



**THE ROLE OF HUMAN RIGHTS IN POST-CONFLICT RECONSTRUCTION IN THE  
DEMOCRATIQUE REPUBLIC OF CONGO**

**Submitted in partial fulfilment of the requirements of the LLM (Human Rights and  
Democratisation in Africa) of the Centre for Human Rights, University of Pretoria**

**By**

**Munguiko Muliri Ramadhan**

**Student No: 23989069**

**Prepared under the supervision of**

**Professor Magnus Killander**

**Faculty of Law, University of Pretoria**

**Dr Abiola Akiyode-Afolabi**

**Faculty of Law, University of Lagos**

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## Declaration

I, Munguiko Muliri Ramadhan, hereby declare that this research is my original work and that it is the best of my knowledge and belief, it has not been previously, in its entirety or in part, been submitted to any other university for a degree or diploma.

Where someone else's work was used (whether from a printed source, the internet, or any other source) due acknowledgement was given and reference was made according to the requirements of the Faculty of Law.

I did not make use of another student's work and submit it as my own.

Student: Munguiko Muliri Ramadhan

Signature:



Date: 21 November 2024

Supervisors: Professor Magnus Killander  
Dr Abiola Akiyode-Afolabi

Signature:

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Date:

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## **Dedication**

In memory of my father Barigehya B. Muliri, and my elder brother Sumbe Muliri, who would have shared my achievements. Gone but not forgotten.

## Acknowledgments

I could not have achieved the completion of this dissertation alone. I therefore acknowledge and thank all those who assisted me somehow.

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## CHAPTER 1 INTRODUCTION TO THE STUDY

### 1.1. Background

Since its independence in 1960, the Democratic Republic of Congo (DRC) has experienced a spiral of violence linked to armed conflicts, ethnic and tribal conflicts and secessionist aims. National institutions have played a fundamental role in the origin and perpetuation of conflicts in the DRC. Indeed, the institutions created after independence have produced and perpetuated antagonisms over the control of power and natural resources, notably their mismanagement and an unequal distribution of profits from their exploitation, while sowing the seeds of interregional and inter-ethnic conflicts.<sup>1</sup> Another important institutional factor causing conflict is the manipulation by leaders of citizenship and nationality laws, thus politicizing the issue of ethnicity and Congolese identity, which has resulted in marginalization of a part of the population, especially those who speak the languages of eastern neighboring countries. The exacerbation of antagonisms between them and other groups compromises relations between the State and a part of its citizens on the one hand, and relations between the DRC and its eastern neighbors on the other hand.<sup>2</sup>

This situation was at the root of the wars of secession that broke out on the eve of independence, in 1960, in Katanga and Kasai;<sup>3</sup> the Lumumbist war from 1961 to 1964 to avenge the assassination of Patrice Lumumba;<sup>4</sup> the liberation war of 1996-1997 with the Alliance of Democratic Forces for Liberation (AFDL).<sup>5</sup> Added to this are cyclical wars led by rebellions supported by neighboring states which have decimated the east of the country; from 1998 to 2002 with the Congolese Rally for Democracy (RCD), supported by Rwanda, and the Congolese Liberation Movement (MLC), supported by Uganda.<sup>6</sup> There was a respite after the agreement of 2 April 2002 signed by the belligerents during the Sun City Inter-Congolese Dialogue<sup>7</sup> which led to a 3-year transition with the 1+4 Government having organized the 2006 elections. However, just after the elections, the rebellion

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<sup>1</sup> United Nations Economic Commission for Africa (UNECA) 'Conflicts in the Democratic Republic of Congo: Causes Impact and Implications for the Great Lakes Region' 2015 vii.

<sup>2</sup> UNECA (n 1) viii.

<sup>3</sup> M Panara 'RD Congo: 60 ans d'indépendance... et d'instabilité politique' *Le Point* 30 June 2020 [https://www.lepoint.fr/afrique/rd-congo-60-ans-d-independance-et-d-instabilite-politique-30-06-2020-2382377\\_3826.php](https://www.lepoint.fr/afrique/rd-congo-60-ans-d-independance-et-d-instabilite-politique-30-06-2020-2382377_3826.php) (accessed 20 April 2024).

<sup>4</sup> O Lanotte 'Chronology of the Democratic Republic of Congo/Zaire (1960-1997) | Sciences Po Mass Violence and Resistance - Research Network' 25 January 2016 <https://www.sciencespo.fr/mass-violence-war-massacre-resistance/en/document/chronology-democratic-republic-congozaire-1960-1997.html> (accessed 20 April 2024).

<sup>5</sup> PI Kabaka 'Histoire Politique Récente Du Congo-Kinshasa (RDC) : De La Création de l'AFDL à l'assassinat de LD Kabila (1997-2001)' 2016 *HAL Open Science* 3-4.

<sup>6</sup> PI Kabaka (n 5) 7.

<sup>7</sup> 'Inter-Congolese Negotiations: The Final Act (Sun City Agreement) | UN Peacemaker' <https://peacemaker.un.org/drc-suncity-agreement2003> (accessed 20 April 2024).

of the National Congress for the Defense of the People (CNDP), supported by Rwanda arose in North Kivu until the agreement of 23 March 2009 which, later, was the basis for the creation of the 23 March Movement (M23), supported by Rwanda,<sup>8</sup> which made waves in 2012-2013 and since March 2022<sup>9</sup> and was joined by the Congo River Alliance (AFC).<sup>10</sup>

There are also foreign rebel groups hostile to neighboring states but which cause deaths in the DRC where they are established, such as the Allied Democratic Forces (ADF-NALU),<sup>11</sup> hostile to the Kampala regime and having pledged allegiance to Islamic State–Central Africa Province (ISCAP), a branch of the Islamic terrorist group, in 2019,<sup>12</sup> which has claimed thousands of victims in Beni in North Kivu since 2001; and the Democratic Forces for the Liberation of Rwanda (FDLR)<sup>13</sup> hostile to the Kigali regime which have been roaming the east of the DRC since 2000, with many Congolese victims.

To face attacks from foreign rebel groups active in the country and national armed groups supported by neighboring states, several local self-defense militias were created by the Congolese throughout North and South Kivu (several Mai-Mai groups in particular the Wazalendo), in Ituri (Forces de Résistance Patriotique d'Ituri “FRPI”, Coopérative pour le Développement du Congo “CODECO”), Grand Katanga (Bakata Katanga).<sup>14</sup> Unfortunately their actions have also led to several casualties among their Congolese compatriots over the years. Added to this are ethnic conflicts which are frequent in the country, particularly in North Kivu<sup>15</sup> (between Hutu, Tutsi, Hunde, Nyanga and Nande),

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<sup>8</sup> DR Ntanyoma ‘M23: Four Things You Should Know about the Rebel Group’s Campaign in Rwanda-DRC Conflict’ *The Conversation* 23 November 2022 <http://theconversation.com/m23-four-things-you-should-know-about-the-rebel-groups-campaign-in-rwanda-drc-conflict-195020> (accessed 20 April 2024).

<sup>9</sup> M Hutton ‘RDC: qui sont les rebelles du M23 et pourquoi sont-ils source de tensions avec le Rwanda?’ *TV5MONDE - Informations* 27 May 2022 <https://information.tv5monde.com/afrique/rdc-qui-sont-les-rebelles-du-m23-et-pourquoi-sont-ils-source-de-tensions-avec-le-rwanda> (accessed 20 April 2024).

<sup>10</sup> AfricaNews ‘DRC: Corneille Nangaa Joins Forces with M23 to Create Political Platform’ 15 December 2023 <https://www.africanews.com/2023/12/15/drc-corneille-nangaa-joins-forces-with-m23-to-create-political-platform/> (accessed 20 April 2024).

<sup>11</sup> TV5 Monde Afrique ‘Qui sont les rebelles ADF alliés à l’EI qui sèment la terreur en Afrique centrale?’ <https://afrique.tv5monde.com/information/qui-sont-les-rebelles-adf-allies-lei-qui-sement-la-terreur-en-afrique-centrale> (accessed 20 April 2024).

<sup>12</sup> L Bahati & D El-Bay ‘Allied Democratic Forces: The Ugandan Rebels Working with IS in DR Congo’ *BBC* 13 June 2021 <https://www.bbc.com/news/world-africa-57246001> (accessed 6 July 2024).

<sup>13</sup> United Nations Security Council ‘Forces Démocratiques de Libération du Rwanda (FDLR)’ <https://main.un.org/securitycouncil/en/sanctions/1533/materials/summaries/entity/forces-democratiques-de-liberation-du-rwanda-%28fdlr%29> (accessed 20 April 2024).

<sup>14</sup> M Ruhanamirindi ‘L’activisme Des Groupes Armés à l’Est de La RDC Amoindrit l’espoir de Paix’ *Peace Insight* 22 September 2021 <https://www.peaceinsight.org/en/articles/lactivisme-des-groupes-arm%C3%A9s-%C3%A0-lest-de-la-rdc-amoindrit-lespoir-de-paix/?location=dr-congo&theme=> (accessed 20 April 2024).

<sup>15</sup> E Rusamira ‘La dynamique des conflits ethniques au Nord-Kivu : une réflexion prospective’ (2003) *Cair.info* 147-163 27 *Afrique contemporaine* 147.



South Kivu<sup>16</sup> (between Babembe, Bafulero, Banyindu and Banyamulenge), in Ituri<sup>17</sup>(between Hema and Lendu), in Tanganyika (between Bantus and Pygmies),<sup>18</sup> the conflict over the succession of traditional chief Kamwinansapu, which tore Kasai apart at the end of 2016,<sup>19</sup> the tribal conflict between Batende and Banunu having shaken the territory of Yumbi in the Province of Mai-Ndombe in December 2018<sup>20</sup> and recently the conflict between Teke and Yaka in the territory of Kwamouth, still in Maindombe since June 2022.<sup>21</sup>

## 1.2. Problem statement

Violent conflicts have led to the internal displacement of more than 6.8 million people, more than one million refugees<sup>22</sup> in neighboring and African countries, and more than six million deaths,<sup>23</sup> in the DRC, particularly in its eastern part, from 1996 to today. Many children, women and parents have died, leaving orphans and widows without support, school infrastructure is destroyed, people have abandoned their fields to live in displaced persons camps where living conditions are inhumane:<sup>24</sup> no adequate shelter, exposure to bad weather of all kinds and bombings,<sup>25</sup> no food, no water, no medical care while diseases are prevalent there, especially cholera which claims several victims. The consequences are diverse;<sup>26</sup> children not having access to school and, given the increasingly difficult living conditions, enlist in armed groups or join the streets where they engage in urban banditry, young girls marry early or become prostitutes to survive, without forgetting the women and young girls who are raped regularly.

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<sup>16</sup> W Bashi 'RDC: dégradation de la situation sécuritaire à Minembwe' *DW* 24/06/2019 <https://www.dw.com/fr/rdc-situation-s%C3%A9curitaire-pr%C3%A9occupante-dans-les-hauts-plateaux-de-minembwe/a-49328274> (accessed 20 April 2024).

<sup>17</sup> International Crisis Group 'DR Congo: Ending the Cycle of Violence in Ituri' Africa Report 292 2020 1.

<sup>18</sup> G Groleau 'A silent crisis in Congo: The Bantu and the Twa in Tanganyika' 2017 *Rescue International Conflict Spotlight* 2.

<sup>19</sup> BBC 'DR Congo's Kasai Crisis: War Crimes Committed by Both Sides, UN Says' 26 June 2018 <https://www.bbc.com/news/world-africa-44613147> (accessed 20 April 2024).

<sup>20</sup> Human Rights Watch (HRW) 'DR Congo: No Justice for 2018 Yumbi Massacres' 19 December 2019 <https://www.hrw.org/news/2019/12/19/dr-congo-no-justice-2018-yumbi-massacres> (accessed 27 April 2024).

<sup>21</sup> HRW 'DR Congo: Rampant Intercommunal Violence in West' 30 March 2023 <https://www.hrw.org/news/2023/03/30/dr-congo-rampant-intercommunal-violence-west> (accessed 27 April 2024).

<sup>22</sup> Relief Web 'République Démocratique Du Congo: La RDC En Bref (Situation Au 31 Janvier 2024)' 4 March 2024 <https://reliefweb.int/map/democratic-republic-congo/republique-democratique-du-congo-la-rdc-en-bref-situation-au-31-janvier-2024> (accessed 7 September 2024).

<sup>23</sup> RTS 'Comprendre la crise en République démocratique du Congo en 5 questions' *rts.ch*, 2 March 2024 <https://www.rts.ch/info/monde/2024/article/comprendre-la-crise-en-republique-democratique-du-congo-en-5-questions-28420863.html> (accessed 27 April 2024).

<sup>24</sup> UNFPA 'Statement by Principals of the Inter-Agency Standing Committee on the Democratic Republic of the Congo' <https://www.unfpa.org/press/statement-principals-inter-agency-standing-committee-democratic-republic-congo> (accessed 27 April 2024).

<sup>25</sup> C Lauvergner 'Plusieurs morts dans une explosion dans un camp de déplacés à Goma, en RDC: "Les gens ont paniqué"' *Les Observateurs - France* 24 3 May 2024 <https://observers.france24.com/fr/afrique/20240503-rdc-congo-goma-morts-explosion-camp-deplaces-blesses-m23-armee-guerre> (accessed 5 May 2024).

<sup>26</sup> UN Info 'En RDC, trois millions d'enfants déplacés sont menacés par les violences (UNICEF)' 19 February 2021 <https://news.un.org/fr/story/2021/02/1089762> (accessed 27 April 2024).

All the political agreements and other peace initiatives that took place in the Congolese conflicts have not produced the expected effects of pacifying the country. The reason is that these initiatives did not address the real causes of conflicts. They consisted rather of a sharing of power between the belligerents, forgetting to rely on the very roots causes of the conflicts which are afflicting the country. Although human rights violations are not the only cause of these conflicts, structural conditions such as social inequalities, corrupt and abusive systems of governance, injustices, impunity and insecurity, corruption and misappropriation of public funds, however, create grievances, dissatisfaction and frustrations, leading, in turn, to the conditions that encourage actors to resort to violence and armed conflict.<sup>27</sup> Human rights violations being, on the one hand one of the important causes of conflicts and on the other hand, the consequences of these conflicts in the DRC, it is to these root causes, once carefully diagnosed, that must tackle any post-conflict reconstruction process in order to sustainably pacify the DRC in general and its eastern part in particular.

### **1.3. Research questions**

#### ***1.3.1. Main question***

Why should human rights be at the heart of the post-conflict reconstruction process in the DRC?

#### ***1.3.2. Sub-questions***

- How have human rights violations contributed to the conflicts in the DRC?
- How can human rights contribute to the success of post-conflict reconstruction in the DRC?

### **1.4. Literature review**

According to the study entitled *Paths for peace* published in 2017 by the United Nations (UN) and the World Bank,<sup>28</sup> violent conflicts are often caused by factors such as grievances, inequalities and situations of exclusion for which nothing was done, as well as by a lack of participation in decision-making that would allow these grievances to be addressed and to remedy these inequalities.

For the UN Security Council,<sup>29</sup> serious human rights violations are not only a consequence of conflicts, but can be a warning sign of a plunge into conflict or an escalation of a conflict and the

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<sup>27</sup>African Commission on Human and Peoples Rights (ACHPR) *Addressing human rights issues in conflict situations Towards a more systematic and effective role for the African Commission on Human and Peoples' Right* (2019) 11.

<sup>28</sup> United Nations & World Bank (UN & WB) 'Pathways for Peace: Inclusive Approaches to Preventing Violent Conflict' 2018 7.

<sup>29</sup> United Nations Security Council (UNSC) 'Maintenance of international peace and security - Conflict prevention' *S/RES/2171* 2014.

implementation at the national level of obligations in matters of human rights can contribute to the prompt prevention of conflicts.

Cingranelli and others<sup>30</sup> note that human rights violations and the existence of significant horizontal inequalities in societies independently increase the risk of the emergence and escalation of many conflicts and that the violation of human rights creates grievances that make violence more likely. Violence is thus used to remedy perceived injustice or inequality in society or to express discontent, rather than to obtain material advantage.

For Chandra and others,<sup>31</sup> violent conflict can emerge where human rights violations such as illegal detentions, extrajudicial executions, disappearances, torture, mass killings, or even attempted genocide, are the most violent.

According to the UN Economic Commission for Africa (UNECA),<sup>32</sup> the causes of conflict in the DRC stem from interrelated economic, institutional, regional, and geopolitical factors. These include poor governance and deteriorating socio-economic conditions that have weakened the state's ability to meet the basic needs of its population and ensure its security, antagonisms over the control of power and the exploitation of the country's natural resources, and the marginalisation of part of the population because of its Rwandan origin.

This study has shared the results of previous research. However, it has tried to go further by studying, not only the interaction between human rights violations and the conflicts in the DRC, but also the Congolese State obligations in matters of security and peace on its territory and the possibility of placing the respect, protection and fulfilment of human rights at the heart of the fight against the outbreak, intensification, continuation or recurrence of conflicts in order to embark on the path of pacification, reconstruction and development of the DRC.

Indeed, post-conflict reconstruction refers to actions aimed at consolidating peace and security and achieving sustainable socio-economic development in a country destroyed by war. The term 'post-conflict' does not necessarily imply a total cessation of conflict, but rather an attenuation of

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<sup>30</sup> D Cingranelli S Mark M Gibney P Haschke R Wood & D Arnon 'Human Rights Violations and Violent Internal Conflict' 2019 8 *Social sciences* 2 2-5.

<sup>31</sup> SC Lekha OM Ortega & J Herman *War conflict and human rights: theory and practice* London Routledge, Second edition 2014 5.

<sup>32</sup> UNECA (n 1) vii-viii.

hostilities, a window of opportunity for peace in a conflict that can escalate if poorly managed,<sup>33</sup> especially in a failed state like the DRC, where the major role of post-conflict reconstruction is above all to prevent and reduce conflict.<sup>34</sup>

Although conflicts are ongoing in the DRC, it should be noted that they are cyclical and there are times when a relative lull is observed in areas of high conflict. Also, not all the DRC is affected by conflicts at the same time, although every province has its own conflict situation, and conflict can break out in any province at any time. This is why, knowing that conflicts can break out anywhere at any time, precautions can be taken, not only to prevent them, but also, if they occur, to contain them to a reasonable extent to minimise their scale and the effects in terms of human and material losses, as is the case today.

The idea is to see how to envisage post-conflict reconstruction actions based on the respect, protection, and fulfilment of human rights in areas of regular tension in the event of a relative stability, before extending them throughout the country when stability is achieved thanks to the peace processes ongoing which should this time focus on the root causes of conflicts, which include human rights violations, and the reforms that will be undertaken, in particular those in the defense and security sector. This is the case of certain territories in the provinces of Ituri, Maindombe, South Kivu, North Kivu, Tanganyika, Haut-Katanga, etc., which are known for their intermittent instability where post-conflict reconstruction actions can take place in relatively stable areas in order to make this stability sustainable.

### **1.5. Research methodology**

To carry out my research successfully, I have used the documentary method consisting of collecting information from books, articles, reports, and publications available on the Internet; the exegetical method which consists of the interpretation of national and international human rights legal instruments to which the DRC is a party, relating to the interaction between human rights violations and conflicts in general and in the DRC in particular.

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<sup>33</sup> N Tzifakis 'Post-Conflict Economic Reconstruction' *The Princeton Encyclopedia of Self-Determination* <https://pesd.princeton.edu/node/586> (accessed 22 October 2024).

<sup>34</sup> Y Jabareen 'Conceptualizing "Post-Conflict Reconstruction" and "Ongoing Conflict Reconstruction" of Failed States' 2013 *Int J Polit Cult Soc* 26 107–125 116.

## **1.6. Significance of the study**

This study is of particular importance in that the DRC is experiencing a spiral of violent conflicts, particularly armed conflicts, which is at the root of one of the deadliest wars the world has seen since the Second World War,<sup>35</sup> unfortunately ignored by the international community, and preventing it from exploiting its potential, which is necessary for its economic take-off for the well-being of its people.

This study could serve as an outline of post-conflict reconstruction in the DRC for Congolese political decision-makers, to develop a preventive and curative approach to conflicts that focuses on their root causes, in particular human rights violations.

## **1.7. Scope of the study**

This study will focus on the interaction between human rights violations and conflicts in the DRC from the first Congo war (1996-1997)<sup>36</sup> to 2024, the year of the present study.

## **1.8. Limitations of the study**

The distance between the place where I am at the time of the research and the geographical space constituting its scope and the insecurity currently prevailing there have not made my task easy in carrying out this study. Indeed, I should go to the field to collect the opinions of the actors involved in the conflicts and the population who experience them, on the causes, the consequences, and the possible solutions to the conflicts that the country is experiencing and which are at the root of one of the most serious humanitarian crises of the 21st century. However, I have relied on secondary information contained in articles and media publications in the field of human rights.

## **1.9. Structure**

Chapter 1. Introduction (Background, problem statement, research questions, literature review, methodology, significance of the study, scope of the study and structure).

Chapter 2. Interaction between human rights violations and conflicts in the DRC.

Chapter 3. Obligations of the DRC regarding peace and security on its territory.

Chapter 4. Integration of human rights in post-conflict reconstruction in the DRC.

Chapter 5. Conclusion and recommendations.

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<sup>35</sup> PN Zena 'DDR et justice transitionnelle : Etat Des Lieux de La Situation En RDC Défis et Recommandations Une Évaluation Indépendante d'un Chercheur et Analyste Local de La Société Civile' *Academia.edu* 3.

<sup>36</sup> J Ménielle 'La chronologie du conflit en République démocratique du Congo' *www.20minutes.fr* 21 November 2008 <https://www.20minutes.fr/monde/274324-20081121-chronologie-conflit-republique-democratique-congo> (accessed 26 April 2024).

## CHAPTER 2

### INTERACTION BETWEEN HUMAN RIGHTS VIOLATIONS AND CONFLICTS IN THE DRC

#### 2.1. Introduction

Human rights violations are often the root causes of conflicts, which in turn invariably lead to further human rights violations. Human rights violations and conflicts are closely linked and mutually reinforcing.<sup>37</sup> On the one hand, grievances related to human rights violations can generate conflict. This may be the case when there is systematic discrimination based on race, ethnicity, religion, language, gender, or other subjective characteristics. On the other hand, human rights violations may result from violent conflict.<sup>38</sup>

This chapter aims to analyze the links between human rights violations and conflicts in the DRC, where these violations can be both one of the causes and the consequence of a conflict.

#### 2.2. Human rights violations as one of the causes of conflicts in the DRC

Violations of human rights by both the government and individuals or armed groups are a major cause of frustration and violence raised from the desire of people to have their rights respected, protected, and fulfilled. When their rights are violated, they may resort to any means, including violence, to improve their situation.<sup>39</sup>

The human rights violations underlying the conflicts in the DRC are suffered by individuals and/or linked to the management of public property and natural resources which cause frustrations conducive to the outbreak of violent conflicts.

##### 2.2.1. Violations suffered by individuals

Individuals are subject to several human rights violations that can consciously or unconsciously lead to violent conflicts. The most important of these violations can be identity exclusion, socio-economic inequalities, government repression and impunity for human rights violations.

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<sup>37</sup> World Bank (WB) World Development Report 2011: Conflict, Security, and Development 58988 2011 80.

<sup>38</sup> SC Lekha and others (n 31).

<sup>39</sup> D Cingranelli and others (n 30)5.

### *Identity exclusion*

Human beings value fairness and inclusion of all citizens in the socio-political life of society. When fairness is absent, injustice and exclusion can lead to frustrations, as the lack of fairness leads to the exclusion of certain groups based on race, ethnicity, religion, or location and geographic origin.<sup>40</sup> Moreover, when socio-political exclusion is perceived as a government policy, it can be used as a narrative line of social discrimination that can create reservoirs of hostility from which armed groups recruit fighters.<sup>41</sup>

In the DRC, identity exclusion is a major institutional factor at the root of conflicts. Indeed, the manipulation of nationality laws by leaders, thus politicizing the issue of Congolese identity, has resulted in the marginalization of a section of the population, particularly those of Rwandan origin, and the exacerbation of antagonisms between them and other groups while compromising relations between the State and them on the one hand, and relations between the DRC and neighboring states on the other hand.<sup>42</sup>

Thus, all the regimes that have succeeded one another in the DRC have always tried to exploit the question of identity to gather national support by fueling ethnic antagonisms, and by targeting in particular the populations of Rwandan origin, who were stigmatized as “foreigners” and accused of supporting the interests of foreign countries, and in particular Rwanda. To do so, a series of nationality laws, which clearly aimed to exclude people of Rwandan origin from the political process, but also to deny them their land rights, were adopted.<sup>43</sup>

Indeed, the first legal text to address the issue of Congolese nationality is the Royal Decree of 27 December 1892, signed by King Leopold II, which provided that “Congolese nationality is acquired by birth on the territory of the State of Congolese parents ...” and “is Congolese, any child born on the soil of the State of parents legally unknown ...”, respectively in its articles 13 and 16.

Later came several other legal and constitutional texts relating to Congolese nationality, notably the 1964 Constitution, which was the first to strengthen the right to Congolese nationality. Its

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<sup>40</sup> WB (n 37) 80.

<sup>41</sup> As above.

<sup>42</sup> UNECA (n 1) viii.

<sup>43</sup> UNECA (n 1) 16.

article 6 provided that "Congolese nationality is attributed to any person one of whose ascendants is or was a member of a tribe established on the territory of the Congo before 18 October 1908, provided that he makes a declaration of change of nationality within 12 months." This article automatically excluded most Rwandans and their descendants, who had immigrated between 1922 and 1950 because of the famine in Rwanda and the labor shortage in the Belgian Congo, as well as illegal immigrants who arrived after 1960. This caused friction in North Kivu between the populations of Rwandan descent and other groups, and more particularly in Masisi, where Rwandan immigrants outnumbered the natives by two to one.<sup>44</sup>

In 1971, the Ordinance-law relating to the acquisition of Congolese nationality by persons originating from Rwanda-Urundi established in the Congo was adopted. Its sole article provided that persons originating from Rwanda-Urundi established in the Congo on 30 June 1960 are deemed to have acquired Congolese nationality on the aforementioned date.<sup>45</sup>

A year later, Law No. 1972-002 of 5 January 1972 on Zairian nationality was adopted. Its article 1 provided that 'all persons whose ascendants are or have been members of one of the tribes established in the territory of the Republic of Zaire within its boundaries of 15 November 1908, as amended by subsequent conventions, are Zairians within the meaning of Article 5 of the Constitution as of 30 June 1960'. Its article 15 also recognised the nationality of persons originating from Ruanda-Urundi who were established in the province of Kivu before 1 January 1950 and who had continued to reside in the Republic of Zaire since then until its entry into force. After being criticized and described as the "Bisengimana Law",<sup>46</sup> in reference to Barthélemy Bisengimana, this Rwandan immigrant who was the powerful Chief of Staff of President Mobutu from May 1969 to February 1977, this law was annulled through law n° 81-002 of 29 June 1981 which strictly limited the right to Zairian nationality to those who could prove that their ancestors lived in Congo-Zaire before 1885.<sup>47</sup> In the process, an order containing implementing measures for the 1981 law was issued on 15 May 1982, which rendered null and void the certificates of

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<sup>44</sup> UNECA (n 1) 36.

<sup>45</sup> Ordonance-Loi sur l'acquisition de la nationalité zaïroise DRC (1971).

<sup>46</sup> J Kakule '[Histoire] 5 janvier 1972 : Promulgation au Zaïre de la Loi Bisengimana sur la nationalité' [www.grandslacsnews.com](http://www.grandslacsnews.com) 5 January 2022 <https://www.grandslacsnews.com/posts/histoire-5-janvier-1972-promulgation-au-zaire-de-la-loi-bisengimana-sur-la-nationalite-4003> (accessed 29 September 2024).

<sup>47</sup> Loi n°81-002 sur la nationalité zaïroise, DRC (1981) Article 4.



Zairian nationality or any other identity document issued pursuant to Article 15 of Law No. 72-002 of 5 January 1972, cited above.<sup>48</sup>

On 28 April 1995, Parliament adopted a resolution implementing the 1981 law that stripped Congolese nationality from all Rwandan immigrants and their descendants. In October 1996, the South Kivu provincial government decided to expel the Banyamulenge, of Rwandan origin who arrived before 1960, in accordance with this parliamentary resolution. It was in this situation that Laurent Kabila's Alliance of Democratic Forces for Liberation (AFDL) fomented a rebellion in October 1996, drawing its strength from the Banyamulenge and Rwanda.<sup>49</sup>

Finally, in 2004, the current law on nationality was adopted, which was supposed to put an end to the nationality problem of Rwandan migrants and their descendants born in the DRC. Its article 6 states that ‘a person of Congolese origin is any person belonging to the ethnic groups and nationalities whose people and territory constituted what became the Congo at independence.’ According to this new law, Rwandans who had immigrated to the Democratic Republic of Congo before July 1960 automatically became Congolese. No procedure for reinstatement of nationality was necessary. Also, the Constitution of 18 February 2006 in force provides in its article 10 that ‘...is Congolese by origin, any person belonging to the ethnic groups whose people and territory constituted what became the Congo at independence’. It emerges from the analysis of these provisions that the Tutsi refugees who migrated to the Democratic Republic of Congo after 1960 and the Hutu refugees who arrived in 1994, as well as their descendants, are not considered Congolese citizens. Among the descendants of Rwandan Tutsi refugees born in the Democratic Republic of Congo after 1960, we find the two famous leaders of the rebel movements that scoured the east of the country, Laurent Nkunda and Bosco Ntaganda.<sup>50</sup>

Feeling discriminated in all spheres of national life, particularly in political and land matters where they were deprived of their rights, these “Congolese” tutsis had no choice but to resort to arms to protect and claim their Congolese nationality. The involvement of neighboring countries in the first war was partly due to a call for help from “Congolese citizens” in distress and threatened with statelessness and dispossession of their land.<sup>51</sup>

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<sup>48</sup>J Kakule (n 46).

<sup>49</sup>UNECA (n 1) 16.

<sup>50</sup>UNECA (n 1) 37.

<sup>51</sup>UNECA (n 1) 39.

### *Socio-economic inequalities*

Higher levels of social inequality, especially horizontal inequality, constitute another source of the frustrations that lead to violence between groups.<sup>52</sup> Indeed, horizontal inequality is economic inequality between groups of people within a society. Horizontal inequality differs from vertical inequality in that the second is a measure of inequality between individuals, while the first is a measure of inequality between groups.<sup>53</sup>

In most cases, the high level of horizontal inequality within society is mainly produced by institutionalized discrimination that favours members of certain groups. Over time, this systematic discrimination is likely to lead to greater economic disparities between privileged groups and other marginalized groups. Also, the existence of institutionalized discrimination results in the creation of self-reinforcing cleavages. This is the case when members of one ethnic group have more resources and political power than members of another ethnic group. This situation creates mutually reinforcing frustrations of domination or discrimination for which the victims are likely to blame their government, and, in some circumstances, this discontent among members of excluded groups will inevitably lead to conflict.<sup>54</sup>

In the DRC, the political elites and their families monopolize most of the country's wealth, while other members of society, including civil servants and state agents, live in extreme poverty, not to mention the ordinary population who are deprived of any basic services. As an illustration, the emoluments, and other benefits of a member of Parliament reach USD21,000, which can go beyond that depending on whether one is a member of the ruling coalition,<sup>55</sup> and many other gifts,<sup>56</sup> while the police officer, the military and the teacher receive the equivalent of USD100 per month.<sup>57</sup> The salaries of most other Congolese leaders, starting with the President of the Republic, through members of the Government and up to the directors of public establishments and companies, are not known to the people. The reason for keeping them secret is to prevent them from continuing

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<sup>52</sup> D Cingranelli and others (n 30) 6.

<sup>53</sup> As above.

<sup>54</sup> As above.

<sup>55</sup> RFI 'Le grand invité Afrique - RDC: combien gagnent réellement les députés congolais?' 12 September 2022 <https://www.rfi.fr/fr/podcasts/invit%C3%A9-afrique/20220912-tr%C3%A9sor-kibangula-analyste-le-salaire-des-autorit%C3%A9s-publiques-en-rdc-est-couvert-d-un-voile-d-opacit%C3%A9> (accessed 13 August 2024).

<sup>56</sup> RFI 'RDC: polémique autour d'un don de véhicules aux 500 députés' 21 June 2021 <https://www.rfi.fr/fr/afrique/20210621-rdc-pol%C3%A9mique-autour-d-un-don-de-v%C3%A9hicules-aux-500-d%C3%A9put%C3%A9s> (accessed 13 August 2024).

<sup>57</sup> Africa Intelligence 'RDC: Kinshasa expose son budget militaire - 14/02/2023' 21 October 2024 <https://www.africaintelligence.fr/afrique-centrale/2023/02/14/kinshasa-expose-son-budget-militaire.109912619-art> (accessed 15 August 2024).

to scandalize public opinion with their staggering amounts and leading to a popular revolution.<sup>58</sup> Also, all the regimes that have succeeded one another in the country have been characterized by the tribalization of institutions and public administration. This is how most people appointed to the various positions of responsibility in the country come from the tribes or provinces of high leaders of the regime in power.<sup>59</sup>

All the rebel movements that have swept the country have always had as their discourse the desire to put an end to the squandering, the illicit enrichment of the ruling class and the institutionalization of tribalism,<sup>60</sup> in order to gain the support of the population, which itself feels destitute and abandoned by its leaders who bathe in opulence and embezzlement of public funds, accumulating personal wealth and becoming increasingly wealthy, more than the State itself.<sup>61</sup>

### ***Government repression and impunity for human rights violations***

Unawareness and disregard for human rights lead to acts of repression and barbarity that revolt the human conscience in a world where human beings aspire to live in an environment where they are free to speak and believe, free from terror and misery.<sup>62</sup>

Repression refers to all forms of human rights violations perpetrated by the State or State agents that result in an increase in the scope and intensity of grievances leading to the emergence and escalation of internal conflicts, as State repression creates the belief among the population that there is no other way out than revolt against an unfair and abusive regime.<sup>63</sup> These are situations in which the denial of human rights is entrenched in the structures of society and governance, in terms of the organization of the State, the functioning of institutions and society as a whole, which constrain man, as a last resort, to revolt against tyranny and oppression.<sup>64</sup>

This is the case in which violent and high-intensity conflicts are seen as manifestations of deeper structural problems. If these are not considered, citizens' frustration, anger and dissatisfaction can

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<sup>58</sup> T Kalonji 'Le salaire de nos élus : entre tabous et omerta' *Habari RDC* 8 July 2021 <https://habairdc.net/salaire-elus-deputes-tabous-omerta/> (accessed 14 August 2024).

<sup>59</sup> L Amisi 'Sévère réquisitoire du CNSA contre le régime Tshisekedi' *ouragan.cd* 9 June 2023 <https://ouragan.cd/2023/06/severe-requisitoire-du-cnsa-contre-le-regime-tshisekedi/> (accessed 19 August 2024).

<sup>60</sup> DRC News Today 'Tshisekedi must fall: Unshaken Corneille Nangaa Responds to Tshisekedi's Illegitimate Trial Opened Against the AFC' 20 October 2024 <https://drcnewstoday.com/tshisekedi-must-fall-unshaken-corneille-nangaa-responds-to-tshisekedis-illegitimate-trial-opened-against-the-afc/> (accessed 14 August 2024).

<sup>61</sup> JN Ba-Mweze 'Des affaires de détournements secouent la RDC' *DW* 18/07/2024 <https://www.dw.com/fr/rdc-d%C3%A9tournements-fonds-publics-senat-gecamines-enquete-corruption/a-69707915> (Accessed 14 August 2024).

<sup>62</sup> Universal Declaration of Human Rights (Universal Declaration) *A/RES/217 A (III)* Paris (1948) Preamble.

<sup>63</sup> D Cingranelli and others (n 30) 6.

<sup>64</sup> M Parlevliet 'Rethinking Conflict Transformation from a Human Rights Perspective' 2009 *Berghof Research Center for Constructive Conflict Management* 6.

reach a point where they mobilize to confront real or perceived injustice.<sup>65</sup> In other words, such sustained denial of rights means a long-term frustration of needs, and people will persist in seeking ways to address them. If possible, through peaceful and constructive means, individuals will generally engage in conventional forms of political action to bring about change. However, if they are marginalized or excluded, they may eventually resort to armed resistance, convinced that this is the only way to bring about societal transformation.<sup>66</sup>

In the DRC, accusations of human rights violations are regularly made against government security forces and associated or opposing militias by human rights NGOs vis-à-vis civilian populations.<sup>67</sup> Security forces and associated or opposing militias committed extrajudicial executions and enforced disappearances, torture, and harassed, arbitrarily arrested, and incommunicado detained opponents and suspected rebels with impunity.<sup>68</sup>

Furthermore, impunity for human rights violations results from the corruption that has plagued the Congolese judicial system for several years. This corruption is caused by a certain laxity that characterizes governance in the DRC, leaving almost all cases of misconduct by state agents and officials unpunished. Thus, corruption always deals a severe blow to the administration of justice, which turns into an injustice in which it is the wealthiest litigants who often win their cases at the end of trials. This factor is among those that have most diminished the Congolese population's confidence in the country's justice system, with most victims often saying that filing a complaint is not worth it.<sup>69</sup> It fuels the feeling of impunity among the populations, which are tempted to take the law into their own hands. This phenomenon is particularly flagrant in the East of the DRC, notably in Goma, Beni and Butembo where, faced with the powerlessness of the security and justice services to put an end to the massacres perpetrated by armed groups, the population has organised itself into self-defence militias which lynch people suspected of collaborating with the enemy, and members of armed groups who are apprehended.<sup>70</sup> This is also the case in most of the

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<sup>65</sup> M Parlevliet 'Bridging the Divide-Exploring the relationship between human rights and conflict management' 2002 11 *CCR* 1 .

<sup>66</sup> As above.

<sup>67</sup> RFI 'RDC: de nombreuses violations des droits humains dénoncées dans un rapport cinglant' 20 October 2021 <https://www.rfi.fr/fr/afrique/20211020-rdc-de-nombreuses-violations-des-droits-humains-d%C3%A9nonc%C3%A9es-dans-un-rapport-cinglant> (accessed 25 August 2024).

<sup>68</sup> Amnesty International 'RDC. Des mesures concrètes pour mettre fin à l'impunité ne peuvent plus attendre' 1 October 2020 <https://www.amnesty.org/fr/latest/press-release/2020/10/democratic-republic-of-congo-take-concrete-steps-to-end-impunity/> (accessed 25 August 2024).

<sup>69</sup> Amnesty International 'The Time for Justice is Now: New Strategy Needed In The Democratic Republic of Congo' Index: AFR 62/007/2011 2011 44.

<sup>70</sup> Radio Okapi 'Butembo: une ong locale alerte sur la résurgence des cas de lynchage' 12/02/2022 <https://www.radiookapi.net/2022/02/19/actualite/securite/butembo-une-ong-locale-alerte-sur-la-resurgence-des-cas-de-lynchage> (accessed 28 September 2024).

country's cities, where suspected thieves are often lynched by the population, which considers the justice system to be ineffective, and express the desire to take justice into their own hands quickly in order to dissuade others from committing similar acts.<sup>71</sup>

### **2.2.2. Violations related to the management of public properties and natural resources**

Opaque management of public goods and natural resources and poor governance can be the basis of poverty and lack of professional and economic opportunities that can trigger frustrations that lead to conflict.

#### ***Bad governance***

The Congolese public administration has not played its role of redistributing national wealth by providing basic public services. It has served as a source of personal enrichment through corruption and misappropriation of public resources, which have become the established mode of governance under all the regimes that have succeeded one another in the country since its accession to independence.<sup>72</sup>

Indeed, according to the *Transparency International Corruption Perception Index 2023*, the DRC has a score of 20/100 and occupies 162nd place out of 180 countries in the world,<sup>73</sup> whereas in terms of good governance, according to *World Economics Governance Index 2024*, the DRC is in the top 5 of the worst governed countries in Africa where it occupies 2nd place with the index 21.6.<sup>74</sup>

The modes of governance implemented since independence have failed to significantly improve the well-being of the Congolese population. They have allowed the accumulation of personal wealth by economic and political elites, and for leaders to sell off the country's natural resources, thus establishing a system that, even today, allows global economic interest groups to exercise significant control over the Congolese state. At the same time, this system has progressively

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<sup>71</sup> Observateurs-France 24 'Voyage au bout de l'enfer: lynchage et scène de cannibalisme à Goma' 12/12/2012) <https://observers.france24.com/fr/20121213-lynchage-scenes-cannibalisme-goma-rdc-congo-insecurite> (accessed 28 September 2024).

<sup>72</sup> UNECA (n 1) 21.

<sup>73</sup> Transparency International '2023 Corruption Perceptions Index - Explore Democratic Republic Of...' 30 January 2024 <https://www.transparency.org/en/cpi/2023>(accessed 28 August 2024).

<sup>74</sup> World Economics 'Governance Factor Ratings' 2024 <https://www.worldeconomics.com/Rankings/ESG-Governance.aspx> (accessed 28 August 2024).

degraded relations between the state and the Congolese population, constituting a factor of conflict.<sup>75</sup>

The government's failure to provide infrastructure and social services has weakened the government's legitimacy in the eyes of the population and provided a base for armed groups fueled by feelings of alienation, particularly in resource-rich provinces where populations have consistently opposed what they see as a one-way transfer of resources from the provinces to the central government for the personal enrichment of leaders.<sup>76</sup>

### ***Exploitation and control of natural resources***

The exploitation and control of natural resources is one of the main causes of conflict in the DRC. Many actors, including foreign countries, armed groups, and multinational companies, have always sought to exploit, by all means, the country's vast resources, including gold, oil, timber and coltan, which are a source of competition and violence.<sup>77</sup>

Although the wars in the DRC have been described as “resource wars”. Natural resources are not the direct cause of the conflicts. The conflicts have been fueled by mismanagement of the natural resource sector and an unequal distribution of the benefits from their exploitation. The problem is therefore not the volume of natural resources, but the failure of the state to establish strong institutions for their management that has made the country vulnerable to conflict and prevented it from taking full advantage of its abundant natural resources.<sup>78</sup>

The combination of poor governance and abundant natural resources allows external agents to take advantage of weak institutions to exploit natural resources. Insecurity then emerges and continues as different actors struggle for control of natural resources and take sides in internal conflicts.<sup>79</sup>

The widespread institutional failure paves the way for the misappropriation of public funds and the unregulated exploitation of natural resources, creating a situation where conflicts coexist with chaotic exploitation of natural resources followed by human rights violations, including forced

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<sup>75</sup> UNECA (n 1) 3.

<sup>76</sup> UNECA (n 1) 21.

<sup>77</sup> WB (n 37) 79.

<sup>78</sup> UNECA (n 1) viii.

<sup>79</sup> UNECA (n 1) 24.

labor, beatings, and arbitrary arrests of resisting gold miners, as well as several massacres of civilian populations in mining areas.<sup>80</sup>

### ***Low professional and economic opportunities***

The risk of violent conflict can be correlated with a high proportion of young adults in unemployment and weak economic performance. Unemployment and idleness are cited as the most important factors motivating young people to join armed groups. Their engagement in armed groups becomes the only recourse available to them given the gravity of the situations in which they find themselves.<sup>81</sup>

With growing economic alienation of the population, especially unemployed youth, including those with education, the environment has become increasingly conducive to the formation of rebellions against the state.<sup>82</sup> Low social development, particularly deprivation of basic needs and lack of income-generating opportunities, generate hostility from the state,<sup>83</sup> an individual's socio-economic status becoming an important factor contributing to his participation in the conflict, voluntarily or not, in order to ensure a certain level of satisfaction of basic needs.<sup>84</sup>

Large numbers of unemployed youth can increase both the opportunities and the motives for conflict, as their lack of other income-generating opportunities pushes them to accept offers of recruitment to fight directly within armed groups and/or to work in artisanal mines controlled by rebels. Thus, the high rate of unemployed youth has helped to make rebellions both financially feasible and profitable for their leaders, since these youth constitute a cheap captive workforce.<sup>85</sup>

According to a study carried out in 2021 by the United Nations Children's Fund, nearly eight out of ten young people were unemployed in the DRC, or 78% of unemployed young people.<sup>86</sup> Facing poverty, unemployment and a lack of prospects, many young people who feel desperate to be useful to themselves and their communities, which are themselves languishing in indescribable

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<sup>80</sup> Office of the High Commissioner on Human Rights (OHCHR) 'Report of the Mapping Exercise documenting the most serious violations of human rights and international humanitarian law committed within the territory of the Democratic Republic of the Congo between March 1993 and June 2003' (Mapping Report) 2010 para 420.

<sup>81</sup> WB (n 37) 78.

<sup>82</sup> UNECA (n 1) 20.

<sup>83</sup> UNECA (n 1) 28.

<sup>84</sup> A Abaho 'Human Needs Satisfaction and Conflict Prevention in Africa' 2020 8 *Open Journal of Social Sciences* 1 9.

<sup>85</sup> UNECA (n 1) 31.

<sup>86</sup> M Assani 'Kinshasa veut s'attaquer au chômage de masse des jeunes' *DW* 12/06/2024 <https://www.dw.com/fr/kinshasa-veut-sattaquer-au-chomage-de-masse-des-jeunes/a-69346405> (accessed 2 September 2024).

misery, have no choice but to join armed groups that sell them the dream of a better life and a social identity that the State has been unable to offer them.<sup>87</sup>

### **2.3. Human rights violations as consequence of the conflicts in the DRC**

Conflicts that arise from concerns about promoting the well-being of one or more identity groups, or over access to resources, have typically resulted not only in great loss of life on the battlefield, but also in large-scale massacres and displacement of civilians, as well as other systematic violations of human rights. Conflicts are at the heart of some of the worst human rights violations in the world.<sup>88</sup>

Increasingly targeted, the civilian population represents the majority of victims of conflicts; a toll that weighs most heavily on vulnerable people,<sup>89</sup> whether as direct victims of death, injury, rape and forced displacement, or as indirect victims of conflict-induced increases in disease, poverty, hunger, and malnutrition.<sup>90</sup>

Conflicts have caused the breakdown of the social and economic fabric and the disintegration of families, making people vulnerable to gender-based violence, sexual exploitation, rape, forced prostitution, child labor and recruitment of child soldiers.<sup>91</sup>

#### **2.3.1. Violations of the rights of vulnerable people during conflicts**

The impact and experience of conflict is not the same for all civilians; it can vary enormously between members of different groups, depending on whether they are men or women, young or old, living in an urban or rural area, or belonging to an ethnic minority. While men represent the largest number of combatants, women and children are disproportionately represented among civilians affected by conflict.<sup>92</sup>

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<sup>87</sup> Equipe spéciale des Nations Unies pour les enfants et les conflits armés en RDC ‘Newsletter #3’ 2 2018 2 [http://monusco.unmissions.org/sites/default/files/newsletter3\\_de\\_lequipe\\_speciale\\_des\\_nations\\_unies\\_pour\\_les\\_enfants\\_et\\_les\\_conflits\\_armes\\_en\\_rdc\\_0.pdf](http://monusco.unmissions.org/sites/default/files/newsletter3_de_lequipe_speciale_des_nations_unies_pour_les_enfants_et_les_conflits_armes_en_rdc_0.pdf) (accessed 2 September 2024).

<sup>88</sup> CM Carrasco LI Alvarez N Loozen & ES Gárate ‘Human rights violations in conflict settings’ 2014 *European Commission Frame* 60.

<sup>89</sup> CM Carrasco and others (n 88) 12.

<sup>90</sup> CM Carrasco and others (n 88) 99.

<sup>91</sup> CM Carrasco and others (n 88) 100.

<sup>92</sup> As above.



## ***Violations against women and children***

Due to their particular vulnerability, children and women require priority protection in crisis or conflict situations. However, women and children are the first victims of war atrocities. Indeed, in the context of the changing nature of contemporary conflicts, the strategies of armed groups aim to maximize their impact on the core of the civilian population. Women and children have thus become more vulnerable due to new tactics for conducting hostilities (indiscriminate attacks on civilian areas or attacks directly targeting civilians, using explosive weapons, air strikes, the use of new weapons technologies or resorting to terrorist tactics), which weigh heavily on millions of children and women.<sup>93</sup>

### **(a) Violations against children**

The wars in the DRC have increased child labor and other forms of exploitation in addition to the direct participation of children as combatants.<sup>94</sup> By creating a situation of insecurity and massive population displacement, wars have placed many children in situations without protection as they have been separated from their families and have dropped out of school. These children have become targets for recruitment by armed groups. Forced recruitment takes place in schools, on the streets, in refugee or displaced persons camps, or in the children's own homes, at gunpoint. Children have gone to the streets where they engage in urban banditry, seen as the only way to survive after losing family members or in response to widespread poverty and deprivation.<sup>95</sup>

The DRC is estimated to have the highest number of children involved in conflict in the world at the height of the war, with an estimated 31,000 children associated with armed groups,<sup>96</sup> where they serve as fighters, cooks, informants or even sexual objects for the fighters. Young girls represent 40% of these children.<sup>97</sup> However, whatever the manner and motives or the process by which they become involved in conflicts, these children have suffered the consequences of conflict, disease and death, not only as victims, but also as witnesses and sometimes forced participants in horrific crimes that inflict permanent psychological trauma.<sup>98</sup> Conflict has created

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<sup>93</sup> CM Carrasco and others (n 88) 125.

<sup>94</sup> Amnesty International 'DRC: Children at war' Index AI: AFR62/034 2003 4.

<sup>95</sup> UNECA (n 1) 87.

<sup>96</sup> Equipe spéciale des Nations Unies pour les enfants et les conflits armés en RDC (n 85) 2.

<sup>97</sup> BICE 'Réintégration des enfants soldats en RD Congo' *BICE - ONG de protection des droits de l'enfant* 3 May 2017) <https://bice.org/fr/reintegration-des-enfants-soldats-en-rd-congo/> (accessed 2 September 2024).

<sup>98</sup> Amnesty International (n 94) 5.

a lost generation of children and its effects affect the lives of these children long after they have overcome the physical and emotional scars associated with it.<sup>99</sup>

As the war has caused the near total destruction of the country's socio-economic infrastructure, like adults, children sometimes join armed groups in the hope of escaping poverty and harsh living conditions. Unable to adequately support their families, some parents encourage their children to join armed groups, believing that they will receive a salary, education and food, and protection from these armed groups. However, in areas where propaganda, recruitment operations and fighting are conducted along ethnic lines, which is mainly the case in the Kivu and Ituri regions, many children are encouraged to join armed groups to defend their own ethnic groups against armed groups of rival ethnic groups.<sup>100</sup>

### **(b) Violations against women**

In situations of armed conflict, women not only suffer the devastating effects of armed conflict on civilian populations.<sup>101</sup> They also suffer gender-based physical, sexual and psychological violence which include murder, femicide, torture and other cruel, inhuman or degrading treatment, abduction, mutilation and forced recruitment of women combatants, rape, sexual slavery, sexual exploitation, involuntary disappearance, arbitrary detention, forced marriage, forced prostitution, forced abortion, forced pregnancy and forced sterilization.<sup>102</sup> These acts do not occur randomly, they are most often real systematic attacks, designed as military strategies aimed at destroying, terrorizing, humiliating and/or displacing entire communities.<sup>103</sup>

Furthermore, conflicts exacerbate existing gender inequalities, putting women at increased risk of various forms of gender-based violence by both state and non-state actors. Conflict-related violence occurs everywhere, including in homes, detention centres and camps for displaced persons and refugees; it always happens, for example, during daily activities such as collecting water and firewood or going to school or work.<sup>104</sup>

The various consequences of conflict, such as limited access to food and water, affect women more heavily than men. After conflict, women still suffer dramatic consequences related to their social

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<sup>99</sup> UNECA (n 1 above) 87.

<sup>100</sup> Amnesty International (n 94) 7.

<sup>101</sup> C Wazinsk 'Protection of Civilians under International Humanitarian Law: Trends and Challenges' 2011 *NOREF Report* 3.

<sup>102</sup> UNGA 'In-depth study on all forms of violence against women' Report of the Secretary-General A/61/122/Add.1 2006 74.

<sup>103</sup> C Wazinsk (n 101) 23.

<sup>104</sup> Committee on the Elimination of Discrimination against Women (CEDAW Committee) General Comment 30 on women in conflict prevention, conflict and post-conflict situations CEDAW/C/GC/30 2013 para 34.

status, most often when they have been victims of sexual violence. During and after conflict, their role in the family and society changes radically, being stereotyped, or rejected by their social environment. In some societies, being a victim of rape leads to extreme consequences, including stigmatization and loss of marital status.<sup>105</sup>

Women and girls are a prime target for both rebels and government troops when it comes to sexual violence and rape, which are used as a weapon of vengeance against the enemy.<sup>106</sup> In addition to physical deaths and injuries, women who are victims of war-related atrocities also suffer psychological trauma caused by humiliation and rejection by their own families and communities due to stereotypes attached to rape.<sup>107</sup> Also, given the importance of women to household well-being and national production, the negative effects of conflict on women have profound repercussions on the economy and society as a whole.<sup>108</sup> In addition, the Congolese conflicts have led to an increase in maternal mortality. In addition to deaths directly related to conflict, the increase in maternal mortality is attributable to the deterioration of living conditions due to population displacement within the country and across borders, and the destruction and looting of health institutions, which has seriously degraded the availability and quality of health care in conflict zones.<sup>109</sup>

### ***Violations against indigenous peoples***

Indigenous peoples are exposed to the consequences of armed conflict and crises like any other group. However, conflict-related human rights violations that indigenous peoples particularly face are deeply linked to discrimination and dispossession of their lands.<sup>110</sup> Indigenous peoples are subjected to forced evictions, militarization of their traditional lands, and suffer intimidation and violence justified under pretexts related to national security concerns.<sup>111</sup> The destruction of indigenous peoples lands, the forced displacement of their communities and other human rights violations exacerbate tensions and conflicts and have serious economic, social and cultural

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<sup>105</sup> International Committee of the Red Cross 'Women Facing War' 1 December 2015) (2015) <https://www.icrc.org/en/publication/0798-women-facing-war> (accessed 6 September 2024).

<sup>106</sup> UNECA (n 1) 74.

<sup>107</sup> As above.

<sup>108</sup> As above.

<sup>109</sup> As above.

<sup>110</sup> T Koskie 'Indigenous Peoples and Violent Conflict: Preconceptions, Appearances, and Realities' 9 February 2016 <https://koskie.com/tfk-blog/files/http://koskie.com/tfk-blog/files/afcd404fb53e373a5f80bd22228c4914-363.html> (accessed 6 September 2024).

<sup>111</sup> As above.

consequences.<sup>112</sup> Most conflicts over indigenous lands are related to issues of control over natural resources such as timber, minerals or oil.<sup>113</sup>

Despite their ability to preserve forests and biodiversity on their lands and territories through their traditional knowledge and practices and the fact that they act as an important line of defense against climate change and the destruction of ecosystems, Congolese indigenous peoples suffer discrimination and marginalization<sup>114</sup> from the rest of the population, from the dominant ethnic communities. They are frequently dispossessed of their ancestral lands, accentuating their extreme poverty, face under-representation in all areas of national life, preventing their voices and concerns from being heard, and do not have access to basic social services, leading to a higher rate of illiteracy among them and a higher mortality rate because of lack of access to health care. This keeps them in a very precarious way of life and thus exposes them to exploitation and violence of all kinds,<sup>115</sup> with the consequence of their total domination, their abusive use in forced labor by their Bantu “masters,” and this, up to degrading and inhuman treatment and slavery.<sup>116</sup>

Over time, non-cohabitation turned into violent conflicts, as more and more indigenous peoples refused to submit to their Bantu "masters", denouncing the slavery they had been subjected to for centuries. In some places, indigenous peoples no longer wanted to honor the customary royalties owed to Bantu customary chiefs. This led to growing discontent among the Bantu, who were losing not only their cheap or even free "labor", but also the property that should be given to them according to Bantu custom.<sup>117</sup> That is the case of an intercommunity conflict which has been going on between the indigenous Pygmy peoples and the Bantu community in the Province of Tanganyika, for several years. Since May 2013, the situation has degenerated into a violent conflict, forcing the indigenous peoples to move to escape this violence.<sup>118</sup> In order to protect themselves against punitive attacks by Bantu militias due to the refusal of indigenous Pygmy peoples in their attempt to recruit them to swell their ranks and the increasing threats of their

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<sup>112</sup> As above.

<sup>113</sup> CM Carrasco and others (n 88) 206.

<sup>114</sup> Agir Ensemble Pour Les Droits Humains ‘[Communiqué] RDC : Reconnaissance des droits des peuples autochtones pygmées : une victoire historique en RDC’ 1 December 2022 <https://agir-ensemble-droits-humains.org/fr/communiqu-rdc-reconnaissance-des-droits-des-peuples-autochtones-pygmees-une-victoire-historique-en-rdc/> (accessed 6 September 2024).

<sup>115</sup> Dynamique des Groupes des Peuples Autochtones (DGPA) ‘Les peuples Autochtones Pygmées en RDC : l’état de leurs droits et la situation dans la Province du Tanganyika’ Rapport alternatif au Rapport périodique de la République Démocratique du Congo au Comité des Droits de l’Homme 2017 5.

<sup>116</sup> DGPA (n 115) 6.

<sup>117</sup> As above.

<sup>118</sup> DGPA (n 115) 7.

eviction from their ancestral lands, indigenous peoples have also created self-defense militias.<sup>119</sup> However, the means are not proportional, the indigenous pygmies responding to the attacks of the Bantu militias with bows and arrows while their adversaries use fire weapons and diesel to burn the pygmies' houses.<sup>120</sup>

### 2.3.2. The destruction of the social and economic fabric

Conflicts result in the destruction of basic infrastructure, including health facilities, with particularly negative consequences for women and children. Conflict situations also present particular challenges in education, employment and the breakdown of social services that often result in food insecurity, inadequate housing, property loss and lack of access to water.<sup>121</sup> Conflicts make discrimination in access to food, resources and social services even more deadly.<sup>122</sup> By leading to the lack of provision of essential services to the population, conflicts constitute a serious threat to the well-being of populations, particularly women and their families.<sup>123</sup>

Conflicts in the DRC have had a devastating impact on the economy, leading to financial instability, reduced investment, and weakened public finances.<sup>124</sup> Their impact to key economic drivers will likely have long-lasting consequences for the country's economic growth, including industry, manufacturing, agriculture, and human capital,<sup>125</sup> as public spending has been driven out of the productive sectors and social in favour of defense spending. This is the tendency to prioritise defence in terms of budget allocations, which is detrimental to investment in growth-promoting sectors,<sup>126</sup> keeping around 74.6% of Congolese population in extreme poverty.<sup>127</sup>

Also, the conflicts have reinforced the structural dependence of the Congolese economy on natural resources by weakening economic diversification and have increased dependence on external financing by compromising the mobilization of internal revenues towards the sectors driving economic growth, notably agriculture, industry, and transport,<sup>128</sup> where economic activity has

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<sup>119</sup> As above.

<sup>120</sup> As above.

<sup>121</sup> CEDAW Committee (n 104) para 51.

<sup>122</sup> D Mazurana 'The gendered impact of conflict and peace keeping in Africa' 2013 *Conflict Trends, ACCORD* 5.

<sup>123</sup> UNSC 'Women and Peace and Security' Report of the Secretary-General S/2009/465 2009 para 15.

<sup>124</sup> UNECA (n 1) viii.

<sup>125</sup> As above.

<sup>126</sup> UNECA (n 1) 49.

<sup>127</sup> WB 'République démocratique du Congo - Vue d'ensemble' 10 April 2024 <https://www.banquemondiale.org/fr/country/drc/overview> (accessed 6 September 2024).

<sup>128</sup> UNECA (n 1) viii.

disrupted due to insecurity, population displacement and deterioration of physical infrastructure. They have also led to the breakdown of governance and national institutions, preventing the country from taking full advantage of the significant growth potential associated with the country's abundant natural resources and its strategic location in Africa.<sup>129</sup> The Congolese agriculture sector has been affected by the disruptions caused by conflict, particularly the displacement of the rural population, the loss of workforce caused by the number of deaths, but also the recruitment of young people and adults into armed groups.<sup>130</sup> This situation has made the DRC more vulnerable to famine by becoming today one of the most famine-affected countries in the world. Indeed, according to *Global Hunger Index* which measures and tracks levels of global hunger, the DRC is ranked 122nd out of 125 countries with sufficient data to calculate the 2023 GHI scores, which score is 37.8, a level described as “alarming”.<sup>131</sup>

The situation is further complicated during the displacement of populations fleeing conflict, where the intersecting vulnerabilities and discriminatory factors experienced by refugees and internally displaced persons in conflict and high-risk areas are complex. As the status of displaced person or refugee intersects with other potential factors of vulnerability, such as gender, age, disability, belonging to a minority group, access to socio-economic resources and the intersection of potential human rights, violations become more significant. For example, in camps for internally displaced persons, people who have fled conflicts live in inhumane conditions.<sup>132</sup> They do not have adequate shelter, they are exposed to all kinds of bad weather and bombings; the most recent of which was the bombing of a displaced persons camp in Mugunga on 3 May 2024,<sup>133</sup> no food, no water, no medical care while diseases are common there, including cholera which claims several victims, the recent case is the death of 200 persons in the various displaced persons camps scattered throughout the city of Goma and its surroundings, whose burial took place on 2 September 2024.<sup>134</sup>

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<sup>129</sup> UNECA (n 1) 3.

<sup>130</sup> UNECA (n 1) 56.

<sup>131</sup> Global Hunger Index 'Dem. Rep. of the Congo' - peer-reviewed annual publication designed to comprehensively measure and track hunger at the global, regional, and country levels) available at <https://www.globalhungerindex.org/drc.html> (accessed 6 September 2024).

<sup>132</sup> Reliefweb 'Déclaration Des Principaux Du Comité Permanent Interorganisations Sur La République Démocratique Du Congo - Des Niveaux de Violence Écrasants et Les Déplacements Alimentent Des Souffrances Civiles sans Précédent - Democratic Republic of the Congo 2 May 2024 <https://reliefweb.int/report/democratic-republic-congo/declaration-des-principaux-du-comite-permanent-interorganisations-sur-la-republique-democratique-du-congo-des-niveaux-de-violence-ecrasants-et-les-deplacements-alimentent-des-souffrances-civiles-sans-precedent> (accessed 6 September 2024).

<sup>133</sup> C Lauvergnier (n 25).

<sup>134</sup> G Ngise 'Inhumation de 200 personnes au Nord-Kivu : « La dignité des victimes exige plus que des mots... »' *CongoRassure* 9 March 2024 <https://congorassure.cd/societe/2024/09/03/inhumation-de-200-personnes-au-nord-kivu-la-dignite-des-victimes-exige-plus-que> (accessed 6 September 2024).

The consequences are diverse<sup>135</sup>; children who do not have access to school and, given increasingly difficult living conditions, enlist in armed groups or join the streets where they engage in urban banditry, young girls marry early or become prostitutes to survive, not to mention the women and young girls who are regularly raped.

#### **2.4. Conclusion of chapter 2**

Human rights violations and armed conflict in the DRC are inextricably linked and interdependent. Socio-economic inequalities, government repression, poor governance, misuse of natural resources and ethnic tensions fuel the conflicts, which in turn lead to massive human rights violations.

By creating a climate of insecurity and mistrust among the population, human rights violations exacerbate tensions that eventually tip over into violent conflict, which in turn leads to other human rights violations, such as massacres, rapes, kidnappings and the recruitment of child soldiers. Added to this are the massive displacements of civilian populations fleeing conflicts, which worsen humanitarian conditions and expose populations, particularly women and children, to new human rights violations.

Analysing human rights violations as one of causes and consequences of conflict enables to integrate human rights into the conflict prevention and management process. Because, as long as the Congolese state does not provide adequate basic services to its citizens, does not put a stop to corruption and bad governance, does not ensure the equitable distribution of national wealth, does not guarantee access to justice for victims, to employment for young people and to basic social services for the population, or as long as communities lose their social cohesion by indulging in tribal-ethnic quarrels, the country will continue to be a breeding ground for violent conflicts.

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<sup>135</sup> ONU Info 'En RDC, trois millions d'enfants déplacés sont menacés par les violences (UNICEF)' 19 February 2021 <https://news.un.org/fr/story/2021/02/1089762> (accessed 6 September 2024).

## CHAPTER 3

### THE DRC'S OBLIGATIONS REGARDING PEACE AND SECURITY ON ITS TERRITORY

#### 3.1. Introduction

Ensuring the security of its people is a sovereign duty of every State. However, in fragile states in particular, the populations do not benefit from the protection that their armed forces, police and other security services should provide. In these contexts, serious human rights violations are likely to occur. People suffer loss of life and physical harm, women and girls are trapped in predatory environments, vulnerable groups live in fear, institutions erode, investors are frightened and conflict is inevitable.<sup>136</sup>

When security sectors perform poorly, the citizens trust that is necessary to ensure the nation's prosperity remains elusive. Citizens no longer seem to trust the State to ensure their security. This feeling, which is largely legitimate, seems to suffer from doubts about the State's responsibility in matters of security, since the sovereignty of a State rests, among other things, on its capacity to ensure the security of its citizens.<sup>137</sup>

This chapter will examine the obligations of the Congolese State in matters of peace and security on its territory contained in the treaties and other international and regional texts to which the DRC is a party and in its national legislation.

#### 3.2. Obligations under international and regional legal instruments

The security aims to safeguard public order, understood to include the safety of persons and property. These are practical measures aimed at protecting individuals whose lives are threatened by the criminal actions of others, but also at adopting standards guaranteeing the protection of persons in public spaces or establishing a legal and administrative framework to deter attacks against persons or property and based on an enforcement mechanism designed to prevent, repress and punish violations.<sup>138</sup>

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<sup>136</sup> DA Youssef 'La Sécurité, Un Droit Fondamental' *The Conversation* 5 September 2016) <http://theconversation.com/la-securite-un-droit-fondamental-64699> (accessed 9 September 2024).

<sup>137</sup> As above.

<sup>138</sup> X de Boulois 'Existe-t-il un droit fondamental à la sécurité?' 2018 *RDLF* 13 2.



A number of international and regional texts to which the DRC is a party recognize peace and security as a primary condition for the well-being, material prosperity and progress of States as well as of the full realization of fundamental human rights and freedoms and express the firm determination of all peoples to eliminate war from the life of humanity.<sup>139</sup>

The obligations of the Congolese State in matters of peace and security on its territory under these international and regional legal instruments are as follows.

### **3.2.1. Ensuring peace for the populations**

Ensuring peace for the populations is a primary objective for any state. It is about creating an environment where people can live in safety,<sup>140</sup> without fear for their lives or property.<sup>141</sup> This is why the Congolese State has the obligation to ensure a peaceful life for its peoples, given that preserving the right of peoples to peace and promoting the realization of this right constitutes a fundamental obligation for each State.<sup>142</sup>

The Congolese State also has the obligation to recognize the importance and necessity of establishing, maintaining and strengthening a just and lasting peace for present and future generations and to observe in particular the equality of all human beings, without distinction of race, belief, language or sex, and their inherent right to live in peace.<sup>143</sup> Respect for this right, as for other human rights, is in the interest of humanity in general and is an indispensable condition for the progress of all nations, large or small, in all fields.<sup>144</sup>

### **3.2.2. Guaranteeing the safety of people and property**

Security is a fundamental right and one of the conditions for the exercise of individual and collective freedoms.<sup>145</sup> This is why the Congolese State has the obligation to ensure security by guaranteeing, throughout its territory, the defense of institutions and national interests, respect for

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<sup>139</sup> UNGA Declaration on the Rights of Peoples to Peace A/RES/39/11 (1984) Preamble.

<sup>140</sup> Universal Declaration (n 62) Article 3.

<sup>141</sup> Graines de paix 'Paix, non-violence - formes d'engagement possibles' 11 July 2016 <https://www.grainesdepaix.org/fr/ressources/sinspiner/concepts-de-paix/agir-pour-la-paix/paix-non-violence-formes-engagement-possibles> (accessed 9 September 2024)

<sup>142</sup> UNGA (n 139) (2).

<sup>143</sup> UNGA Declaration on the Preparation of Societies for Life in Peace A/RES/33/73 (1978) I.1.

<sup>144</sup> As above.

<sup>145</sup> Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (2000) Preamble.

the laws, the maintenance of peace and public order, and the protection of people and their property.<sup>146</sup>

The Congolese State also has an obligation to exercise due diligence by taking reasonable positive measures to respond to foreseeable threats to life from individuals or armed groups, whose acts are not attributable to the State. It is thus required to take adequate preventive measures to protect people from homicides that could be committed by criminals and members of armed groups. It also has an obligation to dismantle illegal armed groups and curb the proliferation of potentially lethal weapons in the hands of individuals who are not authorized to hold them.<sup>147</sup>

The Congolese State also has the obligation to ensure the protection of its citizens against all forms of violence, whether internal or external, the work of its security services or of individuals and armed groups, by fighting against crime, armed conflicts, and to guarantee a safe environment for all, in which every individual enjoys his right to life, liberty and security of person.<sup>148</sup>

In the event of conflict, the Congolese State has the obligation to protect the civilian population and take all necessary measures to ensure the protection and care of children who are affected by the conflicts. It must take all necessary measures to ensure that no child takes a direct part in the hostilities.<sup>149</sup> It also has an obligation to ensure that the rights of children are specially protected and that their situation, without distinction, is constantly improved and that they can be educated in conditions of peace and security and must take all possible measures to prevent the recruitment of children into armed groups, including the legal measures necessary to prohibit and criminally punish such practices.<sup>150</sup>

The Congolese State still has the obligation to protect all material goods, whether public or private, against theft, damage, loss, and other threats in order to allow their enjoyment without the risk of them being stolen or vandalized.<sup>151</sup>

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<sup>146</sup> Optional protocol (n 145) Preamble, Articles 1, 2 & 4 (2).

<sup>147</sup> UN Human Rights Committee General Comment 36 on Article 6 of the International Covenant on Civil and Political Rights (ICCPR) concerning the right to life 2019 Para 25.

<sup>148</sup> Universal Declaration (n 62) Article 3.

<sup>149</sup> African Charter on the Rights and Welfare of the Child (1990) Article 22 (2) (3).

<sup>150</sup> Optional protocole (n 145) Preamble, Articles 1, 2 & 4 (2).

<sup>151</sup> Organisation Mondiale de la Santé (OMS) 'Sécurité et promotion de la sécurité : Aspects conceptuels et opérationnels' 1998 OMS 11.

### 3.2.3. Maintaining public order

Maintaining public order is an essential function of the State, aimed at guaranteeing the security of people and property, preventing disturbances, and enforcing the laws.<sup>152</sup> The Congolese State has an obligation to prevent disturbances of public order and to monitor the use of less-lethal weapons designed for security agents responsible for maintaining order, rubber bullets and attenuated impact projectiles. It can be said that the use of more-lethal weapons to maintain public order is prohibited and even the use of less-lethal weapons must be reserved for members of the law enforcement services who have undergone appropriate training and must be strictly regulated in accordance with the relevant international rules. These less-lethal weapons may only be used in exceptional situations, in compliance with the requirements of necessity and proportionality, when other less aggressive measures have proven ineffective. Thus, the Congolese State should not use them in ordinary situations of riot control or public demonstrations.<sup>153</sup>

The Congolese state has an obligation not only to combat the proliferation of light weapons on its territory, but also to disarm, demobilise and reintegrate ex-combatants under humane conditions in order to protect them from criminal activities.<sup>154</sup>

It also has an obligation to neutralise the armed groups active on its territory, in particular the FDLR and the ADF-NALU, and must severely punish members of its army who collaborate with armed groups.<sup>155</sup>

### 3.2.4. Promoting peace and nonviolent coexistence

The climate of cohesion and social peace as well as equity protecting rights and freedoms at the family, local, national, and international levels refer to a just society protecting harmony between communities of race, sex, age, religion, and tribe, without infringing on the rights and freedoms of individuals. This must allow the non-violent coexistence of different groups and must protect the population from wars or any other organized form of violence.<sup>156</sup>

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<sup>152</sup> SI Ebohon & EUB Ifeadi 'Managing the Problems of Public Order and Internal Security in Nigeria' 2012 5 *African Security* 14.

<sup>153</sup> UN Human Rights Committee (n 146) Para 14.

<sup>154</sup> UNSC Resolution 2293 (2016) on the DRC 3.

<sup>155</sup> UNSC (n 154) 2.

<sup>156</sup> OMS (n 151) 11.

Promoting peace constitutes the guarantee of a dignified life, personal security, and an environment conducive to the realization of all other fundamental rights and the Congolese State has an obligation to prohibit and punish any propaganda in favour of war, any call to national, racial or religious hatred constituting an incitement to discrimination, hostility or violence.<sup>157</sup>

The Congolese State has the obligation to prioritize and increase activities aimed at promoting a culture of peace, and to ensure that peace and non-violence are encouraged at all levels. Since wars begin in the minds of men, it is there where the defenses of peace must be built, the State must provide children, in schools, with an education adapted to each age that promotes a culture of peace by giving particular importance to understanding others, tolerance, and human rights.<sup>158</sup>

The Congolese State has an obligation to take measures likely to promote the ideals of peace, humanism, and freedom,<sup>159</sup> to prevent the incitement of hatred and prejudice against other peoples as being contrary to the principles of peaceful coexistence and friendly cooperation.<sup>160</sup>

The Congolese State also has the obligation to ensure that its policies and modes of education and teaching methods as well as the activities of the media contain elements compatible with the preparation of the whole of society, and in particular of the younger generations, to live in peace.<sup>161</sup> Accordingly, any incitement to racial hatred, national discrimination, injustice or encouragement to violence must be prevented and eliminated,<sup>162</sup> by encouraging non-violent cohabitation between individuals in order to allow each individual not to be personally physically attacked (assault, sexual assault, etc.) or psychologically (harassment, hateful remarks, etc.) and to be able to enjoy their property without the risk of it being stolen or vandalized.<sup>163</sup>

### **3.2.5. Cooperating with other States**

The complexity of current conflicts has made international cooperation in matters of peace and security essential in the sense that no State, however powerful, can face these challenges alone. The Congolese State thus has the obligation to establish various forms of cooperation in a bilateral

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<sup>157</sup> ICCPR (1966) Article 20 (1) (2).

<sup>158</sup> UNGA 'Follow-up to the Declaration and Programme of Action on a Culture of Peace' 2016 (2) & (8).

<sup>159</sup> UNGA (n 143) I.4.

<sup>160</sup> UNGA (n 143) I.8.

<sup>161</sup> UNGA (n 143) II. a) i).

<sup>162</sup> UNGA (n 143) II. a) ii).

<sup>163</sup> OMS (n 151) 11.

and multilateral framework, in order to curb the problem of insecurity on its territory and better enable its people, not only to live in peace, but also to enjoy the immense wealth that their country abounds with.<sup>164</sup>

The Congolese State has the obligation to promote mutually advantageous and equitable political, economic, social, and cultural cooperation with other States, whatever their economic and social system, with a view to ensuring their common existence and cooperation in peace and in conditions of mutual understanding and respect for the identity and diversity of all peoples, by taking measures likely to promote the ideals of peace and humanism.<sup>165</sup>

It is for this purpose that the UN Charter prohibits war and encourages the peaceful resolution of conflicts, expressing the will of nations to practice tolerance, to live in peace with one another as good neighbors and to join forces to maintain international peace and security.<sup>166</sup> To achieve this ideal, the principle of solidarity and friendly relations must govern relations between States<sup>167</sup> and the Congolese State has, like any other State, the obligation to prevent and punish the encouragement of hatred and prejudice against other peoples as being contrary to the principles of peaceful coexistence and friendly cooperation.<sup>168</sup>

Furthermore, if the State is unable to protect its population alone, the international community has a duty to assist it by strengthening its capacities, through mediation between the parties to the conflicts, strengthening the security sector, mobilizing reserve forces and many other actions.<sup>169</sup> If these peaceful measures fail, the International Community has then the responsibility to intervene first through diplomatic means, then in a more coercive manner and, as a last resort, by military force.<sup>170</sup>

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<sup>164</sup> UNGA (n 143) II.b.

<sup>165</sup> UNGA (n 143) I.4.

<sup>166</sup> United Charter (1945) Preamble.

<sup>167</sup> African Charter on Human and Peoples' Rights (1981) Article 23 (1).

<sup>168</sup> UNGA (n 143) I.8.

<sup>169</sup> Pillars 2 & 3 of the Doctrine to Protect (R2P) 'Doctrine de la responsabilité de protéger : Définition et principes' (9 June 2024) <https://avocat-droit-international.fr/doctrine-de-la-responsabilite-de-protoger/> (accessed 14 September 2024).

<sup>170</sup> As above.

### 3.3. Obligations under national legislation

At the heart of the sovereignty of any State is the preservation of peace and internal security. Each sovereign State thus has the monopoly on the legitimate use of force to protect its populations against the internal and external threats they face, through its security system.<sup>171</sup> The State security system includes all services with the power to use and order the use of force, as well as the civilian structures responsible for their management. This is the case of the Armed Forces, the National Police, the intelligence services, the immigration and customs services, and the professionals of the judicial system, including the courts, the prosecutors and prison staff.<sup>172</sup>

These services enable the Congolese State to meet its obligations regarding peace and security on its territory under its legislation. These obligations are as follows:

#### 3.3.1. Ensuring the defense of territorial integrity

The defense of territorial integrity refers to the inalienable right of a State to keep the integrity of its territory and its borders, without external interference, which allows the State to fully exercise its powers on its territory.<sup>173</sup>

This is why the Congolese State has the obligation to defend the territorial integrity and the borders of the country. This mission is the sole responsibility of the Armed Forces<sup>174</sup> and the National Intelligence Agency.<sup>175</sup> The Armed Forces are republican, apolitical, and subject to civil authority. No one may, under penalty of high treason, divert them to his own purposes,<sup>176</sup> or organize military, paramilitary or private militia training, or maintain armed youth.<sup>177</sup>

Furthermore, the sovereign obligation of the State to ensure the defense of territorial integrity implies the right and duty of every Congolese to defend the country and its territorial integrity in front of an external threat or aggression.<sup>178</sup>

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<sup>171</sup> SI Ebohon & EUB Ifeadi (n 152) 1.

<sup>172</sup> SI Ebohon & EUB Ifeadi (n 152) 3.

<sup>173</sup> MC Stecke 'Le principe d'intégrité territoriale. D'un pouvoir discrétionnaire à une compétence liée' 2003 34 *Etudes Internationales* 1.

<sup>174</sup> Constitution DRC (2006) Article 187.

<sup>175</sup> Décret-Loi sur l'Agence Nationale de Renseignements (ANR) DRC (2003) Article 3.

<sup>176</sup> Constitution (n 174) Article 188.

<sup>177</sup> Constitution (n 174) Article 190.

<sup>178</sup> Loi sur l'Armée DRC (2011) Article 123.

### 3.3.2. Ensuring peace for the populations

Peace is understood as a state of calm, tranquility, and well-being, where individuals and societies can coexist without violence or conflict.<sup>179</sup> The Congolese State thus has the obligation to ensure peace for its populations on its territory, by preventing any individual or group of individuals from using the national territory as a base for subversive actions against the Congolese people or any other State.<sup>180</sup>

This obligation is ensured by the State through its security services which, in times of war or on the occasion of the proclamation of a state of siege or emergency, ensure the defense of the national territory and borders as well as the fundamental interests of the country, and in times of peace, under the conditions set by law, participate in economic, social and cultural development as well as the protection of people and their properties.<sup>181</sup>

### 3.3.3. Ensuring the safety of people and properties

Internal security is understood as the absence of any threat to life and property and the presence of a safe environment allowing people to go about their daily activities in complete tranquility.<sup>182</sup>

The protection of people constitutes a guarantee of the stability of the nation,<sup>183</sup> the State has a responsibility to protect its population from atrocity crimes, including genocide, war crimes, crimes against humanity and ethnic cleansing. This responsibility includes preventing such crimes by appropriate means<sup>184</sup> and extends to all those within its territory, regardless of their status, nationality, political affiliation, or ethnicity.<sup>185</sup>

The Congolese State thus has the obligation to guarantee the security of people and their property on its territory. This mission is the responsibility of the Congolese National Police, which is

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<sup>179</sup> Graines de paix (n 141).

<sup>180</sup> Constitution (n 174) Article 52.

<sup>181</sup> Loi (n 178) Article 5.

<sup>182</sup> SI Ebohon & EUB Ifeadi (n 152) 4.

<sup>183</sup> Loi sur la Police DRC (2011) Exposé des motifs.

<sup>184</sup> Pillar 1 of the Responsibility to Protect (R2P) (n 169).

<sup>185</sup> UN Press 'Dix Ans de Responsabilité de Protéger: Face à Un Bilan Mitigé, Les États Membres Examinent Les Moyens de Mieux Préserver Les Civils Des Pires Atrocités | Couverture Des Réunions & Communiqués de Presse' <https://press.un.org/fr/2016/ag11764.doc.htm> (accessed 14 September 2024).

responsible for public security, the security of people and their properties,<sup>186</sup> the Congolese National Police being a public, civil service, accessible and attentive to the population.<sup>187</sup>

### 3.3.4. Maintaining public order

Public order is conceived as the proper functioning of laws and the harmonious regulation of public life for the common good.<sup>188</sup> Maintaining public order is a sovereign mission of the Congolese State, which has the obligation to prevent disturbances to public order through the Congolese National Police, which is responsible for maintaining and restoring public order within the national territory,<sup>189</sup> and to enforce the laws through the Congolese judiciary.<sup>190</sup>

The National Police carries out its action throughout the national territory in compliance with the Constitution, the laws and regulations of the Republic as well as human rights and fundamental freedoms.<sup>191</sup> In its missions of monitoring the territory and securing the population,<sup>192</sup> combating crime, terrorism, gender-based violence and ensuring the protection of children,<sup>193</sup> the National Police only uses force when absolutely necessary and only to achieve a legitimate objective, respecting the principle of proportionality and progressiveness.<sup>194</sup> It does not inflict, encourage or tolerate any act of torture, inhuman or degrading treatment or punishment, under any circumstances.<sup>195</sup>

The practice has never been easy, as the Congolese Police and Army have regularly used excessive force (lethal weapons) to deal with unarmed civilians during demonstrations and attempts to escape from the country's prisons. The most recent cases are the bloody crackdown by the police on followers of the mystico-religious group Bundu Dia Kongo, which caused the 55 deaths and many injured in Kongo Central and Kinshasa in 2020,<sup>196</sup> the bloody crackdown by the FARDC on followers of the Wazalendo religious sect in Goma in 2023, which caused more than 50 deaths and

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<sup>186</sup> Constitution (n 174) Article 182.

<sup>187</sup> Loi (n 183) Article 2.

<sup>188</sup> SI Ebohon & EUB Ifeadi (n 152) 4.

<sup>189</sup> Constitution (n 174) Article 182.

<sup>190</sup> Loi sur le Statut des Magistrats DRC (2006) Exposé des motifs.

<sup>191</sup> Loi (n 183) Article 5.

<sup>192</sup> Loi (n 183) Article 14.

<sup>193</sup> Loi (n 183) Article 16.

<sup>194</sup> Loi (n 183) Article 8.

<sup>195</sup> Loi (n 183) Article 7.

<sup>196</sup> Human Rights Watch (HRW) 'DR Congo: Bloody Crackdown on Political Religious Group' 19 May 2020 <https://www.hrw.org/news/2020/05/19/dr-congo-bloody-crackdown-political-religious-group> (accessed 16 October 2024).



several injured,<sup>197</sup> the repression of followers of the Mbidi sect in Kilwa, Haut-Katanga by the FARDC in August 2024, resulting in 10 deaths and several injuries,<sup>198</sup> and the massacres of prisoners at Makala in Kinshasa during an attempted escape in September 2024, resulting in more than 129 deaths.<sup>199</sup> The Congolese State also has an obligation to combat impunity by providing the justice system with the best possible conditions to enable it to fulfil its mission of dispensing justice independently and conscientiously, without which there can be no real peace in society, an essential factor in political stability and economic and social development.<sup>200</sup> This will ensure that serious investigations are carried out and that the perpetrators of insecurity are punished to answer for their actions and dissuade others in society.

### 3.3.5. Promoting peace and national cohesion

The promotion of peace and national cohesion is a key issue for any State which involves the implementation of policies and strategies aimed at creating an environment where all citizens feel valued, respected, and included in the process of pacification of their society.<sup>201</sup> The Congolese State has the obligation to ensure and promote the peaceful and harmonious coexistence of all ethnic groups in the country. It also ensures the protection and promotion of vulnerable groups and all minorities and ensures their development.<sup>202</sup>

To do this, the Congolese State has the obligation to cultivate in all Congolese people, and in particular children, the values of solidarity, tolerance, peace and mutual respect in order to make them aware of the inseparability of their rights and duties in relation to those of the rest of the community.<sup>203</sup> The Congolese State also has the obligation to encourage dialogue between the different communities to promote mutual understanding and reduce prejudices that are detrimental to peace and national cohesion.<sup>204</sup>

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<sup>197</sup> ZN Zaidi 'Des condamnations suite au massacre du 30 août à Goma' DW 10/10/2023 <https://www.dw.com/fr/rdc-justice-peine-verdict-goma-massacre/a-67058646> (accessed 16 October 2024).

<sup>198</sup> Radio Okapi 'Haut-Katanga : la société civile réclame des enquêtes après la mort de dix personnes à Kilwa' 16 August 2024 <https://www.radiookapi.net/2024/08/16/actualite/securite/haut-katanga-la-societe-civile-reclame-des-enquetes-apres-la-mort-de> (accessed 16 October 2024).

<sup>199</sup> W Chibelushi 'Makala Prison: Behind Bars at DR Congo's Most Notorious Jail' BBC 8 September 2024 <https://www.bbc.com/news/articles/cdjwknzy20xo> (accessed 16 October 2024).

<sup>200</sup> Loi (n 190) Exposé des motifs.

<sup>201</sup> United Nations Educational, Scientific and Cultural Organization (UNESCO) 'UNESCO's Programme of Action: Culture of Peace and Non-Violence; A vision in action' 2013 6.

<sup>202</sup> Constitution (n 174) Article 51.

<sup>203</sup> Loi sur la protection de l'enfant DRC (2009) Exposé des motifs.

<sup>204</sup> UN Press 'Le Conseil de Sécurité Examine La Situation En RDC, Dominée Par l'aggravation de l'insécurité Dans l'est et Les Tensions Avec Le Rwanda | Couverture Des Réunions & Communiqués de Presse' 29 Juin 2022 <https://press.un.org/fr/2022/cs14952.doc.htm> (accessed 14 September 2024).

### 3.4. Conclusion of chapter 3

Peace and internal security remain the main challenge in the DRC where the level of insecurity in the country remains high. This makes the DRC one of the most unstable countries in the world according to the *Global Peace Index 2023* where it occupies 159th place, with an index of 3.214.<sup>205</sup>

Successive conflicts in the country speak volumes about the Congolese State, which chronically displays the symptoms of a failed or collapsing State. This is explained by the fact that the Congolese State faces numerous tensions of insecurity on a daily basis: wars and community conflicts here and there that bring mourning to the populations and cause displacement of several million, including women and children who are raped and live in displaced persons camps where they are abandoned and have no access to anything; kidnappings, armed robberies, urban banditry in almost all the cities of the country, etc. The failure of the State being associated with the loss of its control over peace and security on its territory, these indices of insecurity constitute proof of the inability of the Congolese State to ensure adequate security for its population and can serve as a main variable to measure the failure of the Congolese State.

Since the security and well-being of the population must be the main objectives of the State, the latter loses its essence when it is unable to guarantee these basic needs to its population. Hence the need for the Congolese State to play its role as protector of its populations and defender of the integrity of its territory; because this is a responsibility, an obligation that falls to it first. It must therefore become aware of its obligations under not only the international legal instruments that it has ratified, but also its internal legislation, by strengthening internal security mechanisms to meet the challenge of peace and security of its citizens and other persons living within its territorial borders and the properties of both individuals and the State. If it is unable to ensure the security of the populations on its territory, it has an obligation to resort to cooperation with other States or other international organizations in order to help it resolve this problem that has lasted too long.

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<sup>205</sup> Global Peace Index 'République Démocratique Du Congo - Indice Mondial de La Paix 2023 Countryeconomy.Com' <https://fr.countryeconomy.com/demographie/indice-global-peace/republique-democratique-du-congo> (accessed 14 September 2024).

## **CHAPTER 4**

### **INTEGRATION OF HUMAN RIGHTS INTO POST-CONFLICT RECONSTRUCTION IN THE DRC**

#### **4.1. Introduction**

Human rights and peace are mutually reinforcing in that, respect for human rights leads to a higher level of peace and stability; peace and stability in turn lead to a higher level of respect for human rights.<sup>206</sup>

It can be argued that the causes and consequences of conflict illustrate the role that human rights play in peacebuilding. Thus, if human rights are part of the problem, they must be part of the solution in that human rights promote sustainable peace by addressing not only the immediate causes of conflict, but also its underlying and structural causes.

The aim here is to see the link between human rights and peace before addressing the possibility of integrating human rights into the post-conflict reconstruction process in the DRC.

#### **4.2. Human rights and peace in the DRC**

It can be argued that, by ensuring human rights, society reduces tensions and resentments that can lead to conflict. Respecting, protecting, and fulfilling human rights help to reduce inequalities and strengthen the social cohesion needed to build a fairer, more stable, and more peaceful Congolese society.

##### **4.2.1. Human rights as means of conflict prevention**

Human rights inherently address socio-economic inequalities, discrimination and other violations and abuses in society. They address grievances that lead to violent conflict by empowering their holders to seek redress for their violations from those who have the power to protect them. This mutual relationship between the rights holders and the duty bearers creates a path to peace by encouraging the peaceful resolution of grievances without resorting to violence.<sup>207</sup>

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<sup>206</sup> UNGA ‘The causes of conflict and the promotion of sustainable peace and development in Africa’ Report of the Secretary-General A/75/917–S/2021/562 2021 7.

<sup>207</sup> OHCHR ‘Human Rights, Prevention of Conflict or Crisis and Building Resilience’ <https://www.ohchr.org/en/prevention-and-early-warning/human-rights-prevention-conflict-or-crisis-and-building-resilience> (accessed 17 September 2024)

To better prevent conflicts, human rights, whether civil and political, social, economic, and cultural or collective, must all be protected, respected, and fulfilled. Efforts to eliminate all forms of discrimination and reduce inequalities are an important factor, as they allow every member of society to have equal access to rights and ensure that progress in their realization benefits all, particularly the most vulnerable and marginalized groups.<sup>208</sup>

The preventive power of human rights helps to better respond to conflict situations by placing the human being and his dignity at the centre of interventions that are guided by these rights and respect them.<sup>209</sup> The recognition of the inherent dignity of all members of society and of the equality and inalienability of their rights is the foundation of freedom, justice and social peace;<sup>210</sup> peace being a state where human rights are first known and then respected, whereas war is the very negation of the existence of man, of justice and of human dignity.<sup>211</sup>

To be sustainable, peace must be fueled by respect for the rights of members of society and the fulfillment of their aspirations. It is a commitment to a better future based on shared values that constitute the foundations that allow it to settle in society through dialogue, tolerance, inclusion, equality, justice, respect, and mutual understanding.<sup>212</sup>

It is time for human rights to be at the heart of all actions and peace negotiations to be undertaken in the DRC so that the structural causes of the recurring conflicts in the country are resolved in a good manner. This is because in all peace negotiations; from the Global and Inclusive Agreement of Sun City of 2002 which ended the Second Congolese War,<sup>213</sup> to the 2013 Addis Ababa Framework Agreement that ended the first M23 war<sup>214</sup> through the Goma Agreement of 23 March 2009 which put an end to the CNDP war<sup>215</sup> which the M23 replaced in 2012, human rights issues were ignored during the debates and in the agreements which only focused on the sharing of

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<sup>208</sup> (As above).

<sup>209</sup> (As above).

<sup>210</sup> Convention on the Rights of the Child (1989) Preamble.

<sup>211</sup> Lavieille 'Droit à la paix: cadre juridique et fondements juridiques ( I )' *Mediapart* 1 May 2015 <https://blogs.mediapart.fr/lavieille/blog/010515/droit-la-paix-cadre-juridique-et-fondements-juridiques-i> (accessed 17 September 2024).

<sup>212</sup> UNESCO (n 201) 3.

<sup>213</sup> 'Accord global et inclusif sur la transition en République Démocratique du Congo' 2002 [https://www.grandslacs.graduateinstitute.ch/files\\_on\\_st7210/2826.pdf](https://www.grandslacs.graduateinstitute.ch/files_on_st7210/2826.pdf) (accessed 18 September 2024).

<sup>214</sup> 'Accord cadre d'Addis-Abeba du 24 février 2013' 26 February 2014 <https://www.ingeta.com/accord-cadre-daddis-abeba-du-24-fevrier-2013/> (accessed 18 September 2024).

<sup>215</sup> 'Accord de paix entre le gouvernement et le CNDP' 2009 <https://afrikarabia.com/wordpress/wp-content/uploads/2014/01/Accord-CNDP-RDC-23-mars-2009.pdf> (accessed 18 September 2024).

powers, whereas initially the rebel groups put forward as demands an end to social inequalities, discrimination against Congolese people of Rwandan origin, etc. It is up to the Congolese State to insist that, in case of new negotiations with the armed groups, the subject be only demands likely to bring lasting peace and not political demands for the sharing of powers likely to benefit only political leaders and which could return a few years later, as is the case today.

#### **4.2.2. Human rights factors conducive to peace**

Human rights constitute a powerful lever for building lasting peace through the promotion of national cohesion, non-discrimination, equitable distribution of national wealth, equality and inclusion which create the conditions for peaceful coexistence between individuals in society.

##### ***National cohesion and equitable distribution of national wealth***

It can be argued that decades of conflict have radicalized many Congolese who feel alienated and marginalized. A culture of violence, coupled with tribalism and regionalism that undermine intercultural harmony, peaceful coexistence, and national unity, has replaced traditional values such as dialogue, communication, peaceful coexistence, and tolerance.

Replacing the culture of violence with a culture of peace requires a certain degree of reconciliation and national healing. Hence the need to persuade the parties to the conflicts to subscribe to the peace process by engaging all communities on the path of breaking with the past, putting an end to the socio-economic and political exclusion of marginalized groups, corruption, and misappropriation of public property by implementing guarantees of no return to the past, including through laws and other necessary reforms. This will contribute to restoring the confidence of the parties to the conflicts and the populations in the will and ability of the State to move forward towards peace and national cohesion.<sup>216</sup>

It can be argued that the higher the degree of social cohesion, the greater the possibilities for mediating conflicts before they become violent, as social cohesion helps to strengthen the mechanisms of resilience and non-violence that make societies inclusive and peaceful.

The DRC must also promote social justice based on a fair distribution of resources and national wealth to its populations, without any form of possible discrimination. This requires not only

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<sup>216</sup> WB (n 37) 13.

transparency in the management of public funds and in the exploitation of natural resources, but also the implementation of social development policies that promote the establishment of basic social services and infrastructure and put an end to social inequalities and the marginalization of vulnerable sections of the population on tribal and regional bases. The DRC and its justice system must likewise ensure that its laws are respected, particularly those on nationality which, if not respected, are not worth the trouble, by severely punishing hate speech, violence, and exclusion against Congolese of Rwandan origin, which are at the root of recurring community conflicts in the eastern part of the country.

### ***Greater inclusion in economic and professional opportunities***

By improving the business and investment climate, the DRC will have created decent work opportunities for young people who will no longer have to face the miserable conditions that expose them to recruitment into militias and armed groups and will reduce horizontal inequalities between Congolese people, a climate favorable to peace and stability will be created.<sup>217</sup>

Indeed, decent employment contributes to conflict prevention and peacebuilding and reduces grievances and feelings of injustice, because when conflict is based on negative perceptions of marginalization as is the case in the DRC, inclusive employment programs can reduce conflict and promote social cohesion by increasing mutual esteem between groups. By building trust in each other, employment programs can break down frustrations, improve understanding and trust, and strengthen the social cohesion that is necessary for peace.<sup>218</sup>

To achieve this, there is an urgent need for new economic policies in all sectors of wealth and job creation. These policies should address the unequal distribution of national resources, improve the efficiency of basic public services, and promote the industrialization of the Congolese economy to diversify the national economy and reduce dependence on mining exports.

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<sup>217</sup> International Labor Organisation (ILO) 'Sustaining peace through decent work and employment' DPPA 2021 9.

<sup>218</sup> As above.

### **4.3. Mechanisms for the effective integration of human rights in post-conflict reconstruction in the DRC**

Human rights considerations play an important role in the fight against impunity, transitional justice, and education for the culture of peace and human rights which are preponderant in the post-conflict reconstruction process.

#### **4.3.1. Fight against impunity**

Lack of accountability can hamper long-term peacebuilding, as impunity encourages future abuses as some victims may seek revenge, or the population as a whole may lose trust in institutions that have failed to respond to human rights violations.<sup>219</sup> Judging human rights violations is essential to restore peace and to build the rule of law and in particular to demonstrate that a society is now on a path to the rule of law and non-violence.<sup>220</sup>

This is how violations of human rights must be punished in order not only to deter others who may resort to them, but also to bring justice to victims and strengthen their confidence in institutions. Prosecutions can be initiated at the national level by the Congolese justice system or at the international level by international jurisdictions, including the International Criminal Court.<sup>221</sup>

It is in this fight against impunity that the DRC has given its justice system jurisdiction to judge genocide, war crimes and crimes against humanity,<sup>222</sup> which have become common law offences,<sup>223</sup> despite the results which remain mixed to this day.<sup>224</sup> It was also in this context that in 2004, the DRC submitted human rights violations committed since 2002 to the International Criminal Court (ICC). This is how the ICC launched proceedings against the Congolese Thomas Lubanga Dyilo, Germain Katanga, Mathieu Ngudjolo, Bosco Ntaganda and the Rwandan Callixte Mbarushimana of the FDLR, all former warlords in Ituri and North Kivu,<sup>225</sup> and the ICC Prosecutor has announced the opening of investigations into the situation that has prevailed in the

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<sup>219</sup> CM Carrasco and others (n 88) 66.

<sup>220</sup> (As above) 65.

<sup>221</sup> Rome Statute of the International Criminal Court (1998) Article 8(2)(b) & (e).

<sup>222</sup> Code pénal militaire DRC (2002) Articles 164 à 175. See also Loi modifiant le Code pénal congolais (2015) Articles 221 à 224.

<sup>223</sup> Loi modifiant le Code pénal militaire DRC (2015) Exposé des motifs. See also Loi sur les juridictions de l'ordre judiciaire DRC (2013) Article 91.

<sup>224</sup> Mapping Report (n 80) para 893-94.

<sup>225</sup> PN Zena (n 35) 15.

country since 2022.<sup>226</sup> The year 2022 would have been considered in response to the Congolese government's letter which took into account the year in which the M23 re-emerged in North Kivu province.<sup>227</sup> Nevertheless, the wish was for the investigations to cover all crimes committed in the country between 2006 and 2022, including crimes committed by the CNDP (2006-2009), the M23 (2012-2013, 2022 to date), the ADF-NALU (2014 to date) and those committed during the community conflicts in Ituri, The year 2022 would have been considered in response to the Congolese government's letter, which took into account the year in which the M23 resurfaced. Maindombe (in Yumbi and Kwamouth) and in Kasai with the Kamwina Nsapu conflict, which predate 2022.

However, the involvement of foreign states in serious crimes in the DRC poses a serious problem for the Congolese justice system which, although it is competent to judge them, has little room to manoeuvre because of their refusal to extradite the perpetrators to the DRC, on the pretext of weak guarantees of fair trial rights before the Congolese courts or the death penalty which is still in force under Congolese law.<sup>228</sup> This is why none of the countries has extradited to the DRC the people involved in the commission of serious crimes in the DRC, who are on its territory, despite the existence of serious evidence as to their responsibility.<sup>229</sup> This is the case of Uganda which had requested and obtained the extradition of its citizen and former leader of the ADF-NALU, Jamil Mukulu, arrested in Tanzania in 2015, despite the Congolese extradition request to Tanzanian authorities.<sup>230</sup> Extradited in 2015, his first appearance before Ugandan judge took place in 2018<sup>231</sup> and since then, his trial has been ongoing.<sup>232</sup> This is also the case in Rwanda with Laurent Nkunda, former leader of the CNDP, who was arrested in 2009 in Rwanda but whom it does neither judge

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<sup>226</sup> ICC 'Statement of ICC Prosecutor Karim A.A. Khan KC on the Situation in the Democratic Republic of the Congo and Renewed Investigations' 14 October 2024 <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-kc-situation-democratic-republic-congo-and-renewed> (accessed 15 October 2024).

<sup>227</sup> ICC-Office of the Prosecutor Annex I Public 5 June 2023 <https://www.icc-cpi.int/sites/default/files/RelatedRecords/0902ebd1804cb5fe.pdf> (accessed 17 October 2024).

<sup>228</sup> Mapping Report (n 80) para 978.

<sup>229</sup> Mapping Report (n 80) para 1016.

<sup>230</sup> S Myre 'La Tanzanie a extradé Jamil Mukulu, le chef des ADF, vers l'Ouganda' *Jeune Afrique* 13 July 2015 <https://www.jeuneafrique.com/246179/societe/jamil-mukulu-chef-des-adf-extrade-en-ouganda/> (accessed 25 September 2024).

<sup>231</sup> Voice of America 'Première comparution du chef des ADF en Ouganda' 14 May 2018 <https://www.voafrique.com/a/premiere-comparution-de-jamil-mukulu-chef-des-adf-en-ouganda/4393178.html> (accessed 25 September 2024).

<sup>232</sup> K Kazibwe 'Court Confirms Charges against ADF's Jamil Mukulu' *Nilepost News* 17 September 2019 <https://nilepost.co.ug/news/55112/court-confirms-charges-against-adfs-jamil-mukulu> (accessed 25 September 2024).



nor extradite to the DRC to answer for his crimes,<sup>233</sup> evoking the fear of seeing him condemned to death.<sup>234</sup>

To address the impunity of the perpetrators of serious crimes in the DRC who are outside the country, the cooperation of third States is important to judge them themselves, extradite them to the DRC or hand them over to the ICC so that they can answer for their heinous crimes. If these States do not want to do so themselves, it is up to the UN, *via* the Security Council, to force them to do so under Article 13 of the Rome Statute and Chapter VII of the UN Charter.

Furthermore, crimes committed between 1993 and 2002 remain unpunished to this day given that neither the ICC established in 2002 nor the Congolese judiciary whose legislation on international crimes was introduced in 2002 and after, are competent due to the non-retroactivity of criminal law.<sup>235</sup> Hence the need for an International Criminal Tribunal for the DRC or specialized mixed chambers to allow victims to access justice and to dissuade people who commit or would like to commit human rights violations.

However, while waiting for this pious wish to be fulfilled, transitional justice can be used for cases of human rights violations that are not extremely serious to allow victims to obtain the long-awaited justice.

#### 4.3.2. Transitional justice

Transitional justice was born from the need to rebuild a more just society and the rule of law after a dictatorship or violent conflict that had seen massive violations of human rights, ensuring the trilogy of justice that is truth-responsibility-punishment, to shed more light on what really happened.<sup>236</sup> It constitutes a flexible approach, blending approaches that combine the implementation of peace agreements with justice initiatives that strengthen victims' rights to truth, compensation, accountability and guarantees of non-repetition.<sup>237</sup>

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<sup>233</sup> ICD-Nkunda-Asser Institute' <https://www.internationalcrimesdatabase.org/Case/1076/Nkunda/> (accessed 25 September 2024).

<sup>234</sup> C Boursin 'Laurent Nkunda, Une vie faite d'impunité' [https://www.acatfrance.fr/public/h17-dossier-rapportmapping-portrait-laurentnkunda\\_3.pdf](https://www.acatfrance.fr/public/h17-dossier-rapportmapping-portrait-laurentnkunda_3.pdf) (accessed 25 September 2024).

<sup>235</sup> B Minzoto 'Les écueils de la compétence des juridictions congolaises dans la poursuite des crimes internationaux' 2019 *Academia.edu* 4.

<sup>236</sup> PN Zena (n 35) 6.

<sup>237</sup> Institute for Integrated Transitions (IFIT) 'Rethinking Peace and Justice' 1 <https://ifit-transitions.org/wp-content/uploads/2021/03/Repenser-la-paix-et-la-justice.pdf> (accessed 29 September 2024).

Flexible approaches to justice, particularly in the context of armed conflict, have gained increasing recognition in international law in recent years. This is, in part, due to the practical impossibility of prosecuting all perpetrators of violations consequent on conflict. These are more nuanced and creative approaches to accountability in terms of design and outcomes for the pacification of society,<sup>238</sup> giving priority to restorative justice over retributive justice, which is more likely to satisfy the rights of victims through fair reparation, establishment of the truth and guarantees of non-repetition.<sup>239</sup>

For the African Union (AU), it is necessary, in precarious conflict situations, to find a balance and compromise between peace and reconciliation on the one hand and justice and accountability on the other.<sup>240</sup> It believes that there is no single model of justice; the choice of mechanisms is made on the basis of society's conceptions and needs in terms of justice and reconciliation.<sup>241</sup> This gives each State an explicit margin of appreciation to resort to negotiation of sentences, pardons, mitigation measures, as well as alternative forms of repression other than prison penalties.<sup>242</sup> While rejecting general and unconditional amnesties that hamper investigations into serious crimes and encourage impunity, the AU authorises conditional amnesties that aim to contribute to the establishment of the truth, reparations for victims and guarantees of non-repetition.<sup>243</sup>

Criminal justice, so to speak, remains an essential element in achieving full accountability, but it is not the only means and must be supported by other measures aimed at establishing truth, reconciliation, reparation and non-repetition,<sup>244</sup> with the exception of the integration of alleged perpetrators of serious crimes into the Armed Forces, as in the recent past of the DRC where their mixing and blending in the FARDC led to new serious violations of human rights.<sup>245</sup>

### ***Establishment of a Truth and Reconciliation Commission***

People have the inalienable right to know the truth about past events relating to the perpetration of serious human rights violations, as well as the circumstances that led to them. In case of death or disappearance, families and relatives have the inalienable right to know the truth about the fate

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<sup>238</sup> As above.

<sup>239</sup> IFIT (n 237) 3.

<sup>240</sup> African Union (AU) *Transitional Justice Policy* 2019 7.

<sup>241</sup> AU (n 240) 18.

<sup>242</sup> As above.

<sup>243</sup> AU (n 240) 19. See also Nuffield Foundation 'The Belfast Guidelines on Amnesty and Accountability' 2013 15.

<sup>244</sup> CJ Fuentes & R Ibrahim 'A Human Rights Approach to Conflict Resolution' 2019 33 *Ethics & International Affairs* 268.

<sup>245</sup> CM Carrasco and others (n 88) 66.

reserved for the victim.<sup>246</sup> The effective exercise of this right constitutes an essential protection against the repetition of violations.<sup>247</sup>

This possibility offered to victims only takes place before truth and reconciliation commissions established in accordance with procedures which guarantee their independence, their inclusion, their impartiality, and their competence, so that they enjoy in the eyes of public opinion, of the victims and their families, as well as of the perpetrators of the violations, the credibility necessary for their operation.<sup>248</sup>

This is why the DRC needs a National Truth and Reconciliation Commission established in strict compliance with the rules relating thereto and the law on transitional justice to be adopted to curb the problem of impunity for human rights violations committed during and at the root of the conflicts. Indeed, the DRC attempted this possibility with the National Truth and Reconciliation Commission implemented during the period of the post-war political transition from 2003 to 2007, under Article 154 of the Transitional Constitution of 4 April 2003. Unfortunately, it was a bitter failure because of the components and entities of the transition that were the major actors in the commission and who were supposed to pursue each other for crimes committed during the conflict.<sup>249</sup> This commission only produced recommendations addressed to the components and entities that signed the transition agreements, which remained a dead letter.<sup>250</sup>

### *Compensation for damages*

Reparation for victims is a duty of the State and a right recognized to victims of flagrant violations of human rights. It is either individual or collective. The latter is preferred in the case of a high number of victims, and the need to keep a clear record of the reparations.<sup>251</sup>

Whether or not the perpetrator of the violation is identified, arrested, prosecuted or convicted, the victim is entitled to compensation and the person found responsible may finance the compensation directly if he has sufficient assets, or his descendants, with the fortune inherited from the perpetrator.<sup>252</sup> The State has also a duty to provide reparations through a reparations programme

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<sup>246</sup> United Nations Commission on Human Rights (UN Commission) 'Updated Set of Principles for the Protection and Promotion of human rights through the fight against impunity' 2005 Principle 4.

<sup>247</sup> UN Commission (n 246) Principle 2.

<sup>248</sup> UN Commission (n 246) Principle 7.

<sup>249</sup> PN Zena (n 35) 15.

<sup>250</sup> PN Zena (n 35) 16.

<sup>251</sup> UNGA 'Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law' A/RES/60/147 2005.

<sup>252</sup> UNGA (n 251) para 9.

and can require individual perpetrators of violations or their descendants to reimburse it when it has already provided reparation to the victims.<sup>253</sup>

Although provided for in the DRC's legal texts, the reparation of victims is far from being effective, even though the court has proclaimed it, the compensation provided for victims is not easily paid. This is why millions of people who are victims of various human rights violations during violent conflicts, including sexual violence, war crimes and crimes against humanity, are waiting, and perhaps for a long time, to see their injuries repaired.<sup>254</sup>

After decades of wars and violations of all kinds, the harm suffered by the Congolese populations is enormous (physical, material and economic, psychological and moral harm) and deserves to be repaired by following the path traced by the ICC in *Thomas Lubanga case*, whose victims were compensated mainly by collective reparations after the ICC Appeals Chamber upheld Trial Chamber II, in 2019 decision setting the amount of reparations at US\$10 million for 425 identified victims and other potential victims.<sup>255</sup> These reparations, the implementation of which was approved in 2020, concern collective projects rather than individual financial compensation, aimed at helping victims rebuild their lives and regain their human dignity and social reintegration.<sup>256</sup> It is within this framework that the DRC adopted a law on the protection and reparation of victims of conflict-related sexual violence and victims of crimes against the peace and security of humanity, under which the National Fund for Reparations for Victims of Conflict-Related sexual Violence and other crimes against the peace and security of humanity (FONAREV) was created in December 2022, which is responsible for supporting access to justice, reparation, empowerment and community recovery for victims and their beneficiaries.<sup>257</sup> It should be noted that FONAREV is different from the Fund for the Reparation and compensation of Victims of the Illicit Activities of Uganda (FRIVAO) which is a temporary special fund that was set up in 2023 to manage the

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<sup>253</sup> UNGA (n 251) para 15.

<sup>254</sup> PN Zena (n 35) 16.

<sup>255</sup> ICC 'Lubanga Case: Appeals Chamber Confirms Trial Chamber II's "Decision Setting the Size of the Reparations Award for Which Thomas Lubanga Dyilo Is Liable" 18 July 2019 <https://www.icc-cpi.int/news/lubanga-case-appeals-chamber-confirms-trial-chamber-iis-decision-setting-size-reparations> (accessed 1 October 2024).

<sup>256</sup> ICC, Situation in the Democratic Republic of the Congo. The Prosecutor v. Thomas Lubanga Dyilo 2021 <https://www.icc-cpi.int/sites/default/files/CaseInformationSheets/LubangaFra.pdf#page=4.31> (accessed 1 October 2024).

<sup>257</sup> Loi sur les réparations des victimes de violences sexuelles liées aux conflits et aux crimes contre la paix et la sécurité de l'humanité DRC (2022) Article 21.

money from the damages that Uganda must pay to the DRC in its conviction by the ICJ,<sup>258</sup> and compensate the victims of the 6-day war between the Rwandan and Ugandan armies in Kisangani in 2000.<sup>259</sup>

### 4.3.3. Education for the culture of peace and human rights

The UN Scientific and Cultural Organization (UNESCO) Constitution states that wars begin in the minds of men, and it is there that the defenses of peace must be built.<sup>260</sup> Hence the need for education in the culture of peace and human rights, the aim of which is to ensure the creation of an environment conducive to peace and justice, integrating alternative methods of conflict resolution.<sup>261</sup> This is an investment in the social capital that underpins a society's ability to resolve everyday conflicts before they become violent, and with a view to advance social cohesion.<sup>262</sup>

To achieve this aim, peace must be underpinned by a vigorous commitment to non-violence, dialogue, and tolerance.<sup>263</sup> It is a conceptual and normative framework aimed at promoting the development in everyone of a human conscience and a strong disposition towards understanding others, dialogue, and non-violence, despite social political and tribal divergences and differences.<sup>264</sup>

To prevent the resurgence of serious human rights violations that the Congo has been suffering for decades, it is important that education in the culture of peace and human rights be added to the framework of national education, from primary school to university through secondary school and that it be considered as a cross-cutting course to be taught in all faculties and options of national education. The goal is to ensure that, whenever peace is discussed, the Congolese focus attention on the peaceful resolution of conflicts, humanism, tolerance, living together, respect for common goods, good governance, justice, and social cohesion that must characterize them to

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<sup>258</sup> C Rumu 'Kisangani's Unhealed Scars; the Six-Day War and the On' *Amnesty International* 20 June 2024 <https://www.amnesty.org/en/latest/news/2024/06/kisanganis-unhealed-scars-the-six-day-war-and-the-ongoing-struggle-for-justice-and-accountability/> (accessed 1 October 2024).

<sup>259</sup> C Muamba 'RDC : Félix Tshisekedi nomme les animateurs du Fonds Spécial de Réparation de l'Indemnisation aux Victimes des activités illicites de l'Ouganda en RDC (FRIVAO)' *Actualite.cd* 4 May 2023 <https://actualite.cd/2023/05/04/rdc-felix-tshisekedi-nomme-les-animateurs-du-fonds-special-de-reparation-de> (accessed 1 October 2024).

<sup>260</sup> UNESCO Constitution (1945) Preamble.

<sup>261</sup> New Partnership for Africa's Development (NEPAD) *Policy Framework for Post-Conflict Reconstruction in Africa* (2005) 12.

<sup>262</sup> As above.

<sup>263</sup> UNESCO (n 201) 4.

<sup>264</sup> UNESCO (n 201) 5.

achieve this common ideal prior to their socio-economic development, and not on their tribal and regional differences.<sup>265</sup>

#### **4.4. Conclusion chapter 4**

Human rights are not only a tool for post-conflict reconstruction in the DRC, but also a dynamic process that accompanies society in its evolution. Their deep integration at all levels of public action is essential to build an inclusive, united, and resilient society, able of preventing new conflicts. By placing human rights at the heart of its policies, the DRC will be investing in a future where the dignity of everyone is respected and where institutions serve all, free from discrimination, injustice and frustrations that weaken national cohesion and foster conflict.

Peace is only possible if individuals and communities embrace the underlying values of human rights to live together, accepting differences of culture, gender, religion, and ethnicity from which society must now draw strength for its socio-economic development.

To achieve the ideal of peace in the DRC, the fight against impunity for human rights violations, the promotion of inclusive and independent transitional justice, and the commitment to non-violence, dialogue, tolerance, inclusion, and education in the culture of peace and human rights deserve to be considered in the policies and actions of the State.

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<sup>265</sup> United Nations Human Rights Council ‘International legal standards forming the basis of transitional justice’ Report of the Special Rapporteur on the promotion of truth justice reparation and guarantees of non-recurrence Fabián Salvioli 2023 20.

## CHAPTER 5 CONCLUSION AND RECOMMENDATIONS

### 5.1. Introduction

The study focused on the role of human rights in post-conflict reconstruction. It was developed in five chapters, including the introduction and the present conclusion to which this chapter relates.

This chapter deals with, on the one hand, providing a general conclusion before finishing by providing the recommendations necessary for the post-conflict reconstruction process in the DRC, on the other.

### 5.2. General conclusion

This study first demonstrated in Chapter 2 that human rights violations are at the heart of the conflicts in the DRC, of which they are both one of the important causes and consequences.

It then demonstrated in Chapter 3 that many violent conflicts are characterized by the weakness and fragility of the State when it lacks control over its territory and that it is necessary to further clarify the obligations of the Congolese State in terms of peace and security on its territory, under its legislation and regional and international treaties and agreements in the defense of national integrity and the protection of populations and their properties.

Finally, it demonstrated in Chapter 4 that sustainable peace depends on respect, protection, and realization of human rights, which must integrate all actions in the post-conflict reconstruction process. The interactions between human rights violations and conflicts in the DRC show how crucial it is to integrate human rights into the peacebuilding process to achieve sustainable peace. By ending social inequalities, discrimination and exclusion, frustrations, and dissatisfaction of social needs by ensuring the equitable redistribution of national wealth through the provision of basic social services and the creation of economic and professional opportunities accessible to all Congolese, without discrimination of tribe or province, the DRC will have won its fight against conflicts. In addition, by fighting against impunity for human rights violations and organizing transitional justice so that victims and their families know the truth, obtain reparations for past violations while reconciling with the troubled past, and by focusing on education in the culture of peace and human rights of its populations, the DRC can break the cycles of violence and consolidate peace in the long term.

### **5.3. Recommendations**

To ensure the proper integration of human rights in the post-conflict reconstruction process in the DRC, the following recommendations deserve particular attention:

#### **5.3.1. Reform of security and justice services**

To face the challenge of peace and security in the DRC, the reform of the security and justice sector is necessary given that among the perpetrators of human rights violations, intelligence and migration agents, soldiers and police officers are part of it. This is the case of the massacres of Kilwa, adepts of the mystical-religious group Bundu Dia Kongo, of the faithful of the Church of Wazalendo, or prisoners of the Prison of Makala, and so many other cases of urban banditry in which they have always been cited.

Among the reforms to be considered is the inclusive composition of these services so that all Congolese communities can have access to them and make a career by climbing the ladders on the basis of their professional merits, and no longer their belonging to tribes, provinces, and political parties.

Also, there is the urgent need to build up professional and experienced security services in their tasks. Rigor in recruitment by ensuring the morality of candidates to be certified by a clean criminal record; their intellectual capacities satisfactory for the functions; initial and continuous training; a decent salary that can preserve their dignity; the provision of modern equipment and the technical capacity to accomplish their tasks; apoliticism, neutrality and inclusion must be the main aspects on which the reforms in this sector will focus. The aim of these reforms is to humanize these services in order to regain the confidence of the populations which is crucial to their success, given that without the support of the population, they cannot succeed in their mandates.

It is up to the Congolese State to play its part by providing the necessary resources to carry out these reforms, while ensuring their regular monitoring and vigorously fighting against the anti-values which undermine this sector, in particular corruption, embezzlement of public funds and violations of human rights.



### **5.3.2. Strict control and management of weapons**

The State must ensure that the weapons that are full in the hands of civilians throughout the country are recovered to fight against the crimes that bring mourning to the populations daily. It must also avoid subcontracting security issues to foreign mercenaries and militias as is the case today in North Kivu where the self-defense militias called "Wazalendo" have been armed to fight the M23. These militias that operate as free electrons without any control from the State are the basis of insecurity and many human rights violations in the cities and territories of North Kivu.

The State must ensure that weapons held by its security agents and civilians with authorization are marked in accordance with national, regional, and international standards in order to facilitate their tracing.

### **5.3.3. Use of vetting against state agents involved in conflicts**

This is a cleansing procedure that aims to ensure that civil servants and other state agents who have committed serious human rights violations, particularly those in sensitive positions like the military, security forces, police, intelligence services, and judiciary, should be disqualified from serving in state institutions. Vetting is a particularly important measure in the Congolese situation where many people responsible for serious human rights violations are in state institutions following the peace agreements. This seems to be a retribution for human rights violations, and which pushes many people to want to join militias and groups in order to also end up in institutions during the political agreements.

### **5.3.4. Adoption of the law on transitional justice**

To better implement transitional justice, the DRC should adopt a related law to determine its scope, procedural rules, structures, composition, protection of victims and witnesses and reparations.

This law will thus have to extend FONAREV to the reparation of all human rights violations submitted to it and make it the only reparations fund. Also, in addition to the resources provided for in Article 22 of Decree 22/38 of 6 December 2022 creating FONAREV, its resources may be diversified by extending them to damages paid to the DRC within the framework of international justice, to possible financial reparations for the colonial past, to a special tax on the professional income of members of the government and Parliament and a special tax on profits payable by

mining companies given the impact of mining resources on conflicts, and to ill-gotten assets seized, to be established.

### **5.3.5. Collective memorization of the past**

The Congolese State must ensure the collective memorization of the past to allow society to escape the cycle of conflict and move towards peace, because those who forget the past are condemned to repeat it. The memory of the past is thus essential for respecting the rights to truth, justice, reparations and guarantees of non-repetition in order to restore the dignity of victims and allow society to regain its former resilience.

The Congolese State must create the conditions that will allow populations who have experienced conflicts to explain their painful past without justification, by dignifying the victims and reducing existing tensions in order to coexist peacefully with the legacy of past divisions, without falling into dangerous relativism or denial of the violations committed.

To do this, the Congolese State must, in addition to the National Day of commemoration of the Congolese genocide instituted for every 2 August, ensure the preservation of archives and other evidence relating to human rights violations that will serve future generations to protect themselves against the development of revisionist and negationist theses on the crimes committed in the DRC. This is why museums and memorials must be built in the regions that have experienced massive human rights violations, particularly in Makobola in South Kivu, Ruthuru, Masisi, Beni, Butembo in North Kivu, in Ituri, in Kongo Central among the Bundu Dia Kongo, in Kasai among the Kamuina Nsapu, in Maindombe for the conflicts in Yumbi and Kwamouth, etc. so that they allow the Congolese to remember what happened and, at the same time, avoid falling into such situations of inhuman cruelty again.

### **5.3.6. Creation of specialized mixed chambers within Congolese jurisdictions**

As the creation of an International Criminal Tribunal for the DRC has not had a favorable response from the international community, specialized mixed chambers should be created within the Congolese Courts of Appeal. The aim is to put an end to impunity for serious human rights violations committed in the DRC before 2002, given that the current Congolese courts and the ICC that were to judge them are later, and therefore incompetent. These chambers will have

the task of judging the perpetrators of serious crimes committed between 1993 and 2002 who continue to enjoy impunity that is detrimental to the stability of the country.

Furthermore, Congolese judges will have to be trained in the repression of international crimes to lead these chambers in strict compliance with the procedures and rules applicable to the repression of international crimes.

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