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A cry for justice: the lack of accountability for perpetrators of sexual violence against  
women in the Democratic Republic of Congo

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Declaration of originality

I hereby declare that this mini-dissertation submitted to the University of Pretoria is my own original work. This mini-dissertation has not been submitted to any other university. The sources and references used have been fully cited and acknowledged.

Signed by

.....

ML Mangwanda

.....

Student number

.....

Date



## Dedication

This mini-dissertation is dedicated to the thousands of women who have been sexually assaulted by members of armed groups and United Nations peacekeeping personnel in eastern Democratic Republic of Congo. It is hoped that this discussion of human rights violations perpetrated against them resonate with academics, human rights organizations, decision-makers and legal practitioners.



## Acknowledgments

*“Now to Him who is able to [carry out His purpose and] do superabundantly more than all that we dare ask or think [infinitely beyond our greatest prayers, hopes, or dreams], according to His power that is at work within us” - Ephesians 3:20 (Amplified Bible)*

Thank you to my Heavenly Father for the strength and favour He grants me daily to do things beyond my greatest prayers, hopes and dreams.

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## Abstract

The eastern part of the Democratic Republic of Congo (DRC) has been described as the 'rape capital of the world' due to the severity and brutality of sexual violence that Congolese women experience.

Sexual violence as a weapon of war in conflict-torn areas takes the form of rape, sexual slavery and the insertion of objects into cavities (such as knives, rifle barrels, pieces of glass, sticks, wood, bottles and pestles coated in chili pepper). It predominantly targets girls as young as two years old and women as old as eighty years old. Perpetrators of such illegal and immoral acts of violence in eastern DRC (North Kivu and South Kivu provinces) include members of the national army, members of rebel groups and United Nations Peacekeeping personnel.

Congolese women's rights are constantly undermined and violated. This is despite the country's legal obligations to protect Congolese women through its ratification of a number of international and regional conventions and treaties which promote the rights of women and prohibit sexual violence. The Congolese Constitution contains provisions aimed at promoting and protecting women's rights, including the protection of women against sexual violence.

Despite various pieces of legislation and calls by human rights activists to halt acts of sexual violence, Congolese women continue to face unwanted pregnancies, abortions, sexually transmitted diseases, HIV/AIDS, destroyed reproductive organs, injuries and even death. Sexual violence continues unabated in eastern DRC as a tactic used by various armed groups to terrorise and control the population living in conflict-torn eastern DRC. This mini-dissertation is a cry for justice in that it highlights sexual violence crimes and other human rights abuses faced by women in eastern DRC and calls for perpetrators to be held accountable.

Keywords: sexual violence; Congolese women; victims; survivors; perpetrators; human rights violation; Democratic Republic of Congo; peacekeeping forces; armed groups; justice.



### List of acronyms and abbreviations

ACRWC	African Charter on the Rights and Welfare of the Child
ADF	Allied Democratic Forces
African Charter	African Charter on Human and Peoples' Rights
African Commission	African Commission on Human and Peoples' Rights
African Court	African Court on Human and Peoples' Rights
AIDS	Acquired immunodeficiency syndrome
AU	African Union
CAT	Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment
CAT-OP	Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CNDH	National Commission for Human Rights
CNDP	National Congress for the Defence of the People
DEVAW	Declaration on the Elimination of Violence Against Women
DRC	Democratic Republic of Congo
FARDC	Armed Forces of the Democratic Republic of Congo
FDD	Forces for the Defense of Democracy
FDLR	Democratic Forces for the Liberation of Rwanda
FNL	Front for National Liberation

GBV	Gender-based violence
GII	Gender Inequality Index
GDP	Gross Domestic Product
HDI	Human Development Index
HIV	Human Immunodeficiency Virus
HIV/AIDS	Human Immunodeficiency Virus and Acquired Immunodeficiency Syndrome
HRW	Human Rights Watch
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICGRL	International Conference of the Great Lakes Region
ICESCR	International Covenant on Economic, Social and Cultural Rights
IHL	International humanitarian law
LRA	The Lord's Resistance Army
Maputo Protocol	Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa
MONUC	United Nations Organisation Mission in the Democratic Republic of Congo
MONUSCO	United Nations Organisation Stabilisation Mission in the Democratic Republic of Congo
NGOs	Non-governmental organisations
OAU	Organisation of African Unity
PNC	Congolese National Police

R2P	Responsibility to Protect
SADC	Southern African Development Community
SADC Gender Protocol	Southern African Development Community Protocol on Gender and Development
SANDF	South African National Defence Force
SEA	Sexual exploitation and abuse
STD	Sexually transmitted diseases
TB	Tuberculosis
UN	United Nations
UNDP	United Nations Development Programme
UNFPA	United Nations Population Fund
UNGA	United Nations General Assembly
UNJRO	United Nations Joint Human Rights Office
UNSC	United Nations Security Council
UNSCR	United Nations Security Council Resolution
VAW	Violence Against Women
WFP	World Food Programme
WHO	World Health Organisation

## Chapter One: Introduction

### **1.1. Introduction and background**

The Democratic Republic of Congo (DRC), formerly Zaïre, gained its independence from Belgium on 30 June 1960. Located at the heart of Africa, the Democratic Republic of Congo has undergone brutal dictatorship under former President Mobutu Sese Seko (1965 to 1997). The state of democracy in the country did not improve much even after Mobutu was overthrown by rebel forces led by former President Laurent-Désiré Kabila (1997 to 2001). The DRC has a history of unresolved conflicts, especially of a military nature, which have not only led to a flawed democratic system<sup>1</sup> but also to tremendous suffering and the loss of lives. Most notably, the conflicts in the DRC have been characterised by war crimes as well as serious abuses of human rights and violations of international humanitarian law.

Sexual violence, a grave human rights violation, can be defined as “any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed, against a person's sexuality using coercion, by any person regardless of their relationship to the victim, in any setting, including but not limited to home and work”.<sup>2</sup> Sexual violence against women (persons of female gender, including girls)<sup>3</sup> in the DRC involves “violent acts, perpetrators, victims and survivors”.<sup>4</sup> Sexual violence is prominent in the DRC in conflict and non-conflict torn areas as well as in urban and rural areas.

Over the past two decades, peacekeeping forces have been deployed to the DRC to eradicate violence committed in many parts of the country, especially in the east (North Kivu and South Kivu provinces). Eastern DRC has been described as the ‘epicentre of bloodshed’.<sup>5</sup>

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<sup>1</sup> M Martinella ‘Governance assistance in the Democratic Republic of Congo: Options for European Union engagement’ (2013) Open Society Initiative of Southern Africa.

<sup>2</sup> World Health Organisation ‘World report on violence and health’ (2002) Chapter 6: sexual violence.

<sup>3</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Adopted in Maputo, Mozambique on 11 July 2003 and entered into force on 25 November 2005) Article 1(k). ‘Definitions’.

<sup>4</sup> J Leatherman *Sexual violence and armed conflict* Cambridge: Polity Press (2011) 9.

<sup>5</sup> L Gberie ‘Intervention brigade: End game in the Congo?’ *Africa Renewal* (August 2013).

Countries and international organisations have intervened<sup>6</sup> in the DRC to promote peace and security. However, to date, peace remains elusive in the country.<sup>7</sup>

The United Nations Security Council (UNSC) in its resolution 1279,<sup>8</sup> established the United Nations Organization Mission in the Democratic Republic of Congo (MONUC) in July 1999. This establishment followed after the signing of the Lusaka Ceasefire Agreement between the Democratic Republic of Congo, Rwanda, Namibia, Angola, Uganda and Zimbabwe. The other parties to the agreement include, the Organisation of African Unity (OAU), now the African Union (AU), the Southern African Development Community (SADC) and the United Nations (UN). The Lusaka Ceasefire Agreement was signed in Lusaka, Zambia in an attempt to end the Second War in the DRC;<sup>9</sup> to withdraw demobilizing combatants as well as to deploy UN peacekeeping forces to monitor the ceasefire.<sup>10</sup>

The DRC is not the first country to benefit from UN peacekeeping operations. Over the years, the United Nations has enforced peacekeeping operations across the world in order to “provide security and political and peacebuilding support to help countries make the difficult, early transition from conflict to peace”.<sup>11</sup> Chapter 6 of the Charter of the United Nations is dedicated to ‘Pacific Settlements and Disputes’ and Chapter 7 of the Charter covers ‘Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression’.<sup>12</sup> Former Secretary-General of the UN, Dag Hammarskjöld, referred to the term ‘peacekeeping’ as belonging to ‘Chapter Six and a Half’ of the Charter of the United Nations, as it strategically

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<sup>6</sup> Interventions in countries are required to uphold state integrity/sovereignty and promote/enforce human rights practices. [Definition of international intervention: E Morgan ‘Conflict, Economic Dislocation, and the Hegemonic Role of Dominant Actors’ *The International Journal of Peace Studies* 6:2 (2001)].

<sup>7</sup> J Ahere ‘The Peace Process in the DRC: A Transformation Quagmire’ African Centre for the Constructive Resolution of Disputes (ACCORD) Policy and Practice Brief Knowledge for durable peace Issue Number 020. (December 2012).

<sup>8</sup> United Nations Security Council Resolution 1279 on the situation concerning the Democratic Republic of the Congo (30 November 1999).

<sup>9</sup> First Congo War (1996 to 1997) and the Second Congo War (1998 to 2003).

<sup>10</sup> United Nations Security Council. 1999. ‘Ceasefire Agreement (Lusaka Agreement)’ (23 July 1999).

<sup>11</sup> United Nations Peacekeeping ‘What is peacekeeping?’ 2017  
<http://www.un.org/en/peacekeeping/operations/peacekeeping.shtml> (accessed 15 March 2017).

<sup>12</sup> Charter of the United Nations. 26 June 1945.

falls between “the traditional methods of resolving disputes peacefully, such as negotiation and mediation in Chapter 6, and more forceful action as authorized under Chapter 7”.<sup>13</sup>

Throughout the past decade, there have been reports of how the Congolese population has lost faith in the UN peacekeepers, the United Nations Organisation Stabilisation Mission in the Democratic Republic of Congo (MONUSCO), as they feel that there is no will and determination from the peacekeepers to assist the population and protect them from harm and evil.<sup>14</sup> In the North Kivu province, the common perception is that members of the UN peacekeeping forces are in the country as ‘tourists in helicopters’.<sup>15</sup>

In the meantime, armed groups have been highly active across the country, especially in the North Kivu and South Kivu provinces. Armed groups “challenge the state's monopoly of legitimate coercive force”.<sup>16</sup> Furthermore, armed groups “employ arms in the use of force to achieve political, ideological or economic objectives”.<sup>17</sup> Various Congolese wars have led Congolese army groups, namely rebel groups and non-state groups to become the perpetrators of physical and sexual violence.

Perpetrators are people or structures that commit an illegal, criminal or evil act.<sup>18</sup> In the DRC context, perpetrators include the Congolese national army, the Armed Forces of the Democratic Republic of Congo (FARDC) as well as the Congolese National Police (PNC) who have the prime responsibility to serve and protect the civilians of the country, however, they have been involved in many activities of the violation of human rights.<sup>19</sup>

Other perpetrators who have committed such horrific abuses of sexual violence are rebel groups, including: the Rwandan rebel group, Democratic Forces for the Liberation of Rwanda (FDLR); the Ugandan rebel groups, the Allied Democratic Forces (ADF) and the Lord’s Resistance Army (LRA); the Burundian rebel groups, the Forces for the Defense of Democracy

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<sup>13</sup> United Nations Information Service ‘60 Years of United Nations Peacekeeping- Look backing/moving forward’ (2016).

<sup>14</sup> Z Moloo ‘UN peacekeepers in the DRC no longer trusted to protect’ *Aljazeera* 18 January 2016.

<sup>15</sup> Moloo (n 14 above).

<sup>16</sup> P Policzer ‘Neither terrorists nor freedom fighters’ (2005).

<sup>17</sup> United Nations Office for the Coordination of Humanitarian Affairs ‘Humanitarian Negotiations with Armed Groups: A Manual for Practitioners’ (January 2006).

<sup>18</sup> Dictionary.com ‘Perpetrators’ <http://www.dictionary.com/browse/perpetrator> (accessed 30 June 2017).

<sup>19</sup> United Nations Human Rights Office of the High Commissioner ‘Accountability for Human Rights Violations and Abuses in the DRC: Achievements, Challenges and Way forward’ (1 January 2014 - 31 March 2016) 5.

(FDD) and the Front for National Liberation (FNL) who have ‘frequently and sometimes systematically’ raped Congolese women.<sup>20</sup> These rebel groups, including the M23 rebels, the Mai-Mai armed groups and the Raia Mutomboki continue to use sexual violence as a weapon of war in the DRC.<sup>21</sup>

Sexual violence can be inflicted and experienced through two atrocities: the first atrocity is rape, which is seen as “a natural, if regrettable, aspect of war”.<sup>22</sup> The second atrocity of sexual violence is “the insertion of firearms by soldiers to destroy the genital and pelvic organs of women, including pregnant women, ‘as if they were the main target of the conflict’”.<sup>23</sup> Sexual violence in the form of rape, sexual slavery and forced marriage is predominant in this central African country.<sup>24</sup>

Despite various pieces of legislation to halt such atrocities, as well as the presence of peacekeeping forces and armed groups, these violent activities towards Congolese women result in the violations of human rights, in the form of killings and abduction. Furthermore, this act of violence has led Congolese women to live in constant pain and suffering and to face unwanted pregnancies, abortions, sexually transmitted diseases (such as chlamydia and syphilis), HIV/AIDS, destroyed reproductive organs, injuries and even death.<sup>25</sup>

## 1.2. Problem statement

Peacekeeping forces have been deployed across the country to promote peace and security, and to intervene in times of threat and conflict.<sup>26</sup> It is noteworthy that allegations have emerged of some peacekeeping personnel and some members of armed groups being the

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<sup>20</sup> Human Rights Watch ‘The War Within the War: Sexual Violence Against Women and Girls in Eastern Congo’ (20 June 2002).

<sup>21</sup> Human Rights Watch (n 20 above).

<sup>22</sup> N Farwell ‘War Rape: New Conceptualizations and Responses’ (2004) 19:4 *Affilia Sage Publications Journal* 389.

<sup>23</sup> K Morris ‘D Mukwege: caring for victims of sexual violence in the DRC’ (2009) 373: 9665 *The Lancet Journals* 713.

<sup>24</sup> S Meger ‘Rape of the Congo: Understanding sexual violence in the conflict in the Democratic Republic of Congo’ (2010) 28:2 *Journal of Contemporary African Studies* 119.

<sup>25</sup> Doctors Without Borders ‘Sexual violence’ (2017) <http://www.doctorswithoutborders.org/issue/sexual-violence> (accessed 16 April 2017).

<sup>26</sup> Chapter 7 (Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression) of United Nations Charter, Article 43 “All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security”.

perpetrators of serious crimes in international law, including sexual violence against Congolese women in the Democratic Republic of Congo (DRC). Sexual violence in the DRC has been described to be “unparalleled in any previous or current conflict”,<sup>27</sup> as this form of violence “remains extremely serious due to its scale, systematic nature and the number of victims”.<sup>28</sup> The sexual abuses include: rape, sexual slavery and the insertion of objects into cavities (knives and guns). These sexual abuses may lead to serious medical complications and even death (due to the wounds sustained).

Sexual violence remains a serious problem in the DRC. Rape and other forms of sexual violence are not limited to conflict areas.<sup>29</sup> In the context of eastern DRC, Congolese women can be violated while they are doing daily activities, such as fetching water from the river, collecting wood from the forest or walking to the market.<sup>30</sup> These horrendous violent crimes may also occur at the victim’s home or the perpetrator’s home. Furthermore, sexual violence against women remains a problem, due to the fact that men go to war, leaving their wives as the heads of the households. This leaves women vulnerable to harm as they have no protection, making it possible for soldiers to force entry into their homes, to torture, beat and harass the women in front of their children. In some cases, those soldiers may bring the defenceless women to a deserted area, like the forest, in order to perform the worst possible form of violence towards a human being.

Sexual violence is prevalent across the DRC due to a weak judicial system. The various obstacles in the Congolese judicial system include: the lack of resources and protection for victims, the social and cultural stigmatisation of victims as well as the costs of legal proceedings.<sup>31</sup> Such serious flaws in the DRC legal system make it difficult for prosecutors to conduct proper trials, and thus contribute to the persistence of violence inflicted upon Congolese women.

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<sup>27</sup> S Meger ‘Militarized Masculinities and the Political Economy of Wartime Sexual Violence in the Democratic Republic of Congo’ in J Freedman *Engaging Men in the Fight against Sexual Violence: Case Studies from Africa* (2012) 40.

<sup>28</sup> United Nations Human Rights Office of the High Commissioner (OHCHR) ‘Progress and obstacles in the fight against impunity for sexual violence in the Democratic Republic of the Congo’ (April 2014) United Nations Joint Human Rights Office (UNJHRO) (Report 5) 3.

<sup>29</sup> Freedom from Torture ‘Rape as torture in the DRC: Sexual violence beyond the conflict zone’ Country Reporting Programme (June 2014) 2.

<sup>30</sup> United Nations Human Rights Office of the High Commissioner (n 28 above) 8.

<sup>31</sup> S Kitharidis ‘Rape as a weapon of war: Combating sexual violence and impunity in the Democratic Republic of the Congo, and the way forward’ (2015) 15:2 *African Human Rights Law Journal* 449.



Victims of sexual violence in armed-conflict areas in eastern DRC face serious challenges as most of these women are not cognizant of their right to the access to justice. In the minority of cases whereby the women are aware of their human rights, “the cases which are reported are barely investigated and when investigations take place, trials are not held nor are sentences served”.<sup>32</sup> Furthermore, even in situations where the cases are reported, the perpetrators may have the means to bribe a judge to influence the court’s judgement due to the high level of corruption within the judicial system.<sup>33</sup> Similarly, perpetrators who have been convicted use their connections to escape from prisons. This situation is facilitated by “the dilapidated conditions and poor security in prisons across the country”.<sup>34</sup>

Furthermore, perpetrators who commit such crimes against defenceless Congolese women are not properly detained nor held accountable for their actions. Thus, justice is not served as they often fail to pay for their crimes.

### 1.3. Research questions

The fundamental research problem of this study is captured in the following research question:

- To what extent is sexual violence against Congolese women prominent in eastern DRC and what are the implications of this human rights crisis?

Supplementary to the abovementioned research question, four subsidiary questions emerge:

- What are the legal obligations of the Congolese government in respecting and protecting Congolese women from violence perpetrated by peacekeeping forces and armed groups?
- To what extent is Congolese law suitable to punish perpetrators of violence against women in situations of armed conflict?
- In what way do political, social and economic factors impact the rights of women facing sexual violence in the DRC?
- What measures can be put in place in order to end the impunity of perpetrators of the serious violations of international law in the DRC?

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<sup>32</sup> United Nations Human Rights Office of the High Commissioner (n 28 above) 13.

<sup>33</sup> Human Rights Watch ‘Seeking justice: the prosecution of sexual violence in the Congo war’ (2005) 42.

<sup>34</sup> United Nations Human Rights Office of the High Commissioner (n 28 above) 13.

#### 1.4. Motivation for research

In many parts of the DRC, women are viewed as “disproportionately disadvantaged socially and economically”.<sup>35</sup> As a means of survival, many women in the conflict-torn areas have been forced by war and poverty into a world of prostitution which makes them more vulnerable to sexual violence.<sup>36</sup> According to a report by the UN Secretary-General, the United Nations Population Fund (UNFPA) recorded 11 769 cases of sexual violence against women in the provinces of North Kivu, South Kivu, Katanga, Orientale and Maniema between January and September 2014.<sup>37</sup>

Partly due to the perception that UN peacekeepers are only in the DRC as ‘tourists in helicopters’, they have allegedly been accused of rape and forced prostitution of women during their peacekeeping missions.<sup>38</sup> Acts of sexual exploitation and abuse from peacekeeping forces as well as from members of rebel groups from neighbouring countries contribute to the persistence of violence.

This development takes place in a context where the victims are not only afraid to report their horrific experiences, but they are also unable to produce evidence of the rape by UN peacekeepers, members of the national Congolese army or rebel groups. The victims are also afraid to report, because many of these women have been threatened by the perpetrators, and this prevents them from seeking justice.<sup>39</sup> Moreover, victims may be informed that ‘justice does not extend to women’,<sup>40</sup> thus they do not report such crimes.

Many Congolese women who are victims of sexual violence live in remote areas, where they have no access to psychological or medical services for treatment. The other major obstacles

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<sup>35</sup> S Banwell ‘Rape and sexual violence in the Democratic Republic of Congo: A case study of gender-based violence’ (2014) 23:1 *Journal of Gender Studies* 52.

<sup>36</sup> MCO Ohambe; JBB Muhigwa & BM Wa Mamba ‘Women’s bodies as a battleground: sexual violence against women and girls during the war in the Democratic Republic of Congo: South Kivu 1996 - 2003’ Réseau des Femmes pour un Développement Associatif (RFDA), Réseau des Femmes pour la Défense des Droits et la Paix (RFDP) and International Alert (2005) 26.

<sup>37</sup> United Nations Security General ‘Conflict-Related Sexual Violence: Report of the Secretary-General’ (S/2015/203) (23 March 2015) 7.

<sup>38</sup> Moloo (n 14 above).

<sup>39</sup> Human Rights Watch ‘Democratic Republic of Congo: Ending Impunity for Sexual Violence. New Judicial Mechanism Needed to Bring Perpetrators to Justice’ (2014).

<sup>40</sup> Oxfam International ‘Protection gaps exposing eastern Congo communities to continued abuse’ Secure Insecurity Report (6 March 2015).

to detaining and holding perpetrators accountable for sexual violence crimes include a lack of law enforcement institutions as well as a lack of infrastructure in the country's judiciary.<sup>41</sup>

As a Congolese woman concerned about issues affecting young women in the DRC, the abovementioned reasons, together with the fact that justice needs to be served for those who continue to commit such crimes, add to the motivation for the research. The central purpose of the research is to give a voice to the voiceless and raise awareness about this alarming human rights situation happening in the eastern part of the DRC.

### 1.5. Limitations

The limitations of a study are “the shortcomings, conditions or influences that cannot be controlled by the researcher that place restrictions on the methodology and conclusions”.<sup>42</sup>

The first limitation of the research study relates to the constraints regarding the ability to obtain adequate and transparent information from appropriate sources such as information on the United Nations and their peacekeeping forces' deployment, and on the deployed armed groups' missions to the country. Such information may not only seem controversial, but also 'top-secret'.

A second limitation of this study is asymmetric feed of information, which includes a one-sided (biased) approach, rather than an all-rounded opinion. UN peacekeeping forces and members of the armed groups may communicate certain information for their own self-interest and gain in order to protect themselves from prosecution, thus creating a one-sided approach. A third limitation of this study is that research on sexual violence against women in the DRC is vast and it may become more complex to approach and focus on a particular angle. Victims of sexual violence can also be boys and men. For the purpose of this study, the focus is on women (including girls) as victims in eastern DRC in times of conflict.

A final limitation is the collection of research from a different country, as opposed to where the actual violence is being perpetrated as access to credible information may be restricted.

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<sup>41</sup> Kitharidis (n 31 above) 457.

<sup>42</sup> BCPS Independent Research 'Planning the Methodology- Limitations and delimitations' 2010 [https://www.bcps.org/offices/lis/researchcourse/develop\\_writing\\_methodology\\_limitations.html](https://www.bcps.org/offices/lis/researchcourse/develop_writing_methodology_limitations.html) (accessed 17 March 2017).

## 1.6. Research methodology

The research approach that will be used is the desk research, which consists of “searching for information using existing resources, such as the press, the Internet, analytical reports and statistical publications”.<sup>43</sup> The desk research approach is an effective tool as it consists of gathering and analysing information from primary sources such as charters and treaties as well as from secondary sources, including academic writing such as books and articles.

## 1.7. Literature review

The Democratic Republic of Congo (DRC) shares its borders with Rwanda, Central African Republic, Angola, Burundi, Zambia, Republic of the Congo (Brazzaville), South Sudan and Uganda. With a population of an estimated 81 million people,<sup>44</sup> the DRC is home to bountiful mineral resources such as copper, diamond, cobalt, uranium, oil and gold. Theoretically, these minerals make the DRC one of the richest countries in the world. However, due to colonialism, slavery and corruption,<sup>45</sup> the DRC remains one of the poorest countries in the world.

According to Snow, the DRC’s “apocalyptic present is a direct product of decisions and actions taken over the past five centuries”.<sup>46</sup> This central African country has been embroiled in violence, including but not limited to wars fought in demand for natural resources, political freedom and territorial gain.<sup>47</sup> These wars, known as the First Congo War (1996 to 1997) and the Second Congo War (1998 to 2003) respectively, have caused physical and psychological damage to civilians, the destruction of infrastructures as well as violations of human rights.<sup>48</sup>

The conflicts in the DRC rank among ‘the world’s bloodiest [conflicts] since World War II’ as it has claimed the lives of millions of people, leaving thousands of people with little or no food (famine and malnutrition) and has resulted in hundreds of women being rape victims.<sup>49</sup> The

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<sup>43</sup> PMR Research ‘Desk research’ 2017 <http://www.research-pmr.com/desk-research> (accessed 6 March 2017).

<sup>44</sup> (July 2016 est). Central Intelligence Agency ‘The World Factbook- Democratic Republic of Congo’ (2017).

<sup>45</sup> D Snow ‘DR Congo: Cursed by its natural wealth’ *BBC News* 9 October 2013.

<sup>46</sup> Snow (n 45 above).

<sup>47</sup> World Without Genocide ‘Democratic Republic of Congo’ 2017 <http://worldwithoutgenocide.org/genocides-and-conflicts/congo> (accessed 17 April 2017).

<sup>48</sup> World Without Genocide (n 47 above).

<sup>49</sup> World Without Genocide (n 47 above).

First Congo War and the Second Congo War were characterised by brutal widespread of human rights abuses, including rape (a form of sexual violence) across the country.

Congolese women have been the targets of sexual violence for many years in various Congolese wars, although they are mainly 'non-combatants',<sup>50</sup> due to their non-involvement and non-participation in the fighting of wars. According to Zedenius, women's bodies are used as 'battlegrounds' in Congolese wars, since the perpetrators use this horrific violence to terrorize, threaten and to intimidate women.<sup>51</sup> The type of violence inflicted upon Congolese women can be described as a 'systematic tactic of war'<sup>52</sup> as well as a 'strategic, political, and ideological weapon'<sup>53</sup> that destroys the Congolese community and ruins family bonds.

Sexual violence in the DRC comes in various forms, including: abduction (for sexual slavery), forced participation of family members in rape as well as female genital mutilation (FGM).<sup>54</sup> In addition to these horrendous crimes, torture, forced marriages and the disembowelment of pregnant women have also been used against Congolese women.

The crimes against sexual violence have 'direct, profound and life-changing consequences'<sup>55</sup> for the women that have been attacked and harmed. These life-changing consequences include: the victims being infected with the human immunodeficiency virus and acquired immunodeficiency syndrome (HIV/AIDS); pregnancy as a result of the rape, which will result in the victims struggling to provide for the children they have borne; as well as rejection from their husbands, families and communities.<sup>56</sup>

Many young Congolese girls who have survived the atrocity of rape usually drop out of school due to illness, disease, trauma, displacement or stigma.<sup>57</sup> Moreover, these young girls who have been impregnated from the rape now have the responsibility to look after a child. For

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<sup>50</sup> F Zedenius 'Women's bodies as battleground: Sexual violence in the Democratic Republic of the Congo' (2014) *Gender and Global Development: Theory and Practice*, 15 hp 1.

<sup>51</sup> Zedenius (n 50 above) 1.

<sup>52</sup> Human Rights Watch 'Soldiers Who Rape, Commanders Who Condone: Sexual Violence and Military Reform in the Democratic Republic of Congo' (2009).

<sup>53</sup> L Stark & M Wessells 'Sexual violence as a weapon of war' 2012 308: 7 *American Medical Association* 677.

<sup>54</sup> A Peterman; T Palermo & C Bredenkamp 'Estimates and Determinants of Sexual Violence Against Women in the Democratic Republic of Congo' (2011) 101:6 *American Journal of Public Health* 1060.

<sup>55</sup> Human Rights Watch (n 20 above).

<sup>56</sup> Human Rights Watch (n 20 above).

<sup>57</sup> Human Rights Watch 'Soldiers Who Rape, Commanders Who Condone Sexual Violence and Military Reform in the Democratic Republic of Congo' (2009).

many Congolese women living in conflict-torn areas, “the fear of retaliation by the perpetrator, stigmatization by the community, or rejection by their husband still prevents them from talking about sexual violence [that] they have experienced or from taking any action to have the offenders prosecuted”.<sup>58</sup> Furthermore, the possible rejection that the victims of these crimes face can lead to them withholding information on their horrendous experience, in an attempt to avoid further humiliation, victimization, social incrimination and banishment.<sup>59</sup>

There have been reports and confirmed cases across the country that perpetrators of such horrific crimes include some UN peacekeeping personnel and some members of armed groups.

In July 2010, the United Nations Organisation Stabilization Mission in the Democratic Republic of Congo (MONUSCO) took over from an earlier UN peacekeeping operation in the DRC, the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC), which existed from November 1999 to June 2010. Some personnel of the UN peacekeeping forces have allegedly been accused of human rights violations, such as rape and the forced prostitution of Congolese women.<sup>60</sup>

It is evident that “as military activities increase in one area after another, so do rapes and other crimes against women”.<sup>61</sup> In addition to the UN peacekeeping forces, the national army, rebel groups and warring parties have allegedly been accused of being perpetrators of horrific crimes in the DRC. The Congolese national army (FARDC) and the National Congolese Police (PNC) have been accused of committing gang rapes (which may lead to injuries and/or death) and the abduction of Congolese women.<sup>62</sup>

Other perpetrators who have allegedly committed such human rights abuses to Congolese women are rebel groups, including the Rwandan rebel group (FDLR), whereby the Hutu rebels have been accused of allegedly mutilating female genitals with pieces of glass, wood or even

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<sup>58</sup> J Freedman ‘Explaining Sexual Violence and Gender Inequalities in the DRC’ (2011) 23:2 *Peace Review: A Journal of Social Justice* 173.

<sup>59</sup> United Nations Human Rights Office of the High Commissioner. 2014. ‘Progress and obstacles in the fight against impunity for sexual violence in the Democratic Republic of the Congo’. April 2014. United Nations Joint Human Rights Office (UNJHRO) (Report 5) 22.

<sup>60</sup> K Akonor *UN Peacekeeping in Africa: A Critical Examination and Recommendations for Improvement* SpringerBriefs in Criminology. Springer, International Publishing AG, Cham Switzerland (2016) 38.

<sup>61</sup> Human Rights Watch (n 20 above).

<sup>62</sup> Human Rights Watch ‘Soldiers Who Rape, Commanders Who Condone Sexual Violence and Military Reform in the Democratic Republic of Congo’ (2009).

guns (rifle barrels).<sup>63</sup> Other rebel groups perpetrating horrific crimes are the Ugandan rebel groups, the Allied Democratic Forces (ADF) and the Lord's Resistance Army (LRA). The ADF have been accused of sexual violence and the incapacitation (maiming) of women's bodies.<sup>64</sup> The LRA are notorious for the abduction of women and children for the purposes of recruitment and sexual slavery.<sup>65</sup>

The Burundian rebel groups, the Forces for the Defense of Democracy (FDD) and the Front for National Liberation (FNL) have also been accused of using DRC territory and committing the various forms of sexual violence towards women. These rebel groups, including the M23 rebels, the Mai-Mai armed groups and the Raia Mutomboki have been accused of grave human rights abuses such as unlawful killings, rapes and torture. The rebel groups continue to use sexual violence as a weapon of war in the DRC.<sup>66</sup>

The sexual violence that is perpetrated in the North Kivu and South Kivu provinces in eastern DRC poses serious threats to women's rights, including the right to access to justice, right to healthcare and the right to safety.

The Responsibility to Protect (R2P) is a principle which enforces states to protect its population<sup>67</sup> from war crimes<sup>68</sup> and crimes against humanity.<sup>69</sup> Each state has a prime responsibility and duty to 'protect, promote and implement all human rights and fundamental freedoms'.<sup>70</sup> The notion of the role of the state and thus the inability of the Congolese state to uphold the human rights of its citizenry is evident in the human rights crisis in eastern DRC.

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<sup>63</sup> D Mukwege & C Nangini 'Rape with Extreme Violence: The New Pathology in South Kivu, Democratic Republic of Congo' (2009) 6:12 *PLoS Med* 2.

<sup>64</sup> United Nations Security Council Subsidiary Organs 'Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo' 'Allied Democratic Forces'.

<sup>65</sup> Invisible Children 'Sexual violence in war: testimonies of LRA survivors' 2014. <https://invisiblechildren.com/blog/2014/06/13/sexual-violence-conflict-testimonies-lra-survivors/> (accessed 7 April 2017).

<sup>66</sup> Human Rights Watch (n 20 above).

<sup>67</sup> International Committee of the Red Cross 'International Humanitarian Law and the Responsibility to Protect: A handbook' (2011).

<sup>68</sup> War crimes: 'Wilfully causing great suffering, or serious injury to body or health'. (Article 8(2)(a)(iii) of the Rome Statute).

<sup>69</sup> Crimes against humanity: rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity. (Article 7(1)(g) of the Rome Statute).

<sup>70</sup> Office of the United Nations High Commissioner for Human Rights. 2016. 'Rights and responsibilities'. <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RightAndResponsibility.aspx> (accessed 30 April 2017).

## 1.8. Preliminary framework of research

Chapter One defines the area of study, outlines the research problem and indicates the motivation and limitations of the research. It gives an overview of the literature that is significant to one's understanding of the alarming human rights situation in which Congolese women have become victims of sexual violence in the DRC.

Chapter Two discusses the extent to which the violence that is allegedly being perpetrated by some personnel of the peacekeeping forces and some members of the armed groups against Congolese women is realised and recognised as a serious problem in the DRC. This chapter addresses the severity and the brutality of sexual violence. It also highlights gender-based violence and gender inequality. This chapter looks into the perpetrators to examine their mandate, modus operandi and their role in the Congolese society.

Chapter Three analyses the legal obligations of the Congolese government in respecting, protecting and promoting the rights of women in the fight against sexual violence. This chapter analyses the laws that mention and prohibit sexual violence. These laws also consist of various charters and treaties which the DRC has signed and ratified on an international, regional and national level. The chapter discusses the suitability of Congolese laws in punishing peacekeeping operations and armed groups violating the rights of women.

Chapter Four discusses the main factors that may impact Congolese women in combatting the fight against sexual violence. These factors include political factors, social factors and economic factors which may benefit or hinder the rights of women in the DRC.

Chapter Five lists a number of mechanisms and measures that may be put in place in order to end the impunity of the perpetrators that are violating international human rights law. The chapter also includes the recommendations.

Chapter Six provides the general conclusion of the study.



## Chapter Two: The victims, the survivors and the perpetrators

### 2.1. Introduction

Chapter Two focuses on the main actors of sexual violence in eastern DRC, an area where such atrocities occur on a scale seen nowhere else in the world. This chapter commences with a discussion of victims and survivors, before it examines the perpetrators' mandate, modus operandi and their role in the Congolese society. It ends with a discussion of sexual violence as a form of gender-based violence.

### 2.2. The severity of sexual violence against Congolese women

"The militia cut [Tatiana's mother's] throat, killing her. When Tatiana's 14 -year-old sister began to cry, she was shot in the head. Her other sister, age 12, was taken to a nearby clearing and gang-raped. Tatiana was told to leave at once or suffer the same fate".<sup>71</sup>

The DRC has been described as being 'the worst place in the world for women'<sup>72</sup> due to the severity, harshness and brutality of sexual violence committed towards Congolese women. According to Human Rights Watch, victims of sexual exploitation in the DRC are girls as young as two years old and women as old as eighty years old.<sup>73</sup> An interview conducted by Amnesty International with a sexual violence survivor in the DRC throws light on the extent in which sexual violence is "the use of physical force to compel a person to engage in a sexual act against his or her will, whether or not the act is completed".<sup>74</sup>

The excerpt quoted above is of a story of four Congolese women (three sisters and their mother) and their experiences of violence.<sup>75</sup> A young Congolese lady escaped sexual assault because she was heavily pregnant. Her sisters, however, were not as fortunate as one sister was shot and the other sister was gang raped. Their mother was also a victim as she was fatally

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<sup>71</sup> Amnesty International 'Casualties of war - women's bodies, women's lives. Stop crimes against women in armed conflict'. Tatiana Ume, 17-year-old from DRC. 'My life means nothing' (2004).

<sup>72</sup> J Freedman 'Understanding sexual violence in the Democratic Republic of Congo' 2016 <https://sustainablesecurity.org/2016/05/11/towards-a-greater-understanding-of-sexual-violence-in-the-democratic-republic-of-congo/> (accessed 4 May 2017).

<sup>73</sup> Human Rights Watch 'Democratic Republic of Congo: Ending Impunity for Sexual Violence. New Judicial Mechanism Needed to Bring Perpetrators to Justice' (2014).

<sup>74</sup> Work and Family Researchers Network 'Sexual Violence, Definition of...' (2017) <https://workfamily.sas.upenn.edu/glossary/s/sexual-violence-definitions> (accessed 7 May 2017).

<sup>75</sup> Amnesty International 'Casualties of war - women's bodies, women's lives. Stop crimes against women in armed conflict'. 'My life means nothing' (2004).

injured for not paying the militia's demand for money at a militia checkpoint.<sup>76</sup> A checkpoint is set up by militias in order to collect taxes, and this regularly consists of stealing money from civilians.<sup>77</sup> This is one of the many stories of hurt, anguish and pain faced in conflict-torn areas across the DRC tormenting the lives of Congolese women.

According to Cammaert "it is now more dangerous to be a woman than to be a soldier in modern wars".<sup>78</sup> The extent of rape, and other forms of sexual violence against women is considered a human rights violation and a crime against humanity.<sup>79</sup> Regardless of whether Congolese women are virgins, widows or pregnant;<sup>80</sup> they are still sexually violated and their bodies are used as "an envelope to send messages to the perceived enemy".<sup>81</sup>

In the years of 2006 to 2007, it was recorded that 48 rapes took place every hour in the DRC.<sup>82</sup> More than ten years later, in 2017, the same problem is evident and even greater, as research has shown that sexual violence in the DRC has reached an incomparable and detrimental level.

A victim of sexual violence from the South Kivu province in the DRC boldly expresses her terrifying experience of being detained and enslaved for a year by a perpetrator.

"They cooked food for me and the other captives using water mixed with urine. If anyone refused to eat, they would be hit with sticks covered in faeces, and if they still refused, they killed them with a machine gun. I was forced to dig mass graves for the people they killed".<sup>83</sup>

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<sup>76</sup> Amnesty International (n 71 above).

<sup>77</sup> Global Security 'DR Congo Army' 2017 <http://www.globalsecurity.org/military/world/congo/army.htm> (accessed 15 May 2017).

<sup>78</sup> P Cammaert (Former Deputy Force Commander of the UN Mission in the DRC). In Soraya Chemaly 'Worldwide, It's 'More Dangerous to Be a Woman Than a Soldier in Modern Wars'. The World Post. 5 October 2012. [http://www.huffingtonpost.com/sorayachemaly/rape-in-conflict\\_b\\_1501458.html](http://www.huffingtonpost.com/sorayachemaly/rape-in-conflict_b_1501458.html) (accessed 2 May 2017).

<sup>79</sup> Article 7(1)(g) of the Rome Statute stipulates that "rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity" are seen as crimes against humanity.

<sup>80</sup> Zedenius (n 50 above) 6.

<sup>81</sup> E Rehn & EJ Sirleaf 'Women, War and Peace: The Independent Experts' Assessment on the Impact of Armed Conflict on Women and Women's Role in Peace-building'. United Nations Development Fund for Women (UNIFEM) (2002).

<sup>82</sup> 'DR Congo: 48 rapes every hour, US study finds' *BBC Africa* 12 May 2011.

<sup>83</sup> A Dymond 'Ending Mass Rape in the Democratic Republic of Congo: The Role of the International Community'. Aimerance Chibalonza. 'The story of Aimerance Chibalonza'. Scottish Catholic International Fund (SCIAF) Congo Report (2014) 5.

The extent of sexual violence in this central African country is such that it has been described as the ‘monstrosity of the century’,<sup>84</sup> ‘murderous madness’<sup>85</sup> as well as a ‘systematic pattern of destruction toward the female species’.<sup>86</sup> Hence, the coining of the word ‘femicide’ to refer to the genocide of women.<sup>87</sup> The term ‘genocide’ known as “the deliberate killing of a large group of people, especially those of a particular nation or ethnic group”,<sup>88</sup> concurs with ‘femicide’, which refers to the deliberate and systematic killing of women, that is occurring in the DRC.

Within the DRC context, femicide occurs through the injuries resulting from acts of sexual violence. One common injury is a condition called fistula, whereby a woman’s bladder or bowels can no longer hold her urine or faeces resulting in uncontrollable leakage.<sup>89</sup> Cannon gives a very vivid description of the victims’ condition in the following excerpt: “from the forests, hills, and villages stained with blood from untreated fistulas and pelvic organ prolapses caused by rape”.<sup>90</sup> It is evident from this description that, if left untreated, fistula can completely destroy a woman’s life and create incredible embarrassment and humiliation from her family and community. Other serious injuries resulting from sexual violence, which affect a woman’s reproductive system, include infertility, miscarriages and unsafe abortions.<sup>91</sup>

The endurance of much suffering and pain is evident to victims of sexual violence as pieces of glass, wood or guns (rifle barrels) are used in the performance of female genital mutilation (FGM).<sup>92</sup> FGM is a “procedure where the female genitals are deliberately cut, injured or

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<sup>84</sup> D Mukwege in J Greenberg “‘Silence’ gives voice to Congo’s rape victims’ *Reuters* 24 January 2008.

<sup>85</sup> J Ward & W Mash ‘Sexual Violence Against Women and Girls in War and Its Aftermath: Realities, Responses, and Required Resources. A Briefing Paper Prepared for Symposium on Sexual Violence in Conflict and Beyond’ (2006) 3.

<sup>86</sup> E Ensler ‘A Conversation with Eve Ensler: Femicide in the Congo’ 2007 (interview with Michele Kort). <http://www.pbs.org/pov/lumo/eve-ensler/> (accessed 15 May 2017).

<sup>87</sup> T Lamas ‘A genocide of women is taking place in the Democratic Republic of Congo’. (Interview with Caddy Adzuba Furaha) *Woman News Network* 27 November 2013.

<sup>88</sup> Oxford Dictionary. 2017. ‘Genocide’. <https://en.oxforddictionaries.com/definition/genocide> (accessed 5 May 2017).

<sup>89</sup> Ensler (n 86 above).

<sup>90</sup> P Cannon ‘A Feminist Response to Rape as a Weapon of War in Eastern Congo’ (2012) 24:4 *Peace Review: A Journal of Social Justice* 478.

<sup>91</sup> NI Dossa ; MV Zunzunegui ; M Hatem & W Fraser ‘Fistula and Other Adverse Reproductive Health Outcomes among Women Victims of Conflict-Related Sexual Violence: A Population-Based Cross-Sectional Study’ (2014) 41:1 *Birth: Issues in Perinatal Care* 10.

<sup>92</sup> D Mukwege & C Nangini (n 63 above) 1.

changed, but where there's no medical reason for this to be done".<sup>93</sup> According to Lubunga, this vicious procedure has been used in eastern DRC by foreign rebel groups with the aim of 'destroying women and reducing the population'.<sup>94</sup>

Needless to say, that the spectre of sexual violence haunts women of all ages in conflict-zones, as captured in the following extract:

"The rain pounds on their tin roofs so noisily that they worry they won't hear rapists breaking in to steal their daughters. So they sit up all night, just watching their front doors".<sup>95</sup>

The sleepless nights, the constant trepidation of fear and anxiety that you are being watched and you may be the next victim of sexual violence are the thoughts that many Congolese mothers fear for themselves and for their daughters. The reality of a sexual violence attack is so traumatic that it may be performed as a surprise or planned attack and many Congolese women tend to worry about 'losing their souls'.<sup>96</sup>

Congolese gynaecologist Dr Denis Mukwege, internationally known as 'the man who mends women', due to his heroic work of treating thousands of Congolese rape victims, states:<sup>97</sup>

"The most difficult reality for us is when we help a woman give birth to a daughter, born as a result of rape, and then years later we have to treat the daughter who is also raped".<sup>98</sup>

The magnitude of rape and other forms of sexual violence is so prodigious amongst mothers and daughters that there is fear that the sexual violence cycle may repeat itself endlessly. Such is the situation that in many cases children are left to raise themselves. All this adds to the constant agony and the psychological and physical after-effects such violations leave women with.

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<sup>93</sup> National Health Service Choice 'Female genital mutilation' 2017 <http://www.nhs.uk/conditions/female-genital-mutilation/pages/introduction.aspx> (accessed 28 May 2017).

<sup>94</sup> Lubunga, E 'The impact of conflict in the Democratic Republic of Congo on women and their response to peace-building' (2016) 2:2 *Stellenbosch Theological Journal* 357.

<sup>95</sup> R Maclean 'No sleep for Congolese mothers trying to save their girls from rape' *The Guardian* 7 December 2016.

<sup>96</sup> C Warner 'Raped, Robbed and Molested: Sexual violence against women and girls in the Democratic Republic of the Congo: A curriculum development project' California Baptist University (2008) 61.

<sup>97</sup> D Mukwege 'We need to save the common humanity in Congo' 2015 <http://www.warscapes.com/reportage/denis-mukwege-we-need-save-common-humanity-congo> (accessed 2 June 2017).

<sup>98</sup> Mukwege (n 97 above).

Once a woman is sexually violated, this may change the way she perceives her role as a mother and wife in society. Suffering this atrocity may halt women from fulfilling their potential and it may challenge their development.<sup>99</sup>

Congolese women who have been sexually violated by those who are meant to secure and protect them, sometimes end up bearing a child that is not their partner/husband's. Moreover, a child born from rape by an unknown father (the perpetrator) brings so much animosity in the family. According to Christian *et al*, the child may be seen as a "cursed or a 'snake child' that will bring bad luck to the family".<sup>100</sup> In most cases, the perpetrators, who commit such detrimental acts, are not even aware of their new born children.

### 2.3. The perpetrators

"Even with the pain, I managed to untie one of my hands, and when I wanted to defend myself, one of them immediately cut my left hand with his machete. After that, I lost consciousness, and I don't know how many others raped me. It was night, and I don't know when they left".<sup>101</sup>

Perpetrators perform immoral and wicked acts, as is evident in the above statement from a victim of sexual violence in eastern DRC. There have been reports that perpetrators of sexual violence against harmless Congolese women in the DRC are usually persons who are in positions of authority.<sup>102</sup>

Sexual violence is a crime against humanity,<sup>103</sup> which is perpetrated by some members of armed groups who "employ arms in the use of force to achieve political, ideological or

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<sup>99</sup> K Annan 'Message by the former Secretary-General of the United Nations: International Day for the Elimination of Violence against Women on 25 November' (25 November 2006).

<sup>100</sup> M Christian; M Safari; P Ramazani; G Burnham & N Glass 'Sexual and gender based violence against men in the Democratic Republic of Congo: effects on survivors, their families and the community' (2011) 27:4 *Medicine, Conflict and Survival* 234.

<sup>101</sup> Human Rights Watch 'Democratic Republic of Congo: Ending Impunity for Sexual Violence. New Judicial Mechanism Needed to Bring Perpetrators to Justice'. Mass Rape in the Luvungi Area, Walikale Territory, July 2010. A 38-year-old mother of five from Luvungi village told Human Rights Watch (2014).

<sup>102</sup> United Nations Population Fund (UNFPA) 'Defining Gender-Based Violence' 2017 <http://www.health-genderviolence.org/training-programme-for-health-care-providers/facts-on-gbv/defining-gender-based-violence/21> (accessed 7 June 2017).

<sup>103</sup> Rome Statute Article 7(1)(g) Crimes against humanity: rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity.

economic objectives”.<sup>104</sup> In the specific context of conflicts in eastern DRC, the three types of armed groups identified as perpetrators of sexual violence include: the national army, the rebel groups and non-state actor, peacekeeping forces.

### 2.3.1. The national army

The Congolese national army, the Armed Forces of the Democratic Republic of the Congo (FARDC) is supposed to serve and provide security to the Congolese population.<sup>105</sup> Some members of FARDC have instead been accused of harming their own civilians in the worst possible manner. In so doing, those FARDC soldiers contribute to the sense of insecurity and culture of impunity that prevail throughout the country. They have frequently been accused of committing gang rapes and abductions of women. As the Global Security indicates, the Congolese national army is poorly equipped, has a weak command and control structure and it is plagued with corruption.<sup>106</sup> The low and irregular pay that soldiers from the national army receive may also account for their lack of discipline and propensity to inflict violence.

Congolese women tarnished by the hurt and humiliation of sexual violence may be ridiculed as the ‘wife of a soldier’ by their husbands. A Congolese rape victim states:

“...I thought I had Aids, and now my husband mocks me. He calls me the wife of a soldier, he has rejected me”.<sup>107</sup>

Congolese women who have been sexually exploited may be known as the ‘wives/concubines’<sup>108</sup> of the perpetrators.<sup>109</sup> These women face rejection not only by their husbands, but also their families and communities. In most cases, the victims who face

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<sup>104</sup> United Nations Office for the Coordination of Humanitarian Affairs ‘Humanitarian Negotiations with Armed Groups: A Manual for Practitioners’ January 2006.

<sup>105</sup> Article 187 of Congolese Constitution: The FARDC’s mission is to “defend the integrity of the national territory and the frontiers. Under the conditions specified by the law, they participate, in times of peace, in the economic, social and cultural development as well as the protection of persons and of their assets”.

<sup>106</sup> Global Security ‘DR Congo Army’ 2017 <http://www.globalsecurity.org/military/world/congo/army.htm> (accessed 15 May 2017).

<sup>107</sup> P Jones ‘Congo: We did whatever we wanted, says soldier who raped 53 women’ *The Guardian* 11 April 2013.

<sup>108</sup> Concubine is defined as: “a woman who cohabits with a man to whom she is not legally married, especially one regarded as socially or sexually subservient; mistress”. [Dictionary.com ‘Concubine’ <http://www.dictionary.com/browse/concubine> (accessed 7 June 2017)].

<sup>109</sup> MONUSCO ‘Invisible survivors: Girls in Armed Groups in the Democratic Republic of Congo From 2009 to 2015’ (2015) 8.

rejection have to relocate to a new community far from their familiar former communities.<sup>110</sup> The husbands whose wives have been violated feel a sense of inferiority as they are frustrated at their inability to protect their wives. They also feel a sense of weakness due to the traditional patriarchal role men play in African societies.<sup>111</sup> The rejection that the victims of these crimes may face can lead them to being discreet about their horrendous experience and not seeking proper medical and psychological help, which may have a negative impact on their lives.

The small village of Minova, located at the border between the North Kivu and South Kivu provinces, is notorious for the massive scale of violence that took place in November 2012. Murder, pillage, looting and rape were committed by the Congolese national army who retreated in Minova after suffering defeat at the hands of the M23 rebel group in Goma, capital city of the North Kivu province.<sup>112</sup> A FARDC soldier makes a shocking confession regarding their intention upon arrival in Minova:

"When we arrived here we met a lot of women. We could do whatever we wanted... Twenty-five of us gathered together and said we should rape 10 women each, and we did it..."<sup>113</sup>

The FARDC have been accused of many human rights violations in Minova, including sexually violating 97 women and 33 girls (aged between 6 to 17 years old).<sup>114</sup> This horrific crime towards Congolese women were perpetrated by some of the Congolese soldiers, through their modus operandi of forcefully entering the victims' houses and gang-raping defenceless Congolese women at gunpoint.<sup>115</sup> A group of Congolese soldiers have cited the use of alcohol and drugs, and the effect of the severe wars that they fight in, as reasons why they inflict sexual violence upon Congolese women.<sup>116</sup> Baaz and Stern have argued that rape, as perpetrated by the

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<sup>110</sup> Human Rights Watch (n 20 above).

<sup>111</sup> Harvard Humanitarian Initiative 'Characterising Sexual Violence in the Democratic Republic of Congo: Profiles of Violence, Community Responses, and Implications for the Protection of Women'. Final Report for the Open Society Initiative (2009) 26.

<sup>112</sup> Trial International 'Minova Case' 2016 <https://trialinternational.org/latest-post/minova/> (accessed 7 May 2017).

<sup>113</sup> Jones (n 107 above).

<sup>114</sup> United Nations Joint Human Rights Office 'Report of the United Nations Joint Human Rights Office on human rights violations perpetrated by soldiers of the Congolese armed forces and combatants of the M23 in Goma and Sake, North Kivu Province, and in and around Minova, South Kivu Province, from 15 November to 2 December 2012' (2013) 9.

<sup>115</sup> United Nations Joint Human Rights Office (n 114 above).

<sup>116</sup> M Baaz & M Stern 'The Complexity of Violence: A critical analysis of sexual violence in the Democratic Republic of Congo'. Sida Working Paper on Gender-based violence (2010) 23.

Congolese soldiers, may arise as a result of “an implicit authorisation followed by a lack of specific orders not to rape, and coupled with an attitude that rape is unavoidable”.<sup>117</sup>

Alongside the Congolese national army, the Congolese National Police (PNC) has a mandate to provide and restore security to civilians in the DRC.<sup>118</sup> The PNC have been found guilty of committing human rights abuses and obstructing investigations in order to protect themselves and their subordinates from arrest and suspension.<sup>119</sup>

### 2.3.2. Rebel groups in the DRC

Similar to the national army, rebel groups have also been accused of crimes against humanity in the DRC. Rebel groups are described as “organised resistance or opposition to a government or other authority”<sup>120</sup> or “the taking up of arms traitorously against the government”.<sup>121</sup> Rebel groups operating in the DRC, particularly in the eastern part of the country, include the Mai-Mai, M23 rebels and the Democratic Forces for the Liberation of Rwanda (FDLR). Other rebel groups operating in the country and perpetrating such crimes are the Raia Mutomboki, Ugandan rebel groups Allied Democratic Forces (ADF) and the Lord’s Resistance Army (LRA); as well as the Burundian rebel groups, Forces for the Defense of Democracy (FDD) and the Front for National Liberation (FNL).

The Mai-Mai groups are community-based groups<sup>122</sup> accused of serious human rights abuses, such as rape, torture and unlawful killings.<sup>123</sup> According to Guy, the Mai-Mai’s modus operandi consists of: “entrenched ethnic polarization, endemic insecurity and widespread human rights abuses against civilians, an absence of rule of law and a fear of ‘foreign invaders’”.<sup>124</sup> A Mai-

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<sup>117</sup> Baaz & Stern (n 116 above) 16.

<sup>118</sup> Article 182 of the Congolese Constitution states that the Congolese National Police (PNC) is “responsible for public security, the security of persons and goods/assets, the maintenance and restoration of public order as well as the special protection of the high authorities”.

<sup>119</sup> Dymond (n 83 above) 6.

<sup>120</sup> The Free Dictionary ‘Rebellion (redirected from Rebel groups)’ 2017 <http://www.thefreedictionary.com/Rebel+groups> (accessed 7 June 2017).

<sup>121</sup> The Free Dictionary. The legal dictionary ‘Rebel groups (redirected from Rebel groups)’ 2017 <http://legal-dictionary.thefreedictionary.com/Rebel+groups> (accessed 7 June 2017).

<sup>122</sup> Community-based groups include: Mai-Mai Sheka, Mai-Mai Kifua, Mai-Mai Simba and Mai-Mai Yakutumba groups.

<sup>123</sup> R Blade ‘Rape in War: Congo’s Weapon of Choice Gets Renewed Scrutiny’ *The Washington Diplomat* 22 November 2010.

<sup>124</sup> KM Guy ‘Mai-Mai Militia and Sexual Violence in Democratic Republic of the Congo’ (2014) 16:2 *International Journal of Emergency Mental Health and Human Resilience* 138.



Mai combatant stated: “no matter our number, at any point of time, any woman whom we encountered was subjected to rape”.<sup>125</sup> Moreover, the Mai-Mai groups instil fear into defenceless Congolese women by attacking local villages for their own selfish political and economic interests.<sup>126</sup> The Mai-Mai groups are notorious for spraying themselves with ‘magic water to protect themselves from bullets’<sup>127</sup> as well as the use of weapons, such as machetes, branches or bayonets to execute their action on civilians.<sup>128</sup>

The M23 rebels have been accused of atrocious human rights violations against Congolese people generally and, particularly, women. The rebel group is largely composed of ethnic Tutsis known as the *Banyamulenge*. It is believed that the group has received significant logistical and military support from neighbouring country Rwanda since its inception in April 2012.<sup>129</sup> It is worth noting that most M23 combatants are former members of the National Congress for the Defense of the People (CNDP), a rebel group that integrated into the DRC army in 2009 following a peace agreement signed on 23 March 2009 in Goma (hence its name: M23) and defected in 2012 amid pressure on the Congolese government to arrest their leader Bosco Ntaganda who was sought after by the International Criminal Court (ICC) on charges of crimes against humanity.<sup>130</sup>

The M23 rebel group have been accused of massive human rights violations, including sexual violence in the areas it controlled during the civil war as well as of recruiting young girls as sexual slaves.<sup>131</sup> A Human Rights Watch (HRW) report includes the following excerpts: M23 rebels raped 36 women in the town of Goma, which consisted of 18 wives of army soldiers and

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<sup>125</sup> C Oser; T Goldfarb; B Bares & T Calcut ‘Ending violence against women in eastern Congo: preparing men to advocate for women’s rights’. Women for Women International (2007) 13.

<sup>126</sup> AZ Hale ‘In Search of Peace: An Autopsy of the Political Dimensions of Violence in the Democratic Republic of Congo’. University of Florida. Dissertation: Degree of Doctor of Philosophy (2009) 65.

<sup>127</sup> E Buchanan ‘Battle for control of the DRC: Who are the Mai-Mai groups?’ *International Business Times* 29 October 2015.

<sup>128</sup> Human Rights Watch ‘Democratic Republic of Congo: Casualties of War: Civilians, Rule of Law, and Democratic Freedoms’ (1999).

<sup>129</sup> Human Rights Watch ‘DR Congo: M23 Rebels Kill, Rape Civilians. New Evidence of Rwandan Support for M23’ (2013).

<sup>130</sup> Human Rights Watch ‘DR Congo: US Should Urge Rwanda to End M23 Support. Sanction Rwandan Officials Backing Abusive Congolese Rebels’ (2012).

<sup>131</sup> Human Rights Watch ‘DR Congo: M23 Rebels Committing War Crimes Rwandan Officials Should Immediately Halt All Support or Face Sanctions’ (2012).

a 10-year-old girl.<sup>132</sup> In December 2013, the M23 rebel group attacked a camp for displaced people, raping 13 women living in the camp and looted dozens of camp residents just outside of Goma.<sup>133</sup> This report offers a glimpse of what happens to women when M23 rebels enter a village or town in eastern Congo.

A Congolese rape victim describes her horrendous experience with a member of the M23 group as follows:

“He left me in the forest. I was shaking and turned toward the ground, crying.... The one who raped me was an M23 fighter whom I know. I recognized him, but what can I do to him?”<sup>134</sup>

According to a Human Rights Watch report, in the space of five months between March and July 2013, the M23 rebel group raped 61 women in eastern DRC.<sup>135</sup> The Human Rights Watch report details numerous abuses committed by M23 fighters, including the following: executing, beating, detaining or abducting civilians suspected of collaborating with other militias; executing people who refused to surrender money or their children to M23; torturing captured government soldiers; forcing local chiefs and civilians to undergo military and ideological training; as well as threatening women they had raped with death if they reported the rape or sought medical treatment.<sup>136</sup>

The Democratic Forces for the Liberation of Rwanda (FDLR) is another rebel group that not only retains a significant pocket of territory in eastern DRC, but it is also responsible for crimes of sexual violence and other grave war crimes. In contrast to the M23, which is a Tutsi-led rebel group, the FDLR is made up of Rwandan Hutus. It is an offshoot of the Rwandan Hutu armed forces that escaped to eastern DRC in the aftermath of the Rwandan genocide.

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<sup>132</sup> Human Rights Watch ‘DR Congo: War Crimes by M23, Congolese Army Response to Crisis in East Should Emphasize Justice’ (2013).

<sup>133</sup> Human Rights Watch 2013 (n 132 above).

<sup>134</sup> Human Rights Watch ‘DR Congo: M23 Rebels Kill, Rape Civilians. New Evidence of Rwandan Support for M23’. (35-year-old Hutu woman raped by an M23 soldier) (2013).

<sup>135</sup> Human Rights Watch ‘DR Congo: M23 Rebels Kill, Rape Civilians. New Evidence of Rwandan Support for M23’ (2013).

<sup>136</sup> Human Rights Watch 2013 (n 134 above).

Human Rights Watch has documented evidence of the FDLR group's involvement in the immense rapes of Congolese women and the killings of individuals in their sleeps.<sup>137</sup> From January to September 2007, the FDLR were accused of 2 447 cases of rape in the South Kivu province.<sup>138</sup> In January 2009 to September 2010, 700 women and children were raped and hacked to death with machetes or burned to death in their homes by the FDLR soldiers.<sup>139</sup> Moreover, the FDLR soldiers have been found guilty of performing genital mutilation on Congolese women.<sup>140</sup> A Congolese woman expresses her unfortunate encounter with an army soldier as follows:

“...Then four of the soldiers took me and raped me. They told me that I'm the wife of an FDLR and they can do whatever they want to me. I was able to flee, but I've been very sick since then, and I have constant pains in my stomach.”<sup>141</sup>

Raia Mutomboki translated as 'outraged citizens' in Kiswahili, is one of the largest army groups operating in eastern DRC, made up of civilians who take up arms.<sup>142</sup> Raia Mutomboki is notorious for the use of *dawa*, which is a magic potion believed to make them invincible.<sup>143</sup> This armed group has been accused of sexual mutilation with the victims being women, children and the elderly.<sup>144</sup>

The Ugandan opposition forces, the Allied Democratic Forces (ADF) is known as one of the oldest groups operating in eastern DRC using the territory for its bases.<sup>145</sup> The ADF rebel group has been accused of the killing of 36 people in the city of Beni in the North Kivu province, in what appeared to be 'a massacre of revenge attacks'.<sup>146</sup> The ADF group has also been accused

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<sup>137</sup> AZ Hale 'In Search of Peace: An Autopsy of the Political Dimensions of Violence in the Democratic Republic of Congo'. University of Florida. Dissertation: Degree of Doctor of Philosophy (2009) 68.

<sup>138</sup> 'DRC: Rape cases soar in South Kivu' *IRIN News* 3 June 2009.

<sup>139</sup> I Sawyer 'Arrest DR Congo Warlord' Human Rights Watch (2017).

<sup>140</sup> International Crisis Group 'Congo: Five priorities for a peacebuilding strategy' Africa Report No. 150 (2009).

<sup>141</sup> Human Rights Watch 'Democratic Republic of Congo: Ending Impunity for Sexual Violence. New Judicial Mechanism Needed to Bring Perpetrators to Justice'. Human Rights Watch interview with rape victim, Lukweti. 6 October 2009 (2014).

<sup>142</sup> Congo Research Group 'Who are the Raia Mutomboki?' 2013 <http://congoresearchgroup.org/who-are-raia-mutomboki/> (accessed 17 June 2017).

<sup>143</sup> Congo Research Group (n 142 above).

<sup>144</sup> E Buchanan 'Battle for control of the DRC: Who are the Raia Mutomboki?' *International Business Times* 22 February 2017.

<sup>145</sup> Global Security 'Allied Democratic Forces' 2017 <http://www.globalsecurity.org/military/world/para/adf.htm> (accessed 18 June 2017).

<sup>146</sup> Agence France-Presse 'Thirty-six people are killed in DRC in 'revenge' attack by ADF rebels' *The Guardian*. 14 August 2016.

of violations of international human rights towards women and children, including sexual violence and maiming.<sup>147</sup>

The Lord's Resistance Army (LRA) is a Ugandan rebel group operating in DRC. In 2013, it was reported that the LRA was responsible for the casualties of 53 civilians.<sup>148</sup> The LRA's modus operandi consists of a widespread abduction of women for the purposes of sexual slavery.<sup>149</sup>

The Burundian rebel groups Forces for the Defense of Democracy (FDD) and the Front for National Liberation (FNL) have been accused of violations of human rights in the DRC. Congolese civilians have been attacked, killed and in some cases, have been raped by the FDD.<sup>150</sup> In October 2012, a woman in the South Kivu province was detained by some members of the FNL group for a couple of days, during which she was repeatedly raped and wounded.<sup>151</sup>

The modus operandi of rebel groups consists of the perpetrators entering a village and forcing themselves into people's houses, in order to destroy the peace of innocent Congolese women. The sexual violence that is perpetrated in the North Kivu and South Kivu provinces by members of these groups poses serious threats to women's rights, including the right to access to justice, right to healthcare and the right to safety.

### 2.3.3. Peacekeeping forces

The UN peacekeepers known as the United Nations Organisation Stabilization Mission in the DRC (MONUSCO) have allegedly been accused of human rights violations, such as rape and the forced prostitution of Congolese women.<sup>152</sup> United Nations peacekeepers are often referred

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<sup>147</sup> United Nations Security Council Subsidiary Organs. 2016. Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo. 'Narrative summary: Allied Democratic Forces (ADF)'.

<sup>148</sup> S Casey-Maslen *The War Report: Armed Conflict in 2013* Oxford University Press. United Kingdom (2014) 137.

<sup>149</sup> Invisible Children 'Sexual violence in war: testimonies of LRA survivors' 2014 <https://invisiblechildren.com/blog/2014/06/13/sexual-violence-conflict-testimonies-lra-survivors/> (accessed 7 April 2017).

<sup>150</sup> Human Rights Watch 'Burundi: Everyday Victims: Civilians in the Burundian War' (2003).

<sup>151</sup> Report on violence against women in North and South Kivu, in the Democratic Republic of Congo. Alternative report for the Committee on the Elimination of all forms of Discrimination Against Women. 55<sup>th</sup> session. 8 – 26 July 2013.

<sup>152</sup> K Akonor *UN Peacekeeping in Africa: A Critical Examination and Recommendations for Improvement*. SpringerBriefs in Criminology. Springer, International Publishing AG, Cham Switzerland (2016) 38.

to as 'blue berets' or 'blue helmets' due to the uniform worn on their heads (headgears).<sup>153</sup> According to Caplan, there has been evidence emerging in the DRC that some of these peacekeepers have "sexually and violently violated girls with impunity so long as they wear their iconic blue beret or blue helmet".<sup>154</sup> Due to the sexual exploitation and abuse allegedly perpetrated by the UN peacekeepers on missions, their iconic blue helmet has become 'an ugly stain on the world body'<sup>155</sup> as well as 'black and blue through self-inflicted wounds'.<sup>156</sup>

Peace and security in the African continent have been threatened by wars, heavily influenced by political aspects. Due to the continent's 'peculiar political context', the UN has faced a vast amount of challenges in its peacekeeping missions in Africa.<sup>157</sup>

Former Secretary-General of the UN Kofi Annan is known to have put in new measures in order to halt these sexual exploitations and abuses, by implementing a dusk-to-dawn curfew for military personnel as well as a sanction on unauthorized contact of these personnel with the local residents.<sup>158</sup> Unfortunately, as the cases reported in the DRC show, such measures have not been complied with by all members of the peacekeeping contingents. Reasonable steps should be taken to ensure full compliance with such measures.

MONUSCO peacekeeping personnel's modus operandi consists of exploiting young Congolese girls in exchange for food or money. According to Leatherman, UN peacekeepers in the DRC have admitted to illicit liaisons with underage girls but tried to cast them as prostitutes.<sup>159</sup> Leatherman notes a similar pattern of power relations in Sierra Leone where international aid workers as well as peacekeepers were involved in sexual abuse and exploitation of women in

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<sup>153</sup> N Krastev 'Behind The 'Blue Helmets' -- A Look At UN Peacekeepers' *Radio Free Europe/Radio Liberty* 4 July 2010.

<sup>154</sup> G Caplan 'Peacekeepers gone wild: How much more abuse will the UN ignore in Congo?.' *The Globe and Mail* 3 August 2012.

<sup>155</sup> K Annan 'UN, in a worldwide day of focus, calls for end to 'ugly stain' of torture' *UN News Centre* 26 June 2006.

<sup>156</sup> J Holl Lute in C Lynch 'UN Faces More Accusations of Sexual Misconduct; Officials Acknowledge 'Swamp' of Problems and Pledges Fixes Amid New Allegations in Africa, Haiti' *The Washington Post* 13 March 2005.

<sup>157</sup> EB Mikobi 'The role of the UN Organisation Mission in the Democratic Republic of the Congo (MONUC) with regard to democracy and human rights in the Democratic Republic of the Congo (DRC)'. Dissertation: University of Witwatersrand (2011) 17.

<sup>158</sup> M Fleshman 'Tough UN line on peacekeeping abuses: Action initiated to end sexual misdeeds in peacekeeping missions' *Africa Renewal* April 2005.

<sup>159</sup> J Leatherman *Sexual violence and armed conflict* Cambridge: Polity Press (2011) 146 -147. (Paul Higate conducted field research and interviews with UN staff in the DRC).

exchange for money and gifts during the civil war in that country.<sup>160</sup> These two cases highlight the plight of women in eastern DRC who have become victims of sexual exploitation by the very people who are supposed to protect civilians.

According to Karim and Beardsley, sexual exploitation and abuse (SEA) is an endemic issue in UN peacekeeping missions, which unfortunately creates mistrust between the civilian population and the peacekeepers.<sup>161</sup> Charges levelled against MONUSCO peacekeepers which involve sexual exploitation and abuse include sexual abuse claims of an underage Congolese girl that she was impregnated by a UN peacekeeper, adding that, as a child herself, she now had the responsibility to bear a child.<sup>162</sup> Moreover, other charges include the alleged existence of a paedophile ring whereby the UN police officers from Bosnia paid for prostitutes in the DRC.<sup>163</sup> The famous prostitution hot spot, Hotel Uvira, located in eastern DRC is popular for its recruitment of Congolese teenage girls by UN peacekeepers.<sup>164</sup>

In 2005, there were reports that two Congolese teenage girls were impregnated by Uruguayan peacekeepers in eastern DRC, and then left behind in agony and poverty, whilst the perpetrators returned safely to their home country.<sup>165</sup> There was a similar case in 2011, involving two other teenage Congolese girls who were attacked, gang raped and beaten by some members of MONUSCO.<sup>166</sup>

In 2013, some members of the South African National Defence Force (SANDF) serving under MONUSCO were allegedly acquitted of 93 cases of misconduct, 23 of these cases being of rape, sexual exploitation and sexual abuse of Congolese women.<sup>167</sup> Three years later, in 2016, 11 Tanzanian peacekeepers in the DRC were accused of sexual exploitation and abuse of

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<sup>160</sup> J Leatherman *Sexual violence and armed conflict* Cambridge: Polity Press (2011) 106.

<sup>161</sup> S Karim & K Beardsley 'Explaining Sexual Exploitation and Abuse in Peacekeeping Missions: The Role of Female Peacekeepers and Gender Equality in Contributing Countries' (2016) 53:1 *Journal of Peace Research*. SAGE Journals 3.

<sup>162</sup> 'DR Congo: UN peacekeepers face fresh sexual abuse claims' *BBC Africa* 26 April 2017.

<sup>163</sup> K Brown 'United Nations 'peacekeepers' caught running a child sex ring: 2 000+ cases of sexual abuse reported' *Collective Evolution* 13 April 2017.

<sup>164</sup> G Caplan 'Peacekeepers gone wild: How much more abuse will the UN ignore in Congo?'. *Globe and Mail*. (Investigation conducted by Dr V Fontan. Department of Peace and Conflict Studies at the University for Peace, Costa Rica) (2012).

<sup>165</sup> Caplan (n 164 above).

<sup>166</sup> Caplan (n 164 above).

<sup>167</sup> K Patel 'Peacekeepers behaving badly: Why South African ill-discipline in the DRC is a UN problem' *Daily Maverick* 14 June 2013.

Congolese women, which has resulted in the victims filing paternity claims against the peacekeepers.<sup>168</sup>

The UN peacekeepers accused of committing crimes against humanity are sent back to their respective home countries in order for them to be sentenced and tried for their crimes. According to the United Nations human rights policy framework, upon receiving a report of a human rights violation, the UN has a duty to investigate, report and follow up on the violations.<sup>169</sup>

#### 2.4. The persistence and repercussion of perpetrators

According to Baaz and Stern, a reason for the persistence of sexual violence in the DRC is due to the fact that when soldiers are far away from home (for many months and even years) and in an unfamiliar environment, and they have not seen a woman for a while, they feel entitled to violently force women in order to satisfy their own desires and needs.<sup>170</sup> Many young defenceless Congolese girls are forcefully taken as sexual possessions by perpetrators who may be older than their own fathers, which is senseless and cruel. A father's role, similar to the peacekeeper's role to protect, alternates to something which causes life-changing pain and suffering, all in order for the perpetrator to satisfy their desires and needs for a temporary period.

Barahona asserts that the victims fear reporting the various forms of sexual violence in the DRC due to the fact that the victim's husband may be arrested and considered to be the actual perpetrator.<sup>171</sup> Furthermore, there have been reports that perpetrators from conflict-torn areas are under the influence of traditional local drugs when they perpetrate the horrific

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<sup>168</sup> 'More UN peacekeepers accused of sex crimes' *Mail & Guardian* 8 April 2016.

<sup>169</sup> Human Rights Council. 2008. Eighth session Agenda item 3. Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development. 'Protect, Respect and Remedy: a Framework for Business and Human Rights'. Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises. John Ruggie.

<sup>170</sup> M Baaz & M Stern 'Why Do Soldiers Rape? Masculinity, Violence, and Sexuality in the Armed Forces in the Congo (DRC)' (2009) 53:2 *International Studies Quarterly* 505.

<sup>171</sup> Oxfam International 'Protection gaps exposing eastern Congo communities to continued abuse' *Secure Insecurity Report* 6 March 2015. (Jose Barahona- Oxfam's country director to DRC).

crimes.<sup>172</sup> This evidence could be detrimental to the victim's case when they decide to bring it to court due to the fact that in court trials, "the defendant would not be considered as fully responsible if he were intoxicated with substances at the time of a committed crime".<sup>173</sup>

There have been situations of revenge attacks which emerge after the perpetrators have been found guilty of the various forms of sexual violence, and they are sentenced and tried.<sup>174</sup> Upon their release from prisons, these perpetrators relocate to familiar communities in order to perform a revenge attack on the victims who have reported and accused the perpetrators of crimes against humanity.

According to Human Rights Watch, the identification of perpetrators remains a central problem to the victims because they can only recognise the perpetrators as 'armed men in uniform' and in some cases, the uniforms of these perpetrators from various armed groups may be identical, making it impossible for the victims to distinguish them.<sup>175</sup>

"In the past, burglars would rob a house and then leave. Today, they will first rape all the women in the house and then steal".<sup>176</sup>

Implicit in the above statement from a Congolese woman is the notion that burglars deprive their female victims not only of their material possessions but also rob them of their bodies, dignity, worth and future. Thus, burglars who steal should be caught and held responsible for their actions. The same should apply to perpetrators.

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<sup>172</sup> T Elbert; H Hinkel; A Maedl; K Hermenau ; T Hecker; M Schauer ; H Riedke; N Winkler & P Lancaster *Sexual and gender-based violence in the Kivu Provinces of the Democratic Republic of Congo: insights from former combatants*. Washington, DC. World Bank Group (2013) 30.

<sup>173</sup> Elbert et al (n 172 above) 31.

<sup>174</sup> J Farrall & H Charlesworth 'Strengthening the Rule of Law through UN Security Council' Routledge. New York (2016).

<sup>175</sup> Human Rights Watch 'The War Within the War: Sexual Violence Against Women and Girls in Eastern Congo' (2002).

<sup>176</sup> Office of the High Commissioner for Human Rights. 2007. 'Report submitted by the Special Rapporteur on Violence Against Women, its causes and consequences'. Yakin Ertürk. Mission to the Democratic Republic of the Congo. 16 – 28 July 2007.



## 2.5. Gender-based violence and gender inequality

Sexual violence is a form of gender-based violence (GBV)<sup>177</sup> that occurs as a result of “the normative role expectations associated with each gender, along with the unequal power relationships between the two genders”.<sup>178</sup> The gender mostly affected by GBV are females.<sup>179</sup> GBV results in the infliction of physical, sexual, or psychological harm on a woman<sup>180</sup> because she is a woman or that affects women disproportionately.<sup>181</sup>

According to Dranginis, forms of gender-based violence consist of: rape, sexual exploitation, domestic violence, enslavement, incest and involuntary prostitution.<sup>182</sup> Kristof and Wudunn assert that the manifestations of GBV include: infanticide, female select abortions, trafficking in women and girls, forced and early marriage, female genital mutilation, domestic abuse, marital rape and maternal mortality.<sup>183</sup>

Women in the DRC continue to face gender inequality and gender-based discrimination in society. According to Leatherman, these women are “at a much greater risk of victimization and re-victimization of sexual violence from the onset to the aftermath of violent conflict”.<sup>184</sup>

Gender equality is very far from being a reality in the DRC, as Congolese women are faced with gender inequalities on a social, economic and cultural level. A constant battle in the DRC is gender inequality, in terms of the perception of the roles of women and their rights and duties in society.

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<sup>177</sup> Inter-Agency Standing Committee ‘Guidelines for Integrating Gender-Based Violence Interventions in Humanitarian Action’ 2015.

<sup>178</sup> S Bloom *Violence against Women and Girls: A Compendium of Monitoring and Evaluation Indicators* Chapel Hill, NC: MEASURE Evaluation 2008.

<sup>179</sup> Women Win Organisation ‘What Is Gender-based Violence (GBV)?’ 2017  
<http://guides.womenwin.org/gbv/conflict/context/what-is-gender-based-violence> (accessed 15 June 2017).

<sup>180</sup> General Recommendation No. 19. 1992. General recommendations made by the Committee on the Elimination of Discrimination against Women.

<sup>181</sup> General Recommendation No. 19 (n 180 above).

<sup>182</sup> H Dranginis ‘Interrupting the Silence: Addressing Congo’s Sexual Violence Crisis within the Great Lakes Regional Peace Process’ The Enough Project. Policy Paper (2014) 3.

<sup>183</sup> N Kristof & S WuDunn *Half the Sky: Turning Oppression into Opportunity for Women Worldwide*. New York: Knopf 2010.

<sup>184</sup> J Leatherman *Sexual violence and armed conflict*. Cambridge: Polity Press (2011) 4.

Before the independence of the DRC in June 1960, Congolese women had limited rights, as their access to education and health were hindered.<sup>185</sup> Furthermore, Congolese women had been excluded from political participation and were living in poverty.<sup>186</sup>

From 1960 to 1990, the situation for Congolese women improved to a certain extent as many women now had access to education, which opened doors to information, training and employment.<sup>187</sup> However, this period also saw the consolidation of ‘a dictatorial regime which impoverished the nation’<sup>188</sup> leaving women to poverty, prostitution and promiscuity.<sup>189</sup> This form of gender inequality resulted in the perception of the ‘persistent stereotypes concerning women’s role in society’.<sup>190</sup>

The rights of women in Congolese society are still limited today. Women still have no rights to inheritance<sup>191</sup> and women’s participation in politics remains low as they rarely obtain positions of power.<sup>192</sup> Women still need to acquire permission from their husbands to open a bank account.<sup>193</sup>

Congolese women are primarily responsible for their homes. However, they do not have the right to keep or manage the money they earn. Furthermore, Congolese women’s rights are not taken into account,<sup>194</sup> and this has been the greatest battle for many decades. It must be said, however, that there has been an improvement in urban areas as more women become aware of their rights.

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<sup>185</sup> International Alliance of Women ‘Democratic Republic of Congo- DRC: Violence as a weapon of war’ 2015.

<sup>186</sup> International Alliance of Women (n 185 above).

<sup>187</sup> International Alliance of Women (n 185 above).

<sup>188</sup> International Alliance of Women (n 185 above).

<sup>189</sup> International Alliance of Women (n 185 above).

<sup>190</sup> J Freedman ‘Explaining Sexual Violence and Gender Inequalities in the DRC’ (2011) 23:2 *Peace Review: A Journal of Social Justice* 172.

<sup>191</sup> M Mulanda ‘Ecumenical Women at the United Nations. Role of Women in the Democratic Republic of Congo’ 2008 <https://ecumenicalwomen.org/advocacy/advocacy/role-of-women-in-the-democratic-republic-of-congo/> (accessed 14 June 2017).

<sup>192</sup> Sida ‘The Democratic Republic of Congo’. Country Gender Profile September 2009.

<sup>193</sup> Sida (n 192 above).

<sup>194</sup> North Atlantic Treaty Organization (NATO) ‘Women and conflict: a frontline issue?. The struggle to empower Congolese women’ 2013 <http://www.nato.int/docu/review/2010/Women-Security/Congo-Women/EN/index.htm> (accessed 24 June 2017).

Freedman argues that “sexual and gender-based violence in the DRC cannot be viewed merely as a product of conflict, but must also be considered in relation to persistent gender inequalities that characterize Congolese societies”.<sup>195</sup>

The terms ‘gender-based violence’ (towards women) and ‘violence against women’ (VAW) are frequently used, as they denote “the violation of human rights and a form of discrimination against women”.<sup>196</sup> Furthermore, violence against women include “all acts perpetrated against women... including the deprivation of fundamental freedoms in private or public life in peace time and during situations of armed conflicts or of war”.<sup>197</sup>

The ‘Promotion of Gender Equality and Empowerment of all Women and Girls’ is one of the United Nations Sustainable Development Goals (SDGs).<sup>198</sup> The SDG 5 main targets include the following:<sup>199</sup>

- to end all forms of discrimination against women;
- eliminate all forms of violence against women in public and private spheres (including trafficking and sexual and other types of exploitation);
- eliminate harmful practices (including female genital mutilation); and
- ensure universal access to sexual and reproductive health and reproductive rights.

The SDG 5 goal and its main targets address key challenges such as inequality and the violence against women,<sup>200</sup> thus they are of great importance to African women in general, and in this case Congolese women in particular.

## 2.6. Conclusion

In many African societies, women are portrayed to be the nurturers, however, the sexual abuse Congolese women encounter may lead them to harbour hostile attitudes towards their

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<sup>195</sup> J Freedman ‘Explaining Sexual Violence and Gender Inequalities in the DRC’ (2011) 23:2 *Peace Review: A Journal of Social Justice* 171.

<sup>196</sup> Council of Europe Convention on preventing and combating violence against women and domestic violence. 2011. Article 3.

<sup>197</sup> Protocol to the African Charter on Human and Peoples’ Right on the Rights of Women in Africa. 2003. Article 1(j). (Violence Against Women).

<sup>198</sup> United Nations ‘United Nations Sustainable Goals’. Goal 5 ‘Gender Equality’. SDG 2030. 2017.

<sup>199</sup> United Nations Women ‘SDG 5: Achieve gender equality and empower all women and girls’. 2017.

<sup>200</sup> United Nations Women (n 199 above).

community, family and country. The fact of being sexually exploited affects the abused women's role and behaviour as they feel that they have been treated differently and despised for something that was beyond their control. Because of the high levels of sexual violence perpetrated in eastern DRC and the atrocities that accompany it, eastern DRC has earned the dubious reputation of being 'the rape capital of the world'. This expression highlights the severity and brutality that women face on a daily basis in the heart of Africa.

Many young, defenceless Congolese girls are forcefully taken as sexual possessions by perpetrators who may be older than their own fathers. Some end up bearing children when they are still children themselves and subsequently drop out of school in order to take care of their children.

The underlying argument in this chapter has been that perpetrators of sexual violence need to be held accountable for their horrendous and inexcusable actions. And since the liberation from sexual violence for Congolese women in the DRC remains a constant fight, victims and survivors of sexual violence should be cognizant of the legal obligations which promote their rights, entitlements and privileges, including their right to access to justice.

In many African countries, including the DRC, gender inequality remains a deep-rooted problem that may be extracted through the implementations of promoting gender equality and empowering women, as emphasised in SDG 5.

The elimination of harmful practices against women as well as the elimination of all forms of violence against women remains the central focus in many international, regional and national treaties and charters.

## Chapter Three: The legal obligations of the DRC in the prohibition of sexual violence against women

### 3.1. Introduction

The DRC has legal obligations to respect and protect Congolese women from sexual violence allegedly perpetrated by some peacekeeping personnel and some members of the armed groups. The country has ratified a number of international and regional conventions and charters which promote the rights of women and prohibit sexual violence. At national level, through its constitution in particular, the DRC has provisions aimed to promote, protect and respect women's rights against sexual violence. This chapter looks at some of these instruments, starting with international and regional treaties signed and ratified by the country and, then, the relevant national legislation. It also attempts to address the issue of the country's non-compliance with the legal instruments it has adopted, signed and ratified.

### 3.2. The international sources

#### 3.2.1. The Rome Statute of the International Criminal Court

The Rome Statute of the International Criminal Court was ratified by the DRC on 11 April 2002.<sup>201</sup> Article 7(1)(g) of the Rome Statute emphasises that "rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity" are crimes against humanity.<sup>202</sup> Article 8(2)(a)(iii) of the Rome Statute provides that war crimes consist of "wilfully causing great suffering, or serious injury to body or health".<sup>203</sup>

#### 3.2.2. The Geneva Conventions

International humanitarian law (IHL) refers to "a set of rules that seek to limit the effects of armed conflict".<sup>204</sup> International humanitarian law is applicable during situations of armed conflict and International Human Rights Law is applicable in times of peace or war.<sup>205</sup>

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<sup>201</sup> International Criminal Court. 2017. 'The States Parties to the Rome Statute'.

<sup>202</sup> The Rome Statute of the International Criminal Court. 1998. Article 7 (1)(g).

<sup>203</sup> The Rome Statute of the International Criminal Court. 1998. Article 8(2)(a)(iii).

<sup>204</sup> International Committee of the Red Cross 'War and Law' <https://www.icrc.org/en/war-and-law> (accessed 30 October 2017).

<sup>205</sup> SM Christiansen *Climate Conflicts - A Case of International Environmental and Humanitarian Law* 2016 Springer International Publishing 190.

International humanitarian law distinguishes two types of armed conflict: “international armed conflicts (opposing two or more States) as well as non-international armed conflicts, between governmental forces and non-governmental armed groups or between such groups only”.<sup>206</sup>

The four Geneva Conventions of 1949 and its Additional Protocols “implicitly and explicitly condemn rape and other forms of sexual violence as serious violations of humanitarian law”.<sup>207</sup>

The four Geneva Conventions of 1949<sup>208</sup> were ratified by the DRC on 24 February 1961.<sup>209</sup>

Article 3 of the Third Geneva Convention, relative to the Treatment of Prisoners of War applies to “armed conflicts not of an international character occurring in the territory of one of the High Contracting Parties”.<sup>210</sup> These include armed conflicts in which one or more non-governmental armed groups are involved.<sup>211</sup> Article 3 further states the prohibition (at any time and in any place) of: “violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture”<sup>212</sup> as well as “outrages upon personal dignity, in particular humiliating and degrading treatment”.<sup>213</sup>

In the Fourth Geneva Convention, relative to the Protection of Civilian Persons in Time of War, Article 27 states the protection of women against any attack on their honour, in particular against rape, enforced prostitution or any form of indecent assault.<sup>214</sup> Article 147 of the Fourth Geneva Convention mentions that grave breaches of the conventions include ‘torture or inhuman treatment’ and ‘wilfully causing great suffering or serious injury to body or health’.<sup>215</sup>

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<sup>206</sup> International Committee of the Red Cross (ICRC) ‘How is the Term “Armed Conflict” Defined in International Humanitarian Law?’ Opinion Paper (March 2008).

<sup>207</sup> Human Rights Watch ‘Seeking Justice: The Prosecution of Sexual Violence in the Congo War’ March 2005.

<sup>208</sup> Geneva Conventions of 1949 include: Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva, 12 August 1949. Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea. Geneva, 12 August 1949. Geneva Convention (III) relative to the Treatment of Prisoners of War. Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War

<sup>209</sup> Geneva Conventions. 2017. ‘Treaties, State Parties and Commentaries’. [https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/States.xsp?xp\\_viewStates=XPages\\_NORMStatesParties&xp\\_treatySelected=365](https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/States.xsp?xp_viewStates=XPages_NORMStatesParties&xp_treatySelected=365) (accessed 13 June 2017).

<sup>210</sup> Geneva Convention (III) relative to the Treatment of Prisoners of War. 1949. Article 3.

<sup>211</sup> International Committee of the Red Cross (ICRC) ‘How is the Term “Armed Conflict” Defined in International Humanitarian Law?’ Opinion Paper (March 2008).

<sup>212</sup> Geneva Convention (III) relative to the Treatment of Prisoners of War. 1949. Article 3(a).

<sup>213</sup> Geneva Convention (III) relative to the Treatment of Prisoners of War. 1949. Article 3(c).

<sup>214</sup> Convention (IV) relative to the Protection of Civilian Persons in Time of War. 1949. Article 27.

<sup>215</sup> Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva. 1949. Article 147.

The DRC ratified the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I) on 3 June 1982.<sup>216</sup> Article 75 of the Additional Protocol I prohibits humiliating and degrading treatment, enforced prostitution and any form of indecent assault.<sup>217</sup> Article 76 of the Additional Protocol I states that women shall be protected against rape, forced prostitution and any other form of indecent assault.<sup>218</sup>

The DRC ratified the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) on 12 December 2002.<sup>219</sup> Article 1 of the Additional Protocol II applies to armed conflicts "which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol".<sup>220</sup> Article 4 of the Additional Protocol II contains the prohibition of rape, enforced prostitution and any form of indecent assault.<sup>221</sup> The definition of 'rape' in this Article refers to the "coercion or force or threat of force against the victim or a third person".<sup>222</sup>

The various forms of sexual violence are prohibited in international and non-international armed conflicts. In the DRC, the victims should report serious abuses of human rights and violations of international humanitarian law.

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<sup>216</sup> International Committee of the Red Cross. 2017. 'Treaties, State Parties and Commentaries'. [https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/States.xsp?xp\\_viewStates=XPages\\_NORMStatesParties&xp\\_treatySelected=470](https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/States.xsp?xp_viewStates=XPages_NORMStatesParties&xp_treatySelected=470) (accessed 13 June 2017).

<sup>217</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. Article 75(2)(b).

<sup>218</sup> Protocol Additional to the Geneva Conventions (n 217 above). Article 76(1).

<sup>219</sup> International Committee of the Red Cross 'Treaties, State Parties and Commentaries' 2017 [https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/States.xsp?xp\\_viewStates=XPages\\_NORMStatesParties&xp\\_treatySelected=475](https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/States.xsp?xp_viewStates=XPages_NORMStatesParties&xp_treatySelected=475) (accessed 13 June 2017).

<sup>220</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977. Article 1(1).

<sup>221</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977. Article 4(2)(e).

<sup>222</sup> At the international level, rape has been essentially defined by the international criminal tribunals for Rwanda and the former Yugoslavia through three main cases, including the Furunzja case. International Criminal Tribunal for the former Yugoslavia. Furunzja case, Judgement. Vol II, Chapter 32, No 1732.

### 3.2.3. The Universal Declaration of Human Rights

The Universal Declaration of Human Rights (UDHR) was adopted by the United Nations General Assembly (UNGA) in 1948 and is considered as the ‘milestone document in the history of human rights’.<sup>223</sup> Article 2 of the Universal Declaration emphasises the entitlement of all human beings to the rights and freedoms provided for in the Declaration, regardless of race, colour or sex.<sup>224</sup> Article 5 protects the rights of women as it enforces the prohibition of torture or cruel, inhuman or degrading treatment or punishment.<sup>225</sup>

The Democratic Republic of Congo has signed and ratified a number of international human rights treaties, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment.

### 3.2.4. The International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights (ICCPR) was ratified by the DRC on 1 November 1976.<sup>226</sup> Article 7 of the ICCPR prohibits torture and other cruel, inhuman or degrading treatment.<sup>227</sup> In the General Comment No. 7 of 1982, comments on the prohibition of torture or cruel, inhuman or degrading treatment or punishment emphasises that complaints about ill-treatment must be investigated effectively by competent authorities.<sup>228</sup> The infliction of excruciating pain towards Congolese women and the degrading treatment that they experience should therefore be thoroughly investigated.

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<sup>223</sup> United Nations. 1948. Universal Declaration of Human Rights. <http://www.un.org/en/universal-declaration-human-rights/> (accessed 2 June 2017).

<sup>224</sup> Universal Declaration of Human Rights. 1948. Article 2.

<sup>225</sup> Universal Declaration of Human Rights. 1948. Article 5.

<sup>226</sup> International Covenant on Civil and Political Rights. ‘Ratification Status for Democratic Republic of the Congo’. [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Treaty.aspx](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx) (accessed 4 June 2017).

<sup>227</sup> International Covenant on Civil and Political Rights. 1976. Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976, in accordance with Article 49. Article 7.

<sup>228</sup> UN Human Rights Committee (HRC) ‘ICCPR General Comment No. 7: Article 7 (Prohibition of Torture or Cruel, Inhuman or Degrading Treatment or Punishment)’ 30 May 1982.



### 3.2.5. The International Covenant on Economic, Social and Cultural Rights

The International Covenant on Economic, Social and Cultural Rights (ICESCR) was ratified by the DRC on 1 November 1976.<sup>229</sup> Article 2(2) of the ICESCR promotes the rights of people without discrimination in terms of race, colour or sex.<sup>230</sup> Article 12(1) of the ICESCR ensures the right to enjoy the highest attainable standard of physical and mental health.<sup>231</sup> Furthermore, Article 12(2) of the ICESCR mentions the procedures that State Parties (in this case, the DRC) should take in order for the right of health to be provided, including: “the prevention, treatment and control of epidemic, endemic, occupational and other diseases”<sup>232</sup> as well as “the creation of conditions which would assure to all medical service and medical attention in the event of sickness”.<sup>233</sup>

Unfortunately, the violence which is being perpetrated against Congolese women results in detrimental health problems and the country needs to ensure proper medical assistance that can prevent and treat the illnesses and diseases that emerge from sexual violence.

### 3.2.6. The Convention on the Elimination of All Forms of Discrimination Against Women

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was ratified by the DRC on 17 October 1986.<sup>234</sup> Since its inception in 1979, CEDAW did not contain a provision on violence against women,<sup>235</sup> until in 1992 whereby the General Recommendation No. 19 was adopted.

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<sup>229</sup> International Covenant on Economic, Social and Cultural Rights. ‘Ratification Status for Democratic Republic of the Congo’. [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Treaty.aspx](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx) (accessed 4 June 2017).

<sup>230</sup> International Covenant on Economic, Social and Cultural Rights. 1976. (Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 3 January 1976, in accordance with article 27). Article 2(2).

<sup>231</sup> International Covenant on Economic, Social and Cultural Rights (n 230 above) Article 12(1).

<sup>232</sup> International Covenant on Economic, Social and Cultural Rights (n 230 above) Article 12(2)(c).

<sup>233</sup> International Covenant on Economic, Social and Cultural Rights (n 230 above) Article 12(2)(d).

<sup>234</sup> United Nations Treaty Collection ‘Convention on the Elimination of All Forms of Discrimination Against Women’ 2017 [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en) (accessed 5 June 2017).

<sup>235</sup> United Nations Population Fund (UNFPA) ‘Defining Gender-Based Violence’ 2017 <http://www.health-genderviolence.org/training-programme-for-health-care-providers/facts-on-gbv/defining-gender-based-violence/21> (accessed 7 June 2017).

General Recommendation No. 19 clearly stated: “gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men”.<sup>236</sup>

Article 1 of CEDAW provides the definition of the discrimination against women as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women”.<sup>237</sup> Article 6 of CEDAW obliges States Parties to take all appropriate measures, including legislation to suppress all forms of traffic in women and exploitation of prostitution of women.<sup>238</sup>

In the General Recommendation No. 19, the obligations of State Parties include: taking appropriate and effective measures to overcome all forms of gender-based violence<sup>239</sup> as well as reporting on the extent of domestic violence and sexual abuse, and on the preventive, punitive and remedial measures that have been taken.<sup>240</sup>

CEDAW’s General Recommendation No. 19 influenced the Declaration on the Elimination of Violence against Women (DEVAW) in 1993. DEVAW recognised “the urgent need for the universal application to women of the rights and principles with regard to equality, security, liberty, integrity and dignity of all human beings”.<sup>241</sup>

In 2004, the DRC submitted its combined fourth and fifth periodic report to the UN Committee on the Elimination of Discrimination against Women. The report covered sexual violence that is being perpetrated against Congolese women. According to the report, the extent of rape and other forms of sexual violence linked to armed conflict may result in the amputation of limbs and the live burial of women.<sup>242</sup> This report also provided for the consequences of sexual violence, including sexually transmitted diseases (STDs) and HIV, unwanted pregnancies which

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<sup>236</sup> General Recommendation No. 19. 1992. General recommendations made by the Committee on the Elimination of Discrimination against Women.

<sup>237</sup> The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). 1979. Article 1.

<sup>238</sup> The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). 1979. Article 6.

<sup>239</sup> General Recommendation No. 19 (n 238 above) Specific recommendation 24(a).

<sup>240</sup> General Recommendation No. 19 (11th session, 1992). General recommendations made by the Committee on the Elimination of Discrimination against Women. Specific recommendation 24(s).

<sup>241</sup> Declaration on the Elimination of Violence against Women. 1993. 85th plenary meeting. 20 December 1993.

<sup>242</sup> Committee on the Elimination of Discrimination against Women. 2004. ‘Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women Combined fourth and fifth periodic reports of States parties, Democratic Republic of the Congo’.

may result in unsafe abortions, haemorrhaging (the loss of blood) as well as constant pain in joints of women's hips and backs.<sup>243</sup>

As a follow-up to the submission of the fourth and fifth report, the DRC's combined sixth and seventh periodic report was submitted to the UN Committee on the Elimination of Discrimination against Women in 2011. This periodic report makes mention of the sexual violence that is being perpetrated in armed conflict areas (rape, sexual slavery) and in non-conflict areas (forced prostitution).<sup>244</sup> This report also highlights the living conditions of those affected by social, economic and sexual violence, including the mistreatment of widows and the beliefs related to witchcraft.<sup>245</sup> Finally, this report discusses the consequences of gender-based violence, including the abduction of women, the acceptance of impunity and the failure of justice.<sup>246</sup>

The Committee on the Elimination of Discrimination Against Women's concluding observations to the fourth and fifth periodic report raised the concern that the limiting factors of women's access to justice were illiteracy, legal costs, lack of information on their rights as well as lack of assistance in pursuing their rights.<sup>247</sup> The Committee on the Elimination of Discrimination against Women's concluding observations to the sixth and seventh periodic report recognised: the delay in the establishment of specialized courts to try individuals responsible for war crimes, genocide and crimes against humanity; as well as the absence of a proper screening process to remove persons suspected of perpetrating serious human rights violations from official positions in the security forces.<sup>248</sup>

The Optional Protocol to the Convention on the Elimination of Discrimination Against Women entered into force in 2000. Article 2 of the Optional Protocol provides the communication procedure that may be submitted by individuals or groups of individuals claiming to be victims

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<sup>243</sup> Committee on the Elimination of Discrimination against Women 2004 (n 242 above).

<sup>244</sup> Committee on the Elimination of Discrimination against Women. 2011. 'Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women Combined sixth and seventh periodic report of States parties Democratic Republic of the Congo'.

<sup>245</sup> Committee on the Elimination of Discrimination against Women 2011 (n 244 above).

<sup>246</sup> Committee on the Elimination of Discrimination against Women 2011 (n 244 above).

<sup>247</sup> Committee on the Elimination of Discrimination against Women. 2006. 'Concluding comments of the Committee on the Elimination of Discrimination against Women: Democratic Republic of the Congo'. (Combined fourth and fifth periodic report. DRC). Thirty-sixth session 7-25 August 2006.

<sup>248</sup> Committee on the Elimination of Discrimination against Women. 2013. 'Concluding observations on the combined sixth and seventh periodic reports of the Democratic Republic of the Congo'.

of a violation of any of the rights set forth in the Convention.<sup>249</sup> The DRC has not yet acceded nor ratified the Optional Protocol to CEDAW; which if acceded may empower Congolese women who are victims of sexual violence to invoke the individual complaint procedure and submit claims of violations of rights protected under the Convention.<sup>250</sup>

### 3.2.7. The Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment

The Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT) was ratified by the DRC on 18 March 1996.<sup>251</sup> Article 1 of CAT defines torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person”.<sup>252</sup> Article 12 of CAT provides that State Parties should conduct investigations (prompt and impartial) if an act of torture has occurred.<sup>253</sup> Furthermore, Article 13 stipulates the right of an individual who may have been subjected to torture, to complain and have their case examined by designated authorities.<sup>254</sup> In 2005, the DRC submitted its report to the Committee of CAT which consisted of legislative matters such as ensuring that authorised judicial officers are given the power to examine and investigate offences when an act of torture or degrading treatment has occurred.<sup>255</sup>

The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT-OP) was ratified by the DRC on 23 September

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<sup>249</sup> The Optional Protocol to the Convention on the Elimination of Discrimination Against Women. 2000. Article 2.

<sup>250</sup> The Optional Protocol to the Convention on the Elimination of Discrimination Against Women. <http://www.un.org/womenwatch/daw/cedaw/protocol/> (accessed 20 October 2017).

<sup>251</sup> Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment. ‘Ratification table’. [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-9&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-9&chapter=4&lang=en) (accessed 8 June 2017).

<sup>252</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. 1984. Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984 entry into force 26 June 1987, in accordance with article 27 (1). Article 2.

<sup>253</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (n 252 above). Article 12.

<sup>254</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (n 252 above). Article 13.

<sup>255</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Distr. General. 2005. ‘Committee against Torture consideration of reports submitted by state parties under Article 19 of the Convention Initial reports of States parties due in 1997’. Addendum. Democratic Republic of Congo’. 2 April 2005.

2010.<sup>256</sup> The CAT-OP reaffirms that inhuman or degrading treatment are serious violations of human rights.<sup>257</sup>

### 3.2.8. The Convention on the Rights of the Child

The Convention on the Rights of the Child (CRC) was ratified by the DRC on 27 September 1990.<sup>258</sup> Article 1 of the CRC mentions that children are human beings below the age of 18 years old.<sup>259</sup> In many reports of sexual violence against women in the DRC, the cases consisted of teenage girls, underage girls and even infant girls being the targets of perpetrators due to their vulnerability. Article 34 of the CRC makes provision for the protection of the child from all forms of sexual exploitation and sexual abuse, including unlawful sexual activities.<sup>260</sup> Article 37 of the CRC provides for the right to freedom from torture or other cruel, inhuman or degrading treatment or punishment.<sup>261</sup>

## 3.3. The regional sources

On the African continent, the Democratic Republic of Congo has signed and ratified the African Charter on Human and Peoples' Rights and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol). The DRC has signed but has yet to ratify the African Charter on the Rights and Welfare of the Child as well as the Southern African Development Community Protocol on Gender and Development (SADC Gender Protocol).

### 3.3.1. The African Charter on Human and Peoples' Rights

The regional African human rights system was formed under the auspices of the African Union (AU) and is composed of the African Charter on Human and Peoples' Rights (the African Charter

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<sup>256</sup> The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. 'Ratification table'. <http://indicators.ohchr.org/> (accessed 12 June 2017).

<sup>257</sup> The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. (Adopted in 2002. Entered into force 2006). 'Preamble'.

<sup>258</sup> Convention on the Rights of the Child. 2017. 'Ratification table'. [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en) (accessed 12 June 2017).

<sup>259</sup> Convention on the Rights of the Child. 1989. Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990, in accordance with article 49. Article 1.

<sup>260</sup> Convention on the Rights of the Child (n 259 above) Article 34.

<sup>261</sup> Convention on the Rights of the Child (n 259 above) Article 37.

or Banjul Charter), the African Commission on Human and Peoples' Rights (the African Commission) and the African Court on Human and Peoples' Rights (the African Court).

The African Union established the African Agenda 2063 which included the following aspirations:<sup>262</sup>

- An Africa of good governance, democracy, respect for human rights, justice and the rule of law;
- An Africa whose development is people-driven, relying on the potential of African people, especially its women and youth, and caring for children

An Africa of good governance, democracy, respect for human rights, justice and the rule of law consists of an Africa whereby 'democratic values, cultural practices, universal principles of human rights, gender equality, justice and the rule of law are entrenched and developed'.<sup>263</sup> An Africa where development is 'people-driven', entails empowering women to play their rightful role in all spheres of life as well as for full gender equality in all spheres of life.<sup>264</sup>

The regional African human rights system is based on the African Charter, which was ratified by the DRC on 20 July 1987.<sup>265</sup> Article 5 of the African Charter prohibits all forms of exploitation and degradation of human beings including slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment.<sup>266</sup> In 2017, the African Commission adopted General Comment No. 4 on The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment under Article 5 of the African Charter. In General Comment No. 4, the right to redress applies to the reparation of all persons, including victims or survivors who have been subjected to torture and other ill-treatment.<sup>267</sup>

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<sup>262</sup> African Union. Africa Agenda 2063. 'The Africa We Want'.

<sup>263</sup> African Union (n 262 above).

<sup>264</sup> African Union (n 262 above).

<sup>265</sup> African Charter on Human and Peoples' Rights. 1986. 'Ratification Table: African Charter on Human and Peoples' Rights'. <http://www.achpr.org/instruments/achpr/ratification/> (accessed 16 June 2017).

<sup>266</sup> African Charter on Human and Peoples' Rights. 1986. (Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986). Article 5.

<sup>267</sup> African Commission on Human and Peoples' Rights. 2017. 'General Comment No. 4 on the African Charter on Human and Peoples' Rights: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (Article 5)'. Adopted at the 21st Extra-Ordinary Session of the African Commission on Human and Peoples' Rights, held from 23 February to 4 March 2017 in Banjul, The Gambia.

Article 16 of the African Charter iterates that every individual shall have the right to enjoy the best attainable state of physical and mental health.<sup>268</sup> The right to health is crucial for every human being as it consists of the State Party providing access to maternal and child health care, immunisation against major infectious diseases, appropriate treatment of common diseases and injuries as well as freedom from serious environmental health threats.<sup>269</sup> The right to health includes effective access to health-related education and information, including sexual and reproductive health.<sup>270</sup> Article 18(3) of the African Charter obligates State Parties to ensure the elimination of every discrimination against women as well as ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.<sup>271</sup>

In 2006, the African Commission's Resolution on the Situation of Women in the Democratic Republic of Congo raised grave concerns over the widespread of sexual violence towards Congolese women as well as the incapability of authorities to prevent crimes and arrest the perpetrators.<sup>272</sup> The following year, in 2007, the major concerns raised in the African Commission's Resolution on the Right to a Remedy and Reparation for Women and Girls Victims of Sexual Violence included: the prevailing impunity for the perpetrators, the severity of the physical and psychological trauma that the victims face, as well as the legal obstacles, such as the inability of the women to have access to justice.<sup>273</sup>

In 2014, the African Commission's Resolution on the Suppression of Sexual Violence against Women in the Democratic Republic of Congo included more concerns on gender-based violence and the persistence of the violation of women's rights in the DRC.<sup>274</sup> In its resolution,

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<sup>268</sup> African Charter of Human and Peoples' Rights. 1986. Article 16.

<sup>269</sup> 'The Right to Health' 2017 <http://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/substantive-human-rights/the-right-to-health> (accessed 14 June 2017).

<sup>270</sup> African Commission on Human and Peoples' Rights. 'Principles and guidelines on the implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights'.

<sup>271</sup> African Charter of Human and Peoples' Rights. 1986. Article 18(3).

<sup>272</sup> The African Commission on Human and Peoples' Rights, meeting in its 40th Ordinary Session held in Banjul, The Gambia, from 15 - 29 November 2006. 103: Resolution on the Situation of Women in the Democratic Republic of Congo.

<sup>273</sup> The African Commission on Human and Peoples' Rights (the African Commission or ACHPR), meeting at its 42nd Ordinary Session held in Brazzaville, Republic of Congo, from 15 - 28 November 2007. 111: Resolution on the Right to a Remedy and Reparation for Women and Girls Victims of Sexual Violence.

<sup>274</sup> The African Commission on Human and Peoples' Rights (the Commission), meeting at its 55<sup>th</sup> Ordinary Session held from 28 April to 12 May 2014 in Luanda, Angola. 284: Resolution on the Suppression of Sexual Violence against Women in the Democratic Republic of Congo.

the African Commission urged the Congolese government to ensure the protection of Congolese women, to ensure access to justice, as well as to end the impunity by prosecuting the perpetrators before the competent courts within a reasonable time.<sup>275</sup>

### 3.3.2. The Maputo Protocol

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) was ratified by the DRC on 9 June 2008.<sup>276</sup> The Maputo Protocol aims to eliminate all forms of discrimination and harmful practices against women because women in Africa still continue to be victims of discrimination and harmful practices within their communities.<sup>277</sup> The Maputo Protocol emphasises the contextual realities of women in Africa, as it addresses serious issues including the violence against women, female genital mutilation and sexual reproductive rights.<sup>278</sup>

Article 2 of the Maputo Protocol provides the elimination of discrimination against women.<sup>279</sup> Article 3 of the Protocol provides the right to dignity for women in Africa, including the State Parties' duties to adopt and implement appropriate measures to prohibit any exploitation or degradation of women;<sup>280</sup> as well as to ensure the protection of women from all forms of violence, particularly sexual and verbal violence.<sup>281</sup>

Article 4 of the Maputo Protocol covers the right to life, integrity and security of every women.<sup>282</sup> The State Parties obligations include: the enforcement of laws to prohibit all forms of violence against women including unwanted or forced sex whether the violence takes place in private or public,<sup>283</sup> the identification of the causes and consequences of violence against

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<sup>275</sup> The African Commission on Human and Peoples' Rights (n 270 above).

<sup>276</sup> Protocol to the African Charter on Human and Peoples' Rights. 2017. 'Ratification Table'. <http://www.achpr.org/instruments/women-protocol/ratification/> (accessed 15 June 2017).

<sup>277</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women (Adopted in Maputo, Mozambique on 11 July 2003 and entered into force on 25 November 2005) 'Preamble'.

<sup>278</sup> K Makau 'Mozambique: What You Need to Know About the Maputo Protocol' *The Star* 27 April 2015.

<sup>279</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. Article 2.

<sup>280</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. Article 3(3).

<sup>281</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. Article 3(4).

<sup>282</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. Article 4(1).

<sup>283</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. Article 4(2)(a).



women<sup>284</sup> as well as the punishment of the perpetrators of violence against women and the implementation of programmes for the rehabilitation of women victims.<sup>285</sup>

Article 5 of the Maputo Protocol ensures the prohibition and condemnation of State Parties on all forms of harmful practices which negatively affect the human rights of women.<sup>286</sup> Article 5 covers State Parties' responsibilities to take all necessary legislative measures to eliminate harmful practices, including: the provision of basic services such as health services, legal and judicial support, emotional and psychological counselling;<sup>287</sup> as well as the protection of women who are at risk of being subjected to harmful practices or other forms of violence.<sup>288</sup>

Article 8 of the Maputo Protocol makes mention of the State Parties' responsibility to ensure that women have access to effective judicial and legal services, including legal aid.<sup>289</sup> Article 11 of the Maputo Protocol provides for the protection of women in armed conflict, including for State Parties to protect victims who may be inflicted by all forms of violence, rape and other forms of sexual exploitation, as well as to "ensure that these acts are considered war crimes and/or crimes against humanity and that their perpetrators are brought to justice before a competent criminal jurisdiction".<sup>290</sup>

Article 14 of the Maputo Protocol guarantees women's right to health, including sexual and reproductive health.<sup>291</sup> Article 14 further obligates State Parties to provide adequate, affordable and accessible health services especially to women in rural areas.<sup>292</sup> Thus, the Maputo Protocol aims to promote the rights of African women, particularly in this case,

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<sup>284</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. Article 4(2)(c).

<sup>285</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. Article 4(2)(e).

<sup>286</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. Article 5.

<sup>287</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. Article 5(c).

<sup>288</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. Article 5(d).

<sup>289</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. Article 8(a).

<sup>290</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. Article 11(3).

<sup>291</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. Article 14

<sup>292</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. Article 14(2)(a).

Congolese women's rights as it aims to preserve 'equality, peace, freedom, dignity, justice, solidarity and democracy'.<sup>293</sup>

### 3.3.3. The African Charter on the Rights and Welfare of the Child

The African Charter on the Rights and Welfare of the Child (ACRWC) was signed on 2 February 2010 by the Democratic Republic of Congo but has not yet been ratified.<sup>294</sup> The ACRWC is prominent to the advancement of children's rights on the African continent, as Africa remains the only continent with a region-specific child rights instrument.<sup>295</sup>

Article 14(1) of the African Charter on the Rights and Welfare of the Child emphasises that children (every human being below the age of 18 years)<sup>296</sup> have the best attainable state of physical, mental and spiritual health.<sup>297</sup> Article 16(1) provides the protection against child abuse and torture, ensuring that State Parties "take specific legislative, administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse".<sup>298</sup> Article 16(2) further highlights the protective measures from child abuse, including special monitoring units to provide necessary support for the child as well as other forms of prevention and for identification, reporting referral investigation, treatment, and follow-up of instances of child abuse and neglect.<sup>299</sup>

Article 27(1) of the African Children's Charter makes mention of the protection of children from all forms of sexual exploitation and sexual abuse and indicates that State Parties should take measures to prevent the inducement, coercion or encouragement of a child to engage in any sexual activity;<sup>300</sup> as well as the use of children in prostitution or other sexual practices.<sup>301</sup>

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<sup>293</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. 'Preamble'.

<sup>294</sup> African Charter on the Rights and Welfare of the Child. 'List of countries which have signed, ratified/acceded to the African Charter on the Rights and Welfare of the Child'. 15 June 2017. [https://au.int/sites/default/files/treaties/7773-sl-african\\_charter\\_on\\_the\\_rights\\_and\\_welfare\\_of\\_the\\_child\\_1.pdf](https://au.int/sites/default/files/treaties/7773-sl-african_charter_on_the_rights_and_welfare_of_the_child_1.pdf) (accessed 25 October 2017).

<sup>295</sup> African Committee of Experts on the Rights and Welfare of the Child. 2017. The African Charter on the Rights and Welfare of the Child.

<sup>296</sup> African Charter on the Rights and Welfare of the Child. 1999. Article 2.

<sup>297</sup> African Charter on the Rights and Welfare of the Child. 1999. Article 14(1).

<sup>298</sup> African Charter on the Rights and Welfare of the Child. 1999. Article 16(1).

<sup>299</sup> African Charter on the Rights and Welfare of the Child. 1999. Article 16(2).

<sup>300</sup> African Charter on the Rights and Welfare of the Child. 1999. Article 27(1)(a).

<sup>301</sup> African Charter on the Rights and Welfare of the Child. 1999. Article 27(1)(b).

#### 3.3.4. Southern African Development Community Protocol on Gender and Development

The Southern African Development Community (SADC) is a regional organisation consisting of 15 Member States, including the Democratic Republic of Congo. The Southern African Development Community Protocol on Gender and Development (SADC Gender Protocol) was established in 2008, to promote gender equality on the African continent. The DRC signed the Protocol, but has not yet ratified the Protocol.

Article 11 of the SADC Protocol on Gender and Development stipulates that the State Parties should protect girls from all forms of violence, including sexual abuse, through adopting laws and policies.<sup>302</sup> Article 20 of the SADC Protocol on Gender and Development permits State Parties to enable legislations that prohibit all forms of gender-based violence<sup>303</sup> and ensures that the perpetrators of the gender-based violence who have committed rape, femicide or female genital mutilation, are tried by a court of competent jurisdiction.<sup>304</sup>

#### 3.4. The national sources

The Democratic Republic of Congo has a constitution, which is the supreme law of the country. Other national legal instruments include the Congolese Military Penal Code, the Child Protection Code and the Congolese Family Code. The National Commission for Human Rights aims to promote and protect human rights in the DRC.

##### 3.4.1. The Congolese Constitution

The Constitution of the DRC entered into force in February 2006 and was amended in 2011. The Congolese Constitution consists of provisions and basic laws governing the country and the fundamental rights for the Congolese people.

Article 12 of the Constitution stipulates that “all Congolese are equal before the law and have the right to equal protection by the law”.<sup>305</sup> Article 52 of the Constitution ensures the right to

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<sup>302</sup> Southern African Development Community. Protocol on Gender and Development. 2008. Article 11.

<sup>303</sup> Southern African Development Community. Protocol on Gender and Development. 2008. Article 20(1)(a).

<sup>304</sup> Southern African Development Community. Protocol on Gender and Development. 2008. Article 20(1)(b).

<sup>305</sup> Congo (Democratic Republic of the)'s Constitution of 2005 (with Amendments through 2011) Article 12.

peace and security of Congolese citizens on a national and international level.<sup>306</sup> This reaffirms the notion that peace and security needs to be promoted in the war-torn country. This is followed by Article 60 of the Constitution which states: “the respect of the rights of man and of the fundamental freedoms consecrated in the Constitution is imposed on the public powers and on every person”.<sup>307</sup>

The protection of Congolese women against sexual violence is enshrined in Article 14 to Article 16 of the Constitution. Article 14 of the Congolese Constitution states that the public authorities must eliminate all forms of discrimination against women, and ensure the promotion and protection of their rights.<sup>308</sup> Article 14 also provides for all appropriate measures to be taken by public authorities to ensure the full realization of the potential of women and their full participation in the development of the nation.<sup>309</sup> Furthermore, the public authorities should take measures in order to fight all forms of violence against women in their public and private life.<sup>310</sup>

Article 15 of the Constitution provides the public authorities responsibility in the elimination of sexual violence used as an instrument in the destabilization and displacement of families.<sup>311</sup> Furthermore, Article 15 stipulates that the intention to destabilize or to displace a family through the act of sexual violence is a crime against humanity which is punishable by law.<sup>312</sup>

Article 16 of the Constitution states that the Congolese citizens are not to suffer from any cruel, inhuman or degrading treatment.<sup>313</sup> Thus, the rights mentioned in Articles 14 to 16 of the Constitution should be upheld to protect Congolese women by eliminating all forms of discrimination against women, eliminating sexual violence as well as eradicating cruel or degrading treatment.<sup>314</sup>

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<sup>306</sup> Congo (Democratic Republic of the)'s Constitution of 2005 Article 52.

<sup>307</sup> Congo (Democratic Republic of the)'s Constitution of 2005 Article 60.

<sup>308</sup> Congo (Democratic Republic of the)'s Constitution 2005 Article 14.

<sup>309</sup> Congo (Democratic Republic of the)'s Constitution of 2005 Article 14.

<sup>310</sup> Congo (Democratic Republic of the)'s Constitution of 2005 Article 14.

<sup>311</sup> Congo (Democratic Republic of the)'s Constitution of 2005 Article 15.

<sup>312</sup> Congo (Democratic Republic of the)'s Constitution of 2005 Article 15.

<sup>313</sup> Congo (Democratic Republic of the)'s Constitution of 2005 Article 16.

<sup>314</sup> Congo (Democratic Republic of the)'s Constitution of 2005 Article 14 to Article 16.

### 3.4.2. Child Protection Code

The Child Protection Code entered into force in the DRC on 10 January 2009. Article 2 of the Child Protection Code states that a child is any person under the age of 18 years old.<sup>315</sup> Congolese children, particularly in this case, girls, need to be protected from all forms of abandonment, negligence, exploitation, physical, moral and sexual harm.<sup>316</sup>

Article 9 of the Child Protection Code emphasises that no children should be subjected to any cruel, inhuman or degrading treatment or punishment.<sup>317</sup> Article 57 stipulates that children are entitled to protection from all forms of sexual exploitation and violence.<sup>318</sup> Article 61 makes mention of these protection clauses, including the prohibition of “the incitement, encouragement or coercion of a child to engage in sexual activity”<sup>319</sup> as well as “the use, procuring or offering of a child for the purpose of paedophilia”.<sup>320</sup>

### 3.4.3. Congolese Family Code

The Congolese Family Code entered into force in 1987 and was amended in 2016. Article 448 of the Family Code implies that a wife must obtain permission from her husband on all legal acts which require her to provide a service that must be given in person.<sup>321</sup> The legal acts mentioned in this particular article may refer to the access to justice. The difficulty with this provision lies in the fact that it does not allow much room for manoeuvre to women who are indeed victims of sexual violence and are willing to report such cases. Indeed, the requirement to obtain the husband’s permission for legal actions may become problematic in cases whereby the women face rejection from their husbands and thus cannot proceed with the legal processes of acquiring justice.

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<sup>315</sup> Loi n° 09/001 du 10 janvier 2009 portant protection de l'enfant. 2009. republique democratique du congo.

<sup>316</sup> Loi n° 09/001 du 10 janvier 2009 portant protection de l'enfant. 2009. republique democratique du congo.

<sup>317</sup> Loi n° 09/001 du 10 janvier 2009 portant protection de l'enfant. 2009. Article 9.

<sup>318</sup> Loi n° 09/001 du 10 janvier 2009 portant protection de l'enfant. 2009. Article 57.

<sup>319</sup> Loi n° 09/001 du 10 janvier 2009 portant protection de l'enfant. 2009. Article 61(1).

<sup>320</sup> Loi n° 09/001 du 10 janvier 2009 portant protection de l'enfant. 2009. Article 61(2).

<sup>321</sup> Loi n16/008 du 15 juillet 2016 modifiant et completant le Loi n87-010 du 1er auot 1987 portant Code de la Famille. Article 448.

#### 3.4.4. The National Commission of Human Rights

The National Commission of Human Rights (CNDH) is an independent body in the DRC established in accordance to Article 222 of the Congolese Constitution,<sup>322</sup> to assist the public authorities to assume constitutional obligations including the promotion and protection of human rights.<sup>323</sup> According to Article 5 of the Organic Law on the Establishment, Organisation and Functioning of the National Commission for Human Rights, the CNDH's mandate is to deal with persons, victims or perpetrators and legal entities that perpetrate human rights violation in the DRC.<sup>324</sup> Article 6 emphasises that the National Commission should investigate all cases of human rights violations<sup>325</sup> as well as ensure respect for the rights of women and children.<sup>326</sup>

### 3.5. Congolese laws suitable to punish perpetrators

#### 3.5.1. The Congolese Military Penal Code

The Congolese Military Penal Code entered into force on 30 November 2004 and was amended in 2006 to include the provision of the protection against sexual violence, including sexual assault, sexual slavery, forced marriage, sexual relations with minors (children under 18) and forced pregnancy.

Articles 167 and 168 of the Military Penal Code incorporate indecent assault such as sexual exploitation and abuse in the DRC. Article 167 stipulates that “any act contrary to morals intentionally and indirectly exercised against a person without their valid consent constitutes an indecent assault”.<sup>327</sup> Article 168 provides that any indecent assault which is committed with violence, shall be sentenced with penal servitude between six months and five years.<sup>328</sup>

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<sup>322</sup> Congo (Democratic Republic of the)'s Constitution of 2005 (with Amendments through 2011) Article 222 states: “the Parliament may by organic law establish other democracy supporting institutions, if necessary”.

<sup>323</sup> Loi organique n° 13/011 du 21 mars 2013 portant institution, organisation et fonctionnement de la Commission Nationale des Droits de l'Homme (Organic Law on the Establishment, Organisation and Functioning of the National Commission of Human Rights).

<sup>324</sup> Loi organique n° 13/011 du 21 mars 2013 Commission Nationale des Droits de l'Homme. Article 5.

<sup>325</sup> Loi organique n° 13/011 du 21 mars 2013 Commission Nationale des Droits de l'Homme. Article 6(1).

<sup>326</sup> Loi organique n° 13/011 du 21 mars 2013 Commission Nationale des Droits de l'Homme. Article 6(4).

<sup>327</sup> Loi no. 06/018 du 20 juillet 2006 modifiant et complétant le Décret du 30 janvier 1940 portant Code pénal congolais. Article 167.

<sup>328</sup> Loi no. 06/018 du 20 juillet 2006 modifiant et complétant le Décret du 30 janvier 1940 portant Code pénal congolais. Article 168.

Furthermore, if the victim is below 18 years, the perpetrator will be sentenced between five and fifteen years; if the victim is less than 10 years old, the sentence is between 5 and 20 years.

Articles 170 and 171 of the Military Penal Code include the definition and provisions that address rape. According to Article 170, the perpetrator who commits rape, “either by aid of violence or grave threats or by coercion against a person, directly or through a third person, or by surprise, psychological pressure, or at the occasion of a coercive environment” shall be punished with a penalty of penal servitude between 5 and 20 years and a fine not less than 100 000 Congolese francs.<sup>329</sup>

Furthermore, Article 171 stipulates that “if the rape or the indecent assault has caused the death of the person against whom it was committed, the perpetrator shall be punished with penal servitude for life”.<sup>330</sup>

Article 174 covers sexual violence offences, such as enforced prostitution, sexual slavery, sexual mutilation, exploitation of children for sexual purposes, forced pregnancy, enforced sterilisation and child prostitution.<sup>331</sup> Enforced prostitution, which is the forced engagement in one or more acts of a sexual nature, is punishable with a sentence between three months and five years.<sup>332</sup> Sexual slavery, which is the purchasing, selling, lending or bartering of a person for sexual purposes, and has caused the person to engage in one or more acts of a sexual nature, is punishable with a sentence between 5 and 20 years of penal servitude and a fine of 200 000 francs.<sup>333</sup>

Sexual mutilation, an act which affects the physical and functional integrity of the person’s genital organ, is punishable with a sentence between two to five years and a fine of 200 000 francs.<sup>334</sup> Trafficking and exploitation of children for sexual purposes for any remuneration or benefit, is punishable with ten to twenty years imprisonment.<sup>335</sup>

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<sup>329</sup> Code Penal Congolais. 2006. Article 170.

<sup>330</sup> Code Penal Congolais. 2006. Article 171.

<sup>331</sup> Code Penal Congolais. 2006. Article 174.

<sup>332</sup> Code Penal Congolais. 2006. Article 174(c).

<sup>333</sup> Code Penal Congolais. 2006. Article 174(e).

<sup>334</sup> Code Penal Congolais. 2006. Article 174(g).

<sup>335</sup> Code Penal Congolais. 2006. Article 174(j).

Enforced pregnancy, which consists in making women pregnant by force or through trickery, is punishable with a sentence between 10 and 20 years.<sup>336</sup> Enforced sterilisation consists in depriving a person of their biological and organic reproductive capacity, without the genuine consent of the victim.<sup>337</sup> Child prostitution, defined as using a child younger than 18 years old for sexual activities purposes against remuneration or any other form of advantage is punishable with 5 to 20 years imprisonment and a fine of 200 000 Congolese francs.<sup>338</sup>

### 3.6. Conclusion

According to Eide *et al*, “in principle, everyone is the beneficiary of human rights. However, in practice, some groups are more vulnerable than others in obtaining these human rights”.<sup>339</sup> Congolese women’s rights are perceived as inferior and mediocre compared to those of men’s rights. According to Meger, the women’s inferior status is embedded in the legal code of the country and in dominant social customs.<sup>340</sup>

The establishment of CEDAW in the late 1970s signified the international acknowledgment of the advancement of women’s rights and the standards in which these rights had to be upheld. Almost three decades later, in 2003, the establishment of the Maputo Protocol as Africa’s first women’s protocol emphasised the promotion and protection of women’s rights on the African continent.

Unless the laws enshrined in the Congolese Constitution are respected and upheld by the Congolese population, there will be no positive development in the field of human rights, particularly in terms of the sexual exploitation and abuse that Congolese women are exposed to in eastern DRC.

The Constitution, which remains the supreme law of the country, ought to promote and protect Congolese women’s rights in the country. The Congolese Military Penal Code’s fundamental inclusion of sexual violence in its provision on crimes against humanity suggests

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<sup>336</sup> Code Penal Congolais. 2006. Article 174(k).

<sup>337</sup> Code Penal Congolais. 2006. Article 174(l).

<sup>338</sup> Code Penal Congolais. 2006. Article 174(n).

<sup>339</sup> A Eide ; C Krause & A Rosas ‘Economic, Social and Cultural Rights as Human Rights’ in *Economic, Social and Cultural Rights* Martinus Nijhoff Publishers: Dordrecht (1995).

<sup>340</sup> S Meger ‘Rape of the Congo: Understanding sexual violence in the conflict in the Democratic Republic of Congo’ (2010) 28:2 *Journal of African Studies* 129.



that some significant legal effort is being undertaken to deal with this serious crisis in the DRC. Moreover, law enforcement needs to take place in order for the Congolese judicial system to improve and for the civilians to uphold the laws provided within the various pieces of legislation.

It is clear that if the country is to tackle the issue of sexual violence, it must conform to the international conventions and other instruments that it has ratified and implement the provisions of the relevant national laws. Therefore, failure to combat sexual violence cannot be ascribed to a lack of legal instruments, but rather to a lack of will to use them. The legal obligations stipulated in the international, regional and national sources are critical for the development, promotion and protection of Congolese women's entitlements and rights.

Sexual violence perpetrated against Congolese women in conflict zones persists and even increases despite the country's obligations in protecting women from the scourge. The next chapter explores the main factors affecting Congolese women's fight against sexual violence and the promotion of their rights.

## Chapter Four: Main factors in combating sexual violence and promoting the rights of women in the DRC

### 4.1. Introduction

Congolese women continue to face hindrances and interferences on a daily basis as they lead the fight against sexual violence and the promotion of women's rights. This chapter discusses the political, social and economic contextual factors that impact the current situation.

### 4.2. Political factors

The political wrongdoings of the past in the DRC still have a major effect on the current political situation, characterised as it is by recurrent armed conflicts marked by torture, rape and other serious violations of human rights. Not only did Mobutu's 32-year dictatorship have a detrimental impact on Congolese people's conception of political leadership, but it has also highlighted his use of the army as a tool for oppression and the legitimization of his rule.

The armed conflict in the DRC has been fought in demand for political freedom and territorial gain.<sup>341</sup> Territorial gain has been a political tactic for many armed groups in order to gain control of various resources and minerals that the DRC has to offer. Sadly, in the fight to obtain gold, coltan or copper, women's bodies are often used as 'battlegrounds',<sup>342</sup> a reference to the ground on which a battle is fought.<sup>343</sup> Defenceless women's bodies are misused, betrayed and distorted, in order for the perpetrators to "sustain themselves while they pursue their political agenda".<sup>344</sup>

According to Elloe, a form of militarised rape is the national security rape, which is "systematically used by governments and militaries to ensure what they thought to be national

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<sup>341</sup> World Without Genocide. 2017. 'Democratic Republic of Congo'.  
<http://worldwithoutgenocide.org/genocides-and-conflicts/congo> (accessed 17 April 2017).

<sup>342</sup> Zedenius (n 50 above).

<sup>343</sup> Dictionary.com 'Battleground' 2017 <http://www.dictionary.com/browse/battleground> (accessed 1 June 2017).

<sup>344</sup> J Mansfield 'Prosecuting sexual violence in the Eastern Democratic Republic of Congo: Obstacles for survivors on the road to justice' (2009) 9:2 *African Human Rights Law Journal* 371.

security”.<sup>345</sup> This form of militarised rape “violently enacts many intersecting and mutually constitutive power relations, such as local patriarchy and nationalism”.<sup>346</sup>

Moreover, reports have shown that the lack of representation of Congolese women in the political arena may lead to the persistence of sexual violence seen across the country. The representation of African women, particularly Congolese women, in politics remains a focal challenge in the African continent. Congolese women’s leadership is undermined as their political participation is restricted and their roles in the political environment is frowned upon. As Albright stated: "development without democracy is improbable. Democracy without women is impossible".<sup>347</sup> The term ‘democracy’ is formed from the Greek words ‘demos’ (which means the people) and ‘kratos’ (which means power).<sup>348</sup> The people (which includes women) play a central role in how a country should be governed, therefore the lack of representation of women is detrimental to the country’s development.

A Congolese woman’s effective role in politics would guarantee the advancement of women’s rights in the country. As Kitembo asserts, “having more women in politics could reduce the suffering that women endure in areas marred by conflicts”.<sup>349</sup> Congolese women’s rights should be respected as it is stipulated in the Constitution and in various charters and treaties that the DRC has signed and ratified. A larger presence of Congolese women in politics and in decision-making positions will influence the decisions relating to sexual violence, such as the right to health, the right to access to justice and the right to safety.

Jeanine Mabunda Lioko was appointed as the Congolese President’s Personal Representative in Charge of the Fight Against Sexual Violence and Child Recruitment for the Democratic Republic of the Congo. Mrs Mabunda should take initiatives towards greater protection of women’s rights and a more determined fight against sexual violence in the DRC.

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<sup>345</sup> C Enloe *Manoeuvres: The International Politics of Militarizing Women’s Lives* Berkeley: University of California Press (2000).

<sup>346</sup> M Baaz & M Stern ‘Why Do Soldiers Rape? Masculinity, Violence, and Sexuality in the Armed Forces in the Congo (DRC)’(2009) 53:2 *International Studies Quarterly* 500.

<sup>347</sup> MK Albright ‘National Democratic Institute. Gender, Women and Democracy’ 2017 <https://www.ndi.org/what-we-do/gender-women-and-democracy> (accessed 15 June 2017).

<sup>348</sup> Arton 2017 ‘What is democracy?’ <http://www.arton.co/whatisdemocracy.html> (accessed 17 June 2017).

<sup>349</sup> G Kitembo ‘Women in politics’ *IRIN News* 2 September 2011.

Congolese women should be active agents in their roles in peace and conflict resolutions, as well as in peacebuilding negotiations, as stated in the United Nations Security Council Resolution (UNSCR) 1325.<sup>350</sup> The Resolution further encourages states to increase their representation of women in decision-making levels (on a national, regional and international level) and to promote peace and security.<sup>351</sup> UN Security Council Resolution 1820 reaffirms the important role that women should display in decision making with regards to conflict prevention and resolution.<sup>352</sup>

Article 9 of the Maputo Protocol obliges State Parties to take positive actions to promote participative governance and the equal participation of women in the political life of their respective countries through affirmative action, enabling national legislation and other measures to ensure that women participate without any discrimination in all elections and are represented equally at all levels with men in all electoral processes.<sup>353</sup>

Kitembo believes that Congolese women's presence in the country's political sphere will allow them to "use their influence to ensure that all those who commit sexual violence against women are brought to justice".<sup>354</sup> Thus, access to power for Congolese women including their participation in voting polls and their inclusion on ballot papers, is imperative for the country's development to fight sexual violence and to overcome the challenges which are deterring the roles of women.

### 4.3. Social factors

Congolese women are considered as 'second-class citizens',<sup>355</sup> a term used to describe two aspects. Firstly, "a person who is not given the same rights as other people"<sup>356</sup> and secondly, "a citizen (especially a member of a minority group) who is denied the social, political and

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<sup>350</sup> United Nations Security Council Resolution 1325 on Women, Peace and Security. 2000. Adopted by the Security Council at its 4213<sup>th</sup> meeting, on 31 October 2000.

<sup>351</sup> United Nations Security Council Resolution 1325 (n 350 above).

<sup>352</sup> United Nations Security Council Resolution 1820 on acts of sexual violence against civilians in armed conflicts. 2008. Adopted by the Security Council at its 5916<sup>th</sup> meeting, on 19 June 2008.

<sup>353</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. 2003. Article 9(a)(b).

<sup>354</sup> Kitembo (n 349 above).

<sup>355</sup> Human Rights Watch (n 20 above).

<sup>356</sup> Merriam Webster Dictionary 'Second-class citizen' 2017 <https://www.merriam-webster.com/dictionary/second-class%20citizen> (accessed 20 June 2017).

economic benefits”.<sup>357</sup> According to Freedman, “women’s poor socioeconomic situation, coupled with gendered representations and stereotypes relegate women to a second-class status”.<sup>358</sup>

Being socially excluded has become a norm for many Congolese women, as their gender, class and status remain inferior to men. For many decades, an African woman’s tasks consisted in fetching water, preparing food and looking after her children. Despite the passing of time, in some parts of Africa, a woman is still expected to belong in the kitchen.

Congolese societies tend to control the way a woman should conduct herself, in terms of her dress code. For that reason, society instils a sense of fear in women, suggesting that adherence to a strict dress code may protect them from being attacked by perpetrators. This confirms Warner’s view that rules of certain cultures and beliefs in societies are so strict, that the wearing of pants which may be considered as unacceptable in society, can result in the torture of women.<sup>359</sup>

According to the Gender Inequality Index (GII) of the United Nations Development Programme (UNDP), the DRC had a very low human development with a GII value of 0.663 in the 2015 index.<sup>360</sup> The GII measures countries’ gender inequalities by three aspects of human development, namely reproductive health, empowerment and economic status.<sup>361</sup> In the Human Development Index (HDI), the DRC is positioned 176 out of 188 countries in 2015.<sup>362</sup> The HDI measures three basic dimensions of human development: a long and healthy life, access to knowledge and a decent standard of living.<sup>363</sup>

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<sup>357</sup> Dictionary.com ‘Second-class citizens’ 2017 <http://www.dictionary.com/browse/second-class-citizen> (accessed 20 June 2017).

<sup>358</sup> J Freedman ‘Explaining Sexual Violence and Gender Inequalities in the DRC’. (2011) 23:2 *Peace Review: A Journal of Social Justice* 174.

<sup>359</sup> C Warner *Raped, Robbed and Molested: Sexual violence against women and girls in the Democratic Republic of the Congo: A curriculum development project* (2008) 20.

<sup>360</sup> United Nations Development Programme Human Development Reports ‘Gender Inequality Index’ (2015).

<sup>361</sup> United Nations Development Programme Human Development Reports. ‘Gender Inequality Index’ (2015).

<sup>362</sup> United Nations Development Programme Human Development Reports. ‘Human Development Index’ (2015).

<sup>363</sup> United Nations Development Programme. 2015. Human Development Reports. ‘Human and Development Index’ (2015).

The uneven access to food, education and healthcare may be due to the gender differences whereby ‘women and girls are not valued as men and boys’.<sup>364</sup> Due to particular culture norms, in the various parts of the country, parents prefer sending their boys to school rather than their girls.<sup>365</sup> The young Congolese girls who do not have access to education may end up performing daily activities such as fetching water by the river and collecting wood in the forest, which may make them more vulnerable to the perpetrators. Moreover, the young girls who have access to education in conflict-affected areas such as in the North Kivu and South Kivu provinces, suffer negatively as the learning environment becomes un-conducive and some children are introduced to violence.<sup>366</sup> The fear of repeated conflict is evident in these provinces, as many young girls do not return to school after conflict.

In an attempt to create awareness and to break the silence about sexual violence, a campaign was launched which consisted of placing billboards and call centres across the DRC in order to pass the message to young women. The message on the billboards was clear: “break the silence, don’t feel guilty. They are the guilty ones. Call our helpline number.”<sup>367</sup> However, it is reported that the campaign was unsuccessful because the majority of Congolese women are illiterate or only have basic primary education, and are thus unable to read the billboards. In addition, due to poverty, they cannot afford a cellphone in order to make use of the call centres.<sup>368</sup>

The majority of Congolese women who live in conflict-torn areas experience uneven access to food as they live below the poverty line. Many of these women rely on food aid when it is

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<sup>364</sup> Gender Country Profile ‘Democratic Republic of Congo’. Commissioned by the Swedish Embassy in collaboration with DFID, the European Union Delegation and the Embassy of Canada, in Kinshasa (2014) 41.

<sup>365</sup> Gender Country Profile (n 364 above) 23.

<sup>366</sup> Inter-Agency Network for Education in Emergencies. 2013. ‘The challenges of providing quality education in conflict areas’. <http://www.ineesite.org/en/blog/the-challenges-of-providing-quality-education-in-conflict-areas> (accessed 17 April 2017).

<sup>367</sup> JL Mabunda ‘This woman leads the fight against sexual violence in the DRC’ 2015 <https://www.one.org/us/2015/08/27/this-woman-leads-the-fight-against-sexual-violence-in-drc/> (accessed 30 June 2017).

<sup>368</sup> R Maclean ‘No sleep for Congolese mothers trying to save their girls from rape’ *The Guardian* 7 December 2016.

available and provided.<sup>369</sup> According to the World Food Programme (WFP), food insecurity and malnutrition are widespread in the country.<sup>370</sup>

The lack of healthcare is evident in the country as Congolese women living in villages and other rural areas, do not have access to adequate medical services. In addition, major health issues may occur to the victims of sexual violence, such as the suffering from depression, being infected by HIV/AIDS and the spreading of sexually transmitted diseases. These health issues require immediate treatment, especially in rape cases whereby treatment needs to be provided within 72 hours to prevent possible consequences.<sup>371</sup> Serious healthcare issues which may also occur in times of sexual violence consist of the insertion of objects into women's cavities, such as sticks, bottles, green bananas and pestles coated in chili pepper.<sup>372</sup> In conflict-torn areas, the medical services are not within instant reach, therefore many Congolese women have to travel for many hours and in some cases, many days, to get medical treatment.

Victims of sexual exploitation may suffer from psychosomatic illnesses and in severe cases, they may even commit suicide.<sup>373</sup> Another potential problem is the fear amongst Congolese women that a medical visit to the hospital may make the rape publicly known to the community.

Congolese women who suffer from the consequence of being sexually violated, may find themselves seeking for comfort and protection in refugee camps situated in conflict-torn areas. According to Toole *et al*, the consequences of living in 'crowded makeshift conditions' may cause the victims to experience multiple physical health issues such as tuberculosis (TB), respiratory diseases, parasitic diseases, sexually transmitted diseases and infections, hepatitis, malaria and meningitis.<sup>374</sup>

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<sup>369</sup> D Mukwege & C Nangini 'Rape with Extreme Violence: The New Pathology in South Kivu, Democratic Republic of Congo' (2009) 6:12 *PLoS Med* 2.

<sup>370</sup> World Food Programme 'Democratic Republic of Congo: is economic recovery benefiting the vulnerable?' (2014).

<sup>371</sup> United Nations Human Rights Office of the High Commissioner (n 28 above) 22.

<sup>372</sup> D Mukwege & C Nangini 'Rape with Extreme Violence: The New Pathology in South Kivu, Democratic Republic of Congo' (2009) 2.

<sup>373</sup> World Health Organisation 'Understanding and addressing violence against women.' (2012).

<sup>374</sup> M Toole; R Waldman & A Zwi in Merson, M., Black, R. & Mills, A (editors) *International Public Health: Diseases, Systems, and Policies*. 'Complex Humanitarian Emergencies'. Jones and Bartlett Publishers International. London, United Kingdom (2001) 439 – 509.

Migration remains a societal issue whereby victims of sexual violence migrate to urban areas.<sup>375</sup> These victims seek help in larger towns and cities, where daily life expenditures, including the cost of food, medicine and clothes have increased. Nonetheless, in urban areas, the victims have more access to legal services and healthcare.

#### 4.4. Economic factors

It is often argued that “the prevalence of violence against women has adverse effects on economic growth and development”.<sup>376</sup> Congolese women’s rights are very limited as exemplified by the fact that they have no rights to inheritance and they need to acquire permission from their husbands to open a bank account.<sup>377</sup> This limitation of rights is detrimental to the country’s economy, as the lack of access to inheritance hinders a woman from obtaining money in order to take care of her household and feed her children.

Congolese women in rural areas carry out domestic duties such as fetching water from the river, collecting wood from the forest and walking to the market to get food. However, the women do not have the right to keep or manage the money they earn. In most cases of sexual abuse by perpetrators, husbands of the victims neglect and disregard their wives, thus women are not given permission by their husbands to open a bank account. This is despite the fact that in a place such as the South Kivu province, women are the driving force behind the subsistence economy of the province through farming and livestock.<sup>378</sup> The representation of Congolese women in agriculture in the province is at 70%.<sup>379</sup> The contribution and involvement of women in provinces is crucial in boosting the provinces’ economy.

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<sup>375</sup> AZ Hale ‘In Search of Peace: An Autopsy of the Political Dimensions of Violence in the Democratic Republic of Congo’. University of Florida. Dissertation: Degree of Doctor of Philosophy (2009) 110.

<sup>376</sup> Woman and Public Policy Program ‘Human Rights and Sexual Violence’ 2017 <http://wapp.hks.harvard.edu/human-rights> (accessed 30 June 2017).

<sup>377</sup> M Mulanda ‘Ecumenical Women at the United Nations. Role of Women in the Democratic Republic of Congo’ 2008 <https://ecumenicalwomen.org/advocacy/advocacy/role-of-women-in-the-democratic-republic-of-congo/> (accessed 14 June 2017).

<sup>378</sup> MCO Ohambe; JBB Muhigwa & BM Wa Mamba ‘Women’s bodies as a battleground: sexual violence against women and girls during the war in the Democratic Republic of Congo: South Kivu 1996 - 2003’ Réseau des Femmes pour un Développement Associatif (RFDA), Réseau des Femmes pour la Défense des Droits et la Paix (RFDP) and International Alert (2005) 25.

<sup>379</sup> MCO Ohambe; JBB Muhigwa & BM Wa Mamba ‘Women’s bodies as a battleground: sexual violence against women and girls during the war in the Democratic Republic of Congo: South Kivu 1996 - 2003’ Réseau des Femmes pour un Développement Associatif (RFDA), Réseau des Femmes pour la Défense des Droits et la Paix (RFDP) and International Alert (2005) 25.



Men and women's equality in the DRC is essential for economic growth, as women will have more opportunities and add more value to the country's economy. Women need to be exposed to jobs which can generate income and boost the country's gross domestic product (GDP). Due to the lost productivity and increased health care costs, reports have indicated that the economic costs of gender-based violence range from 1.2 to 2 percent of GDP.<sup>380</sup>

Financial constraints may be a limiting factor given that victims of sexual violence are not able to access justice due to the cost of court fees and transport fees. This is a serious hindrance in the enjoyment of a fundamental human right guaranteed by the Constitution. Victims in conflict-torn areas cannot afford the many expenditures of accessing justice, which is considered a human right.

In conflict-torn areas, particularly in eastern DRC, there needs to be income-generating activities for women. In situations whereby the men go to war and leave their wives as the heads of the households, financial empowerment can result in the increase of bargaining power for women.<sup>381</sup> In situations whereby the women who are victims of sexual violence migrate to urban areas, their access to jobs is pivotal as this brings forth economic stability. Moreover, the migration into urban areas should lead to access to a sustainable livelihood as the victims have the responsibility to take care of themselves in terms of providing food, clothes and shelter.

Eastern DRC is globally renowned for its bountiful resources and minerals, including coltan, a mineral which is used in electronic devices such as cameras and cell phones. The demand for resources in mining remains a reason for the ongoing conflict by rebel groups and regular soldiers in eastern DRC. It has been reported that artisanal mining<sup>382</sup> is a source of income for soldiers or traders operating through armed allies.<sup>383</sup> The illegal trade of minerals, such as gold

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<sup>380</sup> Woman and Public Policy Program (n 376 above).

<sup>381</sup> Bargaining power: in negotiating, capacity of one party to dominate the other due to its influence, power, size, or status, or through a combination of different persuasion tactics. (Business Dictionary 'Bargaining power' 2017 <http://www.businessdictionary.com/definition/bargaining-power.html> accessed 30 June 2017).

<sup>382</sup> Artisanal mining refers to 'mining practised by individuals, groups or communities often informally (illegally) and in developing nations'. (<http://www.miningfacts.org/communities/what-is-artisanal-and-small-scale-mining/> (accessed 30 June 2017)).

<sup>383</sup> Council on Foreign Relations 'The Eastern Congo: A CFR Info Guide Presentation' 2017 [https://www.cfr.org/congo-democratic-republic-of/eastern-congo/p37236#!/?cid=soc-at-interactive-the-eastern-congo\\_infoguide-121015](https://www.cfr.org/congo-democratic-republic-of/eastern-congo/p37236#!/?cid=soc-at-interactive-the-eastern-congo_infoguide-121015) (accessed 30 June 2017).

and diamonds has enabled many of the armed groups to become self-financing and self-sustaining.<sup>384</sup> It is also worth pointing out what is perceived as the “deadly nexus between the worst violence against women in the world and the purchase of electronics products containing conflict minerals from the Congo is direct and undeniable”.<sup>385</sup>

According to Banwell, the gender-based violence occurring in the DRC is being perpetrated at three levels, namely, the macro, meso and micro levels.<sup>386</sup> At the macro level, ‘global political economy of war’, the conflict opposes transnational companies which compete for access and control of the mineral resources in the conflict zones and, therefore, contribute to the continuation of the conflict.<sup>387</sup> In pursuing this mercantilist goal, transnational companies have no concern about the acts of violence perpetrated on the ground.

Leatherman uses the term ‘global political economy of war’ to refer to the system that connects multinational corporations and international government bodies to “plundering militaries on the ground that use extreme forms of violence against the reproductive economy in general, and more specifically through sexual violence against women as a profit-making strategy to gain access to and control of natural resources”.<sup>388</sup> In Banwell’s view, this is reflected in the DRC context in the persistence of the armed groups in eastern part of the country in continuously disrupting the peace and causing ferocious damage to the civilians and infrastructure, in order to gain access to the resources and minerals, including gold, tin and coltan.<sup>389</sup>

In the political economy of violence, the meso level refers to the notions of ‘heterosexual masculinity and the military’, which refers to the perception of soldiers as the embodiment of

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<sup>384</sup> Report of the Security Council Committee Established Pursuant to Resolution 1533 (2004) Concerning the Democratic Republic of the Congo, delivered to the Security Council, UN Doc S/2008/773 (12 December 2008).

<sup>385</sup> The Enough Project (2009) ‘Can you hear Congo now? Cell phones, conflict minerals, and the worst sexual violence in the world’. John Prendergast.

<sup>386</sup> S Banwell ‘Rape and sexual violence in the Democratic Republic of Congo: A case study of gender-based violence’ (2014) 23:1 *Journal of Gender Studies* 49 - 53.

<sup>387</sup> S Banwell ‘Women, rape and warfare: A gendered critique of Just War theory and the immunity principle. A case study of the Democratic Republic of Congo’ 2011 [http://gala.gre.ac.uk/15139/2/15139%20BANWELL\\_Women\\_Rape\\_Warfare\\_Bristol\\_2011.pdf](http://gala.gre.ac.uk/15139/2/15139%20BANWELL_Women_Rape_Warfare_Bristol_2011.pdf) (accessed 20 October 2017).

<sup>388</sup> J Leatherman *Sexual violence and armed conflict* Cambridge: Polity Press (2011) 6.

<sup>389</sup> S Banwell ‘Rape and sexual violence in the Democratic Republic of Congo: A case study of gender-based violence’ (2014) 23:1 *Journal of Gender Studies* 49.

masculinity and the ‘natural driving force which required satisfaction from women’.<sup>390</sup> The micro level refers to ‘rape and masculinities’, which consists of the physical, social and economic power that men dominate to “acquire tokens (women) and wealth (minerals) in order to re-establish lost hegemony”.<sup>391</sup>

This conceptualisation of the role of women in society is at variance with the Sustainable Development Goal 5, which is about the ‘Promotion of Gender Equality and Empowerment of all Women and Girls’. One of the SDG 5’s main target emphasises the need to undertake reforms to give women equal rights to economic resources, including access to ownership and control over land and other forms of property, financial services, inheritance and natural resources.<sup>392</sup> This main target of SDG 5 is essential to Congolese women as it emphasises women’s rights to economic resources. Since these SDGs aim to be achieved by the year 2030, radical economic transformation needs to be enforced in the DRC.

#### 4.5. Conclusion

It is noteworthy that a common obstacle in the DRC is “the imbalance in power dynamics between men and women as well as of cultural and social norms in our societies”.<sup>393</sup> The unequal power relationships between the two genders constitutes of the many challenges that Congolese women endure and suffer from.

Politically, the current situation may be traced to the political past, which consisted of instability, unrest and strife. Territorial gain has also been a political tactic for many decades, as armed groups used strategies in order to gain control of resources which resulted in the intimidation and violation against harmless women. The representation of Congolese women in the political sphere, especially in positions of decision making, will be fundamental for the country’s development.

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<sup>390</sup> M Baaz & M Stern ‘Why Do Soldiers Rape? Masculinity, Violence, and Sexuality in the Armed Forces in the Congo (DRC)’ (2009) 53:2 *International Studies Quarterly* 505.

<sup>391</sup> S Banwell ‘Rape and sexual violence in the Democratic Republic of Congo: A case study of gender-based violence’ (2014) 23:1 *Journal of Gender Studies* 53.

<sup>392</sup> United Nations Women. 2015. ‘Why Goal 5 matters’.

<sup>393</sup> Woman and Public Policy Program ‘Human Rights and Sexual Violence’ 2017 <http://wapp.hks.harvard.edu/human-rights> (accessed 30 June 2017).

Socially, Congolese women are being regarded as second-class citizens due to their subordinate position in society compared to men. Being subordinate results in uneven access to education, health and food which is detrimental to women's development in the DRC. Young Congolese girls' rights to an education are jeopardised upon their falling pregnant from being raped, as they are forced to leave school in order to raise their children. The lack of healthcare is evident as Congolese women living in villages, and other rural areas, do not have access to adequate medical services. Congolese women's journey to the market to get food in conflict-torn areas makes them vulnerable to the perpetrators. The victims who live in poverty-stricken households cannot afford adequate food or clothing.

The prominence of sexual violence against women has a negative impact on the economic growth and development in the DRC. Congolese women's exposure to job opportunities is essential for economic growth, as it will add more value to the country's economy.

Currently, political, social and economic factors are far from stable and thus remain serious impediments in the fight against sexual violence and the promotion of women's rights in the DRC. However, these factors should be considered and addressed to be more beneficial, advantageous and valuable for the protection of women against sexual violence in the country. Measures need to be put in place to enforce political, social and economic factors as well as mechanisms to end the impunity of perpetrators in the DRC.

## Chapter Five: Measures to end the impunity of perpetrators in the DRC

### 5.1. Introduction

Over the years, human rights organisations, activists and researchers involved in the human rights situation in the eastern part of the DRC have continuously cited a number of mechanisms and measures which can be put in place in order to end the impunity of perpetrators that are violating international human rights law. The mechanisms and measures forms part of recommendations in order to bring peace and security and to promote and protect Congolese women's rights in the DRC.

### 5.2. The way forward: The punishment of perpetrators

Committing a crime against humanity, in this case, sexual violence, and enjoying impunity is damaging to the country's rule of law and the fundamental human rights guaranteed to all human beings.

The lack of accountability implies that there is a victim but not the offender or perpetrator of the crime. That is why the lack of accountability by the perpetrators of sexual violence against women in the DRC remains a serious problem, given the fact that the victims continue to suffer the consequences of a crime without having access to justice. The situation is compounded by the fact that there is no sense of closure or peace as they remain 'victims' for the rest of their lives and are constantly reminded of their victimhood by the medical effects of destroyed reproductive organs and pregnancies which can result in unsafe abortions and fatal injuries. The lack of accountability of perpetrators also makes it possible for the offenders to walk free and perform more acts of human right violations against other Congolese women.

The Minova case referred to in Chapter Two is worth discussion at this juncture. The case refers to the sexual violence crimes committed by members of the national Congolese army in the town of Goma in November and December 2012. The Minova Case trial was held in December 2013 and concluded in a verdict rendered in May 2014. The Minova Case trial charges were of

rape and pillage, and the accused consisted of a total of 39 members from the national Congolese army.<sup>394</sup>

The verdict was as follows: 25 soldiers were convicted of pillage and violation, twelve officers were acquitted of all charges and only two soldiers were found guilty and convicted of one individual rape each.<sup>395</sup> Of the two soldiers who were found guilty, one soldier was sentenced to life imprisonment for rape as a war crime and the other soldier was sentenced to 20 years for raping a girl as an ordinary offence.<sup>396</sup> According to the Human Rights Watch report, there was a sense of dissatisfaction and disappointment with the verdict, as the trial failed tremendously on three issues: to establish what happened in Minova, to identify those who were responsible for the crimes and to bring justice to the victims of sexual violence.<sup>397</sup>

The Minova case trial exposed serious flaws and inconsistencies in the Congolese judicial system, including the lack of effort in the collection of evidence as seen in poor interviews conducted with the victims and witnesses, as their testimonies were conflicting; as well as the fact that there was no geographical map to indicate the location of the troops and their alleged movements.<sup>398</sup> Moreover, the evidence excluded the dates of the alleged attacks, the troops involved in the attacks and proof of the suffering of injuries.<sup>399</sup>

The case demonstrates that there needs to be a better way forward for the punishment of the perpetrators of sexual violence in the DRC. In many of the reported cases of the various forms of sexual violence committed in the DRC, the victims express outrage at the low conviction rate and the fact that perpetrators can be seen walking around, with no remorse and free from prosecution.

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<sup>394</sup> Human Rights Watch 'Justice on Trial. Lessons from the Minova Rape Case in the Democratic Republic of Congo' Human Rights Watch Report (1 October 2015).

<sup>395</sup> Minova Case Rape Trial 'Trial Date: December 2013'.

<sup>396</sup> Trial International 'Sabwe Tshibanda – Minova case' 2015 <https://trialinternational.org/latest-post/sabwe-tshibanda/> (accessed 8 May 2017).

<sup>397</sup> Human Rights Watch 2015 (n 394 above).

<sup>398</sup> Human Rights Watch 2015 (n 394 above).

<sup>399</sup> Human Rights Watch 2015 (n 394 above).

A victim of sexual violence expresses her frustration:

“These people who are accountable for the sexual violence in armed conflict, they have to be brought to justice. It’s part of our healing because it’s really painful to see that they are still walking around, they are still doing the same thing”.<sup>400</sup>

The victims of sexual violence seek justice and reparation of the damages that the perpetrators have caused. This calls for the need to put in place effective measures in order to end the impunity of perpetrators in the DRC and to bring peace and harmony to Congolese women.

### 5.3. Measures to end impunity of perpetrators in the DRC

The Congolese government need to investigate, inspect and prosecute with immediate effect the perpetrators of sexual violence in the country. The government needs to issue and enforce clear orders to the national army to stop sexual violence against women. In order for this to be effective, members of the armed forces accused of sexual crimes must be brought to military courts and put on trial. There is also a need to implement comprehensive systems, whereby the victims can report cases of sexual abuse to the authorities and get proper counselling treatment. Such systems should be available all over the country, and especially in conflict-torn areas in the North Kivu and South Kivu provinces.

The Congolese government needs to strengthen its legislative framework by increasing the specialized expertise of the justice system to handle violent crimes by appointing qualified members of the judicial system who have the knowledge, qualification and experience to handle such cases.<sup>401</sup> Moreover, strict implementation of existing legal guarantees is needed to strengthen the independence of the justice system in the DRC.

The right to a fair trial<sup>402</sup> is one of the cornerstones of a just society.<sup>403</sup> The right to a fair trial is imperative in the Congolese judicial system, as stipulated in Article 14(1) of the International

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<sup>400</sup> Invisible Children ‘Sexual violence in war: testimonies of LRA survivors’. (Angela Atim. 14-years old. Victim abducted by the LRA). (2014).

<sup>401</sup> Human Rights Watch (n 394 above).

<sup>402</sup> The right to a fair trial is “a norm of international human rights law designed to protect individuals from the unlawful and arbitrary curtailment or deprivation of other basic rights and freedoms”. (Lawyers Committee for Human Rights. 2000. What is a fair trial?)

<sup>403</sup> Fair Trials International ‘Defending the Human Right to a fair trial’ (2016).

Covenant on Civil and Political Rights.<sup>404</sup> A national protection programme could be an effective measure in pursuing a right to a fair trial by enforcing protection measures before, during and after the trial for all victims and witnesses.<sup>405</sup>

The Congolese government needs to facilitate and provide support and assistance to the judicial system in their investigations regarding human rights abuses, particularly sexual violence in eastern DRC. Furthermore, the Congolese government needs to ensure that victims of sexual violence have access to courts.

The DRC government should engage with multinational corporations and create conditions that enable them to operate legally in a peaceful environment. This will keep them from fueling conflicts in the mining areas.

The Personal Representative in Charge of the Fight Against Sexual Violence and Child Recruitment for the DRC appointed by the Congolese President, needs to work alongside the representatives of organisations that are combatting sexual violence against women in the country, including the United Nations special rapporteur on violence against women and the United Nations special rapporteur on the situation of human rights in the DRC.<sup>406</sup> Human Rights Watch, Amnesty International and other human rights experts should also need to assist with the human rights crisis.

As a remedy, the DRC needs to provide adequate budgetary allocations in order to eradicate sexual violence in society. These funds should be used to assist victims of sexual violence including proper health care units to treat illness and disease. Moreover, educational programmes should be devised and implemented in order for women to gain knowledge about the legal aspects (access to justice) as well as the medical aspects (the causes and treatment of sexual assaults). These programmes should be accessible and study materials should be made available.

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<sup>404</sup> The International Covenant on Civil and Political Rights. Article 14(1). “Everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law”.

<sup>405</sup> Human Rights Watch ‘Justice on Trial. Lessons from the Minova Rape Case in the Democratic Republic of Congo’ Human Rights Watch Report (1 October 2015).

<sup>406</sup> Human Rights Watch ‘The War Within the War. Sexual Violence Against Women and Girls in Eastern Congo’ 2002.



Women's rights non-governmental organisations (NGOs) in conflict-torn areas and non-conflict torn areas across the country need to assist women in dire situations. It is important to involve women who have the exposure and the experience to work together with other women who do not have a voice nor the courage to stand up for what is right. There needs to be a platform wherein engagements can take place, open and closed discussions can be held, for women who are afraid to speak about their situation in front of other women. Women's rights NGOs should also implement and aim to increase the representation of women in courts.

Whistle-blowing is an effective measure of reporting any illegal or unethical conduct, such as corruption and mismanagement. Whistle-blowing will be useful in the DRC in the sense that civilians report and expose the perpetrators through private sessions with officials in camp sites in conflict-torn areas. These sessions should be in full compliance of confidentiality, in order to protect the victim and the perpetrator but also the whistleblower.<sup>407</sup> The evidence produced by the whistleblower should also be protected to facilitate the investigations.

Medical care units should be accessible and made available to cater to the victims of sexual exploitation and abuse. The Congolese government needs to provide effective and efficient service delivery, including the medical services such as adequate medical equipment and medical facilities such as beds, injection needles, sonograms and stethoscopes. Many hospitals in conflict-torn areas face many challenges, including a shortage of money, supplies and resources. The large stream of victims of sexual violence to the hospitals may lead to slow service, as the victims need immediate attention from the doctors and nurses. The Congolese government needs to align its strategies and work with international and national organisations in order for victims of sexual violence to get immediate medical assistance.

The Congolese government needs to also establish a coordinated response system within and across borders that protects women.<sup>408</sup> This system will assist to synchronise the reported cases of victims as well as the responsive aspect of reliable public servants and officials working

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<sup>407</sup> MONUSCO 'Use of whistle blowing to fight sexual exploitation and abuse' 10 August 2016.

<sup>408</sup> United Nations High Commissioner for Refugees 'Report warns refugee women on the move in Europe are at risk of sexual and gender-based violence' 20 January 2016.

together to align with its government in order to bring peace, harmony and unity amongst Congolese women.

The Congolese government should pressurize neighbouring countries and communities to impeach and prosecute rebel groups that are causing death and wreaking havoc in eastern DRC as well as those who are accused of crimes against humanity. This can be done through the International Conference of the Great Lakes Region (ICGRL) to which Rwanda, Burundi and Uganda also belong. These neighbouring countries, where rebel groups appear to have their rear bases, should not only pressure those groups to stop waging war in a neighbouring country but also denounce crimes of sexual violence, as well as other violations of human rights and humanitarian law and insist on the accountability for the perpetrators.<sup>409</sup>

The Congolese national army and the national police should cease to harm civilians and should work together to strengthen security, as well as investigate, monitor and evaluate the crisis in the country. They should also engage with the country's legal authorities to tackle human rights issues as well as allow full access for national and international NGOs, medical professionals and humanitarian agencies to provide information and services to victims of sexual violence.<sup>410</sup> It is incumbent to the government to ensure that relevant – civil and military - courts prosecute those who commit sexual violence acts.

With regard to perpetrators in the ranks of UN peacekeepers, the Congolese government needs to ensure that the MONUSCO, including the African-led intervention brigade which comprises of contingents from Malawi, Tanzania and South Africa, stick to the United Nations zero tolerance policy on sexual violence and the accountability of peacekeepers.

The UN has indeed made commitments towards a 'zero tolerance' policy on sexual exploitation and abuse and this policy should be regularly enforced.<sup>411</sup> UN officials should investigate and prosecute peacekeepers who commit sexual violence. Moreover, the UN should continuously support the DRC and work hard in promoting peace and security within the country. Both the DRC government and the UN need to work together so that transparency about investigations

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<sup>409</sup> Human Rights Watch (n 20 above).

<sup>410</sup> Human Rights Watch (n 20 above).

<sup>411</sup> Human Rights Watch 'UN: Stop Sexual Abuse by Peacekeepers' 4 March 2016.

and prosecutions of offenders become a reality and that safety and relevant services are provided to survivors of abuses by peacekeepers.

#### **5.4. Conclusion**

The way forward for any sexual violence crimes is reparation for those who have been unfairly treated and harmed. The offenders and the perpetrators of these crimes should be detained and brought to justice for the crimes that they have committed.

The victims of sexual violence feel a sense of healing and restoration once their attackers have been brought to justice. The victims should feel safer in their communities and resume their daily life activities once the perpetrators are put in prison cells. This is essential for the victims' well-being and their socio-economic development.

The recommendations provided serve as measures that may be put in place in order to end the impunity of perpetrators of human rights violations. Ultimately, the research study condemns all forms of sexual violence towards women.

## Chapter Six: General Conclusion

Sexual violence in eastern DRC remains a detrimental form of violence that no human being should encounter nor experience as the victims simply walk to the market, fetch water from the river or are awoken from their sleep to be forced to the nearest forest for the worst possible form of violence towards a human being. As mentioned earlier, in this day and age, it is currently more dangerous and perilous to be a woman than to be a soldier. This statement illustrates the significance and seriousness of this human rights crisis unfolding in the DRC, where women's bodies are used as 'battlegrounds'. It has been pointed throughout this mini-dissertation, in most cases, there is a lack of accountability because there are no actual offenders or perpetrators being brought forward for prosecution.

The human rights crisis in eastern DRC is extreme as victims may be informed that 'justice does not extend to women'. The right to access to justice should be emphasised to all women, including the victims. As has been seen, even in situations whereby the victims are aware of their right to access to justice, victims of sexual violence in eastern DRC are afraid to report sexual crimes, because many of these women have been threatened by the perpetrators. Victims are also afraid to report those crimes due to the embarrassment, shame and mortification that come with the sexual abuse. The fear that their neighbours, family and community may find out and reject them further prevents them from coming forward to seek justice. Victims should not be afraid to report such crimes. Appropriate measures need to be put in place in order to prove the credibility of their claims.

The Congolese judicial system should address the key challenges of improving the law enforcement institutions and providing efficient and effective resources and infrastructure. The Congolese government needs to ensure that its judicial system complies to all rules and regulations relating to women's access to justice, as well as to implement effective measures in order for the victims' rights to be respected and acknowledged.

Upon being sexually violated, Congolese women face victimisation and banishment. Gender inequality remains a deep-rooted problem in the DRC, as women's rights tend to have less effective implementation than other human rights. The Congolese government needs to emphasise that human rights are inherent to all human beings.

Congolese women should be cognizant of their rights, such as the right to access to justice, right to health, right to education, right to food and clean water and the right to safety. The right to healthcare as well as the right to education in the African continent remain elusive, as millions of people do not have adequate access to these socio-economic rights. Poverty remains rife in this continent, which results in the inaccessibility of these rights. Congolese women should be aware of these rights as they are entitled to these rights, through the provisions stipulated in charters and treaties.

The legal obligations pertaining to the prohibition of sexual violence enshrined in the various charters and treaties that the DRC has signed and ratified should be upheld. The issues pertaining to sexual violence that also need to be addressed, includes alleviating poverty and combatting HIV/AIDS and other diseases. The eradication of these key challenges that the African continent faces is fundamental in improving women's health rights and further combatting sexual violence. The Congolese Constitution remains the supreme law of the country, thus, Articles 14 to 16 of the Constitution which focuses on the protection of women by eliminating all forms of discrimination against women, the elimination of sexual violence as well as the eradication of cruel or degrading treatment should be enforced in the country.

Economic, social and political factors should be taken into consideration in the fight against sexual violence. The positive aspects of these factors which emphasise development and progress in the country should be encouraged in order to bring about unity, peace and harmony to the Congolese people.

Peacekeeping personnel and members of the armed groups need to protect Congolese women from such atrocities. Perpetrators who have committed crimes of sexual violence should be detained and held accountable for their actions. Peacekeeping personnel and members of armed groups should cease to add fuel to the ever-burning fire.

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## Appendices

### Appendix 1

#### Geographical map of the DRC

The map represents the geographical location of the DRC on the African continent. The North Kivu and South Kivu provinces are situated in the eastern part of the DRC as depicted on the map. The map also includes the various minerals and energy that these two provinces are globally renowned for.<sup>412</sup>

Map of the Democratic Republic of Congo



Source: Geographical map of the DRC. 2017.

<sup>412</sup> Geographical map of the DRC 2017

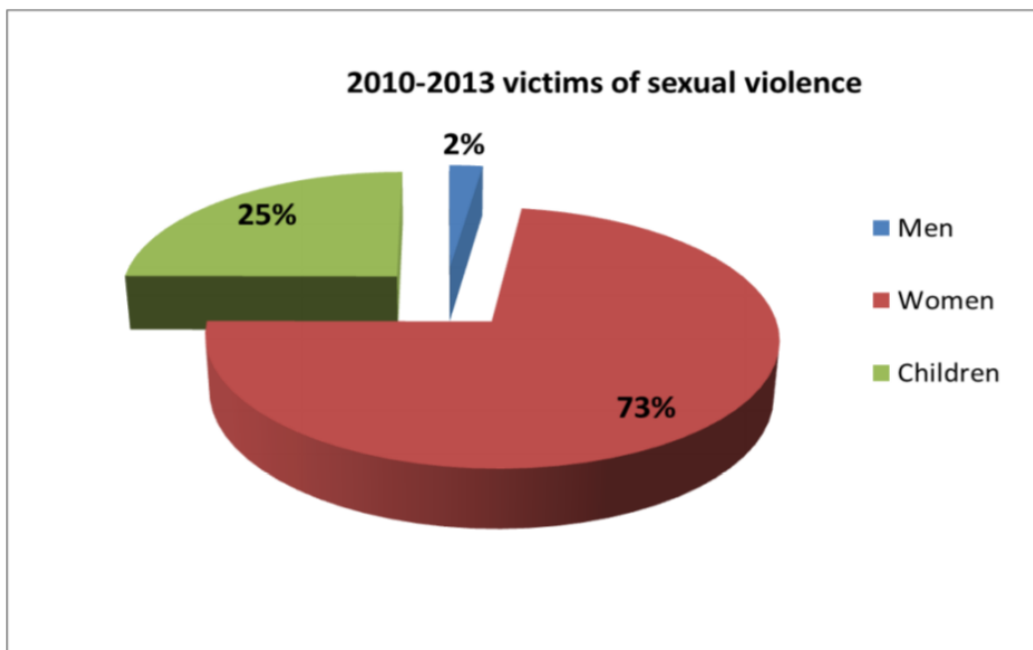
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## Appendix 2

### Types of victims of sexual violence in DRC

The victims of sexual violence in the years of 2010 to 2013 in the DRC mostly constituted of a large percentage of women (73%) followed by children (25%) as opposed to men (2%). It is evident that women are primary victims of sexual violence and are vulnerable to the perpetrators who terrorise, intimidate and attack them.<sup>413</sup>

Pie chart depicting the types of victims of sexual violence in the DRC (2010 to 2013)



Source: United Nations Human Rights Office of the High Commissioner. United Nations Joint Human Rights Office. 2014. Progress and obstacles in the fight against impunity for sexual violence in the Democratic Republic of the Congo. April 2014. UNJHRO Report 5. Page 11.

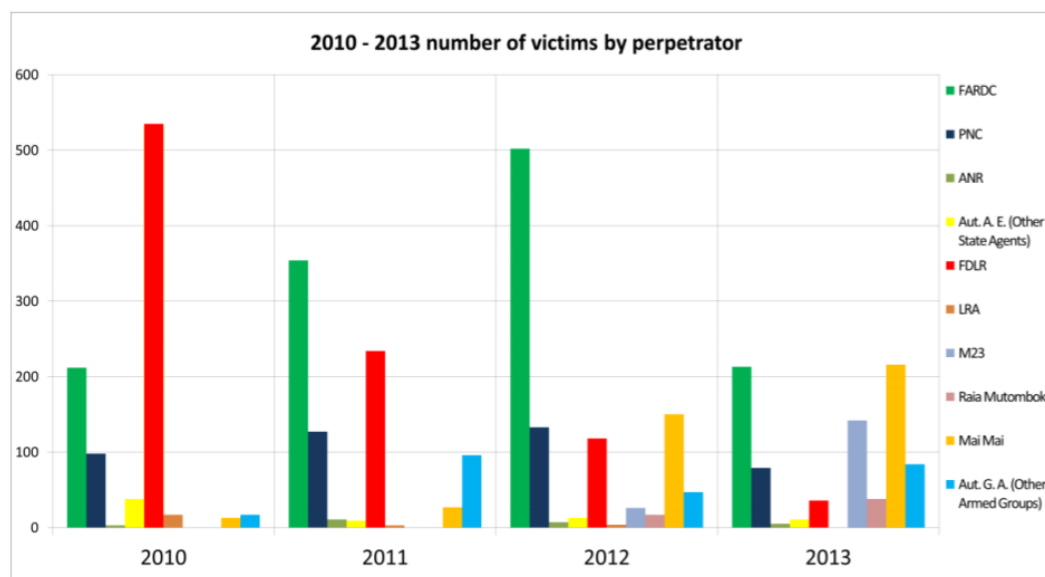
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### Appendix 3

#### Perpetrators of sexual violence in DRC

In a research conducted by the United Nations Joint Human Rights Office (UNJHRO), in the years of 2010 to 2013, various perpetrators of sexual violence against Congolese women consisted of: the Congolese national army (FARDC), the Congolese National Police (PNC), the Rwandan group (FDLR), the M23 rebels, the Lord’s Resistance Army (LRA), the Raia Mutomboki and the Mai-Mai groups.<sup>414</sup> The findings are expressed in the graph below.

Graph depicting the number of victims sexually violated by the various perpetrators in the DRC in 2010 - 2013.



Source: United Nations Human Rights Office of the High Commissioner. United Nations Joint Human Rights Office. 2014. Progress and obstacles in the fight against impunity for sexual violence in the Democratic Republic of the Congo. April 2014. UNJHRO Report 5. Page 10.

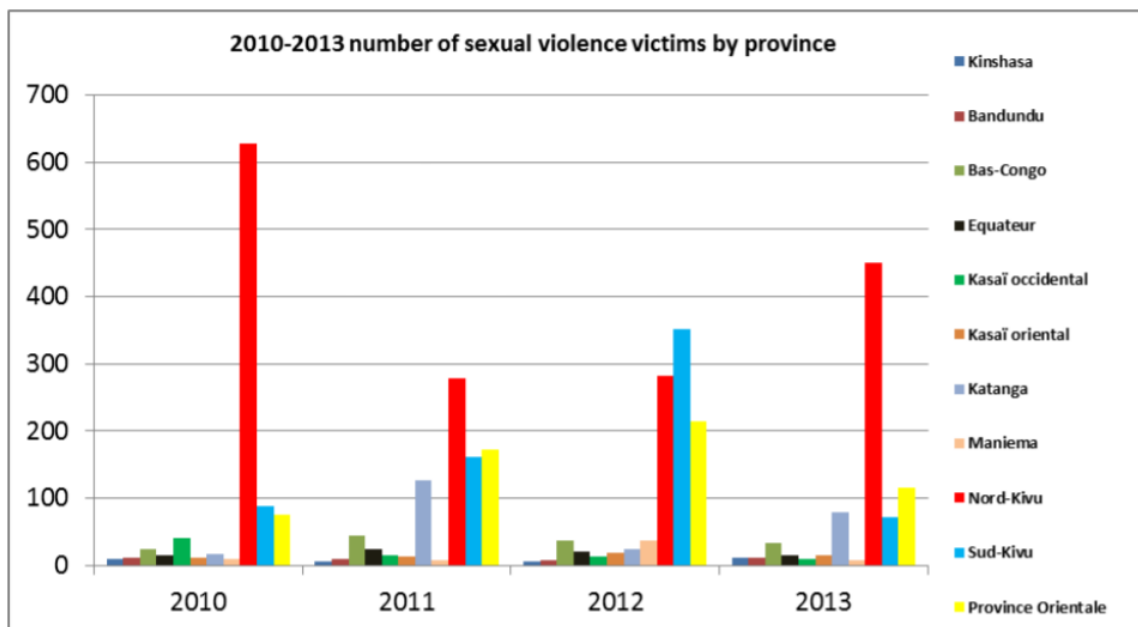
<sup>414</sup> United Nations Human Rights Office of the High Commissioner (OHCHR) ‘Progress and obstacles in the fight against impunity for sexual violence in the Democratic Republic of the Congo’ (April 2014) United Nations Joint Human Rights Office (UNJHRO) (Report 5) 10.

## Appendix 4

### Provinces in DRC stricken by sexual violence

The eastern part of the country, the North Kivu and South Kivu provinces are renowned for the tarnish, damage and suffering of the various forms of sexual violence. The figures in the graph below indicate that between the years of 2010 to 2013, the North Kivu and South Kivu provinces had the most number of victims of sexual violence.<sup>415</sup>

Graph depicting the DRC provinces and the number of victims in 2010 - 2013



Source: United Nations Human Rights Office of the High Commissioner. United Nations Joint Human Rights Office. 2014. Progress and obstacles in the fight against impunity for sexual violence in the Democratic Republic of the Congo. April 2014. UNJHRO Report 5. Page 10.

<sup>415</sup> United Nations Human Rights Office of the High Commissioner. United Nations Joint Human Rights Office 'Progress and obstacles in the fight against impunity for sexual violence in the Democratic Republic of the Congo' (April 2014) UNJHRO (Report 5) 10.

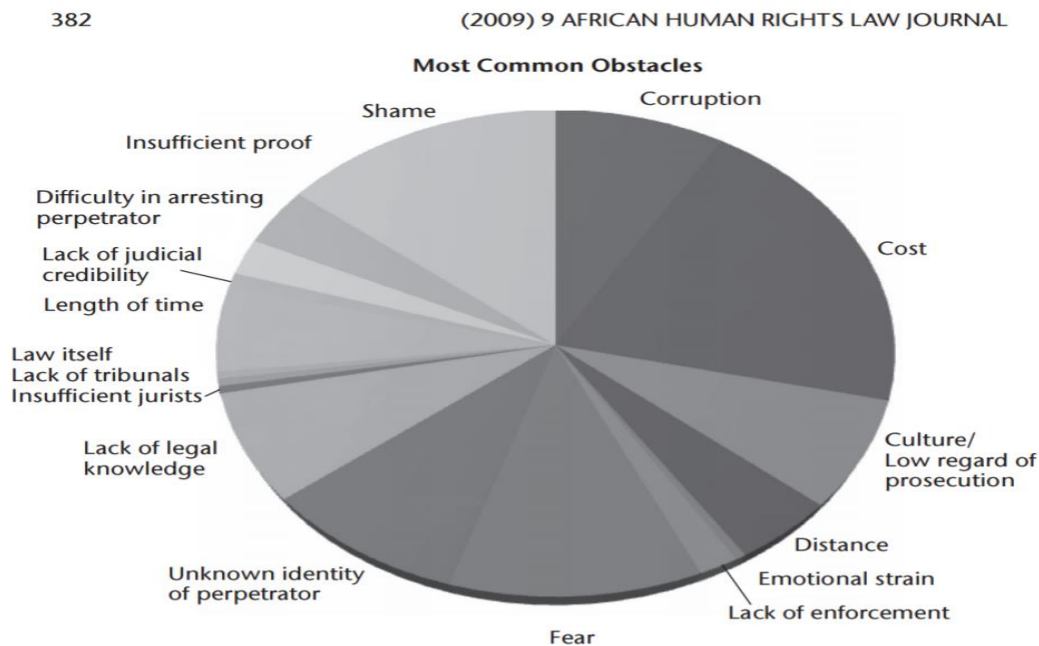
## Appendix 5

### Obstacles faced by victims in the prosecution of sexual violence

Obstacles “blocks one's way or prevents or hinders progress”.<sup>416</sup> The common obstacles to the prosecution of sexual violence against women in the DRC are as follows:<sup>417</sup>

Obstacle 1: The role of prosecution in modern Congolese society. Obstacle 2: Health concerns. Obstacle 3: Lack of knowledge of state laws and public law remedies. Obstacle 4: Position of women in society. Obstacle 5: Shame. Obstacle 6: Religion. Obstacle 7: Identifying and arresting the perpetrator. Obstacle 8: Amicable arrangements. Obstacle 9: Cost and Distance. Obstacle 10: Fear. Obstacle 11: Evidence. Obstacle 12: Protracted judicial proceedings. Obstacle 13: Corruption and enforcement.

Pie chart depicting main obstacles faced by victims in the prosecution of sexual violence in the DRC



Source: Mansfield, J. 2009. ‘Prosecuting sexual violence in the Eastern Democratic Republic of Congo: Obstacles for survivors on the road to justice’. *African Human Rights Law Journal*. Vol. 9, No. 2. Page 382.

<sup>416</sup> English Oxford Living Dictionaries ‘Obstacle’ 2017 <https://en.oxforddictionaries.com/definition/obstacle> (accessed 2 June 2017).

<sup>417</sup> J Mansfield ‘Prosecuting sexual violence in the Eastern Democratic Republic of Congo: Obstacles for survivors on the road to justice’ (2009) 9:2 *African Human Rights Law Journal* 382.