



End violence: Women's rights and safety online

Democratic Republic of Congo country report

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1. Introduction

Technology-related violence against women (VAW)¹ refers to a variety of different types of abuse that take place online and through the use of mobile technologies and that are experienced by women and girls. They can be divided into two groups: violence against women and girls carried out using information and communication technologies (ICTs), such as identity theft, fraud or theft, online spying, and blackmail; and other abuses such as manipulating personal information, online slandering and more. This second category of abuses can be difficult to extrapolate from the online platforms where they take place. As a country, the Democratic Republic of the Congo (DRC) is slowly but surely opening up to ICTs, especially with general packet radio service (GPRS) and more recently 3G and voice over internet protocol (VoIP) services, which all take place over the country's telecommunications networks and have democratised the use of the internet, allowing for better access to ICTs through mobile applications such as SMS, MMS, GPS and Bluetooth.²

2. Research procedure

Within the scope of this research, Si Jeunesse Savait focused on acts of violence affecting women and girls, but specifically where internet intermediaries also played a role. In fact, the research strives to uncover the extent of existing legal remedies for the types of abuses that an increasing number of women and girls experience in the Democratic Republic of Congo, as well as if internet service providers (telecommunications providers and internet platforms) can be held accountable for infractions committed on their platforms, and to determine if there are any requirements in their policies to report those who commit infractions directed towards their users. This report is based on three case studies that will provide a sample of the types of technology-related violence committed in the DRC, the internet intermediaries involved, the consequences of these actions for the victims, as well as potential legal remedies. Data was collected via interviews and desk research.

For five months, between 15 January and 31 May 2014, a research team of four people worked to identify the different cases of violence against women collected on a mapping tool created by the Association for Progressive Communications, which allows women and girls to anonymously document and describe their experiences of ICT-related violence. The team also contacted the survivors of violence against women and met with representatives from the mobile telecommunications service providers in order to shed some light on what procedures for redress exist for survivors, as well as documenting any laws that could potentially be used in cases of technology-related VAW.

¹The United Nations defines violence against women as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life." Declaration on the Elimination of Violence against Women, resolution 48/104 of the UN General Assembly.

²SMS: short message service; MMS: multimedia messaging service, GPS: global positioning system; Bluetooth: a wireless technology standard for exchanging data over short distances using short-wavelength radio waves to simplify connections between electronic devices.

3. Political context in the DRC

With a population of over 70 million, the Democratic Republic of the Congo is estimated to be Africa's third most populated country, with a growth rate of 3.2%.

While rich in minerals (diamonds, coltan, cassiterite, copper, zinc, uranium, etc.) and forests (over a third of its surface area is covered in equatorial forest), the country is economically poor.

More than 50 years after its independence, the country is plagued by poverty, unemployment, corruption and armed conflict, and it is often placed last on United Nations Development Programme (UNDP) human development index.³

Meanwhile, 95% of its arable land remains unused, and traditional agriculture, primarily carried out by women, is not sufficient to cover the country's food requirements.⁴

According to the UNDP, the chance of the country reaching any of the Millennium Development Goals seems impossible, especially where poverty reduction, education, gender equality, HIV/AIDS, and malaria rates are concerned.⁵

The country's socioeconomic, political and legal contexts show that these inequalities have a direct impact on women's health, education, and participation in public and political life. Women, who represent 52% of the country's population, are among the poorest, the least educated, and most likely to contract HIV/AIDS.

Violence against women is a serious societal problem in the DRC. According to the Ministry of Gender, Family and Children's National Gender Report, two women out of three have been victims of some form of violence. This rate of violence against women is a hideous violation of human and women's rights.

While it is common for domestic violence and patriarchal customs to be widely accepted by society, armed conflict in the eastern region of the country has exacerbated the violence to intolerable proportions. Women and girls in the DRC – especially in the east of the country – are victims of acts of sexual violence committed by combatants from the different parties, including the national army.

A 2011 study conducted by *The American Journal of Public Health* revealed that 1,153 women are raped every day in the DRC, which works out to an average of 48 women per hour, and is 26 times more than the United Nations Population Programme's estimate of 16,000 women per year. Previous studies had been based on police and hospital reports and only covered part of the country, whereas these new results were collected from a countrywide medical census.⁶

³United Nations Development Programme. (2010). *Human Development Report 2010. The Real Wealth of Nations: Pathways to Human Development*. hdr.undp.org/en/content/human-development-report-2010

⁴Ministry of Gender, Family and Children. (2011). *National Gender Report*.

⁵United Nations Development Programme. (2010). Op. cit.

⁶Peterman, A., Palermo, T., & Bredenkamp, C. (2011). Estimates and determinants of sexual violence against women in the Democratic Republic of Congo. *American Journal of Public Health*, 101(6).

In another report published in 2012, the Congolese NGO HEAL Africa, which offers help to victims of sexual violence, noted that from January to June of that year, over 2,500 women had been raped, 30% of whom were children, in the province of North Kivu alone.⁷

In an effort to eliminate the sexual violence committed by the army as a weapon of war in conflict zones – and increasingly by civilians around the country – the Parliament passed two laws: Law No. 06/018 of 20 July 2006, amending and supplementing the Decree of 30 January 1940 on the Congolese Penal Code, and Law No. 06/019, of 20 July 2006, the Decree of 6 August 1959 on the Congolese Criminal Procedure Code.

However, aside from these two laws on sexual violence, there are no other laws that specifically address gender-based violence. This is the case with marital rape and technology-enabled violence (online harassment, stealing personal data, posting videos or photos without consent, etc.), which the Penal Code does not address. In the study *Notion de cybercriminalité : praxis d'une pénalisation de la délinquance électronique en droit pénal congolais* (The Notion of Cybercrime: Penalising online delinquency in Congolese penal law), Me Mitinga Kalonji confirms that there are several obstacles that prevent the different cyber crimes from being distinguished in the Congolese Penal Code. The Penal Code is based on certain cardinal principles, which include criminal illegality, strict interpretation of penal law, territoriality, and personal and universal application of penal law. All of the principles are important to Congolese penal law; however, cyber crime – complex in nature – falls into a grey area, and cannot be bound by the above-stated principles. The authorities and bodies responsible for providing proof, extraditing, and international cooperation to combat crime are all also powerless against cyber crime.

4. Summary of the cases: Main themes and tendencies

While acts of technology-enabled violence are committed against women and girls on different platforms (blogs, mobile applications and social media), our research demonstrates that mobile phones are the device of choice for youth in general, as well as their main tool for connecting to the internet and internet-based services – especially since most people in the country cannot yet afford personal computers.

Other than mobile phones, one of the most frequently used platforms for committing these acts is a private blog based in France, which highlights the extra-jurisdictional and international nature of information and communication technology, as it can be used in different places, and raises the question of natural justice for survivors wishing to press charges.

4.1 Common harm caused by the acts of violence:

The harm experienced by the victims is also diverse, ranging from loss of identity and sense of self; emotional and psychological harm; sexual violence; and a damaged reputation. In all three of the cases studied, the survivors were subjected to multiple acts of violence, either by the same person or different people who, for the most part, had better knowledge of the technology than the victims.

⁷HEAL Africa. (2012). *Nord-Kivu: Sexual violence makes its way to children*.

The question of anonymity and the fact that it was possible to abuse these women from a distance through the use of technology are particular attributes of these cases.

4.2 Available remedies

As far as remedies are concerned, the survivors had the power to contact the legal authorities because all of the cases took place in the capital city of Kinshasa. In fact, at the time of the incidents, all of the survivors lived in close proximity to the courthouse and to police stations. As such, all of them could have sought out legal redress before a Congolese court of law for the harm they suffered, especially by virtue of Article 258 of the Congolese Penal Code, which states that “any person who causes harm to another is obligated to provide reparation for the act.”

They could have filed a complaint as a civil party by virtue of Articles 69 and 70 of the Criminal Procedure Code of the Democratic Republic of Congo, or directly addressed a judge through a hearing.

Furthermore, Article 19 of the Constitution of the Democratic Republic of the Congo states, “No person may be removed or transferred against his will from the judge who has been assigned to hear his/her case. All persons have the right to have their case heard by a competent judge within a reasonable time. The right to defense is organized and guaranteed. All persons have the right to defend themselves or to be assisted by counsel of their choice at all stages of the criminal procedure, including the police investigation and the pre-trial enquiry. They may also be assisted before the security forces.” Therefore, Congolese legislation recognises that anyone who has been wronged has the right to legal redress.

Of course, the harmful act must be proven by the person pressing charges for it, and it also must be proven that the person accused of having committed the act is responsible.

The principal actors differ according to where the claim takes place – in a court, the Public Prosecutor’s Office, or the police department. As such, a judge, the Public Prosecutor and/or the defendant will be involved, depending on which one is called upon during the pre-trial instruction, by a civil party soliciting redress before a judge, or the judicial police officers who work in close cooperation with the Public Prosecutor’s Office.

As for the available channels to the remedies, there are two main ones which one should be aware of: an accusation (complaint) and a direct hearing. An accusation is used when the Public Prosecutor is approached. In this case, there are three possible outcomes: the case can be shelved if it is deemed that the case being brought to the Public Prosecutor is not an infraction; a compromise can be reached, that is, the accused can be required to pay a fine, if it is deemed that the infraction is of little consequence; or the Public Prosecutor can request a hearing – that is, set a date and a venue in which the defendant must come before the judge.

A direct hearing takes place when a person considers himself or herself a victim of an infraction, and speaks directly before the judge, thereby prompting public action by the Public Prosecutor.

4.3 Legal framework:

The current Congolese legal framework is not satisfactory; the Penal Code is outdated, since it does not consider acts of violence against women and girls committed through technology or electronic devices. Legal procedures related to violence against women are often the least known and most expensive. In fact, according to a survey conducted by Si Jeunesse Savait, a Congolese plaintiff spends about USD 1,920 in legal fees in order to undertake a criminal proceeding (123 times the minimum wage).

According to the 2012 annual report by the Congolese Association for Access to Justice (ACAJ), entitled "Justice in the DRC is privatised",⁸ numerous factors prevent Congolese people from gaining access to the justice system, and as a result they do not trust the system. Civil servants are at the mercy of militarised groups, who commit murder and other crimes with impunity (there is a great risk of armed groups targeting judges in unstable zones). Justice is often denied, and there are many obstacles to the proper execution of legal decision making, such as arbitrary detentions and arrests by the National Information Agency, which strip judges and civil servants of their independence.

This research also brought to light the issues of natural justice in extra-jurisdictional cases, when a survivor and perpetrator live in different countries. This could explain why, in all three of the cases, none of the victims went to the Congolese authorities to put a stop to the abuse. Only one survivor formally pressed charges in France, the country where the acts of violence were being committed, after her friends urged her to do so.

4.4 Mechanisms for redress:

Outside of judicial mechanisms, two of the survivors used social redress mechanisms, which consisted of directly contacting the presumed author of the violence in order to put an end to the behaviour.

While the judicial redress system is not satisfactory, it should be noted that this research has demonstrated that redress differs with every individual. In two of the three cases, it was more about putting an end to the violence, rather than sending the perpetrators to prison.

5. Recommendations

The recommendations coming from this research are, for the most part, directed towards the users of service providers.

Namely, they address the need to:

- Carefully read the terms of use on websites before creating an account. Indeed, in one of the case studies, the survivor signed up on a site without knowing that it was a beta version and that all beta content belonged to the author of the site, making it possible for him to use and alter it at any time.

⁸ Association congolaise pour l'accès à la justice. (2013). *La justice est privatisée en RDC*. www.droitcongolais.info/files/Rapport-annuel-2012-de-l-ACAJ_-la-justice-est-privatisee.pdf

- Keep personal information online secure: in one of the case studies, the survivor asked a friend to create a Facebook account for her and failed to change the password after the account had been created. As such, the creator had continued to access the account and used it to publish personal information about the survivor without her consent.
- Support survivors of technology-enabled violence, who are often stigmatised; their reputations are tarnished, they are forced to leave their homes or are accused of shaming their families, and yet the perpetrators of the violence remain untouched.
- Understand that violence is violence, regardless of social status. One of the survivors was drugged and gang raped, as well as harassed in person and via SMS, because of her sexual orientation, rather than receiving assistance from her community in bringing the perpetrators to justice.

Where internet service providers are concerned, the following should be considered:

- Make policies and procedures more available to those wishing to report online abuse. These procedures must also be clearly articulated and well known so that survivors are able to use them when needed.
- Cooperate with the justice system in order to find the perpetrators who use mobile applications to threaten women with sexual violence, which is considered a crime in Congolese law.

Where the Congolese government is concerned, the following should be considered:

- Make justice available to all.
- Create specific laws for types of gender-based violence that are not currently considered in the law on sexual violence.
- Create laws that are adapted to the evolution of information and communication technology, and which could help fill the gaps in the Congolese Penal Code.
- Create support systems that make it possible for a Congolese survivor of online gender-based violence to seek out justice when the author of the crimes is in another country.

Other recommendations:

- Always properly read the terms of use of a site before signing up.
- Understand that the notion of justice differs from person to person. One of the victims simply wanted the abuse to stop and have the site shut down. She did not necessarily want to have the perpetrator arrested – rather, all she wanted was technical assistance.
- Policies and procedures for pressing charges must also be spelled out clearly and widely disseminated.
- The justice system must make certain principles widely known so that minors may know what to do in the case of violence. The procedure in cases of sexual violence should also be free of charge for the victims.
- Improve the living and working conditions of the civil servants and legal authorities.

- Ensure that the law is respected by everyone, including by the authorities.
- There must be certain level of cooperation among women, since there is scepticism in Congolese society with regard to women in politics.
- Give both men and women an equal chance to an education and professional training.
- Work to counter the mentalities that hold back women's potential and progress.
- Help counter stereotypes.

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