

## PROBLEM OF REPRESSION AND COMPENSATION FOR SEXUAL VIOLENCE IN THE COURTS OF THE DEMOCRATIC REPUBLIC OF THE CONGO: CASE OF THE TRIBUNAL DE GRANDE INSTANCE OF KISANGANIDE FROM 2010 TO 2013

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**ABSTRACT:** The objectives of this research are to identify the frequency of cases of sexual violence and the proportion of judgments rendered in relation to sexual violence, to determine the frequency of allowances by the number of judgments rendered in relation to sexual violence, Frequency of allowances by number of judgments rendered, executed and the applicability of Congolese laws and finally to highlight the strengths and limitations of the Congolese judicial procedure in matters of sexual violence before the High Court of Kisangani.

At the end of our analysis, we have the following results: several cases of sexual violence were registered before the District Court of Kisangani between 2010 and 2013 when the latter to better deal with all these files.

It should also be noted that there was a lot of campaigning, sensitization financed by the various partners and a repression at the zenith was observed during the pre-election period.

Finally, based on our findings, we also found that victims of sexual violence do not have easy and fast access to the courts. This has led to discouragement by victims who prefer to use customary negotiated solutions.

**KEYWORDS:** Rape, Sexual Violence, Compensation, Victim, Repression.

### 1 INTRODUCTION

Sexual violence is not only a serious problem of violations of fundamental human rights, but also a serious public health problem due to the adverse consequences for physical, mental and social health.

However, Africa has experienced many evils on its soil that have struck its population during this contemporary era. These evils included internal and international armed conflicts, which resulted in numerous casualties among civilians in total violation of the Geneva Convention of 17 August 1949.

The Democratic Republic of Congo, has not been spared by this scourge. It is among the African countries most affected by these deadly conflicts. The following statistical studies are eloquent:

- 32,353 cases of rape have been recorded by various structures in the DRC according to statistics carried by the 2008 Humanitarian Action Plan for the Democratic Republic of Congo;

- 1,200 to 1,600 cases of sexual violence per month were recorded between 1 January and 31 December 2009, including an annual total of 8,000 cases of rape according to the United Nations fund for the population<sup>1</sup>;
- 40 women were reported to have been on average daily rape victims in the eastern Democratic Republic of Congo during 2007 according to the report "Combating violence and impunity in the DRC, the experience of the joint Prevention and Response to Sexual Violence ", developed in LUBUMBASHI in June 2007, collecting data collected through provincial synergies and the United Nations Population Fund" UNFPA ".

However, sexual violence has not disappeared, but tends to increase. At present, many efforts are being made by courts and tribunals to put an end to them. Such violence is often the most serious cause of violations of human rights and fundamental freedoms, while almost all states combat their attachment to dignity.

However, all States have an obligation to take all appropriate measures, ranging from prevention to repression and compensation to combat this violence in the Millennium Development Index goal of The elimination of sexual violence as a public health problem.

Indeed, there is already an abundant literature on the problem of sexual violence.

The Association for Cooperation and Research for Development (ACORD) has oriented its research towards protection and reparation for victims of gender-based sexual violence in Congolese positive law and has resulted through its research with the following results:

The appropriation of the laws by the magistrates showed that the conditions of work of the magistrates are not good:

- failure to respect the confidentiality and dignity of victims;
- The delay in the procedure is not respected, the right to obtain the repairs is not respected, the judgment is not respected, the repair part almost non-existent.

Jean TOSSI notes that the amount of the compensation is fixed in the judgment, he claims that the damages must be fixed in such a way that the victim is fully compensated for the damage suffered.

KISEMBO DJOZA, was interested in the strengths and weaknesses of the mediation, the ordering and the penal composition in the repression of the offenses of sexual violence according to the current of victimism centrism. At the end of his research, the author concludes that the fight against offenses of sexual violence in Congolese criminal law through the new paradigms of mediation, composition and penal order remains possible by the fact that these paradigms allow victims to obtain compensation more easily, quickly and cheaply, not as a result of lengthy trials, but rather as a result of negotiations with the guilty parties under the supervision of the prosecutor.

lastly, MUNTANZINI MUKIMAPA, in her book on the problem of the fight against sexual violence in Congolese law, has resulted in the following results, with regard to the DRC, the recent evolution of sexual violence was no longer limited to War zones, urban centers and adults alone, from now on they were ruralized, feminized and juniorized to the most active sections of our populations. Because of this, they make the country lose the sap necessary for its development.

In view of this grave peril, it is important to make a restrictive and bold legislative reform aimed at ensuring a better involvement of the judicial system for a rigid repression of sexual violence.

## **2 CONCEPT OF VIOLENCE AND SEXUAL VIOLENCE IN CONGOLESE LAW**

### **2.1 RAPE**

Any act of violence by which a person is forced into sexual intercourse or the penetration of a genital organ without the consent of the other party.

Under the new Congolese legislation, it is called rape.<sup>2</sup>

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<sup>1</sup> UNFPA, *Incident Statistics of Sexual Violence in the DRC, 2009*.

<sup>2</sup> Law n ° 06/018 of 20 July modifying and supplementing the Decree of 20 January 1940 on the Congolese Criminal Code, Article 170

The fact, for a man of any age, to introduce no sexual organ, even superficially into that of a woman, or the fact for every woman, whatever her age, to compel a man to even superficially introduce his sexual organ into the body. His;

The fact that every man penetrates the anus, the mouth, or any other orifice of the body of a woman or of a man by a sexual organ by any other part of the body or by any object;

The fact for a person to even superficially introduce any other part of the body or any object into the vagina;

And finally, the fact of obliging a man or a woman to penetrate his anus, his mouth, or any other orifice of his body by a sexual organ, or any other part of the body, by any object, even superficially.

It is clear from these legal definitions that the concept of rape is then broadened. Rape is not only limited to the fact of the intromission of the female genital organ, which widens the scope of this offense and would increase the number of cases of sexual violence.

## 2.2 SEXUAL VIOLENCE

Lacour Pénale Internationale defines sexual violence as the penetration of any part of the body of the victim or of the perpetrator by a sexual organ or the anal or genital opening of the victim by any object or other part of the body by force, Coercive or put into use coercive context<sup>3</sup>.

Sexual violence is of all forms of violence where there is a significant and significant difference between the sexes.

Existing statistics on the subjects show that women are more at risk than men. The most frequent acts of sexual violence are: rape, indecent assault, forced marriage, child prostitution, sexual harassment, the initiation of minors into debauchery, etc.

Women and girls are the most victims of sexual violence, hence the obligation of the Congolese state to protect this vulnerable segment of the population. The Democratic Republic of Congo through the gender, family and child minister, concerned about this situation as part of the efforts to eradicate this scourge, put in place in 2009 the national strategies to combat sexual violence in all its forms Forms.

This strategy is divided into several components:

- Enhancing law enforcement and combating impunity;
- Support for the reforms of the judicial police and the security forces;
- Responding to the needs of victims and survivors;
- The management of data and information related to sexual violence.

However, Article 15 of the Constitution of 18 February 2006 states: "The public authorities shall ensure the elimination of violence, without prejudice to international treaties and agreements, any sexual violence against any person with the intention of destabilizing, To dislocate a family and to make an entire people disappear is a crime against humanity punished by the law"<sup>4</sup>.

Respect for international commitments, the fight against impunity and the trivialization of sexual violence are among the reasons for the legislative reform of 20 July 2006 and the adoption of subsequent legislation.

From the legal point of view of sexual violence; It is essentially speaking of the laws<sup>5</sup> that contribute to the fight against this scourge. For this reason we can cite:

- Act No. 06/018 of 20 July 2006 amending and supplementing the Decree of 30 January 1940 on the Congolese Penal Code;

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<sup>3</sup> Rome Statute of the International Criminal Court, 2002.

<sup>4</sup> Constitution of the DRC of 18 February 2006 as amended by Act No. 11/002 of 20 January 2011 revising certain articles

<sup>5</sup> Association for Cooperation and Research for Development (ACORD) on Protection and Reparation for Victims of Sexual Violence based on Gender in Congolese Positive Law, Synthesis of an Audit on Judicial Practices in Sexual Violence In the Democratic Republic of Congo, June 2010.

- Act No. 06/019 of 20 July 2006 amending and supplementing the Decree of 6 August 1959 on the Code of Congolese Criminal Procedure;
- Act No. 08/011 of 14 July 2008 on the protection of the rights of people living with HIV / AIDS and infected persons;
- Act No. 09/001 of 10 January 2009 on the protection of the child;
- Law n ° 024/2002 of 18 November 2002 on the Congolese Military Penal Code.

### 2.3 THE BASIS FOR THE REPRESSION OF SEXUAL VIOLENCE IN THE DRC

The basis refers to the justifications which motivated the legislator to requalify the rape by adding various other incriminations that constitute the offenses of sexual violence.

A new form of large-scale crime has been developed around the world, usually justified by economic, social and political interests, namely sexual violence. The 1996 and 1998 wars in the Democratic Republic of the Congo provoked crimes of all kinds affecting the victims in their dignity, physical and moral integrity, but also in their lives. These acts had to be punished.

There was a need to prevent and severely punish offenses relating to sexual violence and ensure the systematic care of victims of such offenses. In order to do so, it was necessary to revisit certain provisions of the Penal Code to incorporate all the incriminations which international law had criminalized. The amendments deal mainly with the offenses of rape and indecent assault.

One of its investigations, the ICRC found that soldiers had asked women to have sexual relations with them in exchange for a few sous or a box of sardines. Women often sought such an alliance in order to obtain protection and assistance on their own and for their families, preferring to have a relationship with a man who would offer protection and assistance rather than run the risk of being raped Many times by many men.

In addition, various other reports corroborate the need to reclassify rape as such. Indeed, sexual violence is a particularly brutal act. Sexual violence has been used against women or members of their families as a form of torture, causing injuries, extorting information, degrading and intimidating, and as a form of punishment for actual or alleged acts.<sup>6</sup>

It was also used as a means of ethnic cleansing in a given area to respond to terror and force a population to leave an area and as a tool to destroy the identity of an ethnic group through massive and systematic rape And forced pregnancy. Some pregnant women were gunned down by members close to their families, which the assailants described as "mandatory C-section," while others saw their mutilated sexual organs.<sup>7</sup>

"During the conflicts, tens of thousands of women, girls and elderly women were raped, forced into sexual slavery, forced labor, tortured, buried alive or killed. These aggressions of six-year-old girls to 75-year-old women were committed by all the fighting forces "<sup>8</sup>.

"According to the reports of the NGOs, all the armed forces involved in the DRC, including the government armed forces, those of Rwanda, Burundi and Uganda have committed acts of violence"<sup>9</sup>.

"For some women, the assailants used their genitals to rape them or thrust stones, bits of stick, knives, rusty nails, glasses, bayonets, sharp pieces of wood, sand and chilli In their genitalia. Still others were repeatedly raped in the military camps where they were brought for sexual abuse, cooking and cleaning. "

"Sexual violence against girls and women has resulted in serious physical injuries to victims, according to surveys conducted at the OLAME (Association for Women and Family Activities through Different Services) Center in BUKAVU , Many

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<sup>6</sup> MIGABO KALERE, J., *Genocide in the Congo? Analysis of massacres of populations*, Broederyk Delen, Brussels

<sup>7</sup> AMNESTY INTERNATIONAL, *Report of October 2004*, available at <http://www.amnestyinternational.org> consulted on 30 July 2014 at 10.15 am

<sup>8</sup> NDAYA KABULU, A., *Congo: The right against sexual violence: What protection for women victims of violence in the east of the Democratic Republic of the Congo with regard to human rights? Report from January to June 2008*, available at <http://www.universitedesfemmes.be>, accessed on 02 August 2014 at 15 hours 30.

<sup>9</sup> AMNESTY INETRATIONAL, *Democratic Republic of Congo, Sexual violence: urgent need for adequate responses*, Amnesty International, 26 October 2004, at <http://www.amnestyinternational.org>, accessed 30 July 2014 at 11.20

victims of rape suffer from recto-vaginal fistula, vesico-vaginal fistula for other victims, menstruation does not stop and can last for many months.<sup>10</sup> "

In the light of international legal instruments and in accordance with international humanitarian law, such acts are likely to be classified as crimes against humanity or war crimes.

By Decree-Law No. 003/002 of 30 March 2002, the DRC ratified the Treaty of Rome and by Law No. 024 of 18 November 2002 on the Congolese Military Penal Code, it incorporated it into its domestic legal arsenal. Can we, however, consider that there is protection for women victims of such violence? Taking the point of view of human rights defenders. This protection appears insufficient. "The perpetrators remained unpunished until a certain period of time, although the objective of resolution 1325 was to put an end to impunity for gender-based crimes.»<sup>11</sup>

That is why these offenses must be punished by sexual violence in order to discourage the perpetrators.

Finally, these various laws published in the DRC protect the population from all forms of violence, including sexual violence.

### 3 COMPENSATION IN COMMON LAW AND CUSTOMARY LAW

In its primary sense, compensation is financial compensation intended to compensate for damage.

Indeed, compensation, compensation and reparation are all synonymous, the use of these words refers to all kinds of settlement regardless of the type of damage suffered, be it corporeal, moral or patrimonial or the fact that the sum can find its cause in a contractual, quasi-contractual or statutory relationship or in a tort situation.

CAPITANT, TERRE and LEQUETTE note that the law can never be considered without taking into account the experimental element which is none other than the sociological mentalities and civilizations of each people, otherwise the law becomes anachronistic and by no means sovereign being centered on Foreign customs and customs.

It is thus fitting to note that a strong social current has crossed civil liability since the drafters of the code of 1804 were concerned with guaranteeing compensation for damages. In this sense, they had introduced a system that in many cases made it easier for the victim to seek redress. In 1804, it was the consecration of the idea of human freedom through individual ownership, the autonomy of the will in contracts and thus also individual commitments in responsibility. This was the first phase.

Thus they have posited as a principle which remains to this day, "civil liability is founded on fault. The victim shall be entitled to compensation only if he succeeds in proving fault on the part of the perpetrator of the damage ". However, with the emergence of machinery and the multiplication of traffic accidents, victims had great difficulty in providing evidence. Indeed, in a society, even following the coexistence of individuals, it is logical and inevitable that the damage will occur.

#### 3.1 CIVIL LIABILITY IN COMMON LAW

Liability literally means "rehabilitating" can be understood as compensation or compensation for injury by the person who is civilly responsible or better such as restoring the balance destroyed by the injury and consisting of replacing, if possible the victim in the situation where it would be if the damage had not occurred.

In its classical acceptance, the concept of reparation refers to that of civil liability, which is the obligation of a person to compensate for damage suffered by others as a result of the event for which he is responsible.

Thus defined, it is opposed to criminal responsibility, which is the obligation to undergo punishment when the social order has been disturbed by its fault.

This remedy can take several of the most common forms of reparation: money or pecuniary compensation that is to say by the allocation of a sum of money or, on the other hand, compensation in kind which is affected by restoring the pre-injury situation.

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<sup>10</sup> DOCTORS WITHOUT BORDERS, Operational Section Switzerland, Bunia / ITURI, Annual Activity Report, mid-December 2003

<sup>11</sup> NDAYA KABULU, A., *op.cit*, disponible sur <http://www.universitedesfemmes.be> consulting 02 August 2014

### 3.2 TRADITIONAL CIVIL LIABILITY

In customary law, civil liability is a legal reality that is experienced empirically and reveals whenever there is a problem of compensation for damage. Customary civil liability is therefore the obligation of an individual or his group to repair the damage caused by another person either by himself or by persons with whom he is related or by animals Custody or ownership. This customary civil liability is essentially collective.

The basis of traditional civil liability must therefore be sought in the permanent quest for social harmony, social balance and social solidarity and / or social and class cohesion.

Thus, in traditional societies, damage as well as reparation are not left to the charge of a single individual, even if he is capable, the perpetrator of the damage or the victim of the damage. It is the business of the community, the clan or the community.

## 4 METHODOLOGY

### 4.1 METHODS USED

All scientific work requires the use of research methods and techniques.

The guiding principle is that the choice of method depends on the configuration of the survey universe, the orientation of the work, the scope and the scope of the investigation, The researcher's preferences.

Thus, in order to carry out our study, we have found it useful to have recourse to the legal method of analysing and exposing positive law, but also to confronting facts and law. It aims to solve a problem of "dogmatism" or "legal casuistry".

This allowed us to analyze the legal texts (constitution, laws, ordinance, decree - law, order, decree, decrees, etc.) on procedural formalities for the repression and compensation of violence The High Court of Kisangani.

Finally, the sociological approach allowed us to grasp certain social facts related to sexual violence.

### 4.2 TECHNIQUES

Data Collecting Technique

To materialize this method, data collection was facilitated by the following techniques: documentary technique and interview.

- The first one allowed us to have data through some written documents related to our research. These are the books and any other written material appropriate to this reflection. Thus the reading of official texts, doctrine, better general and specific works as well as consultation of the Internet was indispensable;
- The second, that is to say, the free interview, was very important for our research insofar as it allowed us to talk with resource persons or privileged informants (judges, magistrates, lawyers, legal defenders, Clerks, etc.) who have helped to deepen this research further.

### 4.3 TREATMENT TECHNIQUE

For this technique, we used content analysis. This consists, according to Madeleine GRAWITZ, in a research technique for the objective, systematic and quantitative description of the manifest content of communications, with the aim of interpreting them.

## 5 PRESENTATION AND ANALYSIS OF RESULTS

### 5.1 OVERALL INCIDENCE OF RAPE VICTIMS REGISTERED AT THE KISANGANI DISTRICT COURT FROM JANUARY 2010 TO DECEMBER 2013

Table 1. Inventory of sexual violence cases by year

Année	Fréquence globale	Jugement en cours	Jugement rendus	Cas indemnisés	Cas non indemnisés
2010	149	101	48	8	40
2011	63	35	28	8	20
2012	181	102	79	17	62
2013	166	118	48	19	29
<b>Total</b>	<b>559</b>	<b>356</b>	<b>203</b>	<b>52</b>	<b>151</b>

Source: Registry Viol 2,3 and 4 of the District Court of Kisangani.

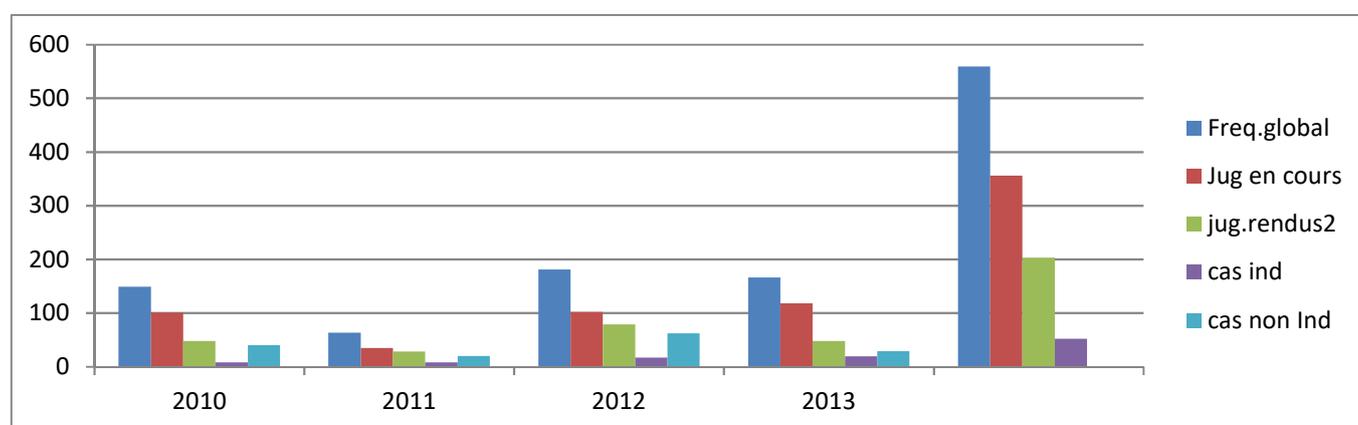


Fig. 1. Hitograms on sexual violence by years

Year Overall frequency Judgment in progress Judgment rendered Cases awarded Cases not compensated

It appears from Table 1 that after the compilation of various data focusing on the overall frequency of sexual violence victims, there was the highest frequency in 2012, ie 181 cases equivalent to 32.3% followed by The year 2013 with 166 cases or 23.2% and 149 cases in 2010 or 26.6% and finally 63 cases or 11.2%.

### 5.2 FREQUENCY OF JUDGMENTS RENDERED PER YEAR

Table 2. Proportion of judgments handed down

Tableau2 : Proportion des jugements rendus

Année	Fréquence des jugements		
	F. A	F. O	%
2010	149	48	32,2
2011	63	28	44,5
2012	181	79	43,6
2013	166	48	28,9
<b>Total</b>	<b>559</b>	<b>203</b>	<b>36,3</b>

Source: Registry Viol 2,3 and 4 of the District Court of Kisangani

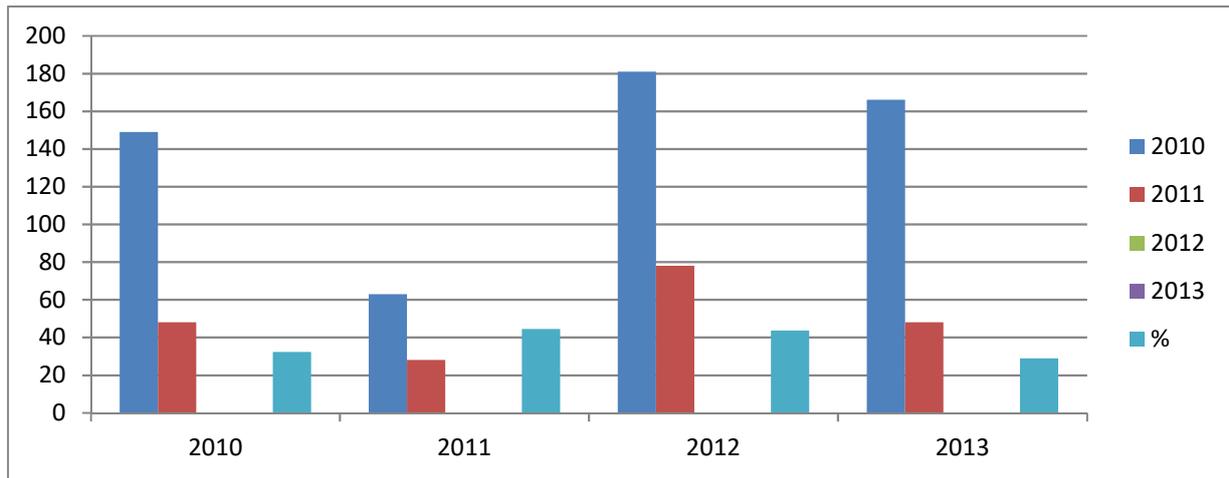


Fig. 2. Histograms on the proportion of judgments rendered

It emerged from the analysis in Table 2 that the proportion of cases of sexual violence per year was higher in 2012, ie 181 cases, including 79 judgments rendered, representing 43.6% in this case in 2011, 63 cases Of which 28 were judged to represent 44.5%.

5.3 PROPORTIONS OF ALLOWANCES BY NUMBER OF JUDGMENTS RENDERED AND EXECUTED

Table 3: Comparison of judgments

Tableau3 : Comparaison des jugements rendus

Année	Jugements rendus	Cas indemnisés	%	Cas non indemnisés	%
2010	48	8	16,6	40	83,4
2011	28	8	28,5	20	71,5
2012	79	17	21,5	62	48,5
2013	48	19	39,5	29	60,5
Total	203	52	25,6	151	74,4

Source: Registry Viol 2,3 and 4 of the District Court of Kisangani

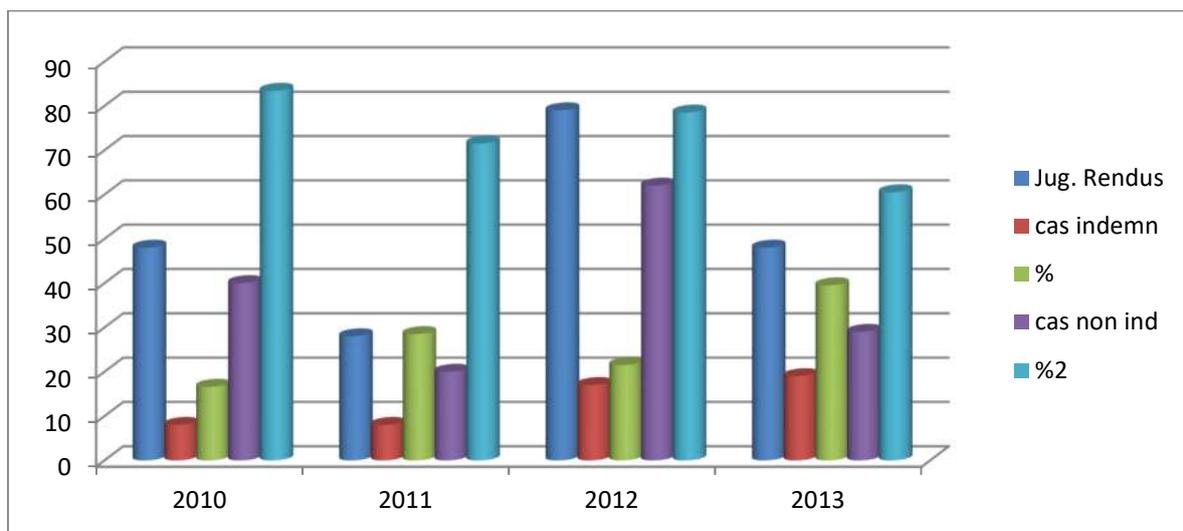


Fig. 3. Histogram on the comparison of judgments

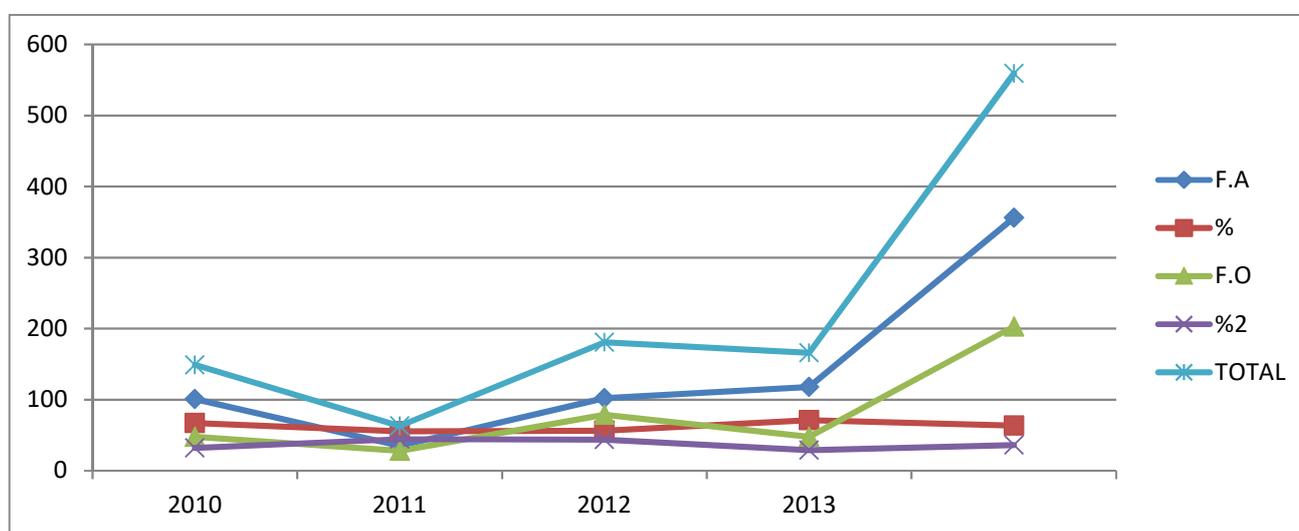
As can be seen from Table 3, the range of judicial texts available to the judge on sexual violence, the number of judgments handed down for all cumulative years was 203 cases out of a total of 559 cases, Only 52 cases were compensated, ie 28.5%, while 151 non-compensated cases represented a high percentage of 74.4%.

**5.4 FREQUENCY OF OUTSTANDING JUDGMENTS IN RELATION TO JUDGMENTS RENDERED TO THE HIGH COURT OF KISANGANI**

*Table 4 Applicability of the Act*

Année	Jugements encourus		Jugements rendus		Total
	F.A	%	F.O	%	
2010	101	67,8	48	32,2	149
2011	35	55,5	28	44,5	63
2012	102	56,4	79	43,6	181
2013	118	71,1	48	28,9	166
<b>Total</b>	<b>356</b>	<b>63,7</b>	<b>203</b>	<b>36,3</b>	<b>559</b>

Source: Registry Viol 2,3 and 4 of the District Court of Kisangani



*Fig. 4. Curve on the application of the law*

The analysis of the various curves on the graph shows that during four consecutive years the Kisangani High Court had received 559 cases of sexual violence, of which 203 had led to the final judgment, ie 32.3% while 356 others Files were outstanding and / or filed without follow-up accounting for 63.7%.

It follows that, whatever the strengths and limitations of the Kisangani High Court in judicial proceedings, the effective and efficient applicability did not reach 50% of the judgments rendered. The curves per year bear witness.

**6 INTERPRETATION OF RESULTS AND DISCUSSION**

**6.1 FREQUENCY AND DISTRIBUTION OF CASES OF SEXUAL VIOLENCE**

The abundance of files by the judges of the district court of Kisangani did not make it possible to treat all the files better, so it is clear that they would process the files according to the order of preference, therefore several files are in progress; others are classified as non-existent. The distribution of justice at all levels would increase the expediency in the processing of cases by magistrates in order to realize the strengths and limitations of Congolese judicial procedures.

The proof being eloquent, for example only 2013; 166 cases of sexual violence only 48 have reached the judgments and 19 cases have been tried and executed with compensation for the victims. This does not appear to be consistent with the effectiveness and efficiency of judicial proceedings in relation to sexual violence.

Blaise who based his reflection on the legal framework on sexual violence in North Kivu had also found that women are subjected to enormous sexual violence but unfortunately do not win cases in the condemnation of the authors or less in their compensation. This seems to be equally justified in the present case.

## 6.2 PROPORTION OF JUDGMENTS

The proportion of judgments rendered was higher in 2012, ie 181 cases, 79 of which were judgments, whereas in 2011, 63 cases were registered, of which 28 were judged to be 44.5%. 'Explain that in 2011 there were several awareness campaigns financed by the various partners and a repression at the zenith was observed during the pre-election period.

## 6.3 FREQUENCY OF COMPENSATION BY NUMBER OF JUDGMENTS

The offense of sexual violence falls within the jurisdiction of the High Court, since its substantive jurisdiction extends to all offenses punishable by 5 to 20 years of criminal servitude and imprisonment.

However, since the number of courts is inadequate and far removed from litigants, victims are very embarrassed by reports of judgments. The table indicates that out of a total of 559 cases, only 203 cases were judged partially, of which 52 were compensated, representing 26.5% for four consecutive years, compared to 151 cases without compensation, ie 74.4%.

These frightening results seem to corroborate those of KISEMBO DJOZA<sup>12</sup> who made the round in courts (Peace Courts of Makiso and Kabondo / Kisangani, Military Garrison Court and High Court / Kisangani from 2006 to 2012) realized that out of 202 judgments 146 cases or 72.2% were not executed against 37 cases representing 18.3% executed totally and only 19 cases of the indemnified among the case

This demonstrates how victims of sexual violence do not have easy and timely access to the courts. This would depend on the discouragement of victims and the use of negotiated customary solutions.

## 6.4 FREQUENCY OF OUTSTANDING JUDGMENTS IN RELATION TO JUDGMENTS RENDERED, EXECUTED AND THE APPLICABILITY OF CONGOLESE LAWS

The slowness of the Congolese judicial system, particularly in the eastern province, is due to many factors leading to a dysfunction, such as the cost of justice and the corruption of judicial personnel, which means that Congolese justice is no longer Public service, but rather the sanction of the law, but a consumer good, which results from a crisis of confidence on the part of the victims in the judicial system, thus resorting to customary justice which allows the parties to obtain reparation Which is often difficult to obtain by judicial means following the non-execution of the judgments.

## 7 THE ADVANTAGES AND LIMITATIONS OF JUDICIAL PROCEEDINGS

From a legal point of view, talking about sexual violence is essentially about the laws that contribute to the fight against this scourge and the rules to guarantee the applicability and the effectiveness of the law in this matter. These include:

- Act No. 06/018 of 20 July 2006 amending and supplementing the Decree of 30 January 1940 on the Congolese Criminal Code;
- Act No. 06/019 of 20 July 2006 amending and supplementing the Decree of 06 August 1959 on the Code of Congolese Criminal Procedure;
- Act No. 09/001 of 10 January 2009 on the protection of the child;
- Act No. 024/2002 of 18 November 2002 on the Congolese Military Penal Code.

From the analysis of all these laws and with regard to what happens on the ground, we have noted some strength in the Congolese judicial procedure regarding the repression of cases of sexual violence. These include:

- Swiftnes in repression, giving urgency to the investigation procedure in the event of flagrancy;
- the abolition of all possibilities of settlement by transactional almand;
- the abolition of the authorization for magistrates and other senior civil servants when prosecuting them for rape;

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<sup>12</sup> KISEMBO D., *Op.cit.cit*

- The fact that the Congolese legal arsenal is more or less complete in view of the relatively large number of national laws, international conventions and treaties of which the DRC is a party and which represses sexual violence;
- The fact that the Congolese legislator provides not only penalties for servitudes and fines but also compensation for victims of sexual violence in order to discourage thugs.

It should also be pointed out that, as regards the limits, we have noted the following OBSERVATIONS:

- The very short deadline for handling cases of sexual violence, with the result that the OPJ seized of such a case has the obligation to transfer the file to the Public Prosecutor in 24 hours,
- The obligation to have recourse to a doctor or a psychologist to guarantee legal redress, in particular in the case of an offense committed in a remote corner of the Republic where, for example, it is difficult to find a doctor or a psychologist to assist the judiciary;
- The insufficient number of magistrates to investigate the many cases of sexual violence.<sup>13</sup>

The debate is, of course, open to this important issue, of which we have contributed only to the outline.

## **8 CONCLUSION**

At the end of our research: "From the repression and the compensation of sexual violence: cases of jurisprudence of the Tribunal de Grande Instance de Kisangani from January 2010 to December 2013", after analysis, we have produced the following results:

- The incidence of sexual violence was very high in all four years and the highest proportion in 2012 was 32.3%, while the lowest proportion was in 2011;
- The judgments rendered and executed were insufficient 36.3% for 4 years;
- The proportion of the recipients was low, ie 26.5%, while the non-compensated 74.6%;
- The applicability of the laws to the judgments in progress and those rendered is not effective and efficient, ie 63.7% against 36.3%.

Finally, in order to preserve families and communities, we suggest the following:

- Real reform in the Congolese justice sector;
- To raise awareness about denunciation of cases of sexual violence and to rehabilitate victims through effective and efficient compensation for the harm suffered.

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<sup>13</sup> *interview with Divisional Clerk and Criminal Clerk of the District Court of Kisangani*

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