussion among families and with the customary chief with little or no consultation
13 with the victims. It must be noted as well that religion in rural South Kivu also has an
14 impact on survivors' preference for traditional mechanisms and reluctance to pursue
15 criminal justice which they often associate with vengeance. This is particularly so
16 among those survivors of Christian faith. For instance, Francine, who was violently
17 raped back in 2012 by the FDLR while she was pregnant and as a result she lost her
18 unborn child remarkably stated:
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32 I do not want to respond to evil by evil. The perpetrators were perhaps forced
33 to commit these crimes...after all what they have done there is only god that
34 can help them. Vengeance is for god... I am not worth more than those who
35 lost their lives. I have been lucky enough to be alive and to get treatment
36 others were not so fortunate.
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45 **The reality of the Congolese formal justice system**

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48 The limited interest among survivors in the prosecution of perpetrators of sexual
49 violence in South Kivu must also be understood against the background of the
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Congolese justice system and its failure to play a positive role in delivering justice to the local population.

In the East of the DRC, victims who wish to pursue justice have to travel long distances, surmount numerous institutional and administrative obstacles, pay excessive official and unofficial costs, and navigate a complex system riddled with corruption. In South Kivu, an area almost twice the size of Belgium, criminal justice institutions are remotely located from the majority of the rural population. For instance, in terms of civil jurisdiction, the Uvira High Court is competent over the whole of rural South Kivu.³⁶ While the Congolese legal system envisaged the establishment of eight Magistrate Courts (*Tribunaux de Paix*) to replace customary courts (*Tribunaux de Zone*) these do not have competence over crimes of sexual violence.³⁷ Mobile courts funded by the international community to bring justice closer to the victims, particularly for cases involving military actors, are temporary structures set up for few days at a time and not a long term solution. With no accessible road networks and transport, access to formal justice for survivors is extremely difficult.

In addition to the problem of geographical remoteness, the formal Congolese justice system is also unaffordable. Congolese law requires parties seeking justice to pay fees at all stages of the investigation and proceedings.³⁸ If the official legal fees are not

³⁶ Loi organique n° 13/011-B du 11 avril 2013 portant organisation, fonctionnement et compétences des juridictions de l'ordre judiciaire Article 14. Ordonnance-loi 82-020 du 31/03/1982 portant Code d'Organisation et de Compétence judiciaires, Article 31.

³⁷ Loi organique n° 13/011-B du 11 avril 2013 portant organisation, fonctionnement et compétences des juridictions de l'ordre judiciaire Article 7 ; Ordonnance-loi 82-020 du 31/03/1982 portant Code d'Organisation et de Compétence judiciaires, Article 86.

³⁸ Décret du 6 Août 1959 portant le Code de procédure pénale Chapitre VIII Articles 122-126.

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5 paid, the victims will not get a response to their claim.³⁹ In addition, because the
6 justice system in the east is not adequately provided with the necessary budget for its
7 day to day functioning, victims are required to pay the non-official cost of seeking
8 justice such as the cost of stationary, printing, transport, communication and service
9 to the clerk or officer in question who is often not paid a salary.⁴⁰ A civil society
10 representative from Kamanyola discussed the problem of official and unofficial costs
11 of pursuing formal justice for survivors:
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19 The police here cannot arrest someone for more than 48 hours and they have
20 to transport him to the central prison. Here the police would ask the victim to
21 pay for the cost of transfer of the perpetrator to the central prison. If the
22 victim does not have any money to ensure such transfer, the police
23 confronted with the law and regulations and logistical difficulties will just
24 release him...Other difficulties facing victims of sexual violence, is that the
25 police requires a medical certificate as a proof of rape ...the police would ask
26 the victim to pay for this as well. So here you have fees to arrest the
27 perpetrators, fees for the medical report, fees to transfer the perpetrator to the
28 central prison and so the process becomes a build-up of bills and fees that the
29 victim has to pay.
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41 In cases where victims successfully manage to navigate the system and pay for all the
42 required costs, perhaps through the support of non-governmental organisations, they
43 will still face the problem of the non-execution of judgments. Due to corruption,
44 dilapidated prison conditions and poor security, many of those convicted of crimes
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50 ³⁹ Fédération Internationale des Droits de l'Homme, 'RDC Les victimes de crimes sexuels
51 obtiennent rarement justice et jamais réparation,' (2013)
52 https://www.fidh.org/IMG/pdf/rapport_rdc.pdf (accessed 14 December 2017).

53 ⁴⁰ Anonymous interviews with legal professionals and members of NGOs in South Kivu in
54 2015 and 2016.
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5 often escape from prison, if arrested at all.⁴¹ For instance, in 2014, in one prison break
6 over 300 dangerous criminals including those convicted or accused of rape have
7
8 escaped from the central prison of Bukavu.⁴² While the Congolese courts routinely
9
10 order the payment of damages and reparation to the victims, these remain unexecuted
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12 even when the government has been convicted in *Solidium*.⁴³
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15 The non-execution of judgements is particularly problematic in mobile courts cases.

16 A legal professional interviewed in Bukavu argued:

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19 The international community are funding these mobile courts but what
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21 happen after a mobile court trial ends in terms of execution? They just go
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23 home. For the NGOs and international agencies their tasks have been
24
25 completed with the judgement, they congratulate themselves on the success
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27 and move on to a different project. A sentence might look good on paper but
28
29 it is the execution that matters. And here again, the issue of distance and
30
31 resources remain problematic.
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34 When a mobile court judgement is appealed the process is blocked again due to
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36 remoteness, procedural delays and lack of resources.⁴⁴ The process for the execution
37
38 of reparation orders is unduly complex and expensive for the victims to pursue on
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43 ⁴¹ United Nations Joint Office for Human Rights, 'Progress and Obstacles in the Fight against
44 Impunity for Sexual Violence in the Democratic Republic of the Congo', (2014).
45 <http://www.ohchr.org/EN/Countries/AfricaRegion/Pages/CDReports.aspx> (accessed 14
46 December 2017).

47 ⁴² La Radio-télévision belge de la Fédération Wallonie-Bruxelles 'RDC: au moins quatre
48 morts dans l'évasion massive de Bukavu' (6 June 2014)
49 [https://www.rtf.be/info/monde/detail_rdc-au-moins-quatre-morts-dans-l-evasion-massive-de-
50 bukavu?id=8286101](https://www.rtf.be/info/monde/detail_rdc-au-moins-quatre-morts-dans-l-evasion-massive-de-bukavu?id=8286101) (accessed December 2017).

51 ⁴³ Anonymous interviews with civil society organisations and legal professionals, June 2016
52 South Kivu.

53 ⁴⁴ The mobile court judgement organised in February 2011 for the Fizi case involving the rape
54 of 121 women in 2011 by the FARDC, was appealed in October 2011. FIDH, supra n 39 at
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6 their own. Yet, legal support for survivors sponsored by NGOs and donors often
7 stops when a conviction is secured.⁴⁵
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10 The failure and inaccessibility of the Congolese criminal justice has led to a distrust
11 in the system and lack of faith in the political commitments of the government. Some
12 of the participants who reported their rape to the police felt confused and let down
13 when their cases were dropped and the perpetrators released. Participants also
14 condemned the endemic corruption and inefficiency within the system. Lucie a
15 survivor of a mass rape that took place in a church in Kasika in the year 2000 argued:
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21 Of the women who are raped here, there are those who got advice and went
22 to the police and then abandoned after realising that it is pointless. I did not
23 go to the police because it is not worth it. When you look at what those who
24 went have achieved, it kinds of discourages you from going...It is a waste of
25 time. The police never resolved any problems. People here also do not trust
26 the police because they never tell you the truth and never deliver justice.
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33 They are very slow to act until any hope for justice would be lost.
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36 Similarly Amani, a 51 years old woman who was raped by armed actors while
37 working her land in Kamanyola stated:
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41 I think that the police here don't strive for the benefit and protection of the
42 community but only to fulfil their greed. They are only interested in how to
43 extort money from the poor population around them and profiting from their
44 misfortune and suffering...You can catch a criminal and take him to the
45 police. But after 2 or 3 days you will see him again here in the village and
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51 this causes problems afterwards between families. At the police, it is the

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53 ⁴⁵ Anonymous interviews with civil society organisations and legal professionals, June 2016
54 South Kivu.
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5 money that rules if you don't have money you do not get justice but even if
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7 you have money and the offenders has more money than you have then you
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9 will not get justice
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14 **Discussion**

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16 In October 2016, Zainab Bangura, the Special Representative of the UN Secretary
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18 General on Sexual Violence in Conflict during her visit to Eastern Congo stated 'The
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20 DRC is our most successful story. It has been our laboratory and we will take what
21
22 we've learned here and apply it in other places such as Iraq and South Sudan,'
23
24 Bangura congratulated the Congolese government on the success achieved so far in
25
26 the fight against impunity in the DRC. Bangura's assessment of success was based on
27
28 the number of prosecutions of rape by armed actors, the financial value of reparation
29
30 orders and the appointment of Janine Mabunda as the Congolese Presidential Special
31
32 Envoy on sexual violence who at that point and since her appointment has never
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34 visited Eastern DRC. As Scully argued 'all donors want results and such results are
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36 often understood only in quantitative terms'.⁴⁶ The number of convictions, reparation
37
38 orders are measurable and look good on paper but the reality on the ground based on
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40 survivors' accounts tell a different story, one that the funders do not want to hear.⁴⁷
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43 Clearly, justice for survivors of sexual violence in South Kivu cannot be separated
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45 from their context and the reality in which they live. Survivors' hand-to-mouth
46
47 existence renders criminal accountability, as Rama Mani pointed out, seem like
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50 ⁴⁶ Pamela Scully, 'Development and its discontents: Ending violence against women in post-
51 conflict Liberia' in *Sexual violence in conflict and post-conflict societies International*
52 *Agendas and their African Contexts*, ed. Doris Buss et al. (New York: Routledge, 2014): 249-
53 263.

54 ⁴⁷ Ibid.

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5 'distant and lofty concept'.⁴⁸ Sexual violence has devastating economic
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7 consequences on survivors. As such transitional justice efforts, must provide
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9 economic remedies and compensation for damages and lost opportunities over the life
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11 time.⁴⁹ Economic remedies are thought to have the potential of countering stigma,
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13 repairing the harm and empowering survivors of rape. Despite the centrality of the
14
15 economic question, to victims of rape, donor funded transitional justice programmes
16
17 in eastern DRC continue to focus on formal prosecution and overlook the socio-
18
19 economic aspect of transitional justice.
20

21
22 The need for reparative justice for victims of sexual violence has long been
23
24 recognised in international law and is extensively addressed in transitional justice
25
26 literature.⁵⁰ However, in practice reparative justice has been limited to reparation. In
27
28 the DRC, the law on reparation does not recognise group or symbolic reparation and
29
30 only provide for compensation for damage to the victims who declared themselves as
31
32 civil party in the trial.⁵¹ For victims who do not wish to pursue formal justice,
33
34 including most of the participants in this study, securing reparations is problematic.
35
36 Moreover, while courts in the DRC have been routinely ordering reparations to
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38 victims of rape, in practice these have never been paid to the survivors.
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42 ⁴⁸ Rama Mani, 'Dilemmas of expanding Transitional Justice, or Forging the Nexus between
43 Transitional Justice and Development,' *International Journal for Transitional Justice* 2(3)
44 (2008): 253-256 at 256.

45 ⁴⁹ For discussion on reparation for life lost opportunities see Lauren Marie Balasco,
46 'Reparative development: re-conceptualising reparations in transitional justice processes,'
47 *Conflict, Security & Development*, 17(1) (2017): 1-20.

48 ⁵⁰ Colleen Duggan and Adila Abusharaf, 'Reparation of Sexual Violence in Democratic
49 Transitions, The Search for Gender Justice,' in *The Handbook of Reparations*, ed. Pablo de
50 Greiff (New York: Oxford University Press, 2006); Ruth Rubio-Marin, ed., *What Happened
51 to the Women? Gender and Reparations for Human Rights Violations* (New York: Social
52 Science Research Council, 2006); Ruth Rubio-Marin and Pablo de Greiff. 'Women, and
53 reparations,' *The International Journal of Transitional Justice* 1(3) 2007: 318- 337.

54 ⁵¹ Martin Ekofo Inganya, 'La réparation des crimes internationaux en droit congolais,' *Avocat
55 Sans Frontiers* (2014) [http://www.asf.be/wp-content/uploads/2015/09/ASF_RDC_R--
56 parationCrimesInternat_201509.pdf](http://www.asf.be/wp-content/uploads/2015/09/ASF_RDC_R--parationCrimesInternat_201509.pdf) (accessed 14 December 2017).
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6 The economic remedies that the survivors in this study discussed are more accurately
7 referred to as economic assistance, redistribution and development responses rather
8 than as reparation in its legal sense.⁵² In transitional justice scholarship a rich body of
9 literature exists on the need to rethink the link between transitional justice and
10 development⁵³ yet in practice, these two fields continue to exist in silos. In the DRC,
11 the separation of development from transitional justice has allowed for the exclusion
12 of structural and economic factors from the narrative of violence and allowed the
13 Congolese state to evade its responsibility towards the victims. With the focus being
14 on the prosecution of armed actors, the human rights violations here become seen as
15 the result of the conduct of individuals rather than the State's systematic failure and
16 complicity. While removing dangerous men remains important, Buss pointed out that
17 individual convictions can in deed distract the attention from the large-scale, systemic
18 failures that underpin conflicts and violence.⁵⁴ Miller warned, that limiting the scope
19 of economic remedies to reparations 'makes structural factors doubly invisible, as
20 they are not only backgrounded in the project as a whole but also reduced to a
21 singular definition for resolution.'⁵⁵ In the DRC, this has inevitably curtailed the
22 potential of transitional justice to make a difference and reduced it to the mere
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40 ⁵² Peter J. Dixon, 'Reparations, Assistance, and the Experience of Justice: Lessons from
41 Colombia and the Democratic Republic of the Congo,' *International Journal of Transitional
42 Justice* 10(1) (2016): 88-107.

43 ⁵³ Pablo de Greiff, 'Articulating the Links between Transitional Justice and Development:
44 Justice and Social Integration,' in *Transitional Justice and Development: Making Connections*,
45 ed. Pablo de Greiff and Roger Duthie (New York: Social Science Research Council, 2009);
46 Naomi Roht-Arriaza and Katharine Orlovsky, 'A Complementary Relationship: Reparations
47 and Development,' in *Transitional Justice and Development: Making Connections*, ed. Pablo de
48 Greiff and Roger Duthie (New York: Social Science Research Council, 2009); Roger
49 Duthie, 'Toward a Development- Sensitive Approach to Transitional Justice,' *International
50 Journal of Transitional Justice* 2(3) (2008): 292– 309; Mani, *Supra* n 48; Christopher J.
51 Colvin, 'Purity and Planning: Shared Logics of Transitional Justice and Development,'
52 *International Journal of Transitional Justice* 2(2008): 412-425.

53 ⁵⁴ Buss *supra* n 23

54 ⁵⁵ Zinaida Miller, 'Effects of Invisibility: In Search of the 'Economic' in transitional Justice,'
55 *The international Journal of Transitional Justice* 2(3) (2008): 278.

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6 pronouncement of sentences that typically remain unexecuted. The structural
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8 inequalities that ignited decades of conflicts and insecurity were also allowed to go
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10 unchallenged. The silence on development in transitional justice following from
11
12 Miller's analysis reinforces inequality and marginalisation. In such circumstances, it
13
14 is important start to question the role of transitional justice initiative in post conflict
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16 contexts such as eastern DRC.⁵⁶

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18 Feminist scholars have called for transitional justice initiatives aimed at responding to
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20 wartime rape to move beyond the stricture of the law to include social, economic,
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22 political, and legal remedies that are capable of addressing the root causes of gender
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24 based violence and tackling structural inequalities.⁵⁷ Scholars have argued that justice
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26 for survivors of sexual violence must be transformative rather than simply corrective
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28 as restoring *the status quo ante* can be disadvantageous to women who prior to
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30 conflict were also suffering from violence, insecurity and gender inequality. In line
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32 with Walker's argument on transformative justice, and given that the Congolese
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34 government has failed to show meaningful commitments and provide for basic
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36 services, is the aim of achieving transformative gender justice realistic and attainable
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38 in the context of Congo?⁵⁸ Here, it is important to ask the question whose role it is to
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40 address structural inequalities, deliver reparative development and transformative
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42 justice to survivors. And whether the international community is now meant to step
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44 in to the field of governance to fill in this gap.

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50 ⁵⁶ Ibid., at 278.

51 ⁵⁷ See for instance, see Ní Aoláin, Haynes, and Cahn supra n 23 and Ní Aoláin, *Supra n 23*.

52 ⁵⁸ Margaret Urban Walker, 'Transformative Reparations? A critical Look at a current Trend in
53 Thinking about Gender Just-reparations,' *The International Journal of Transitional Justice*
54 10(1) (2016): 108-125.

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6 I argued, that survivors of sexual violence perceptions of justice are shaped by local
7 traditional practices that primarily value the reparation of the harm and the restoration
8 of the victim rather than on retributive measures. This in fact highlights that in the
9 context of South Kivu criminal prosecution without the prospect of payment of
10 reparation will not feel like justice to survivors. Other transitional justice scholars
11 have already emphasised the importance of local practices and traditions to
12 perceptions of justice and pointed out that the Western model of prosecution lacks
13 cultural relevance to remote rural communities in Africa that may have had very little
14 experience and understanding of formal justice.⁵⁹ In order to be effective, transitional
15 justice initiatives by the international community have to take into consideration
16 customary law and traditional justice institutions.⁶⁰ Instead of rejecting or outlawing
17 these, it is important to learn from them and to work with them to bring them in line
18 with human rights standards.⁶¹ This is particularly important as these institutions,
19 remain the only hope for the rural population that have no other recourse to formal
20 justice.
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36 Finally, the inaccessibility and dysfunctionality of the Congolese justice system has
37 meant that survivors' are reluctant to pursue formal justice and in fact the numbers of
38 cases reported to the police are in a downward trend despite the fact that sexual
39 violence continue to be prevalent in eastern DRC. The experiences of victims and the
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44 ⁵⁹ Stef Vandeginste and Chandra Lekha Sriram, 'Power Sharing and Transitional Justice: A
45 Clash of Paradigms,' *Global Governance* 17 (4) (2011): 489-505. Harvey Weinstein,
46 'Victims, transitional justice and social reconstruction who is setting the agenda?', in *Justice*
47 *for victims: perspectives on rights, transition and reconciliation*, ed. Inge Vanfraechem,
48 Antony Pemberto and Felix Ndahinda (New York: Routledge, 2014), 161–195; Lydia A.
49 Nkansah, 'Justice in the Special Court v Local Perception,' *African Journal of International*
50 *and Contemporary Law* 22(1) : 103-119.

51 ⁶⁰ Schia and de Carvalho supra n 35 at 16.

52 ⁶¹ An example of this, is the Baraza court system set up by a local NGO in South Kivu to
53 provide alternative access to justice through dialogue, mediation and reconciliation for local
54 community who cannot access the formal justice system. See Freedman, Supra n 17 at 99.

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6 problems with the Congolese justice system are very similar to other contexts in
7 Africa. The study of Schia and de Carvalho on justice for sexual violence in Liberia
8 highlights the same issues of remoteness, lack of resources and inefficiency.⁶² In the
9 East of the DRC access to formal justice is not only a problem for victims of sexual
10 violence but for the whole population. In the DRC, the focus on state building as the
11 solution to the conflict has meant supporting the authority of the Congolese State and
12 collaborating with it on transitional justice programmes.⁶³ Despite, the international
13 community's attempts to improve the capacity of the Congolese justice system, very
14 little can be achieved on the ground unless the Congolese government commits fully
15 to this aim. While the international community can provide logistical support through
16 the donation of vehicles, computers and office equipment, renovation of buildings,
17 payment for legal aid and training for legal professionals they cannot cover the daily
18 cost of running the Congolese justice machinery. While the international community
19 can organise mobile courts, they also cannot be responsible for setting up more
20 permanent institutions or for the execution of sentences and the payment of
21 reparations. For this the Congolese government must be fully engaged and
22 committed. The inaccessibility of the Congolese justice system means that survivors
23 who knew their assailants will continue to use traditional justice mechanisms and
24 friendly settlements. Those who are unable to identify the perpetrators will continue
25 to suffer in silence.

26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 **Conclusion**

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53 ⁶² Schia and de Carvalho supra n 35 at 16; Vandeginste and Sriram, supra n 59.

54 ⁶³ Autissere, Supra n 2.
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6 In this article, I examined the complex question of justice for survivors of sexual
7 violence in South Kivu. I argued that the international community's prioritisation of
8 rape as a weapon of war has obscured the prevalence of everyday rapes and led to a
9 focus on prosecution of armed actors instead of a broader societal intervention
10 capable of addressing gender based violence within communities. Based on
11 interviews conducted with 76 survivors of rape by armed actors and civilians, I
12 argued that for the majority of the participants in this research, justice primarily
13 meant economic assistance and development oriented remedies and particularly
14 subsistence, access to education, healthcare and livelihood. The research also
15 revealed a lack of interest in pursuing criminal prosecution among survivors of rape
16 irrespective of whether these were committed by military or civilian perpetrators and
17 a preference for traditional practices of friendly settlements among those who knew
18 the perpetrators.

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20 However, arguing that survivors of sexual violence are only interested in economic
21 and development oriented remedies would be misleading, if not dangerous, without
22 understanding what influences survivors' perceptions of justice in a local context.

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24 This article does not argue that we should give up on attempts to prosecute
25 perpetrators of rape in South Kivu but rather that we should broaden the scope of
26 transitional justice efforts in a way that responds to survivors needs for justice and
27 addresses impunity. The aim of criminal accountability and delivering a meaningful
28 form of justice to survivors are not mutually exclusive. Merveille, the participant
29 from Kamanyola eloquently argued:

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Punishing the people who commit rape remains important because when
rapists are punished other ones would learn not to rape knowing that they

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5 might as well face prison. But for me as a survivor/victim having a better life
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7 is much more important.
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10 At the same it is important for the international community to recognise the
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12 challenges of delivering justice in South Kivu and understand the context in which
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14 they operate. The Western model of criminal justice cannot be successfully
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16 transplanted in rural South Kivu. Hence, strategies aimed at delivering transitional
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18 justice in the east of the DRC must be realistic and creative. Transitional justice
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20 programming should not primarily or exclusively focus on prosecution efforts but to
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22 include other measures and mechanisms that are capable of responding to survivors
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24 needs for economic remedies and restoration and communities' reconciliation.
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26 Transitional justice, particularly in rural areas, should draw on traditional justice
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28 structures and work with religious and customary authorities to deliver justice and
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30 transform norms that condone violence against women. Economic remedies in
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32 transitional justice initiatives should not be limited to reparation or treated as an add-
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34 on to projects but rather as an integral aspect of transitional justice programmes and
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36 they must be adequately funded. Improving survivors' willingness and ability to
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38 engage with the formal criminal justice system and restoring their faith in it also
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40 remain important. For this to happen, real commitments from the Congolese
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42 government and the international community are urgently required.
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