

# **Challenges towards socio-economic integration of the victims of rape in the Democratic Republic of Congo: Case of South Kivu Province**

A dissertation submitted in partial fulfilment of the requirements for the degree of Master of Laws (multidisciplinary human rights)

by

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## **DEDICATIONS**

To God Almighty source of my inspiration

To my wife Agnes Ciaba, my children Dan, Glory and Gael Ciaba who inspired and encourage me to accomplish this loft dream.

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## **LIST OF ACRONYMS AND ABBREVIATIONS**

ACHPR	African Charter on Human and People Rights
AIDS	Acquired Immune Deficiency Syndrome
CEDAW	Convention on the Elimination of All forms of Discrimination Against Women
DRC	Democratic Republic of the Congo
FARDC	Armed Forces of the Democratic Republic of Congo
FDLR	Forces Democratic pour la Liberation du Rwanda
HIV	Human Immunodeficiency Virus
ICC	International Criminal Court
ICESCR	International Covenant on Economic, Social and Cultural Rights
IO	International Organisations
MONUC	Mission de l' Organisation de Nations Unies au Congo
MSF	Médecins Sans Frontière
NGOs	Non-Governmental Organisations
OHCHR	Office of High Commissioner of Human Rights
SADC	Southern Africa Development Community
TRC	Truth and Reconciliation Commission
UN	United Nations
WHO	World Health Organisation
VTF	Victims Trust Fund

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## Chapter 1: Introduction

### 1.1. Introduction and background

War and conflict in Democratic Republic of the Congo (DRC) has left victims of rape in very deplorable conditions.<sup>1</sup> In South Kivu, women and girls who are victims of rape and other forms of sexual violence continue to face challenges caused by harm and post traumatic experiences; they are also subjected to stigma and exclusion by their relatives and the entire community.<sup>2</sup>

South Kivu which is located in the Eastern DRC was worst hit by the war. There is a prevalence of sexual crime against women and girls.<sup>3</sup> Local health centres estimated that during the war, 40 women are raped every day in the Province of North Kivu, “13% are under 14 years of age, 3% die as a result of rape and 10-12% are infected by HIV/AIDS”.<sup>4</sup> According to the United Nations, 27,000 sexual assaults including rape against women and girls were reported in 2006 in South Kivu Province alone.<sup>5</sup> It was further reported by Malteser International Programme (IO) that, 20,517 rape survivors were registered in South Kivu between January 2005 and December 2007.<sup>6</sup> Concerning exclusion of victims of rape by family members including husbands, it was reported that “12% of cases in 2005 to 6% in both 2006 and 2007”; also, “with 4 out of 10 cases of exclusion of victims of rape, re-integration into the family failed despite family mediation”.<sup>7</sup> The World Health Organization (WHO) reported that 25,000 cases of rape arose in South Kivu because of boundary sharing with Rwanda and Burundi.<sup>8</sup> Furthermore, according to Dr Mukwege from Panzi hospital in Bukavu, one of the medical facilities that support victims of rape who suffered from grave reproductive organ injuries caused by sexual violence, it was estimated that 1,100 rapes took place per month between November 2008 and March 2009.<sup>9</sup> The above statistics have

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<sup>1</sup> S M ‘Rape of the Congo: Understanding sexual violence in the conflict in the Democratic Republic of Congo’ (2010) 28 *Journal of Contemporary African Studies* 127

<sup>2</sup> M Bosmans ‘Challenges in aid to rape victims: The case of the Democratic Republic of Congo’ (2007) 4 *Essex Human Rights Review* 1

<sup>3</sup> C Rodriguez ‘Sexual violence in South Kivu, Congo’ (2007) 27 *Forced Migration Review* 45; see also, Amnesty International Democratic Republic of Congo Masse rape: Time for remedies 27

<sup>4</sup> Rodriguez (n 3 above) 45

<sup>5</sup> J Gettleman ‘Rape epidemic raises trauma of Congo war’ (2007) *The New York Times* 1

<sup>6</sup> B Steiner et al ‘Sexual violence in the protracted conflict of DRC programming for rape survivors in South Kivu’ (2009) 3 *Conflict and Health* 4

<sup>7</sup> Steiner et al (n 6 above) 5

<sup>8</sup> Hanlon ‘Implication for health care practice and improved policies for victims of sexual violence in the Democratic Republic of the Congo’ (2008) 10 *Journal of International Women’s Studies* 67

<sup>9</sup> Mukwege cited in DM Mukwege & C Nangini ‘Rape with extreme violence: The new pathology in South Kivu, Democratic Republic of Congo’ (2009) 6 *PloS Medicine* 1



demonstrated the high prevalence sexual violence against women and girls in South Kivu. These reports represent only a few number of total rapes perpetrated in the area, and are in no way conclusive, most of the victims resist to denouncing rape because of the fear of stigmatization and rejection.<sup>10</sup>

The DRC authorities have neglected their duty to prosecute practices including sexual violence that undermine women rights.<sup>11</sup> The challenge is recognition that such practices constitute a breach of human rights, and consequently they should be prohibited, prosecuted, punished and adequate remedies provided to victims.<sup>12</sup> Another challenge is the need to ensure recognition and protection of socio-economic rights at the domestic level and, guarantee mechanisms to redress gender-based discrimination and inequalities against women and girls who are victims of rape and other forms of sexual assaults.<sup>13</sup>

Armed conflict not only affects the entire population but also violates fundamental human rights of women and girls including socio-economic, civil and political rights. Because of the war, there is limited infrastructure to support society; there is insufficient clean water, schools, health care facilities, job's opportunities.<sup>14</sup> War and conflict have increased the number of persons with disability, widows, victims of rape, sexually abused girls who lack the minimum standard of livelihood.<sup>15</sup>

Rape is not only a traumatic experience characterized by humiliation and domination of women and girls, also, it has long-term social effects on women and girls during the reintegration and rehabilitation process.<sup>16</sup> Many women and girls who are victims of rape suffer from physical and mental atrocities of sexual violence and develop several reproductive organs impairments including fistula.<sup>17</sup> They are rejected and excluded by husbands, family and community because of their illnesses; they often times lack the

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<sup>10</sup> Steiner et al (n 6 above) 2; see also, J Mansfield 'Prosecuting sexual violence in the Democratic Republic of the Congo: Obstacles for survivors on the roads to justice' (2009) 9 *African Human Rights Law Journal* 387

<sup>11</sup> M Gorman 'Sexual violence in the Democratic Republic of Congo: Moving forward with diminished impunity for crimes and increased support for victims' (2011) 1 *Undergraduate Transitional Justice Review* 130

<sup>12</sup> JC Rebecca 'Violations of women's rights' (1994) 7 *Harvard Human Rights Journal* 126

<sup>13</sup> L Arbour 'Economic and social justice for societies in transition' (2007) 40 *Journal of International Law and Politics* 42

<sup>14</sup> J Chilengi 'Violence against women in conflict and post conflict situations' (2008) Paper presented to VI African Development Forum, Addis Ababa Ethiopia

<sup>15</sup> B Sørensen 'Women and post-conflict reconstruction: Issues and sources' United Nations Research Institute for Social Development Programme for Strategic and International Security Studies Paper No. 3 (1998) 37

<sup>16</sup> Sørensen (n 14 above) 38

<sup>17</sup> Meger (n 1 above) 126

minimum living standards.<sup>18</sup> The fate of children born as a result of rape is nearly the same as their mothers; sometimes they are neglected, stigmatised and rejected; sometimes, they are killed by their mother.<sup>19</sup>

Several victims have to conceal the rape because of societal beliefs that rape is a shame to the family, and that women made no effort to resist their aggressors.<sup>20</sup> Also, they consider rape as so shameful and humiliating to the husband and the entire family; some husbands leave their wives because of the societal embarrassment following the rape. Consequently rape survivors become more vulnerable because they lose their position into the community.<sup>21</sup> The aftermath of armed conflict made victims of rape vulnerable because of their exclusion from the mainstream settlement and as a result, this made victims of rape susceptible to poverty and other forms of suffering.<sup>22</sup> Sometimes raped women are unable to work because of physical injuries they have suffered, including fistulas. Consequently victims of rape end up living in poverty, because of exclusion from their dwelling which constituted the unique system of socio-economic support.<sup>23</sup>

The government of DRC is obliged to protect women and girls from rape during the armed conflict. This should be done through legislation and non-legislative mechanisms, and provision of adequate finances to guarantee their social needs including health and housing.<sup>24</sup>

Although the DRC judicial authorities have attempted to pursue cases of sexual violence against women and girls during the armed conflict in South Kivu Province, there remain many victims of rape who are waiting for justice. This is due to the inefficiency of the DRC judicial system and the lack of resources to ensure the training of judicial staff dealing with crime of sexual violence.<sup>25</sup> The DRC government failed to redress effectively crime of sexual violence against women and girls by very small number cases of prosecution; also

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<sup>18</sup> Hanlon (n 8 above) 67

<sup>19</sup> Amnesty International (n 3 above) 34; See also, Hanlon (n 8 above) 69

<sup>20</sup> Mansfield (n 10 above) 387; See also, Amnesty International (n 3 above) 34

<sup>21</sup> Mansfield (n 10 above) 386

<sup>22</sup> C Chinkin 'The protection of economic, social and cultural rights post-conflict' [http://www.peacewomen.org/assets/file/themes/paper\\_protection\\_escr.pdf](http://www.peacewomen.org/assets/file/themes/paper_protection_escr.pdf) downloaded at UP 25 May 2012 10

<sup>23</sup> Malteser International NGO (2007) cited in Hanlon (n 8 above) 67-68

<sup>24</sup> Chinkin (n 22 above) 12

<sup>25</sup> T Savage & O Kambala wa Kambala 'Decayed, decimated, usurped and inadequate: The challenge of finding justice through formal mechanisms in DR Congo' cited in Aersten I, et al (eds) (2008) *Restoring justice after large-scale conflicts: Kosovo, DR Congo and the Israeli-Palestinian case*, Willan Publishing 339

investigations on such violations failed because of the insufficient resources allocated in criminal proceedings.<sup>26</sup>

There is a need to heal physical and psychological wounds, and to create a new environment free from marginalisation and stigma, which promotes the social rehabilitation of the victims of rape.<sup>27</sup> This can be done through the non-judicial mechanism such as Truth and Reconciliation Commission which is considered as the soft mechanism of addressing violation of women rights perpetrated during the armed conflict and the restoration of their dignity through peace and reconciliation process.<sup>28</sup> The DRC Truth and Reconciliation Commission (TRC) is a body that has been created in 2002 during the Inter-Congolese dialogue at Sun City in South Africa, and established Law No 04/18 of 30 July 2004 that determines its mandate.<sup>29</sup> The RDC TRC in the light of South Africa TRC aims to re-establish truth on the past sexual crimes through justice process, and to achieve reconciliation and peace. Also, it seeks to restore the dignity and reputation of victims of rape and to ensure their rehabilitation for the integration in the society.<sup>30</sup>

## 1.2. Problem statement

Impunity for sexual crimes remains a challenge for the DRC government. The government has not fulfilled its duty to expeditiously and adequately respond to the need of the justice for victims of rape in South Kivu Province. There is a need for both victims and judicial officers at the domestic level to commence criminal proceedings against perpetrators, including the protection of the victims of rape and witnesses before, during and after court proceedings.<sup>31</sup> In the same vein, there is a need for reparation that includes financial compensation allocated to victims of rape for prejudices suffered during armed conflict.<sup>32</sup> The problem though is that most victims are not aware of their rights.

Medical and psychosocial supports are necessary for the socio-economic integration of the rape survivors who continue to live in abject poverty with insufficient financial power and

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<sup>26</sup> P Vinck & P Pham 'Ownership and participation in transitional justice mechanisms: A suitable human development perspective from Eastern DRC' (2008) 2 *The International Journal of Transitional Justice* 406

<sup>27</sup> Sørensen (n 15 above) 31

<sup>28</sup> GGJ Knoops 'Truth and reconciliation models and international tribunals: A comparison' (2006) *Symposium on the rights to self-determination in international law*, The Hague 2

<sup>29</sup> T Savage & O Kambala wa Kambala (n 25 above) 346

<sup>30</sup> Knoops (n 28 above) 2

<sup>31</sup> Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and gross violation of international humanitarian law A/RES/60/147 para 12 (b)

<sup>32</sup> Basic principle and guidelines (n 31 as above) paras 2(c), 3(d), 11(b) and 15

rehabilitative programmes.<sup>33</sup> Without assistance from the government victims of rape in South Kivu Province will not be able to return to their routine activities to irk a living.

The extra-judicial process, by the means of the TRC may be useful to assisting victims of rape in the rehabilitation and restoration of their dignity. Moreover, the government should develop programmes based on the specific needs of the victims of rape such as education, health, food, access to land, and shelter with a view to achieving their socio-economic integration in the community.<sup>34</sup> The civil society (Non Governmental Organisations, International Organisations and UN agencies) working in the field have contributed a lot in this regard to improve the condition of the victims of rape.<sup>35</sup>

### **1.3 Research methodology**

The methodology of this study will mostly be through desk research that involves secondary data collection from library. The sources relied on in the library include: international instruments, domestic constitution and legislation, case law, soft law books, journals, newspaper articles, and internet sources.

The main methodology that will be used in this study is library research. This methodology will take a detail literature review approach entailing a desk study and library research to collect material and related information, existing literature from books, journal articles and other publications on the subject.

The study critically analyse and interpret information collected from literature of researchers in the field in order to respond adequately to the socio-economic integration of victims of rape issue raised in this paper.

### **1.4. Limitation of study**

Conducting study on DRC from South Africa is a challenge because most of the information is in the DRC which the researcher could not access owing to distance. The content of the dissertation was therefore limited to specific sources of information compiled through desk or library research on the situation of victims of rape in South Kivu Province of the DRC. Efforts were made to access data through internet.

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<sup>33</sup>Human Rights Watch Seeking justice: The prosecution of sexual violence in the Congo war (2005) Vol 17 No 1(A) 47

<sup>34</sup>Basic principle and guidelines (n 31 as above) para 16

<sup>35</sup>Human Rights Watch (n 33 above) 45-46

In addition to the time constraint for writing the thesis, originating from a francophone background has been challenging during the writing of the thesis and data compilation. Most of the material utilised has been in English. To mitigate this limitation, my supervisor offered constructive comments to the thesis. My colleague ALABO OZUBIDE proof reads my work and gave grammatical guidance.

### **1.5. Research questions**

The study aims to answer the following questions in the context of socio-economic integration of victims of rape in the South Kivu Province in DRC:

- i. What is the extent of DRC's legal obligation in respect of protecting victims of rape?
- ii. How has the DRC addressed socio-economic needs of victims of rape?
- iii. To what extent does the DRC allocate available resources to address socio-economic integration of victims of rape?

### **1.6. Literature review**

Victims of rape face a challenge to see the DRC government starting investigations, prosecuting, punishing perpetrators and allocating compensation to such victims for prejudices suffered during the armed conflict in the South Kivu Province.<sup>36</sup> Rape against women and girls during wartime is prohibited by the Fourth Geneva Convention and its Additional Protocol.<sup>37</sup> Every State has the obligation to protect vulnerable people including women and girls during war; investigate alleged sexual crimes, punish perpetrators, and provide effective remedies, including the payment of damages to victims for physical and mental prejudice suffered.<sup>38</sup> The DRC should ensure that victims of grave breach of human rights including rape during war may access to the reparation in terms of material and psychological support and adequate measures may be taken for the restoration of their reputation and dignity.<sup>39</sup> The DRC's responsibility arises when its officials failed to prevent violation of women rights during wartime.<sup>40</sup>

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<sup>36</sup> Basic principles and guidelines (n 31 above) paras 2-3

<sup>37</sup> Bosmans (n 2 above ) 1-2; see also NNR Quéniwet (2005) *Sexual offenses in armed conflicts & International Law* Transnational Publishers 83

<sup>38</sup> RJ Cook 'State responsibility for violations of women's human rights' (1994) 7 *Harvard human right Journal* 127

<sup>39</sup> P Van Zyl 'Promoting transitional justice in post-conflict societies' cited in Bryden A, & Hänggi H, (2005) (eds) *Security governance in post-conflict peacebuilding* DCAF 212-213; See also, M Akashah & S.P. Marks

Stigmatisation remains a huge issue for victims of sexual violence including rape in South Kivu Province, because several women and girls are thought to have HIV, AIDS or sexually transmitted infections.<sup>41</sup> It is obvious that, the state obligations arise when women including victims of rape are discriminate by harmful practices and customary which prevent them from enjoying their socio-economic rights in the community.<sup>42</sup> Consequently, the DRC government must establish a strategic plan which takes into account the specific needs of rape survivors in order to ensure their rehabilitation and socio-economic integration.<sup>43</sup>

It is important to note that perpetrators must be held accountable for crimes of sexual offences perpetrated against women and girls during war.<sup>44</sup> The DRC judicial officers ensure there is accountability to hold perpetrators responsible for their action and payment of damages to victims for prejudices suffered.<sup>45</sup> According to international law, reparation and compensation must be provided to all victims of rape in order to eliminate consequences of the offence and, to ensure their rehabilitation in the community.<sup>46</sup> Also, the DRC authorities should collaborate with international judicial institutions such as ICC, so that victims of grave breach of human rights including rape perpetrated during wartime may benefit from the ICC Fund Trust provided for them.<sup>47</sup>

The DRC authorities have enacted legislation in order to combat sexual violence, including rape against women and girls.<sup>48</sup> The DRC's Constitution expressly requires the state to protect women against discrimination and all forms of gender-based violence including rape.<sup>49</sup> Also, sexual assaults against women and girls during wars and conflicts may be considered as a "crime against humanity" and shall be punished. Moreover, under DRC Constitution women and girls are protected against harmful practices that may be considered as a "cruel, inhuman and degrading treatment".<sup>50</sup> The DRC has amended its criminal and

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'Accountability for the health consequences of human rights violations: Methodological issues in determining compensation' *Health and Human Rights* 9 (2006) 261

<sup>40</sup> Cook (n 38 above) 145

<sup>41</sup> Amnesty International (n 3 above) 34-35

<sup>42</sup> Cook (n 38 above) 167-168; see also Amnesty International (n 3 above) 34

<sup>43</sup> Chinkin (n 22 above) 5

<sup>44</sup> Gorman (n 11 above) 117

<sup>45</sup> Physician for human Rights, the use of rape in the armed conflicts, *The Beacon* (2010) 8

<sup>46</sup> L McClain and A Ngari 'Pay us so we can forget: Reparation for victims and affected communities in northern Uganda' (2011) *JRP-IJR Policy Brief No 2*, 2

<sup>47</sup> Delivering on the promise of a fair, effective and independent court, Trust Fund for Victims <http://www.iccnw.org/?mod0vtfbackground> downloaded at UP 2October 2012

<sup>48</sup> Gorman (n 11 above) 118

<sup>49</sup> DRC Constitution article 15

<sup>50</sup> Mansfield (n 10 above) 375

penal procedure laws in order to combat and end sexual violence against women and girls.<sup>51</sup> Furthermore, the Military Penal and Proceedings Codes are applied in domestic legislation when sexual violence is perpetrated by armed men. Article 169 of the Congolese Military Penal Code considers rape and others forms of sexual violence as crimes against humanity.<sup>52</sup> As soon as authorities are informed of serious crimes including rape, the State is under obligated to investigate, prosecute and punish perpetrators, including allocation of damages for injury suffered.<sup>53</sup>

The DRC judicial system failed to enforce a court's decision to direct perpetrators to pay compensation. Hence, victims wonder whether perpetrators will be prosecuted and convicted, and if any damages will be paid in their favour.<sup>54</sup> The challenge for rape survivors is seeing their assailants escape the judicial process because of a dysfunctional judicial system; most victims do not have confidence in the domestic judicial system to lodge a complaint against perpetrators even if they know them.<sup>55</sup> In fact, the DRC law on sexual violence provides that procedure of sexual offences have to be carried on promptly within three months after receiving complaint of victims. But in practice, the DRC judicial authorities failed to act diligently and thoroughly because of the lack of consideration for women, including victims of rape.<sup>56</sup>

The DRC judiciary system failed to provide justice for victims of sexual violence because of lack of resources to carry on investigations; also, bribery, political and military high ranking interference have prevented victims of rape from going to justice.<sup>57</sup> However, it is clear that DRC's military courts lack the requisite political independence from the executive, legislative and administrative powers of the State.<sup>58</sup> In addition to this, there is a lack of competence, manpower and resources among the judiciary to implement the DRC legislation on sexual violence.<sup>59</sup> The lack of confidence in the judiciary prevents victims from seeking justice, as

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<sup>51</sup>Loi No 06/18 du 20 Juillet 2006 modifiant et complétant le Décret du 30 Janvier 1940 portant Code Pénal Congolais and Loi No 06/19 du 20 Juillet 2006 modifiant et complétant le Décret du 06 Août 1959 portant Code de Procédure Pénale Congolais

<sup>52</sup> Mansfield (n 10 above) 375

<sup>53</sup>A Seibert-Fohr (2009) *Prosecuting serious human rights violation* Oxford University Press 162

<sup>54</sup> Mansfield (n 10 above) 402

<sup>55</sup>Bosmans(n 2 above) 37

<sup>56</sup> R S Lincoln 'Strengthening the rule of law as solution to sexual violence in Democratic Republic of the Congo' (2011) *Berkeley Journal of Gender, Law and Justice* 156

<sup>57</sup> Lincoln (n 56 above) 158

<sup>58</sup> Gorman (n 11 above) 116

<sup>59</sup> Amnesty International (n 3 above) 37, 40

well as the lack of sensitivity of magistrates, lawyers, police officers and the military in dealing with sexual violence issues.<sup>60</sup>

Usually the DRC authorities do not handle claim by women or girls who are victims of rape during armed conflict. Whenever the DRC government has to take appropriate measures in order to provide compensation to victims of armed conflict, a gender perspective has to be taken into account for the realization of their specific socio-economic needs.<sup>61</sup> The DRC government may put into place mechanisms of accessibility to reparation after consultation with victims in order to know exactly more about their specific needs.<sup>62</sup> Under international law principle of state obligation, women who are victims of rape and other forms of sexual abuse should have access to reparation before judges as provided in domestic law.<sup>63</sup>

Reparation play a critical role in the prevention and suppression of the cycle of reaction following sexual violence, including difficulties of social reintegration for victims who are rejected by the family or a husband and lack the basic minimum of living.<sup>64</sup> The socio-economic need of victims of rape must be evaluated and incorporated into the socio-economic integration programme which incorporates all aspects of their interests.<sup>65</sup> Such programmes should be funded by the DRC since it is their conflict to address the concerns of their citizens including women and girls who are victims of rape and sexual violence.

In addition to the judicial mechanism on the protection of socio-economic rights, the DRC must provide access to psychological services for the atrocities of violence suffered by victims during the armed conflict. Therefore, a psychosocial education program may help the victims who need to be socially rehabilitated.<sup>66</sup>

The DRC may use its Truth and Reconciliation Commission (TRC) in addition to the existing judicial mechanisms to address impunity and socio-economic needs of victims of rape. But, because of lack of political will of the government, the DRC TRC failed to play a critical role, including truth and reconciliation process for the restoration of victims of rape's dignity

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<sup>60</sup>Bosmans (n 2 above) 11

<sup>61</sup> J Gardam & H Charlesworth 'Protection of women in armed conflict' (2000) 22 *Human Rights Quarterly* 158

<sup>62</sup>Report of the Panel on Remedies and Reparations for Victims of Sexual Violence in the Democratic Republic of Congo to the High Commissioner for Human Rights (2011) 5, 52

<sup>63</sup> McClain and Ngari (n 46 above) 3

<sup>64</sup> R Rubio-Marin 'The gender of reparations: Unsettling sexual hierarchies while redressing human rights violations' (2009) 240 *Berkeley journal of Gender, Law & Justice* 243

<sup>65</sup> Merger (n 1 above) 127

<sup>66</sup> Hanlon (n 8 above) 67



and the re-establishment of peace in the South Kivu Province.<sup>67</sup> The TRC must be independent from government interference; the DRC government should empower its TRC with adequate resources and trustworthy staff members who are not involved in the violation of women rights during armed conflict.<sup>68</sup>

Non Governmental Organizations (NGOs), International Organizations (OI) and United Nations (UN) agencies have provided support to the Congolese judicial system in ensuring training of judges and prosecutors on sexual crimes issue.<sup>69</sup> In the same vein, they have played a critical role in challenging socio-economic needs of victims by providing adequate medical care and psychological assistance including social services.<sup>70</sup> Where the DRC government failed, for example, to provide testing of HIV and AIDS, NGOs and OIs have contributed much to the testing and the care of victims infected by sexual transmitted diseases including HIV and AIDS and the provision of needed medicines including the distribution of antiretroviral.<sup>71</sup>

## 1.7 Overview of chapters

The structure of this research will be presented as follows:

Chapter one will contain the introduction; problem statement; research methodology; limitation of study; research questions, literature review and overview of chapters. Chapter two will describe the state's obligation to protect victims of rape. Chapter three will explore the DRC judicial mechanisms to address socio-economic needs of victims of rape. Chapter four expound on the extent to which the DRC is addressing socio-economic rights of victims of rape. Chapter five will comprise the conclusion and recommendations.

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<sup>67</sup> T Savage and O Kambala wa Kambala (n 25 above) 346, 348

<sup>68</sup> T Savage and O Kambala wa Kambala (n 25 above) 347, 348; see also, N Cahn 'beyond retribution and impunity: Responding to war crimes of sexual violence' (2005) 1 *Stanford Journal of Civil Rights & Civil Liberties* 243

<sup>69</sup> T Savage and O Kambala wa Kambala (n 25 above) 339

<sup>70</sup> Amnesty International (n 3 above) 39-40

<sup>71</sup> Amnesty International (n 3 above) 38-39

## **Chapter 2: The DRC's obligation to protect victims of rape**

It should be noted that crimes of sexual nature perpetrated against women and girls during wartimes in South Kivu Province are not immediately punished and victims lacked remedies. There is a state obligation under international human rights law and humanitarian law to undertake action in order to prosecute and punish perpetrators of such crimes and to allocate adequate compensation to victims for prejudice suffered.<sup>72</sup>

The DRC's obligation to protect victims of rape during wartime requires the state to take legislative and other measures such as in conformity with its international obligations and to make available adequate resources in order to achieve the social rehabilitation of victims, including adequate shelter and medical care.<sup>73</sup> Moreover, the government must prevent and eliminate all forms of discrimination against women, including victims of rape through a national programme that takes into account their specific needs.<sup>74</sup>

The obligation of a state arises when its officials failed to prevent commission of sexual crimes during wartime and to arrest their perpetrators.<sup>75</sup> Moreover, the DRC should make it easier for victims of sexual abuses during the armed conflicts in South Kivu to claim reparation before international jurisdictions for international crimes they suffered during wartime.<sup>76</sup> Additionally victims may claim financial indemnification for injuries suffered.<sup>77</sup>

The state should comply with international, regional and sub-regional human rights instruments that provide judicial procedures that include "international remedies" for victims of rape to access to justice and to enjoy the use of their socio-economic rights.<sup>78</sup> For example, the state has a duty to make available information on the ICC Trust Fund for Victims and how victims may access such fund.<sup>79</sup>

### **2.1. The state's obligation at the international level**

The DRC has ratified most of the international instruments that protect women's human rights including women who are victims of sexual violence during armed conflict, such as the 1949

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<sup>72</sup> Cook (n 38 above) 126

<sup>73</sup> Basic principles and guidelines (n 31 above) para 3

<sup>74</sup> Chinkin (n 22 above) 12

<sup>75</sup> Cook (n 38 above) 145

<sup>76</sup> Basic Principles and guidelines (n 31 above) para 14

<sup>77</sup> United Nations Women, Peace and Security, Study submitted by the Secretary-General pursuant to Security Council resolution 1325/200 (2002) 38

<sup>78</sup> Montréal Principles on women's rights (2004) 26 *Human Rights Quarterly* 774-775

<sup>79</sup> <<http://www.iccnw.org/?mod0vtfbackground>> downloaded at UP 2 October 2012

Geneva Convention and its two Additional Protocols of 1977, the International Criminal Court Statute and other relevant international conventions.<sup>80</sup>

Under international law there is an obligation to prevent and protect women and girls who are victims of sexual assault during armed conflict through legal, judicial and administrative measures. The state is obliged to investigate, prosecute and punish irrespective of who the perpetrators may be.<sup>81</sup> International and humanitarian law call on states' obligations to investigate and to prosecute authors of rape perpetrated during wartimes if the state does not want to be held responsible. Hence, a state may incur "indirect responsibility" if it failed to provide for raped women effective remedies for the prejudices suffered during the conflict.<sup>82</sup> According to international law, the DRC may take legislative and administrative measures in order for rape survivors who are suffering from atrocities of violence in South Kivu to prompt and equally access to judicial mechanisms.<sup>83</sup>

The DRC government has a duty to ensure through national programmes that vulnerable peoples, including victims of sexual abuses during armed conflict, enjoy their socio-economic rights.<sup>84</sup> In the same vein, the government may take into account, the specific socio-economic needs of victims of rape, and ensure equitably their involvement in the process of the state's "decision-making".<sup>85</sup> Additionally, the government may establish a gender-based programme which include socio-economic needs of women and girls who are victims of rape in order to provide them with the minimum standard of livelihood.<sup>86</sup>

It is the state obligation to provide reparation when it has demonstrated that the state authorities are in violation of the obligation of protection of vulnerable people including women and girls under international humanitarian law.<sup>87</sup> According to the UN Compensation Commission, an adequate and specific compensation should be allocated to women and girls for all forms of sexual assault suffered during the conflict, and for the loss of land and property.<sup>88</sup> Additionally, the DRC obligation under international law arises when women, including victims of rape suffered from customary and other forms of practice that undermine

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<sup>80</sup> Expert Workshop Report: Giving effect to the law on war crimes, crimes against humanity and genocide in Southern Africa, CHR, University of Pretoria (2011) 21

<sup>81</sup> Quénivet (n 37 above) 87

<sup>82</sup> Quénivet (n 37 above) 90

<sup>83</sup> Chinkin (n 22 above) 4

<sup>84</sup> Chinkin (n 22 above) 47-48

<sup>85</sup> CEDAW/C/2000/I/CRP.3/Add.6/Rev.1 Concluding Comment Democratic Republic of the Congo para 335

<sup>86</sup> Chinkin (n 22 above) 5

<sup>87</sup> UN Women Peace and Security (n 77 above) 46

<sup>88</sup> UN Women, peace and security (n 72 above) 46

and prevent them from enjoying their socio-economic rights in the community.<sup>89</sup> Hence, the state incurs obligation to protect women rights, including the rights for the victims of rape to reparation that include the allocation of damages for harm suffered during wartime.<sup>90</sup> It is the DRC's obligation to provide a support for women who are victims of grave breach of human rights, including restoration of their reputation and dignity undermine during wars and conflicts.<sup>91</sup>

The DRC must change its domestic laws which violate women rights in order to comply with the requirement of international human right law.<sup>92</sup> For example the DRC government may repeal provisions of its Family Law (Code de la famille) that discriminate women against when it requires the marital authorisation for married women to lodge a complaint before the court.<sup>93</sup> The DRC government under international commitments may pass a new legislation in order to protect the rights of victims of rape.<sup>94</sup>

Moreover, the DRC may be held responsible for violation of women human rights by third party interference if it failed to prevent with due diligence gender-based discrimination against women and girls who are victims of rape during armed conflict.<sup>95</sup> It is clear that whenever the breach of socio-economic rights occurs, the DRC authorities may allocate adequate compensation for victims.<sup>96</sup>

The scale of sexual violence including rape committed in the South Kivu Province constitutes a grave violation of the right of women. The DRC government failed to institute criminal proceedings in order to prosecute perpetrators for the alleged sexual crimes committed during armed conflict as require by the 1949 Geneva Conventions and its 1977 Protocol 1.<sup>97</sup> The DRC has failed to comply with its three fold international duties to promptly investigate, to prosecute aggressors, and to punish them if found guilty.<sup>98</sup> However, the DRC need to co-

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<sup>89</sup> See CEDAW article 2(f), 5(a); see also Cook (n 38 above) 167

<sup>90</sup> Cook (n 38 above) 127

<sup>91</sup> Van Zyl (n 39 above) 212-213

<sup>92</sup> Cook (n 38 above) 148

<sup>93</sup> Amnesty International (n 3 above) 10; See also, Loi No 87/010 du 1 Août 1987 portant Code de la famille, article 448

<sup>94</sup> Cook (n 38 above) 148-149

<sup>95</sup> Cook (n 38 above) 151

<sup>96</sup> Montréal principle (n 78 above) 773

<sup>97</sup> L Juma 'Human rights and conflict transformation process in Africa' in R Bowd& AB Chikwanha (eds) 'Understanding Africa's contemporary conflicts: Origins, challenges and peacebuilding' (2010) *Institute for Security Studies* 215-216; See also, UN Commission on Human Rights The right to a remedy and reparation for victims of violations of international human rights law and humanitarian law (2003) E/CN.4/2004/57 18

<sup>98</sup> Basic principles and guidelines (n 31 above) para 4

operate with other states and, also, with international judicial systems, such as the ICC at the different stages of procedures.<sup>99</sup>

In regard to its international commitments the DRC failed to incorporate into domestic legislation relevant provisions of international treaty bodies including those providing for universal jurisdiction for sexual crime committed during the armed conflict.<sup>100</sup> For example the DRC failure to domesticate the ICC Statute into domestic law promotes the impunity and prevents victims of rape to access justice.<sup>101</sup> Furthermore, the state contribution in fighting impunity also requires it through extradition or presentation of perpetrators before international jurisdictions.<sup>102</sup> Also, the DRC in contrary to the international requirement, failed to ensure the protection of victims of sexual violence and witnesses, and to provide them with adequate legal support.<sup>103</sup>

The protection of women, including victims of rape imposes an immediate obligation on state to take steps through appropriate measures that victims of rape are not discriminated in the enjoyment of the economic, social and cultural rights. To this end, the DRC government is obligated to protect, respect and fulfil.<sup>104</sup> The DRC's failing to implement socio-economic rights of the victims of rape through courts have promoted discrimination in the enjoyment of such rights.<sup>105</sup> There is a lack of political will by the government to make available resources for victims of rape to enjoy the exercise of their socio-economic rights without discrimination.<sup>106</sup> The shortage of resources may not constitute an impediment for the government to provide for women who are victims of rape the basic minimum needs, including housing, medical care, clean water and social services.<sup>107</sup> Additionally, the state obligation arises when victims of rape are discriminated in the enjoyment of the basic services needs provided by private institutions.<sup>108</sup>

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<sup>99</sup> UN E/CN.4/2004/57 (n 97above) 20

<sup>100</sup> Basic principles and guidelines (n 31 above) paras 2(a), 5

<sup>101</sup> Amnesty International Republic Democratic of Congo, North Kivu: No end to war and children (2008) 7

<sup>102</sup> Basic principles and guidelines (n 31 above) para 5

<sup>103</sup> UN E/CN.4/2004/57 (n 97above) 20

<sup>104</sup> Montréal principle (n 78above) 770

<sup>105</sup> Montréal principle (n 78above) 771

<sup>106</sup> Montréal principle (n 78above) 771

<sup>107</sup> Montréal principle (n 78above) 772

<sup>108</sup> Montréal principle (n 78above) 773

## 2.2. The state's obligation at the regional level

The DRC is a party to the African Charter on Human and Peoples' Rights (ACHPR) and its Protocol on the Rights of Women in Africa of 2003 (Maputo protocol) which is considered as the most important instrument of the protection of women including victims of rape perpetrated during armed conflict in the specific context of African Region. However, it should be considered that obligations from the Protocol follow the obligations provided into the African Charter.<sup>109</sup>

The article 11 of the Maputo Protocol imposes an obligation on the state to protect women and girls against sexual violence, including rape during wartime. Also, the state shall consider rape towards women and girls during wartime as war crimes, crimes against humanity or genocide and their authors are prosecuted and punished before competent courts.<sup>110</sup> As above mentioned, the DRC failed to amend its legislation in order to incorporate and to implement provisions of Maputo Protocol into domestic laws. In the same vein, the DRC failed to provide in a budget with available resources that satisfy socio-economic needs of victims as recognised in the Protocol.<sup>111</sup>

The DRC failed to meet the requirements of the Maputo Protocol to make effective the participation of women including rape survivors in the process of socio-economic integration and reconciliation.<sup>112</sup> The government lacks of national plan of development that takes into account the involvement of women, including victims of rape in the development process.<sup>113</sup> In order to eliminate discrimination against victims of rape during armed conflict in the South Kivu, the DRC' government should establish a plan that incorporates their basic socio-economic needs.<sup>114</sup>

Practices that undermine victims of rape are also prohibited in the region and, the DRC is obligated to take adequate measures in order to prevent all acts that may be harmful to victims of rape' dignity.<sup>115</sup> The DRC government failed to make available to the women

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<sup>109</sup> B Mugisha 'Engendering conflicting prevention and peacemaking in Africa: Putting women and women' rights first' *Paper presented at a conference on peace and security in Africa* (2008) ISS Addis Ababa 14

<sup>110</sup> Amnesty International (n 101 above) 8

<sup>111</sup> R Karugonjo-Segawa 'The Protocol to the African Charter on Human and Peoples' Rights on the rights of women' (2005) *The Danish Institute for Human Rights* 40

<sup>112</sup> C Chinkin & H Charlesworth 'Building into peace: The international framework' (2006) 27 *Third World Quarterly* 943

<sup>113</sup> Chinkin & Charlesworth (n 112 above) 943-944

<sup>114</sup> Cook (n 38 above) 169; See also, F Banda 'Blazing a trail: The African Protocol on women' rights comes into force' ((2006) 50 *Journal of African Law* 82; Maputo Protocol article 16

<sup>115</sup> Karugonjo-Segawa (n 111) above) 17

including victims of rape, education and training as required in the Maputo Protocol and other relevant international instruments such as CEDAW and International Covenant on Economic Social and Cultural Rights (ICESCR).<sup>116</sup> It is clear that victims of rape in the Kivu Province are denied equal access to their socio-economic rights.<sup>117</sup>

There is a violation of victims of rape' rights to reproductive health care when the government failed to comply with the requirement of the Maputo Protocol that provides for reproductive health care including the right to abortion for pregnant victims as a result of rape.<sup>118</sup> Additionally, the DRC is expected to make available for victims of rape the right to health provided in the Maputo Protocol. To this end, victims of rape may be informed on their health problems and, if they have been infected by sexually transmitted diseases including HIV/AIDS, the DRC health authorities may provide them with adequate and appropriate medical health care in conformity to other international conventions.<sup>119</sup>

The DRC failed to comply with its duty imposed by the Maputo Protocol and other relevant international instruments to provide for victims of rape accessibility to justice before competent courts including effective remedies when it has established that their right have been violated during the armed conflict.<sup>120</sup> Also, the DRC failed to provide for victims of rape involved in criminal proceedings with the service of lawyer or representative.<sup>121</sup>

Although the participation of victims of rape in the process of peace and reconciliation is so critical, the DRC government failed to comply with the provision of the Protocol that calls on state to meet their obligations to make possible the full participation of women in such process. During the process of peace and reconciliation, the DRC government shall meet the socio-economic needs of the victims of rape.<sup>122</sup> In the same vein, the Congolese government is unable to make accessible the land for victims of rape who live in rural areas to go back to their farm activities.<sup>123</sup> The government may not escape from its obligation under Maputo Protocol to submit reports that demonstrate how it complies with its obligation to protect

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<sup>116</sup> CEDAW article 10

<sup>117</sup> Karugonjo-Segawa (n 111 above) 26

<sup>118</sup> See article 14 of the Maputo Protocol

<sup>119</sup> Karugonjo-Segawa (n 111 above) 28; see also R Gawaya and R Mukasa 'The African women Protocol: A new dimension for women's rights in Africa' (2005) 13 *Gender & Development* 42; see also CEDAW, article 12; ICESCR article 12

<sup>120</sup> Karugonjo-Segawa (n 111 above) 40; See also, Banda (n 107 above) 81

<sup>121</sup> F Butegwa & Awori 'Women' rights in Africa: Manual' (2010) *UN Entity for Gender Equality and the Empowerment of Women* 7

<sup>122</sup> Banda (n 114 above) 82

<sup>123</sup> Banda (n 114 above) 82

victims of sexual abuses during the armed conflict through the enactment of legislation and other appropriate measures.<sup>124</sup>

### **2.3. The state's obligation at the Sub-Regional level**

The protection of women against rape and other forms of sexual violence during armed conflict have been found to be the focus of Sub-Regional Organisations such as the Great Lakes Region of Africa and the Southern Africa Development Community (SADC).

#### **2.3.1. The Great Lakes Region of Africa**

The DRC is a party to the Protocol on the Prevention and Suppression of Sexual Violence against Women and Children of the Great Lakes region. Under the above mentioned Protocol a state is obligated to amend its national legislations in order to comply with its provisions.<sup>125</sup>

With respect to the above mentioned international and regional instruments of the protection of women including victims of rape, the DRC government failed to put into place in cooperation with other states members of the Sub-Region a legal framework that permit the investigation, the prosecution and the arrest of perpetrators, and their transfer to a competent jurisdiction of any other state member.<sup>126</sup> In relation to the crime of sexual nature committed during armed conflict, the state may use cooperation and diplomatic tools in order to extradite alleged perpetrators if another state requests.<sup>127</sup> According to Amnesty International the Protocol imposes the obligation on DRC' government to combat the impunity of sexual crimes against women and girls; to simplify the proceedings of access to justice for victims of rape; to provide the compensation of victims of rape, including their family members and to provide a legal aid and medical care for victims of rape.<sup>128</sup>

The state of violence against women and girls in the South Kivu Province that involved different armies and rebels from different countries require the establishment of a Sub-regional mechanism that provides for victims with minimum basic services such as food, medical health care, clean water, shelter and psychological assistance. Additionally, the DRC

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<sup>124</sup>Karugonjo-Segawa (n 111 above) 41

<sup>125</sup> See Great Lakes Region Protocol on the Prevention and Suppression of Sexual Violence against Women and Children (3006) article 6(10)

<sup>126</sup>Butegwa & Awori (n 121 above) 11

<sup>127</sup> Great Lakes protocol (n 125 above) Article 6(1)(2)(3)

<sup>128</sup> Amnesty International ( n 96 above) 8



with other States members of the Great Lake Region involved in conflict are required to provide a financial compensation to victims for injuries suffered during armed conflicts.<sup>129</sup>

As a State member, the DRC has an obligation under the Pact on Security, Stability and Development in the Great Lakes Region, to eradicate sexual violence against women and girls during armed conflict and, to start investigation in order to prosecute and punish perpetrators in conformity with the requirements of international justice.<sup>130</sup>

### **2.3.2. The Southern Africa Development Community (SADC)**

The DRC is a member of SADC which is a Sub-Regional Organisation with among other purposes the elimination of discrimination against women, the prevention of sexual violence against women and girls and, the protection of women and girls victims of rape and other forms of sexual assaults during wartimes.

In order to comply with the SADC Protocol, the DRC may amend its legislation in conformity to relevant global and regional treaties with a view to eliminate all forms of discrimination against women and girls, specifically victims of rape perpetrated during wartime in the South Kivu.<sup>131</sup> To this end, the DRC should take legislative, administrative and judicial measures for the elimination of cultural and religious practices that undermine the dignity of the victims.<sup>132</sup>

The SADC Declaration on gender and development has highlighted equal access of women including victims of rape and other forms of sexual abuses, to economic, social and cultural rights such as health care, food, clean water and shelter. SADC like other international instruments obligates the State to amend its domestic laws with a view to eliminate behavioural patterns that discriminate against victims of rape in social life.<sup>133</sup>

Although the SADC protocol requires the states to make available the participation of women including victims of rape the resolution of conflict and rehabilitation programme, there is a little done by the DRC government to make possible the participation of victims of rape in such programmes.<sup>134</sup> Moreover, the DRC failed to comply with the SADC Protocol which requires it to support nursing mother and to ensure the welfare of the children born as a result

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<sup>129</sup>Butegwa & Awori (n 121 above) 11; See also, article 6(6) of the Great Lake Protocol

<sup>130</sup> Pact on Security, Stability and Development in the Great Lakes Region (2006) article 11

<sup>131</sup>Butegwa & Awori (n 121 above) 11

<sup>132</sup>Butegwa & Awori (n 121 above) 11

<sup>133</sup> SADC Declaration on gender and development 8 September 1997

<sup>134</sup> SADC Protocol article 11(16)

of rape.<sup>135</sup> Also, the DRC failed to put into place a medical programme that involves and permits women who are infected by the HIV virus as a result of rape during armed conflict to access to medical services, including needed medicines.<sup>136</sup>

#### **2.4. The state's obligation at the national level**

The state obligation to protect women including victims of rape is found in the provisions of the Constitution and other relevant Bills of rights of the DRC. Although the DRC has ratified relevant international instruments of protection of women rights, the authorities have failed to incorporate into domestic law provisions of international treaties to which it is part, with a view to ensuring the prevention of rape women and during the armed conflict.<sup>137</sup>

The level of sexual crimes perpetrated towards women and girls during wartimes in the South Kivu raise the issue of the DRC's failure to prosecute and to punish offenders. The DRC government should consider the breach of women rights by wars and conflicts as a crime within its domestic law, since their tribunals and courts have jurisdiction to prosecute and punish alleged perpetrators.<sup>138</sup>

The DRC lacks the will to make available a specific fund so that victims of rape may access justice that provides effective remedies, including compensation for prejudice suffered during armed conflict.<sup>139</sup> The security of victims is so critical during the proceedings. Therefore, the DRC must protect victims, witnesses, family members of the victims, lawyers and representatives during and after proceedings.<sup>140</sup> Although the DRC has provided in its laws the assistance of the victims of rape with legal services, including legal assistance during the judicial proceedings, there has been no assistance to victims before courts neither support to the family members of victims died as a result of rape during wartimes.<sup>141</sup>

In South Kivu Province, victims of rape had suffered physically from atrocities of sexual assaults.<sup>142</sup> The DRC government has neglected its obligation to provide for victims and their family members with medical, psychological and financial assistance.<sup>143</sup> Also, the DRC

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<sup>135</sup> SADC Protocol article 11.8

<sup>136</sup> SADC Protocol article 11.7(g)(h)(i)

<sup>137</sup> C Chinkin 'Gender, human rights, and peace agreements' (2003) 18 *Ohio State Journal on Dispute Resolution* 881

<sup>138</sup> L Juma (n 97 above) 215-216

<sup>139</sup> E/CN.4/2004/57 (n 97above) 19

<sup>140</sup> E/CN.4/2004/57 (n 97above) 22

<sup>141</sup> E/CN.4/2004/57 (n 97above) 22

<sup>142</sup> Gorman (n 11 above) 104; see also Meger (n 1above) 126-127

<sup>143</sup> E/CN.4/2004/57 (n 97above) 23

failed to make available for victims of rape, information on accessibility to national mechanisms that promote their socio-economic rights.<sup>144</sup>

The state of discrimination against victims of rape in the enjoyment of their socio-economic rights remains in South Kivu. Therefore, DRC must take steps and act immediately in order to put an end to all forms of discrimination against women.<sup>145</sup> Positive steps consist, to refrain from acts or practices that may discriminate against women and girls who are victims of rape, and to immediately take legislative and administrative measures in order to prohibit customs or policies that undermine them in the enjoyment of their socio-economic rights.<sup>146</sup>

The DRC's obligation arises when it failed to ensure the access to justice for women and girls who are victims of rape; denied the justiciability of socio-economic right to victims and failed to make available resources for the achievement of socio-economic rights of the victims through appropriate mechanisms.<sup>147</sup>

#### **2.4.1. Obligation under the DRC's Constitution**

The DRC Constitution should not be in contradiction with the state commitments to implement its obligations under international law and incorporate same into domestic laws.<sup>148</sup>

The DRC Constitution imposes an obligation on the state to apply duly ratified international instruments as far as they are not contrary to the national law.<sup>149</sup> Despite the fact that the DRC has provided in its Constitution protection of women including victims of rape against all forms of discrimination, there has been no effective steps to eliminate discrimination against victims of rape in the enjoyment of their socio-economic rights.<sup>150</sup> However, the acknowledgement of women rights in the Constitution should be a guarantee for victims of rape to benefit from their socio-economic rights without discrimination and to access remedies for the injury suffered.<sup>151</sup>

Under the DRC Constitution, the government is expected to combat all forms of discrimination against women and girls who are victims of rape. Article 14 of the DRC's Constitution expressly requires the state to undertake all appropriate measures in order to

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<sup>144</sup> Montréal Principles (n 78 above) 775

<sup>145</sup> Montréal Principles (n 78 above) 770

<sup>146</sup> Montréal Principles (n 78 above) 770-771

<sup>147</sup> Montréal Principles (n 78 above) 774

<sup>148</sup> Arbour (n 13above) 21

<sup>149</sup> Article 153 of the DRC Constitution cited in Expert Workshop Report 21

<sup>150</sup> Arbour (n 13above) 24

<sup>151</sup> Arbour (n 13above) 24

combat rape against women and girls. Also, article 15 calls on the state to consider rape against women during armed conflicts as crimes against humanity.<sup>152</sup>

#### **2.4.2. Obligation under the Criminal law (Penal Code)**

The DRC has a commitment under its Law no 06/018 of 20 July 2006 on sexual violence, to prosecute and punish crimes of sexual violence including rape perpetrated against women and girls during armed conflict and, to put an end to the impunity on sexual crimes.<sup>153</sup> However, the DRC authorities failed to prosecute and punish high ranking officials of the DRC Armed Forces (FARDC) who are involved in sexual crimes and, for rape perpetrated by soldiers under their control.<sup>154</sup>

Although the Law no 06/018 of 20 July 2006 on sexual violence which imposes obligation on DRC judicial authorities to promptly prosecute crimes of sexual violence, including rape against women during wartime, there has been no implementation due to the lack of resources for the conduct of investigations and the training of judicial staff dealing with crimes of sexual nature.<sup>155</sup>

#### **2.4.3. Obligation under Military Codes**

The fact that crimes of sexual nature perpetrated against women during armed conflict in Eastern of DRC fall under military jurisdictions has promoted impunity. Military tribunals and courts have conducted proceedings against perpetrators for all sexual crimes, including rape against women during armed conflict in the South Kivu Province. Under article 169 of the Military Penal Code, the DRC authorities should consider rape against women during wartime as crimes against humanity.<sup>156</sup>

As soon as authorities become informed of serious crimes including rape and other forms of sexual assaults, the DRC has the obligation to investigate, prosecute and punish perpetrators regardless of whether they were officers or private persons.<sup>157</sup> For example, the DRC Military Courts have applied provisions of the ICC Statute in certain cases which four military officers have been sentenced for rape as crimes against humanity in February 2011. Also, the Military

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<sup>152</sup> Mansfield (n 10 above) 375

<sup>153</sup> Loi no 06/018 of 20 Juillet 2006 modifiant et complétant le Décret du 30 Janvier 1940 portant Code Pénal Congolais, articles 42(bis) et article 42(ter)

<sup>154</sup> Mansfield (n 10 above) 390

<sup>155</sup> Amnesty International (n 101 above) 7

<sup>156</sup> Mansfield (n 10 above) 375

<sup>157</sup> Seibert-Fohr (n 53 above) 162

Court in South Kivu Province handed on a judgement sentencing two soldiers' members of F.D.L.R. for crimes against humanity, including rape and sexual slave.<sup>158</sup>

## 2.5 Conclusion

The protection of women during armed conflict includes the taking by the state of legislative, judicial, administrative and other appropriate measures with a view to preventing the occurrence of sexual violence including rape against women and girls.<sup>159</sup> The DRC government incurs obligation from its international, regional and sub-regional treaties to investigate, prosecute and punish when breach of women' rights occurs, and to provide reparation, including indemnification of victims for physical and mental prejudices suffered during the armed conflicts.<sup>160</sup> In the same vein, the DRC government is obliged to eliminate discrimination against victims of rape in the enjoyment of their socio-economic rights.<sup>161</sup> Also, the government should amend its national laws in order to comply with the requirement of the international human rights and the international humanitarian law that provide protection of women and girls during armed conflict.<sup>162</sup>

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<sup>158</sup> Expert Workshop Report (n 80 above) 22

<sup>159</sup> Basic principles and guidelines (n 31 above) para 3(a)

<sup>160</sup> Basic principles and guidelines (n 31 above) para 3

<sup>161</sup> Montréal Principles (n 78 above) 770

<sup>162</sup> Basic principles and guidelines (n 31 above) paras 2, 3(a)

## **Chapter three: The mechanisms of addressing socio-economic needs of the victims of rape in South Kivu**

### **3.1 Introduction**

In this chapter attention will be focused on judicial and non-judicial mechanisms as a way of redressing violation of women rights through justice and restoration of their dignity undermined during the armed conflict in the South Kivu Province. Judicial mechanism will comprise criminal proceedings that include investigation, prosecution and punishment of sexual crimes towards women and girls during armed the conflict on the one hand, and the reparation, including financial compensation and rehabilitation for prejudices suffered, on the other hand.<sup>163</sup> Extra-judicial mechanisms will be used as a soft and universal solution to resolve the problem of the violation of women' rights during the armed conflict through the TRC which is an important tool that allows reconciliation, unity and peace. Also, attention will be put on the adoption by the government of programmes to realize socio-economic needs of victims of rape in order to ensure their integration in the society.<sup>164</sup>

### **3.2 Judicial mechanisms**

Victims of grave breach of women rights, including rape during the armed conflict are entitled to use judicial proceedings that provide access to justice for the redress of the violation of their human rights.<sup>165</sup> If victims of rape are reluctant to go to justice in order to lodge a complaint, this is due to the DRC's failure to ensure their security and safety from all forms of threat of perpetrators.<sup>166</sup> The DRC government should investigate sexual crimes committed in the past and present, identify individuals and entities presumed authors of alleged crimes, punish those found guilty, provide effective remedies including reparation for victims of rape and the family members of such victims.<sup>167</sup> The tribunals dealing with complaints of the victims of rape perpetrated during armed conflict should make accessible for victims, the reparation for physical and mental prejudice suffered.<sup>168</sup> The government

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<sup>163</sup> E/CN.4/2004/57 (n 97above) 22 ; See also, Montréal Principles (n 78above) 776

<sup>164</sup> Arbour (n 13 above) 17

<sup>165</sup> E/CN.4/2004/57 (n 97above) 22

<sup>166</sup> Human Rights Watch (n 33 above) 42

<sup>167</sup> PA Njunguna Mwanika 'Mediation and peacebuilding through regional arms control and disarmament diplomacy' in R Bowd & AB Chikwanha (eds) 'Understanding Africa's contemporary conflicts: Origins, challenges and peacebuilding' (2010) *Institute for Security Studies* 78; See also, Vinck & Pham (n 26 above) 406; M Melandri 'Gender and reconciliation in post-conflict societies: The dilemmas of responding to large-scale sexual violence' (2009) 5 *International Public Policy Review* 5

<sup>168</sup> N Valji 'A window of opportunity? Making transitional justice work for women' (2010) United Nations Development Fund for Women UNIFEM 21

should ensure that rape survivors receive moral and financial support for the healing of the trauma and harm suffered during armed conflicts.<sup>169</sup>

### 3.2.1 Access to courts

The DRC authorities should ensure that victims of rape are free from discrimination against when they access to justice in order to claim redress for the breach of their human rights.<sup>170</sup>

The privacy of victims of rape, family members and witnesses must be protected by the judicial authorities when such victims appear before the courts even after proceedings.<sup>171</sup> But in the field there is no mechanism of protection for the victims of rape, witnesses and family members from threat of the offenders during criminal proceedings.<sup>172</sup>

In the South Kivu most of the victims of rape who live in rural areas are prevented from accessing to justice because of legal fees.<sup>173</sup> Despite the provision of Congolese law for assistance to victims of rape with legal services including the presence of representatives or lawyers during criminal proceedings, there has been no action by the government to provide such assistance to victims, and to remove the payment of legal fees as a requirement before the victims of rape lodge a complaint.<sup>174</sup> Additionally, the above legislation does not clearly determine who will be in charge of this legal assistance. In fact there is no case in which the government fulfil this responsibility.<sup>175</sup> The legal mechanism of “justice for destitute” institution which provides a legal assistance to vulnerable and poor victims does not function properly and is inexistent in rural areas of South Kivu where there is increase need of justice for victims of rape.<sup>176</sup>

Most of rape survivors are poor and vulnerable, and lack financial support to satisfy their basic needs.<sup>177</sup> Poverty impedes them from accessing justice because of the distance between their dwellings and where the court is established, given that there is a lack of judicial

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<sup>169</sup>Vinck & Pham (n 26 above) 399

<sup>170</sup>Chinkin (22 above) 4

<sup>171</sup> E/CN.4/2004/57 (n 97above) 21-22

<sup>172</sup> Amnesty International (n 3 above) 37-38; See also, CEDAW/C/2000/I/CRP.3/Add.6/Rev.1 (n 80 above) para 338

<sup>173</sup> Amnesty International (n 3 above) 37

<sup>174</sup> Mansfield ( 10 above) 382; See also, E/CN.4/2004/57 (n 97above) 22; Loi No 06/19 du 20 Juillet 2006 modifiant et complétant le Décret du 06 Août 1959 portant Code de Procédure Pénale Congolais, article 7 bis

<sup>175</sup> Report of the Panel (n 62 above) para 28

<sup>176</sup> UN OHCHR Mapping Report of the Mapping Exercise documenting the most serious violations of human rights and international humanitarian law committed within the territory of the Democratic Republic of the Congo between March 1993 and June 2003 (2010) 921

<sup>177</sup>Chinkin (n 22 above) 14

facilities in the rural areas of South Kivu.<sup>178</sup> Rape survivors have to walk long distance to urban areas where they can find police stations or magistrate courts in order to lodge their complaints.<sup>179</sup> Rape survivors lack information on access to justice mechanism or the support of NGOs and other International Organisations advocating on justice for victims of rape in the South Kivu Province.<sup>180</sup> In practice, victims of rape are not informed on the accessibility to the remedies, including those provided by international instruments in case of breach of women' rights during armed conflict.<sup>181</sup> For example victims of rape in South Kivu are not informed on the accessibility to the ICC Trust Fund for Victims (VTF) which was established in 2002 by article 79 of the ICC Statute to support victims of international crimes.<sup>182</sup>

### 3.2.2 Reparation for prejudices suffered

According to Vincent Kangulumba Mbambi, “reparation may be considered as the indemnification of compensation for an injury by the person who is civil liable or better still, the re-establishment of the balance disrupted by the harm, consisting of, if possible, restoring the survivor to the position he or she would have been in had the tortuous action not been committed”.<sup>183</sup>

According to the Resolution 111 of African Commission on the right to remedy and reparation for women and girls victims of sexual violence, the state incurs obligation to provide reparation in favour of victims of rape, including compensation and rehabilitation in order to heal physical and mental injuries suffered.<sup>184</sup> Also, victims of rape may pursue claim of damages against offenders for sexual crimes perpetrated during the armed conflict.<sup>185</sup> Moreover, the right to reparation comprises the right to compensation which is essential for victims of rape who suffered from physical and psychological injuries to receive financial support.<sup>186</sup>

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<sup>178</sup>Chinkin (n 22 above) 5; See also, CEDAW/C/2000/I/CRP.3/Add.6/Rev.1 (n 80 above) para 336

<sup>179</sup> UN OHCHR Mapping Report (n 176 above) 909

<sup>180</sup> The Nordic Africa Institute, Understanding and addressing conflict-related sexual violence (2010) Policy Notes 4

<sup>181</sup> E/CN.4/2004/57 (n 97above) 22

<sup>182</sup><<http://www.iccnw.org/?mod0vtfbackground>> downloaded at UP 2 October 2012

<sup>183</sup> V K Mbambi (2002) *Indemnisation des victimes d'accident de la circulation et assurance de responsabilité civile automobile: Etude de droit compare belge et Congolais*, Academia-Bruylant, Louvain-la-Neuve cited in ACCORD 'Protection and reparation under Congolese law for survivors of sexual and gender-based violence: Situational analysis and prospects for reform' (2010) 6

<sup>184</sup> The African Commission on Human and Peoples' Rights Resolution 111 42<sup>nd</sup> ordinary session (2007)

<sup>185</sup> UN Women, Peace and Security (n 77 above) 46

<sup>186</sup> Akashah & Marks (n 39 above) 261



Victims of rape may be provided with financial and medical assistance for the termination of the pregnancy or for the child born as a result of rape.<sup>187</sup> Although the DRC has ratified the Maputo Protocol which provide for women, including victims the right to reproductive health that encompasses the termination of pregnancy as a result of rape,<sup>188</sup> there remains restriction on abortion in Congolese penal legislation.<sup>189</sup> The government should amend its restrictive legislation for the promotion of sexual reproductive health of women, including the right of victims of rape perpetrated during the armed conflict in South Kivu to seek medical and safe abortion.<sup>190</sup> Victims of rape who suffer from sexual transmissible infections including HIV/AIDS may access needed medicines without discrimination.<sup>191</sup>

It is many years since, the responsibility for breach of women's rights has been considered necessary for the state to prosecute and punish perpetrators, and to ensure the reparation for victims.<sup>192</sup> The reparation is so critical to efface the post traumatic experience of the victims of rape in order to ensure their socio-economic integration as it was before the armed conflict.<sup>193</sup>

One of the challenges face by women and girls who are victims of rape during armed conflict is related to the right to effective remedies that encompass financial compensation for harm suffered.<sup>194</sup> The DRC through its national legislations failed to make available reparation for victims of rape, including the availability of the specific health needs in order to protect them from being traumatized again during proceedings.<sup>195</sup> When the government provides the reparation for victims of sexual assaults, it must hold a consultation with them, including their family members and representatives, in order to satisfy adequately to their socio-economic needs.<sup>196</sup>

The reparation for the breach of women rights entails the "restitution, compensation rehabilitation and the guarantee of non-repetition".<sup>197</sup> Victims of rape are entitled to

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<sup>187</sup>Valji (n 168 above) 21

<sup>188</sup> See article 14(2)(c) of the Maputo protocol

<sup>189</sup>Décret du 30 Janvier 1940 portant Code Pénal, tel que modifié à ce jour, mise à jour 30 Novembre 2004, article 165-166

<sup>190</sup> C Ngwena 'An appraisal of abortion laws in Southern Africa from a reproductive health rights perspective' (2004) *Journal of Law, Medicine & Ethics* 709-710

<sup>191</sup>Valji (n 168 above) 21

<sup>192</sup> Physician for human Rights (n 45 above) 8

<sup>193</sup> McClain and Ngari (n 46 above) 2

<sup>194</sup> Amnesty International (n 3 above) 37

<sup>195</sup> E/CN.4/2004/57 (n 97above) 21

<sup>196</sup> McClain and A Ngari (n 46 above) 3

<sup>197</sup> E/CN.4/2004/57 (n 97above) 23

restitution which is critical for the restoration of their fundamental rights denied because of sexual violence.<sup>198</sup> Also, the right of victims to compensation should be proportional and take into account of physical and psychological injuries and the loss of interest.<sup>199</sup> The rehabilitation should be promoted in order to provide for victims of rape with minimum services required for their economic, social and cultural integration.<sup>200</sup>

### 3.2.3 Enforcement of court's decisions

Another challenge facing by victims of rape perpetrated during the armed conflict in South Kivu is related to the enforcement of courts' decisions. In most of verdicts whenever the judge has condemned perpetrators to pay compensation to victims of rape for the reparation of injuries, enforcement is rare.<sup>201</sup> The DRC has failed to enforce judicial decisions in favour of victims of rape which may constitutes an impediment for victims to go to courts since they have known that perpetrators will not be prosecuted and damages will not be paid.<sup>202</sup> Also, even though perpetrators are sentenced, they will be released or they will vanish from the jail because of the appalling state of the prisons in DRC.<sup>203</sup> Most of the victims of rape in South Kivu have not been paid the amount of damages allocated in compensation of the harm suffered because of the lack of enforcement of courts' decisions, and the inability of sentenced persons to pay the cost of damages.<sup>204</sup> In the absence of the government fund for victims of rape, NGOs and IOs have funded such victims with material and psychological support in order to ensure their rehabilitation and integration in the society.<sup>205</sup> Practically, the DRC government is unwilling to comply with the court order which condemns it to pay damages *in solidum* with the authors of rape.<sup>206</sup> Moreover, the judicial system lacks resource in order to compel the state to indemnify victims of rape.<sup>207</sup> In the same vein, the DRC should enforce the decisions of international jurisdictions that allocate compensation in favour of victims of rape under domestic laws.<sup>208</sup>

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<sup>198</sup> Basic principles and guidelines (n 31 above) para 19

<sup>199</sup> E/CN.4/2004/57 (n 97above) 23

<sup>200</sup> E/CN.4/2004/57 (n 97above) 23

<sup>201</sup> Basic principles and guidelines (n 31 above) para 17

<sup>202</sup> Mansfield (n 10 above) 402

<sup>203</sup> Mansfield (n 10 above) 402

<sup>204</sup> Mansfield (n 10 above) 402

<sup>205</sup> Human Rights Watch War within the war: Sexual violence against women and girls in Eastern Congo (2002) 76

<sup>206</sup> Report of the Panel (n 62 above) para 7

<sup>207</sup> Mansfield (n 10 above) 402

<sup>208</sup> E/CN.4/2004/57 (n 97above) 23

However, judicial mechanisms have shown some weakness in addressing sexual violence as above mentioned. It is relevant to go beyond legal mechanisms in order to look at non-judicial processes that may be useful to find a solution to the problem of impunity and enforcement of socio-economic rights of victims of rape in the South Kivu Province.<sup>209</sup> To this end, TRC is seen as an alternative that provides solution to redress violation of women's rights during armed conflict with adequate services such as health care and psychological counselling for the recovery of victims of rape.<sup>210</sup>

### **3.3. Extra-judicial mechanisms**

Extra-judicial mechanisms has been considered as a parallel solution of redressing the breach of women rights during the armed conflict through the TRC process that includes the restoration and rehabilitation of victims from physical and mental injuries.<sup>211</sup> Extra-judicial mechanisms aims to restore reputation and memory of victims of rape through complex process that encompasses the prosecution of offenders, the reparation for physical and mental injuries suffered and the re-establishment of lasting peace in the Province.<sup>212</sup>

#### **3.3.1. The DRC's Truth and Reconciliation Commission (TRC)**

Truth and Reconciliation Commission refers to "the commission established to research and report on human rights abuses which have occurred over a certain period of time in a particular country under a particular regime or in relation to a particular conflict".<sup>213</sup> The TRC has been considered to be effective in the various roles played to address the past-violation of women rights by undertaking investigations and prosecution; interviewing victims and offenders and provide a set of solutions that encompass forgiveness, reconciliation and rehabilitation.<sup>214</sup>

The DRC TRC has been established by the Law no 04/18 of 30 July 2004 after a peace agreement of Sun City (South Africa) in 2002.<sup>215</sup> In a declaration, the Chairman of the DRC

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<sup>209</sup> H Friman 'The Democratic Republic of Congo' (2001) 10 *African Security Review* 75

<sup>210</sup> C Cochran 'Transitional justice: Responding to victims of wartime sexual violence in Africa' (2008) 9 *The Journal of International Policy Solutions* 36

<sup>211</sup> UN Women, Peace and Security (n 77 above) 39

<sup>212</sup> L Davis Justice-sensitive security system reform in the Democratic Republic of Congo (2009) Initiative for Peace Building 24

<sup>213</sup> The United States Institute of Peace (UNSIIP) cited in Knoops (n 27 above) 1

<sup>214</sup> Knoops (n 28 above) 2

<sup>215</sup> T Savage & O Kambala wa Kambala (n 25 above) 346

TRC, Bishop Jean Luc said that among other purposes, “the TRC were created to re-establish the truth, promote the peace, justice, reparation forgiveness and reconciliation”.<sup>216</sup>

In the context of the South Kivu Province, the Truth Commission may contribute to the true reconciliation if it provides in its report on sexual crimes perpetrated during armed conflict indemnification of victims or their family members, the minimum basic services such as medical assistance and counselling.<sup>217</sup> The TRC may help to remove shame and all negative considerations that brought disgrace on raped women.<sup>218</sup> Telling the truth and sharing the painful experience is so critical for the TRC to provide for victims, adequate services which are necessary for the recovery from their physical and mental health problems.<sup>219</sup> In the light of South Africa and Sierra Leone TRC, the DRC TRC dealing with sexual violence issues may create a framework with trained women in gender and post traumatic sexual violence to engage in a free dialogue with victims in order to help them sharing their nightmare scenario, sometimes in the absence of their relatives if the need arises.<sup>220</sup>

According to the President of the DRC’s TRC, “the failure of the DRC TRC to function properly is the result of the DRC authorities including military high ranking officers who are involved in serious violations of women rights during armed conflict”.<sup>221</sup> Furthermore, he asserted that “Congoese authorities have prevented its TRC to reveal the truth and undermine its efforts by violating its independence and its financial autonomy”.<sup>222</sup> For the above mentioned reasons and other such as political instability, lack of resources, appointment of members by state authorities, the DRC TRC failed to address sexual violence issues and to achieve reconciliation.<sup>223</sup>

The DRC government, in cooperation with UN agencies, NGOs and other partners should act to make its truth commission efficient ready to face challenges of prosecution, reconciliation and restoration of victims of rape’ dignity undermined during wars and conflicts. Also, in reference to what happened in Sierra Leone, the DRC TRC may benefit from the presence of

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<sup>216</sup> See <<http://www.afjn.org/focus-campaigns/restorative-justice/147-commentary/743-dr-congo-a-call-for-truth-and-reconciliation.html>> Downloaded at UP 29 August 2012

<sup>217</sup> Knoops (n 28 above) 2

<sup>218</sup> Cochran (n 210 above) 34

<sup>219</sup> Cochran (n 210 above) 34

<sup>220</sup> Melandri (n 167 above) 17

<sup>221</sup> Savage & Kambala wa Kambala (n 25 above) 347

<sup>222</sup> <http://www.afjn.org/focus-campaigns/restorative-justice/147-commentary/743-dr-congo-a-call-for-truth-and-reconciliation.html> downloaded at UP 9 October 2012

<sup>223</sup> Savage & Kambala wa Kambala (n 25 above) 347

different religious authorities who will share atrocities of the past with victims in order to obtain a true reconciliation which is so important for the forgiveness and the peace in the South Kivu Province.<sup>224</sup>

### 3.3.2 Apology

Crimes of sexual nature committed during the armed conflict in the South Kivu Province left women and girls deeply wounded and empty without consideration in the family and the entire community. One of the challenges of the TRC is to restore and re-establish victims of rape's dignity, to publicly recognize the mistake of the past, to accept the responsibility of redressing and to facilitate the apology.<sup>225</sup> Apology plays a critical role in the reconciliation of victims of rape and perpetrators, if the latter acknowledge their fault and accountability.<sup>226</sup> The reconciliation through apology relieves victims of rape from psychological trauma suffered during the armed conflict.<sup>227</sup> The process in which perpetrators ask for apology and victims accept to forgive may help to build the bridge that has been broken by the offence and lead to the true peace and unity.<sup>228</sup>

### 3.3.3 Commemoration and tributes for victims

In the reconciliation process they should be recognised atrocities suffered by thousands of women and girls during armed conflict in South Kivu. DRC government has a duty of acknowledgement of the past violations against women and girls and declare officially to pay homage to the offence that it failed to prevent and to end.<sup>229</sup>

### 3.3.4 Memorization

In South Kivu armed left women and girls with physical and psychological injuries that may stay for long time or never healed.<sup>230</sup> The way to restore victims' human dignity is to symbolically build a memorial in order to immortalize them. For example, in Shabunda, a territory of South Kivu Province a statue was built by a local priest in remembrance of women and girls who are victims of sexual violence, including victims who died during

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<sup>224</sup>Huyse, L & Salter, M (2008) *Transitional justice and reconciliation after violent conflict: learning from an African perspective* International IDEA12, 19

<sup>225</sup> E/CN.4/2004/57 (n 97above) 24

<sup>226</sup> L Stovel 'When the enemy comes home: Restoring justice after mass atrocity' (2003) Restorative Justice Conference (Vancouver 2003) 4,10

<sup>227</sup>Stovel (n 226 above) 10

<sup>228</sup>Stovel (n 226 above) 11

<sup>229</sup> E/CN.4/2004/57 (n 97above) 24

<sup>230</sup> Lincoln (n 56 above) 148

armed conflict.<sup>231</sup> The woman statue will remind peoples about atrocities suffered by women and girls during the wartime.<sup>232</sup> The DRC government should go beyond this initiative and undertake to build in memory of the victims of rape, hospitals, schools, houses, markets, and to create job opportunities in order to help rape survivors and their family members to access to the minimum standard of live for their socio-economic integration.<sup>233</sup>

### **3.4. Socio-economic integration programmes**

Victims of rape are living in extreme poverty due to the stigmatization and exclusion by their family and the community which prevent them from enjoying their socio-economic rights.<sup>234</sup> The DRC government should establish programmes with specific targets in order to achieve the rehabilitation of victims of rape, and to ensure their socio-economic integration into community.<sup>235</sup> The socio-economic needs of victims of rape may be achieved only if they have a “decision-making role” in the sphere of the state level in which they establish plans and policies on accessibility to the basic standard of livelihood such as food, clean water, adequate housing, education and health care.<sup>236</sup> It is clear that the DRC government failed to establish appropriate programmes with different targets to address specific needs of rape survivors.<sup>237</sup>

#### **3.4.1. Programme on education**

With regard to the right to education which is guaranteed in the DRC Constitution,<sup>238</sup> the government should make this right accessible for all, including victims of rape who are marginalized since school facilities have been destroyed during armed conflict.<sup>239</sup> The government must have education programmes which take into account circumstances of the victims and providing training on gender-based violence. Also the government should include in education programmes specific teaching that promotes gender equality.<sup>240</sup> In the same vein, authorities should ensure that girls who are sexually abused and children born as a result of rape during armed conflict access primary or nursery schools.<sup>241</sup> In the context of the

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<sup>231</sup> Report of the Panel (n 62 above) 15-16

<sup>232</sup> Report of the Panel (n 62 above) 16

<sup>233</sup> Report of the Panel (n 62 above) 22

<sup>234</sup> Sørensen (n 15 above) 37; See also, Human Rights Watch (n 33 above) 47

<sup>235</sup> UN Women, Peace and Security (n 77 above) 127

<sup>236</sup> Sørensen (n 15 above) 26; See also, CEDAW/C/2000/I/CRP.3/Add.6/Rev.1 (n 85 above) para 343

<sup>237</sup> Steiner et al (n 6 above) 2

<sup>238</sup> DRC Constitution 18 February 2006, article 43-45

<sup>239</sup> UN Women, Peace and Security (n 77 above) 119-120

<sup>240</sup> UN Women, Peace and Security (n 77 above) 120

<sup>241</sup> Arbour (n 13 above) 18

South Kivu Province, education plays a critical role for victims of rape who are often denied the right to school<sup>242</sup> to have the opportunity to study for their own development and integration into the society.<sup>243</sup> Educational programme contribute to the recovery and rehabilitation of rape survivors when it allows them access to employment opportunities and become “economically self-sufficient”.<sup>244</sup>

### 3.4.2. Programme on health care

In South Kivu, health problems constitute a great challenge for victims of rape who are suffering from serious illnesses related to the reproductive health, and sexually transmitted diseases including HIV/AIDS.<sup>245</sup> Another challenge is related to mental health problems resulted to the atrocities of sexual violence which may affect victims of rape for long time if there is no counselling and psychological assistance.<sup>246</sup> Victims of rape live in extreme poverty and are unable to afford the cost of transport to attend the surgery for medical consultation and lack the consultation fees required before to see a doctor; they are facing challenges to access to medical examination and needed medicines.<sup>247</sup>

The aftermath of war in South Kivu left the medical sector with inadequate health facilities, and a lack of medical personnel.<sup>248</sup> The DRC Government failed to make available financial resources in order to ensure the effective running of medical services with appropriate equipment and qualified medical personnel, in order to assist victims of rape with adequate medical treatment.<sup>249</sup> With regard to injuries suffered by victims of rape in South Kivu, the government failed to provide them with appropriate medical services.<sup>250</sup> There is a need for the government to put in place a health care programme that encompasses different medical services capable to provide, proportionally to each of the victims of rape, adequate and appropriate medical support for their prompt recovery.<sup>251</sup> According to the Amnesty International the DRC government has underestimated the impact of sexual violence in the live of women and girls. The DRC Deputy Health Minister declared that “the government

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<sup>242</sup> LR Jefferson ‘In war as in peace: Sexual violence and women status’ (2004) Human Rights Watch World Report <<http://www.unhcr.org/refworld/pdfid/402bac094.pdf>> 2 downloaded at UP 25 October 2012

<sup>243</sup> Sørensen (n 15 above) 32

<sup>244</sup> Jefferson (n 242 above) 13

<sup>245</sup> Mansfield (n 10 above) 384

<sup>246</sup> Sørensen (n 15 above) 34

<sup>247</sup> Human Rights Watch (n 33 above) 45-46

<sup>248</sup> Amnesty International (n 3 above) 30

<sup>249</sup> J Clover ‘Conflict and human security’ in Supporting sustainable livelihoods (2011) Institute for Security Studies <<http://dspace.cigilibrary.org/jspui/handle/123456789/31454>> downloaded at UP 29 August 2012

<sup>250</sup> Hanlon (n 8 above) 67

<sup>251</sup> UN Women, Peace and Security (n 77 above) 119

cannot establish a global policy on rape because rape is an isolated phenomenon and is not an epidemic or disease like cholera”.<sup>252</sup>

There is a lack of the structure in rural areas that supports victims of rape who are infected by sexual transmitted diseases, including HIV/AIDS with needed medicines including antiretrovirals.<sup>253</sup> For the entire Province of South Kivu, there is only one programme on HIV/AIDS which provides medical assistance to persons infected, including victims of rape with anti-retrovirals.<sup>254</sup> Moreover, there is a lack of psychological counselling for victims of rape who suffered from psychological problems due to the atrocities of violence in the rural areas of South Kivu Province.<sup>255</sup> Most of victims have developed various health related diseases such as fistulas, incontinence and bleeding;<sup>256</sup> they have lost hope because the DRC government failed to put in place a specific policy that provides access to medical services. In the same way, the DRC is unwilling to make available free of charge accessibility of the victims of rape to the testing for alleged sexual transmitted infections including HIV/AIDS.<sup>257</sup> To this end, NGOs and IOs have contributed a lot to the support of victims of rape with HIV/AIDS testing, medicines-related for those who are infected by HIV/AIDS and counselling.<sup>258</sup> There is a need to provide for victims of rape with medical care that responds adequately to their situations. This can be done through programmes.<sup>259</sup> Also, the government should make available resources for the construction of health care facilities that have been plundered and demolished during armed conflict.<sup>260</sup>

### 3.4.3. Programme on agriculture and land

Victims of rape are rejected and excluded by their families and community.<sup>261</sup> They have lost all of their socio-economic support and property,<sup>262</sup> including access to land for the agriculture which constitutes the main activity and the source of income and a means of

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<sup>252</sup> Amnesty International (n 3 above) 33

<sup>253</sup> Chinkin (n 22 above) 72

<sup>254</sup> Human Rights Watch (n 33 above) 46

<sup>255</sup> Chinkin (n 22 above) 72

<sup>256</sup> Chinkin (n 22 above) 67; See also, Human Rights Watch (n 33 above) 45

<sup>257</sup> Chinkin (n 22 above) 68

<sup>258</sup> Steiner et al (n 6 above) 2; See also, Human Rights Watch (n 33 above) 46

<sup>259</sup> S Bartels et al ‘Surviving sexual violence in Democratic Republic of Congo’ (2010) 11 *Journal of International Women’s Studies* 44

<sup>260</sup> UN Women, Peace and Security (n 77 above) 119; See also, Human Rights Watch (n 33 above) 46

<sup>261</sup> Chinkin (n 22 above) 65-65; See also, SM Tarallico ‘War, rape, and the Democratic Republic of the Congo: A feminist’s command for legal evolution, progress towards universal human rights for women’ (2008) *Michigan State Journal of Gender and Law* 23

<sup>262</sup> JA Nordlander ‘How to respond to genocide and other crimes against humanity’ (2011) *Development Dialogue* 64



providing food to their children and family members.<sup>263</sup> Most of raped women are involved in agriculture which is considered as source of income and livelihood. 77% of raped women in South Kivu earn their living from agriculture.<sup>264</sup> The DRC government should establish a programme on agriculture and land for victims of rape and their family members to access to loan, plough land in order to be involved in the socio-economic activities such as farming which may constitute a guarantee for their integration into society.<sup>265</sup> According to CEDAW, rural women, including victims of rape perpetrated during the armed conflict are not discriminate in accessibility to land and the state should provide loans, credits and other forms of support to make it possible. Also, the state should put in place a policy for the resettlement of victims who are denied access to land by husbands or family members.<sup>266</sup> The DRC failed to establish adequate and sustainable programmes on agriculture and resettlement with a view to achieve socio-economic integration of the victims of rape.

### 3.5 Conclusion

The need of victims of rape is to access to justice. Through judicial mechanisms investigations on sexual crimes towards women and girls are carried out, offenders prosecuted and punished if found guilty and compensation paid to such victims for prejudices suffered during wartime.<sup>267</sup> Reparation is critical to redress physical and psychological injuries suffered by victims of rape with financial, material and moral support in order to ensure their socio-economic integration.<sup>268</sup> Enforcement of courts' decisions in favour of the victims of rape contributes to fight impunity and to execute decisions that award compensation to such victims.<sup>269</sup> Extra-judicial mechanisms with the assistance of the TRC, the government may address the past violation of women' rights with focus on the restoration of victims' dignity, reconciliation and peace in the South Kivu Province.<sup>270</sup> Basic needs of victims of rape may be achieved through socio-economic integration programmes based on education which is so critical for the building of victims of rape's own capacity and development of skills.<sup>271</sup> There is a need to eliminate discrimination against victims and the

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<sup>263</sup>Sørensen (n 15 above) 20; See also Tarallico (n 261 above) 23; Davis (n 199 above) 22; Bartels et al (n 259 above) 42

<sup>264</sup> Bartels et al (n 259 above) 40, 42

<sup>265</sup> UN Women, Peace and Security (n 77 above) 118

<sup>266</sup> CEDAW, article 14(g)

<sup>267</sup> Mwanika (n 167 above) 78

<sup>268</sup> E/CN.4/2004/57 (n 97above) 23

<sup>269</sup> Mansfield (n 10 above) 401-402

<sup>270</sup> E/CN.4/2004/57 (n 97above) 24

<sup>271</sup> UN Women, Peace and Security (n 77 above) 120; See also Sørensen (n 15 above) 32

removal of obstacles that prevent victims from accessing to education.<sup>272</sup> Additionally, health care programme contribute to address health problems facing by victims of rape who lack access to medical and psychological health care in rural areas of South Kivu. Through land and agriculture programmes the government may rehabilitate agriculture sector so that victims of rape access to loans, land and logistics with a view to returning to their farming activities which are considered as the source of income and food security.<sup>273</sup>

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<sup>272</sup>Chinkin & Charlesworth (n 112 above) 946

<sup>273</sup>Sørensen (n 15 above) 20; See also Clover (n 249) 16

## Chapter Four: To what extent is the DRC addressing socio-economic rights of the victims of rape?

It should be noted that crimes of sexual nature perpetrated against women and girls during wartime in the South Kivu Province are often neglected by DRC authorities who failed to investigate, prosecute and punish alleged breach of women rights;<sup>274</sup> or they failed to enforce court decisions that awarded compensation to victims for harm suffered.<sup>275</sup> The DRC legislation on sexual violence which requires judicial authorities to undertake investigations within three months and to ensure legal assistance including the presence of a lawyer is not appropriately implemented.<sup>276</sup> The Congolese judicial system promotes impunity for sexual crimes because of lack of consideration for the cause of women including victims of rape.<sup>277</sup>

In fact, civil society has noticed that local authorities have registered a high number of complaints on rape and other forms of sexual assaults, but only a limited number of them have been tried due to the dysfunction of the DRC judicial system.<sup>278</sup> Furthermore, the prosecution of soldiers is almost nonexistent due to the deficiency of the DRC justice system and the security implications.<sup>279</sup> For example, according to UN Population Fund (UNFPA), “in the entire South Kivu Province, only 44 civil and 10 military decisions on crimes of sexual nature including rape were handed down during the first quarter of 2008”. This does not reflect the reality in the area with a high rate of population.<sup>280</sup> Rape survivors are denied redress including financial compensation for injury suffered.<sup>281</sup> Furthermore, the lack of confidence in judicial system impedes rape survivors from seeking justice; and there is also a lack of interest, awareness, sensitization and training of officials to cope with issues of sexual violence.<sup>282</sup>

The fact that only military tribunals have jurisdiction on crimes of sexual nature perpetrated towards women and girls during the armed conflict have promoted a widespread impunity due to the lack of investigation and prosecution of perpetrators in spite of the large number of

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<sup>274</sup> Lincoln (n 56 above) 156; See also, Report of the Panel (n 62 above) 34

<sup>275</sup> Tarallico (n 261 above) 28-29; See also, Lincoln (n 56 above) 156

<sup>276</sup> An International Legal Assistance Consortium and International Bar Association Human Rights Institute Report rebuilding courts and trust: *An assessment of the needs of the justice system in the Democratic Republic of Congo* (2009) 39; See also Amnesty International (n 101 above) 7

<sup>277</sup> Lincoln (n 56 above) 156

<sup>278</sup> Amnesty International (n 3 above) 40; see also S Nolen ‘Not women any more: The Congo rape survivors face pain, shame and AIDS’ (2005) 4

<sup>279</sup> Mansfield (n 10 above) 390

<sup>280</sup> Mansfield (n 10 above) 378

<sup>281</sup> Amnesty International (n 101 above) 7

<sup>282</sup> Bosmans (n 2 above) 11

cases of sexual violence committed during the armed conflict in the South Kivu Province.<sup>283</sup> In the same vein, the UN Mapping Report added that “in none of the decisions in favour of victims, made by military tribunals in which the DRC has been found to be responsible under civil law, did the victims see, either from the state or from the aggressors, any indication that sentences would be enforced”.<sup>284</sup> Moreover, the high ranking military officers have contributed to the state of impunity because they have protected soldiers under their control from responding to court summonses to answer for sexual crimes perpetrated during wartime.<sup>285</sup>

However, most of the victims of rape in the South Kivu Province face many challenges ranging from the deprivation of their socio-economic rights such as health care, food, shelter, education to social services.<sup>286</sup> Also, there is shortage of medical infrastructure including hospitals and equipment necessary to cover the needs of victims due to the failure of the DRC to provide adequate resources to procure them.<sup>287</sup> Furthermore, socio-economic needs of victims require the government to provide in its national budget allocation of funds in order to support the process of the reparation in favour of victims for injuries suffered during armed conflict.<sup>288</sup> In the same vein, the DRC failed to involve women including victims of rape in the elaboration of socio-economic policies and plans for their socio-economic integration.<sup>289</sup> The government has not provided in its budget financial requirements that may be geared towards helping victims to access loans and land to enable them to go back to farm for their integration into the mainstream of society.<sup>290</sup>

The government has a duty to make available information on the ICC Trust Fund for Victims that was established in 2002 by article 79 of the ICC Statute to support victims of rape and their family members.<sup>291</sup> The DRC has ratified the Rome Statute, but it failed to take legislative measure in order to incorporate ICC Statute into domestic law so victims of crimes under ICC Statute may access to justice and benefit from such fund.<sup>292</sup> A DRC law on crimes

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<sup>283</sup> Mapping Report (n 176 above) 974

<sup>284</sup> Mapping Report (n 176 above) 921

<sup>285</sup> Mansfield (n 10 above) 390

<sup>286</sup> Amnesty International (n 3 above) 27

<sup>287</sup> Amnesty International (n 3 above) 27

<sup>288</sup> Chinkin (n 22 above) 49

<sup>289</sup> Sørensen (n 15 above) 26

<sup>290</sup> UN Women, Peace and Security (n 77 above) 118

<sup>291</sup> T Ingadottir ‘International criminal Court: The Trust Fund for Victims (article 79 of the Rome Statute)’ (2001) ICC Discussion Paper #3 7; See also <<http://www.iccnw.org/?mod0vtfbackground>> downloaded at UP 2 October 2012

<sup>292</sup> An International Legal Assistance Consortium (n 276 above) 36

under ICC statutes is so critical for the authorities to challenging the problem of impunity on sexual violence and to enable victims of rape to benefit from the ICC Trust Fund for Victims.<sup>293</sup>

Despite the fact that the DRC has ratified the ACHPR and its Protocol on the rights of women in Africa which is the Regional instrument that protects women against sexual violence during armed conflict,<sup>294</sup> victims of rape during war in South Kivu lack information on such institutions and the mechanism provided on the accessibility to African Commission in order to seek redress.<sup>295</sup> The DRC, by the means of awareness campaign may inform victims of rape about their rights to justice through African Commission mechanism. NGOs advocating for justice support of the victims of rape may assist them to access to such mechanism. In the same vein, women who are victims of rape committed during wartimes may *mutatis mutandis* seek redress before the CEDAW Committee, whenever the DRC authorities are unable to address violation of their rights.

#### 4.1 The judicial system

The DRC Constitution considers sexual violence against women during wartime as a crime against humanity and requires the State to combat all forms of sexual violence against women.<sup>296</sup> Also, the Military Penal Code lists rape and other forms of sexual violence as crimes against humanity.<sup>297</sup> Furthermore, in 2011 four military officers have been sentenced of rape as crimes against humanity.<sup>298</sup> Although the DRC has amended its legislations to combat impunity on sexual violence, including its “zero-tolerance policy”,<sup>299</sup> there has not sufficient means to strengthen its judicial institutions in terms of provision of furnished court halls and training of judges and other judicial personnel to adequately address the problems of victims of hostilities, particularly rape victims.<sup>300</sup> Lack of funds has in no small way militated against the responsibility of the judicial authorities to undertake arrests, investigations and prosecution of suspects or perpetrators of heinous crimes.<sup>301</sup> The failure of

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<sup>293</sup> Report of the international parliamentary-expert Mission addressing impunity for sexual crime in the Democratic Republic of Congo (2008) para 48; See also Human Rights Watch (n 33 above) 44; <http://www.iccnw.org/?mod0vtfbackground> downloaded at UP 2 October 2012

<sup>294</sup> Maputo protocol, article 11

<sup>295</sup> Report of the Panel (n 62 above) 34

<sup>296</sup> Articles 14-16 of 2006 DRC Constitution cited in Mansfield (n 10 above) 375

<sup>297</sup> Mansfield (n 10 above) 375

<sup>298</sup> Expert Workshop Report (n 80 above) 22

<sup>299</sup> S/RES/2009 (2009)1906 Resolution 1906 (2009) para 11; See also Amnesty International (n 101 above) 7

<sup>300</sup> Amnesty International (n 101 above) 7

<sup>301</sup> Amnesty International (n 101 above) 7

the DRC to conduct standard criminal prosecution and to provide reparation including financial compensation for victims, have left them with no option than to be exposed to the unhealthy “amicable arrangement” that consists in inadequate recompense of cash or property from their assailants. Therefore, the state of impunity remains because offenders are free from prosecution.<sup>302</sup>

Furthermore, the smooth administration of justice in the DRC is hampered by unwarranted interferences from the military high ranking which culminate in both political and economic uncertainties.<sup>303</sup> Additionally, judicial personnel including judges earn meagre wages or low income and the irregular mode of the payment of such salaries have made them prone to manipulation through bribery.<sup>304</sup> As indicated above, the judicial system has failed to give hope to victims of rape, as access to justice in order to claim reparation for breach of their rights during armed conflict is virtually non-existent.<sup>305</sup> Also, if the government musters the political will to abate impunity and provides resources to make the judiciary functional by bringing perpetrators to book, impunity will be a thing of the past.<sup>306</sup>

Generally, even where perpetrators are tried, convicted and punishment prescribed, execution of such judgments or decisions pose further problems because of inadequate resources to cope with the claims of victims of rape who expect to be compensated as part of their socio-economic integration process.<sup>307</sup> The enforcement of court decisions in DRC constitutes a great challenge for victims of rape who become apprehensive of the administration of justice system due to its deficiencies.<sup>308</sup> The DRC enforcement mechanism failed to prevent perpetrators from escaping from the prisons while their obligations to pay compensation to their victims are still pending, thereby technically disregarding the ruling of the court.<sup>309</sup> For example, in the *Songo Mboyo* case<sup>310</sup> “the court found six perpetrators guilty for crimes against humanity and awarded damages to twenty-nine rape victims”. Also very shocking is that “not long after judgement was rendered, sentenced perpetrators escaped from the prison without paying damages to victims”.<sup>311</sup> The problem of escape of prisoners from prisons has

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<sup>302</sup> Amnesty International (n 101 above) 7

<sup>303</sup> Mapping (n 176 above) 929; See also, Amnesty International (n 3 above) 37

<sup>304</sup> Lincoln (n 56 above) 158; see also, An International Legal Assistance Consortium (n 276 above) 16

<sup>305</sup> Mapping (n 176 above) 921; See also, Report of the Panel (n 62 above) 34

<sup>306</sup> Mapping Report (n 176 above) 979

<sup>307</sup> An International Legal Assistance Consortium (n 276 above) 39

<sup>308</sup> An International Legal Assistance Consortium (n 276 above) 39

<sup>309</sup> Report of the Panel (n 62 above) 4; See also, Mapping (n 176 above) 865

<sup>310</sup> Military Court of the Garrison of Mbandaka, *Affaire Songo Mboyo* 12 April 2006, RP 084/05

<sup>311</sup> Report of the Panel (n 62 above) 34

demonstrated the weakness of DRC penitentiary system which promotes the perpetual violation of women rights, and the reluctance of victims from going to court.<sup>312</sup> In the same way, the government failed to pay damages to victims who could not identify their aggressors before the court.<sup>313</sup> Thus, victims may not enjoy from right to reparation that includes “restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition”.<sup>314</sup>

Most of the victims of rape live in rural areas and are not well educated and are therefore poor, so they cannot afford the legal fees to procure services of lawyers.<sup>315</sup> There is compelling need to assist them by lawyers or a representative in order to bring their claim to court and obtain reparation for the injury suffered. The DRC judicial system that provides legal aid to victims of rape lack relevant means to make it effective and accessible.<sup>316</sup> Therefore, the government in partnership with civil society may organise awareness campaign for victims of rape to access to justice and to benefit from legal services provided for vulnerable people.<sup>317</sup>

#### **4.2 The DRC’s budget relative to victims of rape**

In Kivu Province victims of rape face many challenges related to their stigmatization and exclusion from their families and the community.<sup>318</sup> Their socio-economic integration requires from the state a lot of resources in order to ensure the provision of basic minimum requirements necessary for their survival such as shelter, education, health and social services.<sup>319</sup> To meet the growing needs of rape victims as aforesaid, particularly as it relates to their health problems in the Province of South Kivu, the state should provide an adequate health care budget, including medical assistance schemes.<sup>320</sup> According to the Organization for Economic and Co-Operation Development, “between 2005 and 2006, only 2.5% of foreign aid to the DRC was designated to health and population, despite the demand for greater assistance”,<sup>321</sup> of victims of sexual violence in the South Kivu Province.

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<sup>312</sup> Mapping Report (n 176 above) para 865, 925

<sup>313</sup> Report of the Panel (n 62 above) 4

<sup>314</sup> Report of the Panel (n 62 above) 4

<sup>315</sup> Mapping Report (n 176 above) 921

<sup>316</sup> Amnesty International (n 101 above) 12

<sup>317</sup> Mapping Report (n 176 above) 921

<sup>318</sup> Report of the Panel (n 62 above) 4

<sup>319</sup> Sørensen (n 15 above) 37

<sup>320</sup> Hanlon (n 8 above) 69

<sup>321</sup> Organization for Economic and Co-Operation Development (2006) Aid Recipients Chart, Democratic Republic of Congo cited in Hanlon (n 8 above) 69

It is clear that most of rape survivors are prevented from accessing appropriate and adequate medical treatment including the treatment of HIV and AIDS.<sup>322</sup> Also, the Organization for Economic and Co-Operation Development added that “only 15% of foreign aid is earmarked for social services”.<sup>323</sup> Thus, victims who suffer from mental problems are not allowed to access counselling services and psychological assistance.<sup>324</sup> Therefore, NGOs and International Organisation dealing with health issues should provide for victims of rape with adequate medical support including testing for HIV/AIDS and needed medicines.<sup>325</sup>

In the same manner, the DRC’s budget should provide sufficient resources for the reconstruction of “infrastructural amenities including health institutions, schools and markets” that have been destroyed and demolished during the armed conflict, which are indispensable for the rehabilitation of victims of rape.<sup>326</sup> Another challenge for the government is to make available resources in order to ensure the resettlement of rape survivors who are ostracized and excluded from their land by their relatives and the community.<sup>327</sup>

The predicament of rape survivors in South Kivu has risen to such a degree that it requires the state to provide resources in its budget in order to pay damages to victims for harm suffered during wartime.<sup>328</sup> The DRC failed to provide an adequate amount in its budget in order to support compensation efforts and to ensure socio-economic integration of victims.<sup>329</sup> For example, in its “2008 budget, the amount provided for compensation of victims of rape was insufficient” to cover their socio-economic needs. The national budget provided the sum of US \$5,350 to cater for all such victims, but in practical terms, the said budgetary provision was so inadequate and could perhaps meet the needs of only a single victim.<sup>330</sup> The DRC therefore failed to make available the required resources to ensure the effective financial compensation of victims for physical, psychological and mental injuries suffered during wartime.<sup>331</sup>

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<sup>322</sup> Nolen (2005) cited in Hanlon (n 8 above) 69

<sup>323</sup> Organization for Economic and Co-Operation Development (2006) cited in Hanlon (n 8 above) 70

<sup>324</sup> Hanlon (n 8 above) 70

<sup>325</sup> Steiner et al (n 6 above) 2; See also, Human Rights Watch (n 33 above) 46

<sup>326</sup> Sørensen (n 15 above) 31; See also, UN Women, Peace and Security (n 77 above) 119

<sup>327</sup> Sørensen (n 15 above) 37

<sup>328</sup> Report of the Panel (n 62 above) 34

<sup>329</sup> Report of the International Parliamentary-Expert Mission (n 293 above) para 18

<sup>330</sup> Report of the International Parliamentary-Expert Mission (n 293 above) 18

<sup>331</sup> Mansfield (n 10 above) 402



In fact the DRC failed to take into account of gender aspects in the elaboration of its national budget that would have been necessary to achieve socio-economic needs of rape survivors in search of rehabilitation.<sup>332</sup> Also, the DRC failed to put in place an adequate gender-based violence redress plan with specific purposes relating to the socio-economic integration of rape survivors in the community.<sup>333</sup> The DRC must have adequate programmes for rehabilitation and reintegration in order to eliminate all forms of discrimination against victims of rape and to ensure their social wellbeing in the community.<sup>334</sup> Even during the period of financial crisis, the state is expected not to abdicate its responsibilities or shrink from its duty to provide in its budget available resources in order to guarantee victims of rape access to the minimum basic standard of existence.<sup>335</sup> In practical terms, there is no budgetary provision aimed at achieving the minimum basic needs of victims of rape, the state is in perpetual violation of their socio-economic rights.<sup>336</sup>

Integration of victims of rape may be achieved only through the realization of their socio-economic rights that require from the state a positive and “immediate” action and the allocation of available resources.<sup>337</sup> But, the Congolese government lacks the relevant determination, financial means and programmes to prevent the discrimination against rape survivors in the enjoyment of their socio-economic rights.<sup>338</sup>

It is true that most of the sexual crimes in South Kivu province were committed by DRC soldiers (FARDC), and therefore there is inescapable vicarious liability on the part of government for the gross misconduct of its rank and file in its armed forces, and this, the DRC government must do whether the rapists who committed the crimes are identified by victims or not.<sup>339</sup>

### **4.3 The role of perpetrators**

It is important to note however that perpetrators of sexual crimes, in cases where they are specifically identified by their victims have sole or shared responsibility in the process of indemnification of victims of rape.<sup>340</sup> According to the DRC municipal jurisprudence, when

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<sup>332</sup> UN Women Peace and Security (n 77 above) 126

<sup>333</sup> UN Women Peace and Security (n 77 above) 127

<sup>334</sup> Montréal principles (n 78 above) 771

<sup>335</sup> Montréal principles (n 78 above) 772

<sup>336</sup> Montréal principles (n 78 above) 774

<sup>337</sup> Arbour (n 13 above) 11-12

<sup>338</sup> Montréal principles (n 78 above) 774-775

<sup>339</sup> Report of the Panel (n 62 above) 34

<sup>340</sup> KD Askin ‘The quest for post-conflict gender justice’ (2003) 41 *Columbia Journal of Transitional Law* 520

courts or tribunals pronounce a sentence, it also makes orders bordering on the allocation of damages to victims, by way of a civil sentence for injuries suffered.<sup>341</sup> Therefore, perpetrators who are responsible for injuries should undertake to pay damages, except for cases of vicarious liability as aforesaid in conformity with the decisions of courts in favour of victims of rape.<sup>342</sup> For example, in *Songo Mboyo* case, the court found guilty six soldiers of FARDC of rape; and awarded damages to 29 victims for injuries suffered, but convicted offenders escape from the prisons without paying damages to such victims.<sup>343</sup>

It is sufficiently known that DRC soldiers are unable to pay the compensation allocated to victims because of their meagre income; therefore, the government is compelled to pay in *solidum* with authors of crimes.<sup>344</sup> But it has been found by MONUC that the DRC has never paid damages when the court decision requires it to doing so.<sup>345</sup> The court enforcement services lack the power, being agencies of the same government to compel the state to pay damages as ordered by the courts, which invariably may culminate in Government's negligence to protect women and girls during wars and conflicts.<sup>346</sup> Furthermore, it has been reported that "out of 120 cases that have been argued by lawyers, none of the sentences allocating financial compensation for victims had been enforced". That is why victims of rape are reluctant to lodge a complaint because of the weakness of the DRC to enforce court's decisions.<sup>347</sup> Government has tied compensation to the ability of victims to identify their assailants or rapists, but this trend works hardship for rape survivors who fail to recognise or identify their attackers, the criminal conduct having been performed in the night.<sup>348</sup> That apart, in other cases, these rapists escape free by relocating to other formations for avoidance of arrest. Thus, victims cannot access justice and enjoy their rights to be compensated for harm suffered during wars and conflicts.<sup>349</sup> The failure of the state to allocate damages and interests in the absence of perpetrators constitutes a blatant violation of the rights of victims to reparation.<sup>350</sup>

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<sup>341</sup> Mapping (n 176 above) 871

<sup>342</sup> Mansfield (n 10 above) 402

<sup>343</sup> Report of the Panel (n 62 above) 4

<sup>344</sup> Report of the Panel (n 62 above) 4; See also, Mansfield (n 10 above) 402

<sup>345</sup> Mansfield (n 10 above) 402

<sup>346</sup> Mapping (n 176 above) 921; See also, Mansfield (n 10 above) 402

<sup>347</sup> Arche d' Alliance (NGO 2008) cited in Mansfield (n 10 above) 402

<sup>348</sup> Mansfield (n 10 above) 390

<sup>349</sup> Mansfield (n 10 above) 390

<sup>350</sup> Report of the Panel (n 62 above) 34

#### 4.4 The role of Non-Governmental Organisation (NGOs) and International Organisations (IO)

One of the great challenges of rape survivors in South Kivu is related to health problems due to the extremely violent sexual assault they have been subjected to including the introduction of “foreign objects” in women bodies during wartime.<sup>351</sup> Rape survivors are in need of medical care including surgery to heal injuries of sexual violence on the one hand, and social assistance in order to recover from psychological trauma as a result of atrocities of sexual abuses, on the other hand.<sup>352</sup> The majority of victims of rape in South Kivu suffered from genital and reproductive diseases, but they could not access to appropriate treatment because of the failure of the DRC to provide an adequate and appropriate medical health care needed, and the lack of health care facilities and qualified medical practitioners.<sup>353</sup> For example, for the province of South Kivu, “only the city of Bukavu had a medical facility (Panzi hospital) with one or two gynaecologists as well as equipment to intervene in case of serious injuries to women reproductive organs”.<sup>354</sup> Panzi hospital is considered to be the unique hospital that has appropriate medical equipment for surgery in case of fistula.<sup>355</sup> Furthermore, the Amnesty international reported that “at a visit to Walungu general hospital in South Kivu Province, there was no clean water and electricity” and a times “they used dirty water to mix with food supplement in powder form”.<sup>356</sup> Most of the victims have been infected by sexually transmitted diseases including, but not limited to gonorrhoea and HIV.<sup>357</sup> Due to lack of health care facilities, victims may not access to needed medicines including antiretroviral drugs.<sup>358</sup>

Where the DRC’s government failed to make available resources in order to provide a minimum standard of living for rape survivors, NGOs and International Organizations including UN agencies have contributed a lot to the socio-economic integration of victims.<sup>359</sup> A number of NGOs and International Organizations have played critical roles in

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<sup>351</sup> Acquire Project (2005) ‘Traumatic gynaecological fistula: A consequence of sexual violence in conflict settings’ a report of a meeting held in Addis Ababa, Ethiopia cited in Hanlon (n 8 above) 67

<sup>352</sup> Hanlon (n 8 above) 66-67

<sup>353</sup> Hanlon (n 8 above) 67; See also, M Pratt and L Werchick (2004) Cited in Hanlon ( n 8 above) 64 ; see also , Amnesty International (2004) cited in Hanlon (n 8 above) 67

<sup>354</sup> Amnesty International (n 3 above) 28

<sup>355</sup> Steiner et al (n 6 above) 3

<sup>356</sup> Amnesty International (n 3 above) 27

<sup>357</sup> Human Rights Watch (n 33 above) 45

<sup>358</sup> Hanlon (n 8 above) 68

<sup>359</sup> Human Rights Watch (n 205 above) 76

denunciations of breach of women rights, as well as enhancing the medical and psychological support of victims who are sick.<sup>360</sup>

In the context of South Kivu Province, it is relevant to highlight the critical role NGOs, International Organisations and UN agencies have played in supporting the socio-economic integration of the victims of rape with means capable of ensuring their minimum basic services.<sup>361</sup> Those organisations have contributed to the improvement of the life of rape survivors by giving them a hope and the opportunity to be integrated into the community.<sup>362</sup> For example, Malteser International<sup>363</sup> is an IO that supports victims of rape with “medical, psychological and social” assistance in order to ensure their socio-economic integration.<sup>364</sup> It has also contributed to the sensitization, awareness campaigns and education of population on the resettlement and integration of rape survivors who are often victims of exclusion from their relatives and the community.<sup>365</sup>

Where rape survivors may not afford the cost of medical consultation because of their low income and exclusion from their families or community, IO like Médecins Sans Frontière (MSF) provided medical support to victims without any cost.<sup>366</sup> In the same vein MSF has contributed a lot to the examination of sexually transmitted diseases including HIV/AIDS and provided victims who are infected with adequate medicines including Anti-retroviral drugs. For instance, in Bukavu, capital city of South Kivu Province, “MSF supports around 300 rape victims every month by providing HIV tests, psychological support for HIV positive patients, and treats opportunist infections”.<sup>367</sup> That apart, local NGOs have contributed to the improvement of the living conditions of the victims of rape, in the face of their lack of resources to cope with the challenges of logistics and payment of stipends to volunteers and employees.<sup>368</sup>

In order to help victims of rape to be involved in economic or agricultural activities, NGOs in South Kivu Province have undertaken many programmes to help them to do small and medium scale businesses or to go back to agriculture which is considered to be the main

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<sup>360</sup> Hanlon (n 8 above) 64

<sup>361</sup> Sørensen (n 15 above) 43

<sup>362</sup> Sørensen (n 15 above) 43

<sup>363</sup> Malteser International (2007) cited in Hanlon (n 8 above) 70

<sup>364</sup> Hanlon (n 8 above) 70

<sup>365</sup> Hanlon (n 8 above) 71

<sup>366</sup> Amnesty international (n 3 above) 40

<sup>367</sup> Amnesty international (n 3 above) 31

<sup>368</sup> Amnesty international (n 3 above) 39

activity that ensures the survival of victims.<sup>369</sup> For example, in Baraka an “NGO has established a restaurant, which is run by rape survivors. Although the restaurant was looted and destroyed by combatants”.<sup>370</sup> NGOs have done a lot in order to support the socio-economic rehabilitation of rape survivors.<sup>371</sup> The problem however, is that the DRC failed to ensure the protection of NGOs working in the field, as most of them are targeted during hostilities.<sup>372</sup> Also, the achievement of socio-economic needs of victims can be realised through cooperation between states with a view to make available resources in order to ensure socio-economic integration of victims of rape.<sup>373</sup>

Most of local NGOs working with victims of rape during armed conflict in Eastern DRC, including South Kivu province, lacks resources and qualified staff to deal with sexual violence and related-health problems, and failed to ensure training of its personal dealing with health problems as a result of rape.<sup>374</sup> Additionally, most of responsible of NGOs were much more interested in money than the concern of victims of rape. They could not achieve programmes they have promised to victims of rape for the improvement of their socio-economic integration.<sup>375</sup> Although victims of rape need services and support of NGOs for their rehabilitation, they become victims of sexual harassment by NGOs staff members.<sup>376</sup> There is a need to increase accessibility to services for the improving of growing demands of victims of rape.<sup>377</sup> NGOs dealing with sexual violence must have a good knowledge in the field, and able to achieve the goal set up in their programmes.<sup>378</sup>

#### 4.5 Conclusion

Addressing socio-economic integration of victims of rape is a process that includes a great effort by DRC government to empower its judicial system with adequate resources and training of judicial officers in order to deal with crimes of sexual nature and to enforce

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<sup>369</sup> Amnesty international (n 3 above) 40

<sup>370</sup> Amnesty International (n 3 above) 40

<sup>371</sup> Human Rights Watch (n 205 above) 76

<sup>372</sup> Amnesty international (n 3 above) 39

<sup>373</sup> Chinkin (n 22 above) 31

<sup>374</sup> M Pratt and L Werchick ‘Sexual terrorism: Rape as a weapon of war Eastern Democratic of Congo’ (2004) *An assessment of programmatic responses to sexual violence in North Kivu, South Kivu, Maniema and Orientale Province* 16

<sup>375</sup> J Kelly ‘When NGOs beget NGOs: Practicing responsible proliferation’ (2009) *The Journal of Humanitarian Assistance* 2

<sup>376</sup> Kelly (n 375 above) 2

<sup>377</sup> Pratt and Werchick (n 374 above) 14

<sup>378</sup> Kelly (n 375 above) 4

courts' decisions in the favour of the victims of rape.<sup>379</sup> Also perpetrators have to contribute to the effort of reparation, including compensation of victims for prejudices suffered during the armed conflict. The DRC may work together with civil society for the improvement of the conditions of living of victims of rape.<sup>380</sup> In the same vein, the government may ensure the security of NGOs and IOs staff members working on the fields.<sup>381</sup> Also, the government should contribute to the effort of NGOs and IOs to alleviate the suffering of victims of the rape with an adequate logistics. The DRC government should develop a substantial budget capable to cover the specific needs of victims of rape in order to ensure their integration into the society. A particular attention should be paid on the realisation of their socio-economic rights.<sup>382</sup>

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<sup>379</sup> Amnesty international (n 3 above) 37

<sup>380</sup> Amnesty International (n 3 above) 38

<sup>381</sup> Amnesty International (n 3 above) 39

<sup>382</sup> Arbour (n 13 above) 16

## Chapter five: Conclusion and recommendations

### 5.1. Conclusion

Crimes of sexual nature towards women and girls in the Eastern DRC raise certain issues that have to be addressed by the DRC government which bears responsibility to prevent, prosecute and punish alleged perpetrators where breach of rights of women occurs.<sup>383</sup> Under its obligation at the international, regional and national levels, the DRC must respect and protect human rights as it concerns women by taking legislative, administrative and other specific measures in order to prevent all forms of gender based violence against women, including investigating alleged infringement and prosecution of perpetrators.<sup>384</sup> To this end, victims of rape must have access to independent judicial mechanisms with all legal services in order to be compensated for prejudices suffered during armed conflict.<sup>385</sup>

Under chapter one the writer has responded to the research requirement that contain introduction of what is coming to be developed in this paper and the background; the problem statement which served to identify socio-economic challenges of the victims of rape in South Kivu Province and how the DRC government has attempted to address them; the research methodology used was mainly library research desk; the research questions posed in the context of socio-economic integration of the victims of rape were: What is the DRC's obligation in respect of protecting victims of rape? How is the DRC addressing socio-economic needs of the victims of rape? To what extent is the DRC addressing socio-economic rights of victims of rape? The literature review has referred to victims of rape's problems as written by different scholars and how they have attempted to resolve them. The study's limitation concerned challenges the writer has faced during the research particularly, as it relates to the languages barriers which made assimilation of study difficult.

Under chapter two, attention has been focused on DRC's compliance with its obligation at the international, regional, sub-regional and national levels. The DRC's obligations are encapsulated in human rights instruments such as the ICESCR, CEDAW, ACHPR, Maputo Protocol, Great Lakes' Protocol on the Prevention and Suppression of Sexual Violence against Women and Children, SADC Protocol, SADC Declaration on gender and development which are to protect women and girls against rape and also to provide adequate

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<sup>383</sup> Askin (n 340 above) 347; See also, Chinkin (n 22 above) 4

<sup>384</sup> Chinkin (n 22 above) 4

<sup>385</sup> UN E/CN.4/2004/57 (n 97above) 20 ; Chinkin (n 22 above) 4

indemnification for prejudices suffered during armed conflict. Similarly at the national level, the DRC is obliged to take legislative, judicial, administrative and other measures in order to protect victims of rape, and to make accessibility to justice and reparation possible for such victims.

In chapter three the writer has zeroed-in on the mechanism formulated by the DRC to address socio-economic needs of the victims of rape. The writer has focused on judicial mechanisms which should provide victims of rape with access to justice, including effective remedies, on the one hand, and an extra-judicial process that may include truth and reconciliation, restoration of dignity, memorization, apology and acceptance of responsibility as a way of mitigating the pain of victims of rape, on the other hand.

Under chapter four the writer has discussed the extent to which the DRC has allocated resources for socio-economic integration of the victims of rape. Also, the writer has looked at the budget relative to victims of rape and the financial contribution of perpetrators. Additionally, the writer has discussed the role and contribution of NGOs and International Organisations in addressing problems of socio-economic integration of victims of rape by proving them with adequate support in order to improve their livelihood.

## **5.2. Recommendations**

5.2.1 The DRC should put an end to the widespread impunity by enforcing courts' decisions, so that rape survivors or family members of victims, died or incapacitated as a result of rape can receive financial compensation allocated by courts' decisions.<sup>386</sup> The DRC judicial authorities should hold perpetrators themselves responsible to pay damages and interests to victims of rape or to their family members for prejudices suffered during armed conflict. If alternatively, perpetrators failed to compensate victims, which are more often than not, the likely result, then the DRC government should ensure that its budget covers the cost of compensation of victims of rape.<sup>387</sup>

5.2.2 NGOs should work together with victims to escalate the cases concerning non-enforcement of judgements by DRC courts awarding compensation to victims of rape. The African Commission Rapporteur on Women's Rights in Africa could be seized of this particular matter immediately due to its urgency in order for the African Commission to make

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<sup>386</sup> Mansfield (n 10 above) 402

<sup>387</sup> Mansfield (n 10 above) 402



appropriate recommendations including sanctions against DRC. Additionally, NGOs in particular should address this issue on priority basis to the African Commission especially the Rapporteur on Women's Rights in Africa.

5.2.3 The DRC government should establish programmes which take into account, requirements for meeting the minimum standards of existence such as medical health care, shelter, education, food and clean water.<sup>388</sup> Health care, psychological assistance and social support should be the focus of the DRC government with a view to realise their socio-economic integration.<sup>389</sup> The DRC must establish a plan of action with budgetary allocations, having regards to the specific purposes to be achieved in a short, medium and long terms for the realization of socio-economic integration of victims through physical, mental, social and psychological rehabilitation.<sup>390</sup>

5.2.4 The DRC government should ensure equitable participation of women including victims of rape in the national sphere of "decision-making" and, in policies and plans on gender-based violence.<sup>391</sup> In the same vein, the DRC should increase the number of female judicial officers and judges, before whom victims may be freer to give testimony respecting the violence they suffered in the hands of men because generally, there is reluctance to talk about sexual abuse before male officers and judges.<sup>392</sup> The DRC should abolish from its legislation, all provisions that discriminate against women including victims of rape who are prevented from enjoying their socio-economic rights including the right of access to justice which is given by marital authorisation.<sup>393</sup>

5.2.5 The DRC should take responsibility of children who are born as by-products of rape, where the rape survivors lack the means to provide the basic needs of such children. The DRC, as aforesaid, should take care of all children who fall into this vulnerable and often abandoned bracket to avoid their stigmatization, rejection and in extreme cases extermination by the construction of nursery, primary and secondary schools for their education free of charge in conformity with the provisions of domestic and international instruments.<sup>394</sup> The same applies mutatis mutandis to the girl child, particularly, victims of rape and other forms of sexual abuse perpetrated during armed conflict.

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<sup>388</sup>Sørensen (n 15 above) 26; See also, Chinkin (n 22 above) 5

<sup>389</sup>Bosmans (n 2 above) 11

<sup>390</sup>UN Women, Peace and Security (n 77 above) 127

<sup>391</sup>Concluding Comment Democratic Republic of the Congo (n 85 above) para 335

<sup>392</sup>Human Rights Watch (n 33 above) 36-37, 44; see also Mapping (n 176 above) 922

<sup>393</sup>Amnesty International (n 3 above) 10

<sup>394</sup>Bosmans (n 2 above) 6; See also Amnesty International (n 3 above) 35

5.2.6 The DRC should ensure the accessibility of victims of rape who are living in rural areas in the South Kivu Province by the establishment of courts in such areas, and also work with the Bar Associations to provide pro bono services for indigent victims. Legal aid services through the appropriate channels should be also strengthened to give relief to victims.<sup>395</sup> The DRC government should allocate adequate financial resources to the judicial system in order to strengthen criminal justice administration process which may encompass investigation of sexual crimes; prosecution and punishment of alleged perpetrators.<sup>396</sup>

5.2.7 Where the DRC government efforts are inadequate NGOs, International Organisations and UN agencies have augmented by playing critical roles in addressing problems of socio-economic integration of rape survivors in the community. In recognition of their commitments, the DRC Government should partner with NGOs, Organisations and Agencies to formulate realisable plans of action to address the plight of victims, including medical care, psychological assistance and counselling.<sup>397</sup>

5.2.8 Extra-judicial process, such as alternative dispute resolution, TRC must be empowered and should work in concert with government and civil society to bring succour to victims of unwarranted violations. In the circumstances, it is suggested that the DRC TRC be strengthened and made effective and free from military and political interference in order to restore the confidence of the institution charged with such enormous responsibility of settling feuding parties.

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<sup>395</sup> Mapping Report (n 176above) 921

<sup>396</sup> An International Legal Assistance Consortium (n 276 above) 16, 37

<sup>397</sup> Bosmans (n 2 above) 8

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