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Democratic Republic of the Congo: Prevalence of domestic violence, the availability of legal protection, methods of punishing or deterring offenders, and presence of support systems for survivors (March 2006)

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Prevalence of Domestic Violence in Congolese society

Country Reports 2005 describes domestic violence in Congo as "common" (8 Mar. 2006, Sec. 5). According to the Reproductive Health for Refugees Consortium (RHRC), it is "pervasive" (July 2002, 17). In 2002, Asylum Aid published findings showing that in one village eighty per cent of women suffered abuse and violence at the hands of their spouses (Mar. 2002, 11). In a reproductive health study conducted by RHRC, 100 per cent of women participants in one zone reported having experienced domestic violence, which included being beaten while pregnant (July 2002, 17). Half of respondents reported having experienced marital rape (RHRC July 2002, 17). Reported domestic violence and sexual abuse in some provinces tripled from 2003 to 2004 (Mechanic Dec. 2004, 4).

Context of Domestic Violence in DRC

Amnesty International (n.d.) has drawn links between militarized societies and domestic violence (n.d.), and has reported that the level of violence that women and girls experience in times of peace rises during and after war (ibid.; Mechanic Dec. 2004; IANSA 1 July 2003; Dahrendorf 27 Oct. 2005, 2). The reintegration of combatants (AI n.d.), circulation of small arms, and post-traumatic stress, "combined with economic prospects and a reduction in basic services" all contribute to a post-conflict increase in domestic violence (IANSA 1 July 2003). According to Nicola Dahrendorf, director of the Office for Addressing Sexual Exploitation and Abuse for the United Nations Mission in the Democratic Republic of Congo, there is "overwhelming evidence of a substantial increase in domestic violence in post-war settings" (27 Oct. 2005, 2).

Conflict in Congo has been aggravated by deep inequality between genders (Dahrendorf 27 Oct. 2005, 3; Mechanic Dec. 2004, 4). The loss of control felt by men post-conflict has resulted in the re-entrenching of masculinity through violence against spouses and intimate partners (Dahrendorf 27 Oct. 2005; Mechanic Dec. 2004; see also Charlesworth Sept. 2005).

According to Aili Mari Tripp, director of the Women's Studies Research

Center at the University of Wisconsin and specialist in African politics and gender studies (UW n.d.), widespread rape and sexual violence have occurred unpunished in Congo (July 2005, 22; AI 17 Mar. 2005, 3; see also Dahrendorf Oct. 2005; HRW Mar. 2005, 29), and women who have survived rape or sexual assault outside of marriage are often ostracized or rejected by their husbands and communities (Tripp July 2005, 21; Dahrendorf 27 Oct. 2005, 1; RHRC July 2002, 17; HRW June 2002, 64), part of a phenomenon that the World Health Organization (WHO) calls "social murder" (UN July 2005, 5). According to the United Nations, poverty and the need to flee one's home have put women and girls at greater risk of sexual violence (July 2005, 2).

Forced (APDFE Feb. 2004) and early marriage (ibid.; RHRC July 2002) are common throughout Congo, and, upon marriage, wives find themselves at the mercy of their husbands (APDFE Feb. 2004). Women's "subordinate status" (HRW June 2002, 20) prevents them from obliging their husbands use prophylactics and, as extramarital affairs are condoned for husbands, women are exposed to sexually transmitted diseases, including HIV/AIDS (ibid. June 2002, 20). Generally large family sizes cause women to be dependent on their husbands (ibid.). In many cases, payment of bride price or the conducting of a simple ceremony is the only requirement for a marriage, and a large number of marriages are not recorded at a registry office (UN 30 Nov. 2004, 44). In cases of divorce, full custody is generally accorded to husbands, and wives are often made to repay the bride price (APDFE Feb. 2004).

Legal protection offered to women

Neither the Penal Code nor the Family Code of the Democratic Republic of Congo contains any reference to domestic violence (Asylum Aid Mar. 2002, 13). While the Penal Code prohibits assault, battery (ibid.), indecent assault, physical torture, and kidnapping (Tripp July 2005, 22), there is no specific prohibition of domestic violence or assault within the family, nor is there reference to verbal or psychological abuse (Asylum Aid Mar. 2002, 13). Rape is an offence, but rape specifically within marriage is not mentioned within the legislation, nor are other forms of sexual abuse (Asylum Aid Mar. 2002, 13). When determining whether a crime has been committed, the court may call into question the prior conduct of the victim, and seek, for example, evidence of "loose morals" before reaching a decision on whether a crime has been committed (HRW Mar. 2005, 29).

The United Nations (UN) Committee on the Elimination of Discrimination Against Women (CEDAW) analysed the 1987 Family Code and found a large number of articles to be contrary to the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, 30 Nov. 2004, 16-18). For instance, in DRC, the husband is designated as the head of household (UN 30 Nov. 2004, 18; Tripp July 2005, 23); wives do not have the legal right to choose their residence (ibid.; UN 30 Nov. 2004, 17-18), seek divorce (Tripp July 2005, 23), or act outside the home (for example to accept employment (UN 30 Nov. 2004, 16; *Country Reports 2005* 8 Mar. 2006, Sec. 5), travel (ibid., Sec. 2.d), or apply for a passport (ibid., Sec. 5; Tripp July 2005, 23) without prior authorization from their husbands. Husbands are legally entitled to act on behalf of their wives without their consent (Global Rights Aug. 2005b).

Section 448 of the Family Code requires that a woman seek her husband's authorization to bring a civil case before a court (HRW Mar. 2005, 29; ibid. June 2002, 84-85). Should a husband refuse to give such an authorization, it is necessary to have a family council overrule his decision in order for the wife to

pursue the court case (ibid., 85; Tripp July 2005, 23).

According to a paper by the United Nations Educational, Scientific and Cultural Organization (UNESCO), Congolese women do not have the right to seek divorce (Tripp July 2005, 23). Major obstacles to a woman's securing of restitution from her husband include a woman's lack of financial resources compared to those of her husband, and the acceptance of the custom of "right of correction" exercised by husbands over their wives (Asylum Aid Mar. 2002, 14). However, documentation from the Women's Network for Defending Rights and Peace (Réseau des Femmes Pour la Defense des Droits et la Paix) quotes Article 451 of the Family Code: [translation] "A husband's authorization is not required in order to file a suit against him" (Global Rights Aug. 2005b, 250). In practice, it has been documented that certain magistrates in Bukavu, South Kivu, refuse to hear cases brought by women against their husbands and partners (ibid., 249). One magistrate said to a female complainant, [translation] "You are his wife. It is your duty to stay with your husband even if he were to kill you," and that [translation] "you wives, you must not bring cases here against your husbands" (ibid., 250). Divorce in DRC is described as "practically impossible" to acquire (Asylum Aid Mar. 2002, 8).

Punishment or deterrence of perpetrators

The Congolese police and justice systems are "considerably weakened" as a result of conflict, post-conflict political disorganization, destroyed infrastructure, and economic inertia (HRW Mar. 2005, 29). According to the International Crisis Group (ICG), "[t]he Congo police have never been able to provide basic law and order and have themselves ranked among the top abusers of citizens' basic human rights" (13 Feb. 2006, 4). An assessment of the judicial sector by Global Rights in 2005 reported that

[i]n the country's interior, particularly in the east, there is such a severe shortage of judicial personnel that courts can no longer hear cases, public prosecutor offices cannot conduct investigations, and those prisons that are still standing are being closed (Aug. 2005a).

Country Reports 2005 describes the various levels of the justice system as "largely dysfunctional," and characterized by an absence of the rule of law and widespread corruption, notably among magistrates (8 Mar. 2006, Sec. 1.e).

Preoccupation with the 18 June 2006 elections (*Der Spiegel* 25 Feb. 2006) has overshadowed the reconstruction of the legal system and the fight against impunity (Global Rights Aug. 2005a). Although rape and assault are criminal offences, police avoid intervening in household disputes (*Country Reports 2005* 8 Mar. 2006, Sec. 5; Asylum Aid Mar. 2002, 14), or domestic violence (ibid.). Increasingly, police themselves abuse their authority and perpetrate sexual harassment with impunity (UN July 2005, 2; see also ICG Feb. 2006, 4). Predominantly male judicial authorities accord little priority to sexual violence (HRW Mar. 2005, 29). Because many women do not file charges against those who have been sexually violent against them, perpetrators are largely unpunished (ibid., 36).

Several organizations noted the obstacles encountered by women seeking redress for sexual violence. Feelings of shame (HRW Mar. 2005, 37; Global Rights Aug. 2005a, 9; ibid. Aug. 2005b, 127), and pressure from family members (*Country Reports 2005* 8 Mar. 2006, Sec. 5), and authorities (HRW Mar. 2005,

37) may all cause a woman to stay silent. Lack of knowledge about their rights and about judicial proceedings are other barriers that keep women from seeking help (HRW Mar. 2005, 37; Global Rights Aug. 2005a, 9; *ibid.* Aug. 2005b, 118). Geographic remoteness, poverty, insecurity, fear of retaliation, and child-rearing obligations all impede women's capacity to engage the justice system, and this results in a low number of filed cases (Global Rights Aug. 2005b, 117; *ibid.* Aug. 2005a, 9). In cases when a complaint is filed, "the tendency of the courts is to shelve the victim's complaint if she agrees to return to the marital home" (Asylum Aid Mar. 2002, 14). According to *Country Reports 2005*, "most victims did not have sufficient confidence in the justice system to be willing to subject themselves to further humiliation and possible reprisals by pursuing formal legal action" (8 Mar. 2006, Sec. 5).

Resources available

Along with sustaining psychological and physical injury, and potentially being impregnated, survivors of rape are at increased risk of contracting HIV, as non-consensual sex may result in genital injuries and abrasions (HRW June 2002, 72-73; Asylum Aid Mar. 2002, 20). Pre-pubescent girls are at even greater risk (HRW June 2002, 73).

According to the WHO, conflict has seriously damaged the health system and "the infrastructure has collapsed" (UN Jan. 2006, 2). Where there are health services in operation, these are most often private enterprises, the costs of which make them unavailable to most (UN Jan. 2006, 2). In the Eastern provinces, ongoing conflict has impoverished the population (*ibid.* July 2005, 3). In 2005, the WHO reported a daily income of as little as US\$0.18 per day (*ibid.*, 3).

There is no established referral procedure between the health and justice sectors for cases of sexual and gender-based violence, and as a result it is not possible to measure the extent of the problem (*ibid.*, 2).

Other obstacles to obtaining medical treatment include the absence of health care infrastructure, supplies, and trained personnel; the lack of female medical professionals; the absence of care for psychological trauma (*ibid.*, 6; see also RHRC July 2005, 14); and the stigmatization and blame by the community and by health care professionals themselves, which are imposed upon women (Dahrendorf 27 Oct. 2005, 1, 2).

The World Health Organization's planned activities for 2006 include addressing the health consequences of sexual and gender-based violence as part of a strategy to identify and fill gaps in public health (UN Jan. 2006, 2).

Information regarding the existence of shelters or refuges for women survivors of domestic violence could not be found among the sources consulted by the Research Directorate. Non-governmental organizations (NGOs) and churches are aware of the need to provide support to survivors of sexual violence, including domestic violence (UN 30 Nov. 2004, 49). In particular, efforts by diocese and local NGO networks are concentrated in South Kivu province (*ibid.*). Collaboration between NGOs in other provinces is either absent or "embryonic" (*ibid.*). While a number of actors have expressed interest in responding to sexual violence, there is "no real coherent strategy on the part of the humanitarian community" (Dahrendorf 27 Oct. 2005, 2), and "domestic violence remains a serious crisis in the DRC" (Mechanic July 2004, 4).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of additional sources consulted in researching this Information Request.

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