



Institute for War & Peace Reporting | International Justice Programme

# Special Report Sexual Violence in the Democratic Republic of Congo



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Democratic Republic of Congo**

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**Cover photographs by Lisa Clifford**

Fighting in the eastern DRC has driven hundreds of thousands of civilians from their homes. These children were separated from their families and took refuge at an orphanage near Rutshuru in North Kivu province.

## Foreword

Human rights abuses suffered by the population of the Democratic Republic of Congo, DRC, including sexual violence, are widespread. A recent study conducted by the Berkeley-Tulane Initiative on Vulnerable Populations and the International Centre for Transitional Justice, ICTJ, showed that 23 per cent had witnessed an act of sexual violence and 16 per cent reported having had experienced sexual violence.

The study also indicated that only 27 per cent of people in eastern DRC and 28 per cent in Kinshasa are aware of the International Criminal Court, ICC, in The Hague. Yet, four local militias leaders are charged with war crimes including sexual violence by the ICC, and face trials in The Hague. These trials, some of which will start in 2009, will have a considerable impact on the process of justice and reconciliation in the DRC.

IWPR-Netherlands is addressing the enormous void of information about the court and its activities. It relays crucial information about the ICC and justice issues to the population of DRC at a time when the first Congolese cases are about to come to trial.

The quality of reporting in DRC is very poor and the information produced by the media in general lacks credibility. One cause is the absence of qualified journalists. This is due to the fact that training standards are poor – a consequence of a lack of resources and skilled teachers. A constant complaint from the public is that the information they receive is inadequate, irrelevant and manipulated.

As a media development organisation, IWPR first established a presence in the DRC in 2007, setting up a network of Congolese correspondents who

work closely with the editorial team in The Hague to produce balanced and independent reports about ICC-related events in the DRC and justice issues in general. These pieces are published and circulated in French and English, and posted on the IWPR website where they can be downloaded and reprinted by other local and international media free of charge.

Since 2007, the DRC network has produced more than 50 pieces which have been published in a wide variety of international and Congolese outlets. IWPR has also conducted a training session on International Justice reporting for a group of 12 journalists in Kinshasa in 2007. In October 2008, IWPR-NL launched its pilot radio broadcast “Facing Justice” in DRC. It’s the first programme in the country to focus on the ICC and justice issues. It goes out in three languages – French, Lingala and Swahili – across a network of over ninety local radio stations associated with Search for Common Ground, IWPR’s partner in this project. In late-2008, IWPR-NL will be conducting another training session focused on how to report on crimes of sexual violence in North Kivu province.

This special report, Sexual Violence in the Democratic Republic of Congo, has been produced by IWPR-Netherlands’ International Justice Programme in conjunction with IWPR-trained Congolese journalists, whose tireless field reporting provided the package of stories with invaluable local perspectives and context. Special thanks to our local journalists Charles Ntiriyica, Jacques Kahorha and Taylor Toeka Kakala for their work, often carried out under very difficult circumstances.

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## About IWPR Netherlands

Launched in April, IWPR-NL has media development projects in DRC, Uganda, Sudan and the Balkans. It provides intensive hands-on training, extensive reporting and publishing, aimed at building the capacity of local media.

The mission of the worldwide IWPR network is to build peace and democracy through free and fair media.

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# No Sign of End to Epidemic

Nearly 40,000 victims of sexual violence treated in medical centres belonging to UN and partners last year.

By Katharina Goetze in London

When a peace agreement was signed in the Democratic Republic of the Congo in 2002, hopes were high that the country's horrific epidemic of sexual crimes would end.

Instead it worsened with government soldiers and rebels raping hundreds of thousands of girls and women. Although the Congolese government passed tougher laws in 2006 to punish sex crimes, women continue to be raped and alleged perpetrators set free.

Sexual violence in the DRC escalated during the First Congo War, which ended with the overthrow of Mobutu Sese Seko, and continued to rise during the Second Congo War.

“There was a dramatic spike in the number of rape cases when armed conflict began during the first war from 1996 to 1997 and then second war from 1998 to 2003,” said Human Rights Watch researcher Anneke Van Woudenberg.

“During Congo's second war, it became clear that rape was being used as a weapon of war by all armed groups with devastating consequences for the victims, but also their families and communities.”

Rape victims have been as young as infants and toddlers and as old as 80-year-old grandmothers, according to experts. Some women have been raped by groups of soldiers, while others have been abducted and held as sex slaves.

Many victims have been mutilated by their rapists or gravely injured by having wooden sticks or even guns inserted in their vaginas.

According to a recently published report by the All-Party Parliamentary group on the African Great Lakes, APPG, 38,000 people received treatment in the last year for sexual violence in United Nations children's agency medical centres or its partners. Most experts believe that this number represents only a fraction of the victims.

The war-torn provinces of North and South Kivu on the DRC's eastern border with Rwanda are the nexus of this epidemic.

A recent letter by Congolese women's groups to the UN Security Council stated that in April 2008, 880 rape cases were documented by aid groups and UN agencies in North Kivu. The letter estimated that the rape figure represented only a tenth of the actual cases, since most go unreported because of fear, shame and impunity.

Obtaining accurate figures for rape cases is one of the biggest problems for researchers, says Andrew Philip, of Amnesty International, “Many women and girls living in areas still under armed group control are fearful of reprisals if they attempt to report or seek medical care for rape.”

Conflict in the troubled Kivu provinces continues as militias struggle over control of eastern DRC's rich deposits of gold, diamonds, coltan, and other ores.

While nearly two dozen militias are present in the Kivus alone, the major armies are the Congolese, the ethnic Tutsi troops of Laurent Nkunda, and various ethnic Hutu insurgent groups. All have committed crimes of sexual violence.

“Rape in Congo has been used as a weapon of war, as a tactic by armed forces to punish communities for supposed support to their enemies, to demonstrate control or to instill fear,” said Van Woudenberg.

Rape is often part of an attack on a community and is done to intimidate villagers or provide sexual gratification for soldiers. In many cases, says Philip, ethnicity seems to be a factor in the choice of victims.

Philip believes the tolerance of rape by military commanders has allowed sexual violence to become endemic, “In that sense, I do believe that the perpetration of rape is broadly aligned with war aims.”

Rape and sexual violence as a weapon of war is not new.

During the war in Bosnia, mass rapes were committed by Bosnian Serbs against Muslim women.

Similarly, Hutu militias committed widespread sexual violence against Tutsi women as part of the Rwandan genocide of 1994.

According to UN estimates, 250,000 to 500,000 women were raped during the three-month conflict in Rwanda, prompting the International Criminal Tribunal for Rwanda to hand down a conviction against a former mayor in Rwanda, Jean-Paul Akayesu, for rape as an act of genocide four years later.

That sentence, however, didn't prevent the rape of thousands of women in Sierra Leone's civil war which lasted until 2001.

Although the cases of Rwanda and Sierra Leone are statistically difficult to compare with Congo, Van

Woudenberg says the outcome has been the same, “Sexual violence has been used as weapons of war in all three of these cases resulting in horrific suffering for tens of thousands of women and girls.”

According to a report by the UN Mission in the Congo, the vast majority of rapes recorded during the first half of 2007 seemed to have been committed by government troops and police.

Human Rights Watch, however, noted that identifying alleged perpetrators can be difficult because they often disguise themselves by wearing different uniforms to avoid detection.

The impunity experienced by soldiers raping civilians has also increased the proportion of sexual crimes committed by civilians.

Aid groups and UN officials reported that in 2004, only about 13 per cent of all rapes were committed by civilians. Three years later, the figure had risen to 40 per cent.

UNICEF's DRC-based Protection Specialist Pernille Ironside pointed out children are often targeted by civilians, “In some areas, as many as half of the victims are children.”

Although the DRC's rape laws were strengthened in 2006, the legal standing of victims remains weak because harsh sentences are rarely imposed.

Rather, the number of out-of-court settlements often mediated by tribal leaders or local authority officials has increased.

Such arrangements not only violate civil and military law, they subvert efforts to control the rape epidemic.

“These settlements are a major problem because they rarely represent the interest of the victim,” said APPG coordinator Stephen Carter. “Men have been known to have set aside a couple of goats as compensation before even raping the girl. It's a sign of the complete breakdown of the rule of law, where people have no other system.”

But the popularity of such deals is understandable, says Philip, since many victims are reluctant to go to court.

Since most magistrates are poorly trained, underpaid, and not inclined to help rape victims, there is a widespread lack of confidence in the justice system.

Also, women are chronically underrepresented among judicial personnel and must face male judges, prosecutors, and police who often have a limited understanding of sexual violence, according to experts.

The ineffectiveness of Congolese courts is evidenced by the low number of convictions.

Even if victims are willing to face a court trial, for many the fees demanded by prosecutors and judges, legal or otherwise, are prohibitive.

The difficulties are compounded for those living in the countryside who face long and expensive travel to courts located in cities.

Proving rape in court can be difficult, so the UN Human Rights Office has introduced a standardised medical certificate intended to simplify the process. But according to Carter, it seems to have complicated matters because judges are demanding the certificates, which are not always available, before proceeding with rape cases.

While impunity plays a part in the rape epidemic, the motives for the crime can vary.

For her documentary, *The Greatest Silence*, filmmaker Lisa F Jackson interviewed militia members who admitted to many rapes. Some had lost count of how many women they had raped, but one estimated it could have been 25.

“No one is prosecuting them and when I asked them about the law they just laughed at me,” said Jackson. “Obviously, there is another law in the bush, they consider it their right if they need a woman and their wives are not there.

“Some of the... militias I spoke to said that it gives them power before the battle. One even told me that if his wife was raped to save the Congo he wouldn't intervene.”

There is evidence that some perpetrators of sexual violence are coerced into committing these crimes.

“We have had a small number of testimonies from armed group fighters, saying that they were 'expected' to rape by their commanders [and] that food rations might be withheld or reduced if they didn't rape,” said Philip. “This seems to be more so with child fighters whom commanders seek to brutalise.”

Whatever the motive, the attacks continue at an alarming rate. In some villages, so many women and children have suffered from sexual violence that rape has lost its stigma and support for the victims has built up, say experts.

They say local aid groups play an important role in raising awareness among communities and bringing families back together.

But as the conflict goes on, most feel they can't prevent the crime from continuing or from destabilising communities, widening ethnic divisions and blocking reconciliation.

“Rape is cheaper than bullets and it has a more lasting effect,” said Jackson. “It sends a ripple effect that goes forward for generations.”

# Militias Seen as Main Perpetrators

The prevalence of armed groups in eastern Congo linked to upsurge in rape cases.

By Peter Eichstaedt in Goma

“We met soldiers,” was Honorine Kavugho's simple description of how she became one of the countless thousands of women in the eastern Democratic Republic of Congo, DRC, who have been brutally raped.

Kavugho, a 33-year-old mother of eight, spoke in a voice choked with emotion and wiped away tears as she described how she was traveling to the town of Butembo in North Kivu province, along with some 30 people riding precariously atop a truck loaded with freight, when armed men ambushed the vehicle, killing most of its passengers.

“Soldiers were hiding in the bush and below a bridge. They stabbed me in my neck,” she said. “They took us to their bunker and we spent four days there. A child of two years was killed. They took our clothes and money.”

Kavugho had been carrying the equivalent of 2,500 US dollars to buy goods that she hoped to sell when she returned to Goma, the administrative centre of North Kivu.

She was raped repeatedly for four days by a group of soldiers led, ironically, by a female commander named Chantal.

Once the soldiers had tired of her, she was released. Kavugho says Chantal said she could “die at home”.

Kavugho didn't die. But the reception she got at home was worse than death, she said.

“When I came home, my husband rejected me and my family rejected me,” she said. “I didn't know if I was still alive.

“He said he would never share anything with me ever again. He called me the wife of a soldier, rebels, criminals.”

Although the attack occurred in 2003, Kavugho has a constant reminder of the rape the daughter she gave birth to afterwards. This daughter is the youngest of her children, all of whom have been raised on the streets.

To keep her family alive, Kavugho begs for handouts.

“Now they are starving,” she said.

If the violence she survived was not enough, Kavugho has been diagnosed with HIV, leaving her in despair.

“All my life has been anger,” she said “My family has rejected me as if I killed a man. I tell my children that in

life, there is no hope. You have to take care of yourself. You have to do the best you can.”

Most of the men committing acts of sexual violence are affiliated with the numerous armed militias in the region, say experts such as Devote Musafire, chief counselor with Hope in Action, an aid group in Goma funded by the church and Sweden.

Musafire explained that these paramilitaries are usually far from any controlling influences such as family and they behave “like animals”, in large part because they know they can get away with their crimes.

“There's impunity,” said Musafire. “They know they can rape and nobody is going to stop them. Nothing will happen. They're aware it is a crime, but they also know there is impunity.”

Sexual violence in this part of DRC has become so prevalent that it is now commonly committed by civilians as well as combatants, explained Francoise Kahindo, director of the Union for Life Against HIV, UNIVI. Her organisation works with women like Kavugho who have contracted the HIV virus as a result of rape.

“Some are raped by soldiers, and others by civilians,” said Kahindo, noting that militia violence had led to a general epidemic of violence in society as a whole.

At the same time, she said, “the first problem is the presence of so many armed groups. They arrest you and rape you. The problem is war”.

A peace deal signed in January by more than 20 warring factions in the region has done little to curb sexual violence, said Kahindo.

“It changed nothing. The number of fighters diminished, but the troops are still in position. So when people have to go out for food or trade, that's when they're raped,” she explained. “Now it has extended to the rest of the community.”

She noted that dangerous and erroneous beliefs helped spread the disease, saying, “Some [men] think that if they have HIV, and have sex with a young girl of two or three, they can be cured.”

Often, she said, cases of sexual violence are the result of social interaction, “Many young girls befriend soldiers, due to poverty. This contributes to HIV spread.”

Such women are confronted with multiple problems, according to Kahindo.

“They suffer two times. The first shock is the act itself. The act of rape. It touches all women, from the young up to [those in their] sixties. The second shock is being a victim of HIV. Some are mutilated.”

The resulting social stigma is hard to escape, she added.

“People ignore the facts,” she said. “They only see a woman who’s been raped. There is a cultural problem. Once a woman has had sex with someone who is not her husband, she cannot be married any more. We try to explain that they are victims and life should continue. It’s a part of healing.”

As a result, she said, “most cases of raped women don’t admit it. They keep silent”.

Pastor Clement Lembire, of the New Song Church in Goma, acknowledged that the rape problem was out of control in eastern DRC.

“The problem is complex here. There are so many factors,” he said.

Lembire said that some 15 years ago, rape was not a problem, explaining, “It’s a new phenomenon here because of repeated wars.”

He noted that rape is now committed openly and with impunity.

“We’ve learned that one community can humiliate another community. Some are taken to prison, but it changes nothing,” he said.

“Armed men rape your wife and mother and it’s done publicly. How can you sit and eat with these people? The family unit is gone. Even yourself. You are dead.”

Turning the tide will be difficult, but some progress is slowly being made.

Christine Mpinda, a lawyer with Dynamic Women Jurists, a legal aid group in Goma, said recent changes to the DRC’s rape laws have helped. The legislation has been expanded to include forced prostitution, sexual mutilation, forced marriage, sexual harassment and slavery, HIV transmission and forced pregnancy.

Victims are now required to contact police within two days after the crime is committed, and a prosecutor must process complaints and reports within one month, she said. Cases must go to court within three months.

The victims have a right to see doctors and psychologists, and a doctor must certify that rape has occurred.

Once the case reaches trial, victims can appear either in a public courtroom or in a closed trial chamber.

Another important change is that soldiers can now be arrested without the permission of their unit commanders. In the past, commanders blocked the arrest of their soldiers, a situation that guaranteed impunity.

“It is true the law exists, but it’s true everything doesn’t go well,” said Mpinda.

Noting that “many rapes go unreported”, she explained that victims generally live in remote areas and are unable to afford legal costs, which is why her group and others provide free legal services.

“The distances do not enable victims to have access to legal help,” she said. “Most of the cases can’t pay to travel from village to town.”

Mpinda’s organisation works on several cases a month, each of which costs between 500 and 1,000 dollars to prosecute. Once the case gets to court, problems persist.

“There is a misunderstanding about sexual violence among people, as well as judges, that it is not a serious problem,” she said.

Of the 20 cases that the group handled last year, 12 defendants received sentences of five to 20 years in prison, she said. Eight are awaiting sentencing.

Despite the changes, many are still critical of the law and look to the international community for help.

“People are disgusted with the law,” said Kahindo. “Once someone has been a victim and goes to court, she’s asked to pay money each time they go to court. They get tired of it and don’t go.

“Most women who are raped in a village don’t have access to healthcare and are without roads or access to the outside world.”

Kahindo complained that too little had been done to bring the armed groups to heel.

“If they’re in the bush, they’re committing crimes,” she said. “How can the international community not take them out of the bush? I can’t believe the international community can’t neutralise them. When there is peace, all this will end.”

# ICC Investigative Strategy Under Fire

Ex-court employees and activists say problems with investigative procedures at International Criminal Court have meant many sexual crimes are overlooked.

By Katy Glassborow in The Hague

Former court employees and rights groups say a flawed approach to investigating sexual violence crimes at the International Criminal Court, ICC, has meant many atrocities are going unpunished.

Ex-ICC investigators told IWPR that not enough analysis and effective planning has been done ahead of investigative missions to uncover human rights abuses in Uganda, the Democratic Republic of Congo, DRC, and Sudan.

Gender justice groups say this approach means the most appropriate charges are not always brought against suspected perpetrators of war crimes. They also argue that too few sexual violence charges which are often complex and difficult to prove are being issued.

However, prosecutors point out that limited resources mean that they are unable to pursue all the crimes an individual is suspected of having committed the charges against a suspect, just a selection. They insist they have made efforts to bring sexual violence charges, making sure all investigators are trained how to interview victims ahead of their deployment in the field.

Before an ICC investigation is carried out, prosecutors often decide on the investigative approach they will take after reviewing material from international and local NGOs, United Nations agencies, government bodies, national judiciaries and military police.

After this preliminary information is gathered and reviewed, investigators are told which alleged perpetrators and particular incidents such as specific attacks on villages, mass killings or forced transfer of civilians to focus on.

However, because there is great pressure on the ICC to intervene in countries embroiled in, or emerging from, conflict, investigators say they are being sent in to investigate before an adequate analysis of this information is complete.

Because they arrive in the country already focused on gathering evidence of a particular set of crimes, committed in specific locations and on specific dates, they say this means other atrocities are often overlooked.

Even when investigators stumble across evidence of other crimes not on their initial list, they say they lack the time to investigate these properly, meaning that the alleged perpetrators are less likely to be charged.

## A LACK OF PLANNING BEFORE INVESTIGATIONS

A major problem cited by former ICC investigators is that they were sent to countries to gather evidence without sufficient time to review information already gathered from other sources operating on the ground.

As a young institution, the ICC is under enormous pressure to prove itself and bring justice to countries which cannot or will not prosecute grave war crimes domestically.

As a result, former investigators say that prosecutors have pushed them into situations before they have thoroughly collected and analysed existing information.

“We didn't have sufficient time to do the preliminary collection of information,” said Martin Witteveen, who worked as an ICC investigator in Uganda, the first country to be investigated by the fledgling court.

“The prosecutor wanted indictments issued within a year, but the success of investigations depends on the first phases of information collection and analysis.”

Former ICC staffers say that investigators sent to Sudan to probe atrocities in Darfur said they were rushed to begin investigations before they had time to examine existing documentation. Former ICC staffers say that investigators sent to Sudan to investigate atrocities in the Darfur region were rushed to begin investigations before they had time to examine existing documentation.

Before the UN Security Council, UNSC, referred Darfur to the ICC in March 2005, a UN Commission of Enquiry was sent to investigate human rights violations there. The commission found that the government and allied “janjaweed” militias conducted widespread and systematic rape and sexual violence throughout Darfur. Women and children were enslaved, and girls as young as ten years old subjected to gang rape.

“Rape by janjaweed and government soldiers surrounding IDP [internally displaced persons] sites have occurred in sufficient numbers to instill fear of such incidents amongst women and girls, and has led to their virtual confinement inside these sites,” said the commission's report.

While these findings were passed on to the ICC, former court staff say that prosecutors buckled under what was perceived as outside criticism for not moving fast

enough, and launched the investigation before sufficient planning had been done.

Former staffers say more analysis should have taken place internally before investigators were sent out. As a consequence, they say, interviews with victims of sexual violence were not specifically planned as an aspect of the investigation.

Ex-investigators say evidence of these abuses only emerged when they spoke to survivors about what they suffered during crimes incidents that prosecutors wanted to probe.

Those who worked on a variety of different cases also say they were instructed to change direction in the middle of investigations to focus on a different set of incidents and crimes. This reflected an overall lack of strategic direction, and meant that the limited time they had was not used efficiently.

“You can start off looking for A and end up finding B, which may be a better basis for prosecution, but if you change what you are looking for, it wastes time as you do not build on what you gather,” said one former ICC staff member.

Those investigating war crimes in DRC expressed frustration that one day, without explanation, prosecutors told the team probing an ex-leader of the Union of Congolese Patriots, UPC, Thomas Lubanga, to drop a year and a half of investigative work and focus solely on the use of child soldiers.

In the course of investigating incidents like mass killings in a village, they say they had also found evidence of torture, pillage, rape, and enslavement.

“It was bizarre and surprising,” said a former investigator. “We had been investigating killings, attacks on villages, the flow of illegal weapons but one day a decision was made to focus just on child soldiers.”

The same ex-employee says he thought that this might have happened because the investigation had already taken a long time, and prosecutors wanted something to present at court as soon as possible.

“For a year and a half, we didn't just investigate the use of child soldiers sexual violence was part of the overall investigation but the decision to focus meant that all the things we had done for the last year and a half was gone,” he said.

“I cannot remember how and when the explanation was given, but it was important for the office [of the prosecutor] to present a case before the court.”

Christine Chung, a former senior trial attorney at the ICC who steered investigations for the prosecution in Uganda and DRC, acknowledged that there was pressure on prosecutors to start cases.

However, she told IWPR that this pressure did not adversely affect investigations.

“Pressure to start cases was there, but that factor did not cause planning for the investigation of sexual violence crimes to be impaired,” she said, insisting that any obstacles encountered were due to the lack of security on the ground.

“The office of the prosecutor does a great deal of pre-investigation planning many think for too long [and] at some point you need to go to the field.”

Beatrice Le Fraper du Hellen from the ICC prosecutor's office, OTP, du Hellensays that in early investigations there was a sense that to build the institution, the most important thing was to start cases.

“There was a lot of analysis to find out the situations of the most serious crimes... and start as soon as possible. The idea was if we want to get the court started, there was no way we could investigate for years and years and not have cases. Once we have sufficient evidence, we have to move.”

Critics and insiders agree that things have changed for the better in recent investigations such as the Central African Republic, CAR, where planning was a lot more extensive than in previous investigations before investigators were deployed to the field.

“We have a field office in the CAR and everything was ready before we announced the investigation. We already identified the places we wanted to investigate, so the planning was good,” said Le Fraper.

## NARROW FOCUS OF INVESTIGATIONS

According to former investigators, a common strategy used by ICC prosecutors is to instruct investigators to focus on a limited set of incidents which have been reported by organisations on the ground, such as the looting of a village, for example.

But they note that concentrating on a narrow range of incidents means other crimes are never fully investigated or prosecuted.

Human rights groups, meanwhile, accuse the prosecution of looking to secure quick convictions, rather than striving to capture a representative range of crimes committed during a given conflict.

In the case of the insurgency in northern Uganda which was referred to the ICC by the country's government at the start of 2004 prosecutors made a decision early on to focus investigations around what they considered to be the six most brutal attacks by the rebel Lord's Resistance Army, LRA, in the north of the country since 2002.

Before beginning investigations, ICC prosecution analysts received documents from local NGOs and rehabilitation centres where children abducted and held

captive as child soldiers, porters and sex slaves gathered when they came out of the bush. They also collected evidence from the Ugandan authorities, which had documented the actions of the LRA over the last 20 years, and rooted through newspaper articles written about attacks.

After gathering examining this body of evidence, prosecutors decided to limit their investigation to six incidents. This decision made at the end of September 2004, when they had been in the country for just four weeks was never changed.

“Nothing else other than those six incidents was [ever] investigated,” said Martin Witteveen, who worked as an ICC investigator in Uganda.

One year later in July 2005, arrest warrants were issued for five LRA members for 33 counts of crimes against humanity and war crimes. Despite evidence that crimes of sexual violence were widespread during the 20-year conflict, only two of the top commanders have been charged with such crimes.

LRA leader Joseph Kony is accused of sexual enslavement, rape and ordering rape, while his deputy Vincent Otti who the LRA say is now dead is charged with sexual enslavement and ordering rape.

Investigators say that because the investigation was so narrowly focused, sexual crimes were not given special attention.

“In retrospect, we should have done better on the thematic charges [for systematic crimes committed by the LRA throughout the conflict], like sexual crimes and use of child soldiers,” said Witteveen.

He said that while rape and sexual enslavement were not specifically investigated, evidence of these crimes was uncovered when investigators interviewed girls in order to glean information about the incidents being investigated.

During the interviews, the girls also told investigators about the sexual violence they had suffered. A complex system of sexual enslavement emerged, he said.

“Girls were not randomly dispersed among commanders, [they] were maids in households, and then grew up in the ranks and given to the commanders for sexual pleasure,” said Witteveen.

“What they were allowed to do, what they were forced to do, and by what age was perfected and written down it was orchestrated, thought about and laid out in rules.”

It was only because investigators uncovered this evidence when pursuing other leads that sexual crimes ended up on Kony and Otti's indictments.

But Le Fraper defended the prosecutor's policy, telling IWPR that it is impossible to investigate for years and collect everything.

“During the analysis phase we collect [information from] open sources, communications, reports by NGOs and out of that try to see what the period was of most violence, and which region [suffered most]. Then we select a few incidents and this is where the frustration comes from for investigators, and I understand it entirely,” she said.

“But we have to set the standards and the focus of the investigation, and we can only select a few incidents; we need a good selection and cannot investigate hundreds of similar incidents.

“[The procedure] is probably is not perfect and can be criticised, but at one time, we need to settle on our incidents which [reflect] our own evidence.”

She said that focused investigations were central to the way ICC prosecutors work.

Le Fraper says the ICC has learned lessons from cases at the international war crimes tribunals that came before it, like the trial of former Serbian president Slobodan Milosevic at the International Criminal Tribunal for the former Yugoslavia, ICTY.

It took the tribunal six years to prepare three separate indictments against Milosevic, covering crimes committed in Bosnia, Croatia and Kosovo over the course of almost a decade. The accused died four years into the trial, before a judgement could be passed.

In contrast, Le Fraper says du Hellen the ICC prosecutor's policy is to carry out investigations in a few months, involving as few witnesses and incidents as possible.

“In Uganda, it was a matter of drawing the balance between covering the widest range of victimisation, which is one of the main guiding principles of prosecutorial strategy, and conducting a focused investigation in a short time to have charges ready against those we considered most responsible,” she said.

Chung agreed that it is not possible to investigate every lead.

“If this was the [office of the prosecutor's] practice, no sexual violence victim would obtain timely justice,” she said.

## MISSED OPPORTUNIES

Ex-investigators say that a different approach to investigations could have led to more extensive sexual violence charges being brought in relation to the conflicts in DRC and Uganda.

Witteveen said that in Uganda, more evidence of sexual crimes could have been gathered had the investigation been broadened.

“We interviewed a number of 'wives' (girls forced to live with senior LRA men) but questions were focused on their relationship to commanders, not on rape and sexual

enslavement,” he said. “We should not have limited ourselves to this kind of witness we should have widened it out to speak to other victims of sexual violence.”

He added that ICC staff missed the chance to reflect the allegedly organised nature of sexual crimes committed by the LRA.

While sexual crimes feature on two of the LRA indictments, many observers say that these in no way show the systematic and widespread sexual violence that was a feature of the conflict.

Kony's arrest warrant, for example which has been heavily redacted, presumably to protect victims' identities suggests that the sexual enslavement charge against him relates only to one specific incident in 2003.

Brigid Inder, director of Women's Initiatives for Gender Justice, WIGJ, agrees that an opportunity has been lost. According to her, each of the indicted LRA commanders could have been charged with rape as a crime against humanity because they were all active in overseeing and enforcing this act.

Observers say that failing to prosecute sexual crimes, when evidence exists that they have been committed, sends a damaging message.

“This is dangerous, because it leaves out victims who feel unacknowledged for the crimes they suffered, and gives the message that sexual violence crimes are not crimes,” said Binaifer Nowrojee, director of the Open Society Initiative for East Africa.

She accused ICC prosecutors of taking a narrow approach to administering international justice, by focusing on individual crimes in order to secure a conviction, rather than prosecuting a wider range of crimes and establishing a broader narrative of everything that happened.

But Le Fraper du Hellen maintains that the systematic nature of sexual crimes has been covered in the charges against Kony, who she said is accused of ordering the abduction of girls to distribute to commanders as rewards.

Meanwhile, Chung said the Uganda investigation focused on systematic sexual crimes far more than any prior investigation brought in any other international criminal tribunal.

However, she stressed that in order to charge each of the LRA officers with the crime of sexual enslavement, active participation in and enforcement of a criminal policy of sexual enslavement must be proven. Although proof of other commanders' involvement emerged later, this was not adequately developed until after prosecutors submitted their evidence to judges and requested arrest warrants, she said.

Rights groups have also called for further charges to be brought against Lubanga, condemning the decision to charge the militia leader solely in relation to the use of

child soldiers, and urging prosecutors to investigate killings, rape and torture which they say have been perpetrated by all armed groups in DRC.

Out of the same set of investigations in the Ituri district of DRC, Lubanga's deputy, Bosco Ntaganda, was also charged with similar crimes to his chief enlisting, conscripting and using child soldiers to fight in the UPC. Like Lubanga, he was not charged with crimes of sexual violence.

Inder told IWPR that the first series of investigations in Ituri failed to bring charges for rape and other forms of sexual violence committed by militia groups because they were poorly conducted and lacked rigour.

“The first investigations did not follow up on leads of sexual violence, rape and sexual enslavement and failed to develop community relationships with local women's NGOs who could have facilitated access to victims and witnesses,” she said.

She pointed out that the DRC is known internationally as having amongst the highest rates of sexual violence crimes in the world.

“We documented over 112 cases of gender-based crimes in Ituri, of which 31 interviews related to the commission of sexual violence by the UPC,” she said.

Inder told IWPR that her team shared this evidence with prosecutors in August 2006, and passed on contacts of women willing to be interviewed, who were able to identify commanders involved in attacks, and testify about the scale of the sexual violence committed.

“[Prosecutors] ignored the information and have never investigated gender-based crimes committed by the UPC,” said Inder.

Former DRC investigators said their teams were keen to investigate sexual violence and identify new leads within the confines of the incidents they were tasked with investigating.

“We knew that during killings, rapes happened [but] the idea was that the first ICC trial could not fail. To organise a good trial, the prosecutor selected child soldiers as the only charge against Lubanga and to drop the others... against the will of many investigators,” said a former investigator.

But Bernard Lavigne, who worked as an investigator on the Lubanga case the future of which is now uncertain following judges' ruling that prosecutors were guilty of malpractice in their handling of evidence said prosecutors had to proceed with the charges for which they had the strongest evidence.

“To organise a good trial with solid evidence and witnesses, the prosecutor selected the recruitment and use of child soldiers as the only charge against Lubanga, and decided to postpone other charges,” he said.

He added that the evidence collected relating to killings and sexual violence did not meet the necessary legal threshold for bringing charges.

While former investigators told IWPR that they understood the concerns of pressure groups, they said that evidence emerged to suggest that within Lubanga's UPC, rapes were opportunistic, not ordered by commanders, and that perpetrators were punished.

"Nothing was found in our investigations to confirm that orders were given to humiliate through rape. If we'd found leads, we would have immediately investigated further," said one former investigator.

Chung cited the particular difficulties involved in investigating and pursuing sexual violence charges in the DRC.

"Finding the victims who can help you link the highest commanders to the rapes and enslavement that happened at the times and places that are the focus of the investigation is very difficult," she said.

Former investigators agree that sexual violence crimes are extremely difficult to prove because victims are often reluctant to testify.

Rape victims, who are stigmatised by their communities following an attack, can often suffer further by testifying. They could also be at risk of retributive violence from the militias or government troops against which they give evidence.

"Protecting sexual violence victims... has special complications because they are highly identifiable. In the DRC, the perpetrators and their friends are still active," said Chung.

Chung said that other investigations in the DRC into the National Integrationist Front, FNI, militia headed by Germain Katanga and Mathieu Ngudjolo Chui had led to charges of sexual violence crimes.

Following arrest warrants issued in July, judges confirmed in September that there was enough evidence to support sexual slavery and rape charges against both men for crimes committed during an attack on Bogoro in February 2003.

Chung, who was one of the prosecutors directing this investigation, said that from the outset, the aim was to try to include sexual violence crimes in the application for arrest warrants.

"We conducted missions specifically devoted to interviewing sexual violence victims and we were helped a lot by NGOs who were willing to share information," she said.

Le Fraper du Hellen said that overall, she and her colleagues were satisfied that they had properly emphasised sexual violence investigations and succeeded in bringing representative charges.

Chung agreed, saying, "Overall, I believe the [office of the prosecutor] has done well in making sexual violence a priority and bringing charges that represent the scope of sexual violence."

"Sexual violence crimes are adequately represented, and ICC cases reflect more representation [of crimes committed] than has been achieved at any of the other tribunals. Of course they will continue to build on lessons learned."

## SEXUAL VIOLENCE CHARGES TOO LIMITED

Many commentators still maintain that the ICC should not only bring greater numbers of sexual violence charges against suspects, but also charge them with more specific crimes. They say that this is possible under the court's founding Rome Statute, in which sexual slavery, enforced prostitution, forced pregnancy and enforced sterilisation have been set out as prosecutable offences for the first time under international law.

Nowrojee told IWPR that the term "rape" does not adequately capture the range of violations directed at women. She said that prosecutors must take a broader approach to prosecuting various types of sexual violence, not just rape in the narrow sense of vaginal penetration.

"Prosecutors need to have a clearer sense of where the line is drawn between rape versus sexual mutilation, sexual slavery, enslavement and forced marriage," she said.

However, Chung says that instead of pushing for more varied sexual crimes charges to be brought at this stage, campaigners should instead be calling for the arrest of war crimes fugitives wanted by ICC. Currently only four ICC indictees out of a total of 12 are in custody in The Hague.

"The problem needing desperate attention is the fact that not even one of the LRA's sexual violence victims is likely to have a day in court. Victims should be advocating for arrest and trial rather than seeking to add allegations to a piece of paper that, as any good prosecutor should tell you, proves nothing by itself," she said.

"In the LRA case, we can add more charges, including a sexual violence charge, if someone gets arrested."

Le Fraper du Hellen said that her team would not hesitate to bring additional charges against the LRA commanders once the suspects are brought to court, if there is evidence to support this.

She added that prosecutors were following with interest the ground-breaking work of their counterparts at the Special Court for Sierra Leone, SCSL, who are the first to charge suspects with forced marriage, saying this crime accurately described the experience of Sierra Leonean women kidnapped by soldiers and rebel groups.

Observers say this charge could adequately reflect the experience of girls conscripted into militias during other conflicts, including the LRA insurgency.

Le Fraper Du Hellen said at the time when the arrest warrant application was made in the LRA case, prosecutors knew the LRA called the girls “wives”, but this was not evidence that forced marriage had taken place. Yet she added that ICC prosecutors now had more evidence in their files, leaving open the possibility that the further charges, including that of forced marriage, could be brought following the arrest of the suspects.

## ADVANCES MADE IN TACKLING SEXUAL VIOLENCE CRIMES

Prosecutors at the court argue that they are working hard to support investigators pursuing evidence of sexual violence crimes.

In August 2004, they set up a dedicated Gender and Children's Unit to advise investigators and trial lawyers how to investigate and prosecute crimes of sexual violence.

The head of the unit, Gloria Atiba-Davies, said her team is involved from the analysis stage when the court receives information from states, the international community or NGOs about grave crimes of sexual violence. The unit offers investigators training before they are deployed, and organises cultural awareness sessions for each particular country.

ICC prosecutors say that since the court was established, they have made great progress in pursuing sexual crimes, and point out that the charging strategy has become stronger and more descriptive.

A major step forward came in July, when ICC prosecutors asked judges to indict Sudanese president Omar al-Bashir for conducting genocide in Darfur, in part through a campaign of rape the first time the court has attempted to prosecute the crime in this way.

Prosecutors accused al-Bashir of organising the destruction of the Fur, Zaghawa and Masalit communities in Darfur through rape, fear and hunger. Three months earlier, ICC judges issued arrest warrants for Sudanese minister Ahmed Harun and janjaweed militia leader Ali Kushayb, for 51 counts of war crimes and crimes against humanity, including the charge of rape.

To prosecute rape as genocide, prosecutors need to prove the intention to destroy a group in whole or in part. Le Fraper du Hellen said that rape was an integral part of attacks on Fur, Masalit and Zaghawa villages.

In their application to judges for an arrest warrant against al-Bashir, prosecutors sought to show that rape was systematic.

“[Government-backed janjaweed] didn't need to kill people in the camps, but surround the camps and wait for

the women to come outside, and rape them and let them go back to tell the stories. Over five years, they can destroy the group,” said Le Fraper du Hellen.

“This is systematic targeting of a specific group, and shows the intent to destroy.”

Sexual violence charges also feature heavily in the indictment of former DRC vice-president Jean-Pierre Bemba, who is charged with six counts of crimes against humanity and war crimes, including rape, in relation to events in CAR.

Bemba, the latest suspect to be indicted at the ICC, is accused of orchestrating rape as a crime against humanity and a war crime; torture; and outrages upon personal dignity, in particular humiliating and degrading treatment, again in relation to sexual violence.

Inder said that these are strong charges, and when considered in tandem with the explicit charges of rape as a crime in and of itself, they reflect both the purpose and impact of the use of sexual violence in the armed conflict.

Le Fraper du Hellen said that during the CAR investigation, prosecutors overcame an initial hesitancy to initiate a case which featured more sexual violence charges than killings.

Although preliminary evidence gathered from local NGOs and international organisations showed a massive campaign of rape, analysts and investigators were not initially certain whether the rapes and sexual violence crimes committed were numerous enough and grave enough to constitute crimes against humanity and war crimes.

Prosecutors, apparently, had no hesitation, based on the evidence, that the campaign of rape met the necessary legal threshold, according to Le Fraper du Hellen.

They worked with community groups in the country to show that prosecuting rape was high on the ICC's agenda.

“When [Chief Prosecutor Luis Moreno-Ocampo] visited CAR, some women's associations wanted to show him mass graves, but he was interested in how rape was dealt with and whether records of the attacks were kept,” she said.

Prosecutors say they are proud of their decision to prosecute rape extensively in relation to CAR, recognising that in certain circumstances the crime is also an act of torture and an outrage upon personal dignity.

“Rape of a little girl for one hour in a village is rape, and it is torture. A local leader raped for a very long time and publicly is a case of rape requiring additional charges of torture and outrages upon personal dignity,” said Le Fraper du Hellen.

## INCREASED COOPERATION WITH LOCAL COURTS

As investigators prepare to launch their long-awaited investigation in North and South Kivu in the east of DRC, they are planning an initiative which will see them work with local courts to support sexual violence prosecutions of lower-level suspects.

Observers say this decision to cooperate with the local judiciary is long overdue.

A recent survey by the International Centre for Transitional Justice, Berkeley University's Human Rights Centre and the Payson Centre for International Development confirmed the prevalence of sexual violence as a tool of conflict in the Kivus.

Moreno-Ocampo said that ICC investigations of these crimes will aim to support the national justice system by sharing evidence with local judges.

As the court's investigators gather evidence against those believed to be most responsible for the most serious crimes, they will also identify lower-level suspects and build up dossiers of evidence against them for use in local trials.

Announcing this new strategy at a gender justice conference in The Hague in July, prosecutors acknowledged there would be associated problems, including how to go about protecting witnesses.

In spite of this, investigators say this should have been implemented sooner.

Lavigne said it was a "mistake" not to hand over to the local judiciary evidence of sexual violence crimes gathered in the Lubanga investigation, after ICC prosecutors decided to focus exclusively on charges relating to child soldiers.

"It is a pity that we didn't hand over evidence [so local courts could organise sexual violence trials]," he said. "Thanks to our resources, we collected forensic evidence that could have been useful for them, but the prosecutors were not interested in handing it over."

But prosecutors said that safety and security were sticking points, and stressed that handing over evidence would require enhanced protection for witnesses and the judiciary.

"[An] assessment [is required] to decide whether and how to turn information over to national authorities. There are usually concerns about witness protection, for example," said Chung.

The Congolese justice system is in dire need of help, with both the military and civilian branches plagued by lack of resources, corruption and insufficient independence from government.

Lavigne says a relationship with the ICC could raise the standard of local trials, and persuade renegade militias and corrupt government officials to start respecting the rule of law.

However, other former investigators say any arrangement must be carefully planned to avoid already over-stretched ICC investigative teams being spread even more thinly.

# Hague Court Considers Bolstering Local Judiciary

Legal experts say helping enhance Congo's legal capacity is one way ICC can ensure rapists end up in court.

By Lisa Clifford in The Hague and Charles Ntiriyica in Goma

The Democratic Republic of Congo, DRC, has been described as the worst place in the world to be a girl or woman. Women young and old, even babies, are raped by militiamen, soldiers, policemen and civilians every day. There are hundreds of thousands of victims, though exact numbers are unclear as most women don't ever report an assault. The near defunct judicial system means there's little point.

The arrival of the International Criminal Court, ICC, four years ago brought some hope for Congolese rape victims. But international justice has so far been unable to stop, or even slow, the violence against women.

Tasked only with prosecuting those most responsible for war crimes yet criticised for not doing more to fight general impunity, the ICC is now considering its options in North and South Kivu provinces where the rape epidemic is at its worst. One early option is working more closely with Congo's government.

ICC deputy prosecutor Fatou Bensouda told IWPR that the court is considering sharing information it has gathered on lower-level perpetrators information it doesn't intend to use with the national authorities. Congolese prosecutors and judges would then draw on the ICC information in preparing their own rape cases.

“The office of the prosecutor attaches a lot of importance to the investigation of sexual and gender crimes,” said Bensouda. “One thing we are looking at is working very closely with the government of DRC. We are not in a position to do everything, but we could provide information to the government, and we could even work with government at a local level.”

Cooperating with national judiciaries is prominent in the ICC's founding document. The Rome Statute says the ICC should complement local courts, allowing them to retain the jurisdiction to try genocide, crimes against humanity and war crimes.

But in Congo, where the legal system has collapsed, how realistic is the ICC's idea to hand over files of evidence to local prosecutors and judges?

Legal experts say Congo's lack of witness protection programmes and the frequent and pervasive political and military interference in court cases makes such close cooperation nearly impossible. Congo has yet to incorporate the Rome Statute into its domestic legislation meaning civilian courts cannot try war crimes cases and still retains the death penalty. Three soldiers and two civilians were sentenced to death in September for the

July murder of Daniel Boteti, a Congolese opposition member of parliament.

“In principle we would be very excited about the court working more closely with the Congolese judicial system ... then we started thinking about how this would work and then you start thinking about all the problems,” said Geraldine Mattioli, advocacy director at Human Rights Watch's international justice programme.

“At the moment it seems impossible ... investigators compiling information and handing over a dossier to the national judicial system. At this moment in time I don't see how this could work.”

Lawyers from a North Kivu group that offers legal assistance to rape victims Dynamique des Femmes Juristes, DFJ know all too well the failings of the country's court system.

Sindubaza Vumbi from Goma told IWPR that accused rapists often pay judges to grant them provisional release. They then vanish, having given a false address. Sometimes they join an armed group or flee into a neighbouring country.

“This makes our task more difficult and turns rape into a disgusting tradition in our province,” said Vumbi.

Interference in the legal process by politicians as well as the police and military is common. DFJ lawyer Christine Mpinda says judges who refuse to go along are reassigned or otherwise humiliated.

“The only efficient military magistrate of Goma, a colonel from the FARDC [Congolese army], was recently transferred simply for having dared to say that from now on any military interference in a trial would be unacceptable,” said Mpinda. “He received serious death threats.”

The lawyers themselves are also intimidated. “Every time we defend our clients who are victims of rape we receive threats from army officers or from those who are on the side of the police,” said Tulinabo Chirimwami, also from DFJ.

Bensouda said the ICC is aware of the failings of Congo's legal system.

The lack of victim and witness protection is particularly problematic, she said, adding the court would never hand over files of evidence to the national courts if Congo couldn't guarantee the safety of those who'd spoken to the ICC.

“We are looking at whether this is feasible,” said Bensouda. “We would not do this knowing it would jeopardise anybody.”

“It would not just be to give [evidence] over to them and leave them. It is to see how the ICC can work with them. We won't just hand everything over, wash our hands and turn our backs.”

Though debate continues about the ICC's role in Congo, that something must be done is clear.

A recent survey by the International Centre for Transitional Justice, the University of California, Berkeley's Human Rights Center and Tulane University's Payson Center found that almost 16 per cent of those surveyed in North and South Kivu and Ituri had been sexually violated. Almost 12 per cent were raped multiple times.

Mirna Adjami, the ICTJ's chief of mission in Congo, said real figures are actually higher but are underreported due to the stigma associated with rape and the fear of reprisals. But despite the many obstacles to prosecution, Congolese told the surveyors they wanted justice for those who had been raped.

“Seventy per cent of those surveyed believed that sexual violence crimes were the most important to seek accountability for,” said Adjami. “This underscores the population's desire to combat impunity for rape and sexual violence.”

Legal experts say that helping to enhance Congo's legal capacity is one way the ICC can ensure that rapists end up in court.

Mattioli suggested the ICC should support local prosecutors in areas where it is already investigating. A national prosecutor in Ituri, where the ICC issued its first four indictments, recently told Human Rights Watch staffers that he would like to talk to the ICC about how it builds a case on child soldier recruitment.

“The prosecutor has all these questions about how he could go around the fact that [recruitment of children] is not a crime under Congolese law but war crimes are, about how to build a case relying on the Rome Statute,” said Mattioli.

“He has all these questions, but I can't help. The MONUC [United Nations Mission in the DRC] people can't help. The NGOs can't help. They haven't done a case on recruitment of child soldiers.”

“ICC prosecutors and investigators on their next trip there could spend an afternoon with this guy and talk the elements of the crimes through. This could go a long way to helping him to build a case.”

Thomas Lubanga, Germain Katanga, Mathieu Ngudjolo and Bosco Ntaganda are accused of recruiting children to fight in the Ituri conflict. Katanga and Ngudjolo are also charged with crimes of sexual violence.

Mattioli suggested the ICC set benchmarks including the abolition of the death penalty and the setting up of a victim and witness protection programme which must be met before the court can work more closely with Congo.

“This is not unprecedented. It is exactly what the International Criminal Tribunal for Rwanda did with Rwanda,” she said.

Groups like DFJ in the North Kivu capital say they would welcome the ICC's help. Founded in 2007, DFJ operates legal clinics in the Masisi and Rutshuru regions that inform local residents of their options if they are raped.

The group also represents women in court and has won 56 convictions, mostly for the rape of minors like 16-year-old Jeannette. She was attacked by two soldiers in Rutshuru while returning from the fields.

“A friend of my family came to tell my parents there were women helping victims to press charges,” she said. “They went to see the Dynamique des Femmes Juristes, and fortunately we won the trial. At least that's some comfort for me.”

The soldiers who raped Jeannette were jailed, though how long they'll stay there is unclear. Congo's prisons are notoriously porous and inmates escape, or buy their way out, on a regular basis.

In 2006, a military court sentenced seven soldiers from the Congolese army to life imprisonment for gang raping dozens of women in the northern town of Songo Mboyo. Judges cited the Rome Statute in their verdict, the first time in Congolese judicial history that a court had recognised rape and sexual violence as a crime against humanity. The men escaped several months later and remain at large.

Improving Congo's prison system may be well beyond the ICC's remit, but analysts say international justice does have another important role to play in Congo.

South African archbishop Desmond Tutu, in The Hague recently for a meeting of the board of the ICC's victim's trust fund of which he is a member, believes the court acts as an important deterrent.

Tutu points to the situation in another African country, Zimbabwe, as proof that international justice is working.

“Terrible crimes continue, that is true, but people are beginning to be scared,” Tutu told IWPR. “Part of the [reason] why we can't get a resolution of [the] crisis in Zimbabwe is that a lot of people who were sidekicks of Mugabe, who perpetrated the violence, are scared.”

“They are looking out for some kind of immunity, which does mean that people are aware that there is this court, and more and more as they know that there could be a sword of Damocles hanging over their head. That could deter them.”

Mattioli, however, questions how much of a deterrent the ICC has actually been. She says Ituri militia leaders were afraid when Lubanga's indictment was first announced more than two years ago, but that was short lived.

“That [fear] lasts for a moment when the news [of an arrest warrant] is out and then everybody forgets about it,” said Mattioli.

She thinks the court needs to do a better job explaining its work to the Congolese.

“I'm not sure their communications policy is the best it could be. Sexual violence charges are included in the Ngudjolo and Katanga cases, but I'm not sure that anyone in Congo knows these crimes are being prosecuted,” she said.

Another major problem for the ICC in Congo, said Mattioli, is its failure to execute its arrest warrants. The court revealed an indictment against Ituri militia leader Bosco Ntaganda in April, but he continues to elude the court.

Ntaganda is accused of pressing children into military service while he was with the Patriotic Forces for the Liberation of Congo, FPLC, in 2002 and 2003. The FPLC is the military wing of Lubanga's Union of Congolese Patriots, UPC.

Lubanga's ICC trial is near collapse, and Ntaganda has left Ituri, the FPLC's stomping ground, for North Kivu. He joined the rebel force of Laurent Nkunda and is now second-in-command in the group that is accused of committing mass sexual violence in North Kivu.

“You are going to be more of a deterrent if you are seen to be strong,” said Mattioli. “If I was someone out there committing sexual violence I wouldn't be too worried about the ICC right now.”

Recent communiqués from prosecutors have deplored the “shocking brutality” of the sexual violence in the Kivus and warned Nkunda, the army and Rwandan Hutu rebels that the ICC is watching.

But concrete legal action against rapists in the Kivus still seems far away. ICC investigators are not yet on the ground there, but are instead speaking informally with locals and NGOs.

“What we thought was crucial was to get the true picture from the people who are on the ground,” said Bensouda. “We need to be very cautious about how we approach sexual crimes, and we need to collect as much information as we can before deploying to the area.”

But when that will be remains unclear. “A lot of issues need to be looked at,” said Bensouda. “It is difficult to put a timeframe on it.”

