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The Impact of Poverty on Children's Rights in the Democratic Republic of Congo

By

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SUMMARY

In this dissertation, I examine the impact of poverty on the rights of the child in the Democratic Republic of the Congo (DRC) where, in spite of the country's wealth and resource capacity, the most fundamental rights guaranteed to children remain violated on a daily basis due to extreme levels of poverty. While the DRC is potentially a rich country, it has one of the highest infant mortality rates in the world. Basic health care and education are nothing but distant dreams to most children, thereby making realisation of the rights enshrined in legally binding international, regional and national instruments elusive. This poses a huge developmental problem not only to children but importantly to the future of the country as a whole. This necessitates looking at the factors that cause and sustain poverty in the country. Without underestimating the external causes, I figure out a range of internal causes that contribute to draining the country's resources, which incidentally impacts negatively on the realisation of the rights and welfare of the child. I illustrate with evidence from the challenges that poverty poses to the implementation of children's rights that politics in the DRC is not one that is designed with the intention to promote human rights, let alone the rights of the child. Based on these findings, I make a number of recommendations that necessitate more proactive concrete action both from the government of the DRC and other active forces in eliminating poverty and thus consequently ensure effective realisation of children's rights.

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DEDICATION

To the Congolese children affected by poverty, war and corruption

ACRONYMS AND ABBRAVIATIONS

ACRWC	African Charter on the Rights and Welfare of the Child
AU	African Union
BAD	Banque Africaine de Développement
CRC	UN Convention on the Rights of the Child
DRC	Democratic Republic of Congo
ESCR	Economic, social and cultural rights
EITI	Extractive Industries Transparency Initiative
ICCPR	the International Covenant on Civil and Political Rights
ICESCR	the International Covenant on Economic, Social and Cultural Rights
MGDs	millennium Development Goals
NGOs	Non-Governmental Organizations
SAP	Structural Adjustment Program
UDHR	universal Declaration of Human Rights
UN	United Nations
UNICEF	United Nations Children's Fund
WFCLC	Worst Forms of Child Labour Convention
WW2	World War 2

TABLE OF CONTENTS

Summary	2
Acknowledgement	3
Dedication	4
Acronyms and Abbreviations	5
Chapter One: Introduction	
1. Background.....	9
2. Clarification of concepts.....	13
2.1. What is poverty.....	13
2.2. Who is a child?.....	16
2.3. What are children’s rights.....	17
3. Problem statement.....	20
4. Research question.....	21
5. Significance of the study.....	22
6. Methodology.....	22
7. Literature review.....	22
8. Structure.....	23
Chapter Two: International and regional laws on the protection of the rights of the child	
1. Introduction.....	25
2. International human rights instruments.....	26
2.1. Universal Declaration of Human Rights.....	26
2.2. International Covenant on Economic, Social and Cultural Rights.....	27
2.3. International Covenant on Civil and Political Rights.....	28
2.4. UN Convention on the Rights of the Child.....	29
2.5. Worst Forms of Child Labour Convention.....	30
3. African human rights instruments.....	31
3.1. African Charter on Human and Peoples’ Rights.....	32

3.2. Protocol to the African Charter on Human and peoples’ Rights on the Rights of Women in Africa.....	32
3.3. African Charter on the Rights and Welfare of the Child.....	33
4. Conclusion.....	33

Chapter Three: National laws guaranteeing protection on the rights of the child in DRC

1. Introduction.....	35
2. Constitution of the DRC.....	35
3. Other national legislation.....	38
3.1. Child protection law.....	38
3.2. Family law.....	39
3.3. Labour law.....	40
3.4. Penal law.....	41
3.5. Civil responsibility law.....	42
4. Conclusion.....	43

Chapter Four: Causes of poverty in the Democratic Republic of Congo

1. Introduction.....	44
2. Internal causes of poverty.....	45
2.1. Lack of good governance.....	45
2.2. Inept policies.....	47
2.3. Corruption.....	49
2.4. Unfair distribution of resource.....	51
2.5. The Congolese war.....	52
3. External causes of poverty.....	54
3.1. Activities of multi-national corporations.....	54
3.2. Unfair international trade rules.....	57
4. Conclusion.....	59

Chapter Five: Challenges of poverty to the implementation of children’s rights in the Democratic Republic of Congo

1. Introduction.....	61
2. Negative impact of poverty on the lives of children.....	62
2.1. Poverty and the right to life.....	62
2.2. Poverty and the right to health.....	62
2.3. Poverty and the rights to a standard of living, food and clean water.....	63
2.4. Poverty and the right to education.....	64
2.5. Poverty and he right to fair trial.....	65
2.6. Poverty and child prostitution.....	68
2.7. Poverty and the phenomenon of children accused of witchcraft.....	68
2.8. Poverty and the rights of children involved in armed conflict	69
2.9. Poverty and the right of children living with disability.....	69
3. Conclusion.....	70
Chapter Six: Conclusion and recommendations	
1. Concluding remarks.....	72
2. Recommendations.....	73
Bibliography.....	79

Chapter One

Introduction

Wherever we lift one soul from a life of poverty, we are defending human rights. And whenever we fail in this mission, we are failing human rights.

Kofi Annan, former UN Secretary General, 2010

1. Background

The protection of the rights of a child among the community of states was fully expressed when the United Nations (UN) adopted the Convention on the Rights of the Child (CRC).¹ The CRC remains the one treaty with the highest number of ratifications.² The need to have the CRC was premised on the vulnerable position of the child, particularly the girl child. The child is most vulnerable in terms of access to economic, social and cultural rights (ESCR); victimised during both international and domestic conflicts and in several circumstances sexually and physically abused. A major factor that has continued to impact the realisation of the rights contained in the CRC is poverty. The lack of political will premised on the economic insufficiencies in most sub-Saharan African countries remains a major stumbling block to the realisation of the rights of the child. The Democratic Republic of Congo (DRC)³ is one of the many states that have ratified the CRC.

On the African continent, in a bid to further enhance the protection of the rights of the child, the African Union has also put in place the African Charter on the Rights and Welfare of Child (ACRWC), which remains the core African regional

¹ Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989.

² T Kaime *The African Charter on the Rights and Welfare of the Child: A Socio-Legal Perspective* (2009) 1.

³ In French la République démocratique du Congo (RDC).

treaty that protects the rights of the child. The ACRWC places obligations on both the state and the child towards the realisation of the best interest of the child. The DRC (known at the time as “Zaire”) signed the CRC on 20 March 1990 and ratified it on the 27 September 1990.⁴ With the aim to conform to the neoliberal thinking of the 90s, Mobutu’s regime was motivated to sign and ratify the CRC and other international treaties in the midst of a political and economic crisis.⁵ It should be noted that Zaire faced numerous economic challenges and sanctions imposed by the international community during this period as a result of Mobutu’s dictatorial regime.⁶

The Democratic Republic of the Congo (DRC) is situated in the Central African sub-region with a land area measuring 2,345,409 Sq km; the largest in Sub-Saharan Africa and 11th largest in the world. It has a population of over 75,000,000.⁷ It is bordered to the north by the Central African Republic and South Sudan; to the east by Uganda, Rwanda, and Burundi; to the south by Zambia and Angola; to the west by the Republic of Congo and the Atlantic Ocean; and to the east by Tanzania, separated by Lake Tanganyika.⁸ Although located in the Central African sub-region, the country is also regionally a member of the Southern African Development Community (SADC).⁹

⁴ Treaties ratification available online at http://www.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?Treaty=CRC&Lang=en (accessed: 22 January 2014).

⁵ For further insight into the neoliberal philosophy see generally TC Boas & J Gans-Morse ‘Neoliberalism: From new liberal philosophy to anti-Liberal slogan’ <http://people.bu.edu/tboas/neoliberalism.pdf> (accessed: 20 October 2014); DE Thorsen and A Lie ‘What is neoliberalism?’ available at: <http://folk.uio.no/daget/neoliberalism.pdf> (accessed: 20 October 2014).

⁶ ATD Imoh & N Ansell *Children’s Lives in the Era of Children’s Rights: The Progress of the Convention on the Rights of the Child in Africa* (2014) 72.

⁷ Wikipedia ‘Social issues in the Democratic Republic of Congo’ available at: http://en.wikipedia.org/wiki/Social_issues_in_the_Democratic_Republic_of_Congo (accessed: 10 October 2013).

⁸ Wikipedia (n 7 above).

⁹ SADC States members available at: www.sadc.int (accessed: 15 May 2014).

The Congolese population has suffered economic and political crisis for over forty years. The DRC became a sovereign state in 1960, experiencing 32 years of Mobutu's tyranny and the hardship fuelled by a war that involved at different times most of the country's nine neighbours.¹⁰ Since 1997, the country has continually been at war, dubbed as "Africa's first world war" because of the involvement of at least six nations in the region. The endless war characterised by mass population movements, widespread violent rape, and the collapse of public sector services has rapidly aggravated the phenomenon of poverty in the country.¹¹

Poverty levels in the DRC have remained high since from the days of Mobutu's dictatorship. In 1973 the average income reached its highest level at USD 1.31 per person per day.¹² In 1998 the figure dropped to USD 0, 30. The growth rate of the economy that previously was fluctuating between 0% and 6% since 1974, stretch to 17% in 1993.¹³ The rate of inflation went up to 9800% in 1994, causing untold suffering and further deterioration in the living conditions for the poorest populations.¹⁴ By the mid-nineties most state services collapsed and bad governance and corruption became entrenched in the economy.¹⁵ The poverty rate has continued to increase due to the conflict.¹⁶

Meanwhile, the DRC is a country with immense resources. The country overflows in agricultural potential and mineral resources, which if harnessed, could transform the country into one of the richest on the African continent and a leader in African

¹⁰ C Williams 'Explaining the Great War in Africa: How conflict in the Congo became a continental crisis' (2013) 37:2 *The Fletcher Forum of World Affairs* 83.

¹¹ B Coghlan *et al* 'Mortality in the Democratic Republic of Congo: A nationwide survey' (2006) 367 *Lancet* 44-51.

¹² C Faubert *Case Study: Democratic Republic of the Congo* (2006) UNDP Report.

¹³ Faubert (n 12 above).

¹⁴ Faubert (n 12 above).

¹⁵ Faubert (n 12 above).

¹⁶ Faubert (n 12 above).

development.¹⁷ In reality however, it is one of the poorest countries in Africa and if not in the entire world.¹⁸ The country has an average annual income of USD236, almost the smallest in the world.¹⁹

Poverty in the DRC is therefore, a serious concern because of the impact that it has on the rights of Congolese children. Poverty currently is a major human rights concern as it remains at the core of human rights violations. This fact is contained in the findings of Mary Robinson and Louise Arbour²⁰ when they remark that poverty besets human dignity.²¹ Consequently, poverty reduction has become a major goal and concern for many international organisations such as the United Nations and the World Bank.²² As a matter of fact, in September 2000 at the United Nations in New York, 189 nations decided to work together to build a more prosperous and equitable world by approving the Millennium Declaration establishing the Millennium Development Goals (MDGs). This Declaration contained eight determinate goals that were planned to be achieved by 2015. The eradication of poverty and enhancing the rights of the child are core components of the MDGs. As the 2015 deadline draws to its close, it remains a huge challenge to realise the aspirations set out in the MDGs.²³ It is based on this that this research proceeds to investigate the impact of poverty on the realisation of the rights of the child in the DRC. However, before proceeding on this, it is important to make some conceptual clarifications.

¹⁷ Democratic Republic of Congo Overview available at: <http://www.worldbank.org/en/country/drc/overview> (accessed: 22 January 2014).

¹⁸ 20 Poorest Countries in the World available at: <http://www.therichest.com/rich-list/world/poorest-countries-in-the-world/> (accessed: 22 January 2014).

¹⁹ 20 Poorest Countries in the World (n 18 above).

²⁰ UN High Commissioner for Human Rights (1997-2002) and (2004-2008) available at: <http://www.ohchr.org>.

²¹ Centre for Economic and Social Rights 'Human rights and poverty: Is poverty a violation of human rights?' (2009) 1 *CESR Human Rights Insights* 1.

²² J Doek *et al* *Child Poverty: African and International Perspectives* (2009) 13.

²³ For a general view of the performance of MDG in Africa see <http://www.undp.org/content/undp/en/home/librarypage/mdg/mdg-reports.html?q=DRC> (accessed: 20 October 2014).

2. Clarification of Concepts

2.1 What is poverty?

The concept of poverty is relative. It is one of the concepts that are difficult to pin down to a clear-cut definition. However, to state in simple terms, poverty represents a situation where an individual is unable to meet basic essential needs, such as food, clothing, and shelter.²⁴ According to the World Bank, “poverty is an income level below some minimum level necessary to meet basic needs. This minimum level is usually called the “poverty line”. The international poverty line is set at USD2 per day, though this is not universally standardised as poverty lines vary in time and place, and each country uses lines which are suitable to its level of progress and standards.²⁵

A 98 year old Congolese woman was asked to define poverty and the response she gave in Tshiluba was, “*mupele muena mutumba ne lufu*”, meaning that a person who is poor is actually neighbour to death which, interpreted literally would imply that being poor means being close to death.²⁶ According to the Copenhagen Declaration,²⁷ poverty is described as a condition characterised by severe lack of basic human needs: food, clean water, sanitation, health, housing, education and information.²⁸ While the above concepts have captured poverty as lack in basic needs, it is important also to note that poverty is also expressed in terms of lack of required basic infrastructures.²⁹ Consequently as a collective concept, poverty can also be described as lack of hospitals, schools, and roads among other basic social amenities.

²⁴ Definition of poverty available at: <http://www.businessdictionary.com> (accessed: 10 October 2013).

²⁵ T Pogge ‘Severe poverty as a human rights violation’ (2003) *UNESCO Poverty Project*.

²⁶ Ministère du Plan, Province du Kasai Occidental, *Pauvreté, Insécurité et Exclusion dans la Province du Kasai Occidental*, Septembre 2007.

²⁷ Copenhagen Declaration on Social Development A/CONF.166/9 1995

²⁸ Copenhagen Declaration (n 27 above)

²⁹ Copenhagen Declaration (n 27 above)

According to the Human Rights Commission's Report, the concept of poverty can be stated in three different ways:

The first definition refers to a situation in which insufficient income generates deficiency of fundamental needs. Therefore those who live below a certain socially minimum level are called poor.

The second definition refers to a situation in which some fundamental needs (food, clothing and house, health and education) are not met; therefore being deprived from such needs is a state of poverty.

The third definition refers to lack of opportunities. According to the modern denotation, poverty goes beyond lack of income or incapacity to meet basic human needs. Some people do have a potential to cross the borders of poverty. They have good health and can live a productive life; but still they are deprived of suitable opportunities. This condition slightly brings them back into unemployment resulting in loss of income and incapacity to meet the fundamental needs.³⁰

Thus, the nexus of both personal and collective poverty will be used to examine the rights of the child in the DRC. Children are the first in line to be seriously affected by poverty, with a child most likely to die every 4 seconds because of poverty.³¹ Poverty has a way of entrenching its cycle as shown in the probability of a child from a poor background to remain poor, if deliberate actions like access to education and health are not taken.³² In addition, poverty is also rooted in the phenomenon of children accused of witchcraft, child soldiers, children with disabilities, child prostitution, and child trafficking.³³ Poverty is not only about lack of income but also about the lack of abilities, choices, safety and the inability to enjoy fundamental civil and political, as well as economic, social and cultural, rights.³⁴ It is necessary to classify poverty into two categories:

³⁰ Millennium report review available at: www.humanrightsinitiative.org/ (accessed: 24 April 2014).

³¹ Poverty.com 'Hunger and world poverty' available online at <http://www.poverty.com/> (accessed: 20 October 2014).

³² Doek (n 22 above) 15.

³³ UNICEF Report 2011.

³⁴ Poverty issues available at: <http://www2.ohchr.org/english/issues/poverty> (accessed: 10 October 2013).

- I. Absolute or severe or extreme poverty: happens when people cannot acquire necessary resources (measured in terms of calories or nutrition) to support a minimum level of physical health. Absolute poverty means about the same everywhere, and can be eradicated as demonstrated by some countries.
- II. Relative poverty: happens when people are not able to enjoy a certain minimum standard of living as determined by a government; that differ from country to country, sometimes within the same country.³⁵

Extreme or absolute poverty exists mostly in poor developing countries, while relative poverty exists also in rich countries.³⁶ In the case of relative poverty, incomes are extremely below the accepted or recommended standard for the ordinary individual or family that they are consequently left out from ordinary living configurations, customs and activities.³⁷

Many scholars have asked whether poverty is a violation of human rights. Some have argued that poverty and its different manifestations (mortality, hunger, and illiteracy, just to name a few) constitute indignation to human dignity but is not in itself a violation of human rights.³⁸ They have argued that it is not because people suffer from poverty-related deficiencies such as lack of houses or food that their rights to housing or to food have necessarily been violated.³⁹ In other words, for poverty to be considered as a violation of human rights, it is recommended first to identify state action or inaction that constitutes a breach of the obligations to respect, protect or fulfil the specific human right in question.⁴⁰

³⁵ Definition of absolute and relative poverty available at: <http://www.businessdictionary.com>, (accessed: 10 October 2013).

³⁶ Centre for Economic and Social Rights (n 21 above) 2.

³⁷ Centre for Economic and Social Rights (n 21 above) 2.

³⁸ See O Okafor & B Ugochukwu 'Have the norms and jurisprudence of the African human rights system been pro-poor?' (2001) 2 *AHRLJ* 396-421; A Bösl & J Diescho (eds) *Human Rights in Africa Legal Perspectives on their Protection and Promotion* (2009).

³⁹ Centre for Economic and Social Rights (n 21 above) 3.

⁴⁰ Centre for Economic and Social Rights (n 21 above) 3.

It must be noted that poverty is the same everywhere. It is hunger, lack of housing, poor quality of health care, incapability to access education; it is unemployment, fear of the future and living one day at a time; it is losing a child after he took unclean water; it is incapacity, lack of representation and choice.⁴¹

Finally, the pivotal place of poverty impacting on the realisation of the rights of a child in the DRC is incontrovertible. This is supported by the report on the importance of social protection measures in achieving the Millennium Development Goals. It establishes the fact that poverty can destroy or invalidate economic and social rights such as the rights to health care, suitable housing, food and clean water, education and even civil and political rights, such as the rights to life, political participation and security of the person.⁴² The report concludes that poverty is a violation of human dignity due to its innumerable social, cultural and political implications.⁴³ It is however, the perception of this research that the human rights understanding of poverty should take into account the deprivation on human dignity that accompanies poverty.

2.2 Who is a child?

Etymologically, the term ‘child’ comes from the Latin *infans* meaning the one who does not speak and for the Romans the term designates a human person from birth up to 7 years.⁴⁴ The concept has developed through centuries and cultures to designate a human being from birth until adulthood. This notion of the child is rather too broad and vague, especially because the age of adulthood varies from one culture to another.⁴⁵ According to the oxford dictionary, a child is a young human being below the age of puberty or below the legal age of majority.⁴⁶

⁴¹ G Khanna ‘Poverty: A violation of human rights or not?’ (2013) 3 Electronic copy available at: <http://ssrn.com/abstract=2264371> (accessed: 8 October 2013).

⁴² Poverty issues available at: <http://www2.ohchr.org> (accessed: 10 October 2013).

⁴³ <http://www.unmillenniumproject.org/goals/gti.htm> (accessed: 27 march 2014).

⁴⁴ History of children’s rights available at: <http://www.humanium.org/en/child-rights/> (accessed: 8 May 2014).

⁴⁵ History of children’s rights (n 44 above).

⁴⁶ Definition of child at <http://www.oxforddictionaries.com> (accessed: 24 January 2014).

In accordance with article 1 of the CRC, a ‘child’ is a person below the age of 18, unless the laws of a particular country set the legal age for adulthood at an earlier age. Article 2 of the ACRWC as well as article 41 of the Constitution of the DRC also states that every person who has not yet attained 18 years is a minor, without distinction on grounds of sex.

Within the Congolese traditional setting, especially among the Baluba ethnic group,⁴⁷ adulthood is determined by a person’s corporal development. A child is called ‘*muana*’ in ‘Tshiluba’,⁴⁸ and almost in all languages in the DRC. The moment a girl child develops breasts and other bodily features that portray maturity, she is no longer considered a child as she is believed to have become mature and ready to marry.⁴⁹ It is the same for the boy except that the boy has to be able to build his own house (sign of financial capacity) before he could be considered a man.⁵⁰

A child is considered as an asset to the family and a source of social and economic strength to the clan. The birth of a child is an event for parents, family and the whole community to celebrate because the child is seen as the continuation of the clan and the society. This explains the common adage in the DRC that ‘the child is the lifeblood of the nation, the hope of the society, and the future of a people’.⁵¹ Owing to such a belief, a man is allowed to send his barren wife away or marry a second wife if the wife cannot have children.⁵²

2.3 What are children’s rights?

Before proceeding to look at the historical developments on the protection of the rights of the child, it is important to note that the concept of rights varies from

⁴⁷ VK Muyumba ‘Luba-Kasai: A working bibliography’ (2004) 9 *Electronic Journal of Africana Bibliography*.

⁴⁸ Language spoken by les Baluba

⁴⁹ Luba culture.

⁵⁰ Luba culture.

⁵¹ JA Idzumbuir *La Place de la Convention Relative aux Droits de l’Enfant en Droit Zaïrois* (1994) 4.

⁵² Luba culture.

different perspective.⁵³ However, for the purposes of this dissertation, the concept of right that is adopted is which should accrue to any child for the purposes of development and the realisation of self-dignity. Children were initially not seen as requiring a special regime for the protection of their rights. It is not until about the middle of the 19th century that the idea of special protection for children started emerging. For instance, in France the reformist development of “minors’ rights” started developing from around 1841. By 1881 laws protecting children and requiring that children have the right to be educated came into force.⁵⁴

Following the increased awareness on the importance of the rights of the child, an international treaty concerning children’s rights, “the Declaration of the Rights of the Child” was negotiated.⁵⁵ This led to the formation of the United Nations International Children and Education Fund (UNESCO), with the aim of protecting children that were victims of the Second World War.⁵⁶

Since the adoption of the Universal Declaration of Human Rights (UDHR),⁵⁷ the international community recognised that children need special protection.⁵⁸ In 1959 the UN General Assembly adopted the Declaration of the Rights of the Child. This Declaration was not an achievement but at least, it opened the way for a Universal Declaration of Children Rights.⁵⁹ The International Covenant on Economic, Social and Cultural Rights (ICESCR) established the right to protection against economic exploitation, the right to education and the right to proper healthcare while the Covenant on Civil and Political Rights (ICCPR) established the

⁵³ See Stanford Encyclopaedia of Philosophy ‘Rights’ available at: <http://plato.stanford.edu/entries/rights/> (accessed: 20 October 2014); Facing History and Ourselves ‘UDHR 4: What is a Right?’ available at: <https://www.facinghistory.org/for-educators/educator-resources/lessons-and-units/udhr-4-what-right> (accessed: 20 October 2014).

⁵⁴ RK Rai ‘History of child rights and child labour’ (2014) available at: <http://menengage.org/> (accessed: 29 October 2014).

⁵⁵ Rai (n 54 above).

⁵⁶ Rai (n 54 above).

⁵⁷ December 10 1948.

⁵⁸ Rai (n 54 above).

⁵⁹ Rai (n 54 above).

right to a name and nationality.⁶⁰ In 1989, the Convention on the Rights of the Child (CRC) was adopted and entered into force on September 1990, after ratification by 20 states. Today, the CRC has been ratified by 190 out of 192 states.⁶¹

In July 1990, the African Union followed the path of the United Nations by adopting the African Charter on the Rights and Welfare of the Child (ACRWC), to promote children's rights in Africa.⁶² The Worst Forms of Child Labour Convention was also adopted,⁶³ followed by the Optional Protocol to the International Charter on the Rights of the Child⁶⁴ regarding the participation of children in armed conflicts.⁶⁵

In olden days, traditional Congolese society protection was provided to the child right from conception, reason why a pregnant woman was entitled to special care.⁶⁶ While the child was still to be born, it was already bearer of the right to life, to health, to education, to work and healthy recreation.⁶⁷ The phenomenon of abandoned, maltreated, vagabond, beggar, and even delinquent children was uncommon.⁶⁸ The protection of children was a natural law principle based on the idea of human dignity, which was a duty for the entire community and thus the education of children was the responsibility of the entire community.⁶⁹

The question that may be asked is whether children's rights were fully respected in the Congolese traditional setting? The answer cannot be a complete yes because

⁶⁰ Rai (n 54 above).

⁶¹ Only the US and Somalia have not ratified the Convention.

⁶² African Union treaties available at: <http://www.au.int/> (accessed: 27 February 2014).

⁶³ In June 1999.

⁶⁴ In May 2000, it entered into force in 2002.

⁶⁵ UN conventions and treaties available at: <http://www.ohchr.org> (accessed: 27 February 2014)

⁶⁶ Idzumbuir (n 51 above) 4.

⁶⁷ Idzumbuir (n 51 above) 4.

⁶⁸ Idzumbuir (n 51 above) 4.

⁶⁹ Idzumbuir (n 51 above) 4.

the child's protection was under intense social control and in total conformity with relationships within the social community in which the child was born. The community had the right of privileging the collective rights of the clan and the tribe at the expense of individual and family rights. That is why for example, there were early marriages or marriages without consent of the child. Respect for traditional and ancestral practices was placed ahead of the rights and freedoms of the individual and therefore also of the child.⁷⁰

In modern day DRC, conformity to tradition values has largely disappeared, and the ills and vices of the rapidly changing social, economic, cultural, and political African context are becoming more obvious to deal with. This has inspired the need to strengthen children's rights, particularly by taking measures like adopting international treaties and national laws to protect the child.⁷¹ The influence of tradition however, also impacts negatively on children's rights which remain down trodden due to cultural perceptions that the child is unable to make decisions, that a girl at some point does not have the same rights as a boy or does have more responsibilities than a boy, that a girl who is physically developed is already a woman to be married off.

3. Problem Statement

The majority of children in the DRC live in absolute poverty. While the DRC is potentially a rich country, it has one of the highest infant mortality rates in the world. Education, let alone effective education and basic health care are distant dreams to most children in the DRC. Meanwhile, the country has the richest mining sites of diamonds, gold, silver, zinc, manganese, tin, germanium, uranium bauxite, iron, coal and radium.⁷²

⁷⁰ Idzumbuir (n 51 above) 4.

⁷¹ Idzumbuir (n 51 above) 4.

⁷² DRC Coltan mineral wealth exploitation available at: <http://www.cellular-news.com/coltan/> (accessed: 15 May 2014).

Poverty remains the bane of the child in the DRC, making realisation of the rights contained in both international and national laws elusive. The prevalence of poverty in the country poses a grave danger to the aspiration of engendering a society where children's rights are adequately protected. The impact of poverty on Congolese children is enormous and negates aspirations for the realisation of the rights contained in legally binding instruments. The provisions on the rights of the child cannot be fulfilled in as much as the child is living in poverty and parents cannot afford to provide what the child deserves, while the state is also failing in its obligations to fulfil, promote and protect the rights of the child.

Furthermore, due to the endemic conflict prevailing in the DRC the implementation of the treaties that enshrine the rights of the child are yet to be realised. It is based on this that this study looks at how poverty and low income affect the respect, protection and fulfilment of the rights of the child in the DRC.

4. Research Questions

Premised on the problems identified above, this research responds to the following questions:

1. Does international and regional human rights law provide protection on the rights of the child in the DRC?
2. How and to what extent does the government of the DRC ensure the realisation of the rights of poor children in the DRC?
3. What are the causes of poverty in the DRC and how does it affect the rights of the child?
4. What are the challenges posed by poverty to the effective realisation of the rights of the child in the DRC?
5. How can the government of the DRC utilise the national, regional and international human rights instruments to ensure effective protection of the rights of the child?

5. Significance of the Study

Life in the DRC has been impacted negatively because of poverty. The inability to access education, adequate health care among other rights continues to loom large for the Congolese child. The problem of domestic labour; child abuse and use of children in armed conflicts continues to keep children in the DRC at the lowest rungs of the ladder when compared to children in other African countries. Premised on this, the study focuses on the importance of assessing the impact of poverty on the realisation of children's rights in the DRC. The study critically examines how the rights of children have been infringed upon and thus, makes recommendations on potential ways of alleviating the impact of poverty on Congolese children.

6. Methodology

The research has predominantly been desktop-based, involving the review and analysis of literature as well as treaties and other important instruments that deal with the rights of the child. The study adopted a multidisciplinary perspective, which also incorporated personal observations and interactions with some of the children and parents whose views provided an insightful dimension on the impact of poverty on the realisation of the rights of the child.

7. Literature Review

The starting point for the literature reviewed in this research is the various treaties and national laws that regulate concerns relating to the rights of the child in the DRC. The work of Kaime is largely relied upon owing to the fact that it captures the concept of a child from a socio-legal perspective.⁷³ From the same perspective, Julia Sloth-Nielsen's analysis of the child provides an alternative argument to that advanced by Kaime.⁷⁴

⁷³ Kaime (n 2 above) 59.

⁷⁴ J Sloth-Nielsen *Children's Rights in Africa: A Legal Perspective* (2008) 4.

In addition, to understanding the concept of a child, the realities of the abdication of the responsibilities of the state in DRC is reviewed. Saskia *et al*⁷⁵ present this factor from a neo-liberalism perspective by locating the African political economy as a prime basis of the ever crumbling hope of Congolese children.⁷⁶ Khanna engages the on-going debate as to the nature of poverty and interrogates whether or not it is a violation of human rights.⁷⁷ Furthermore, the work of Duncan and Brooks-Gunn provide a family and welfare basis for examining the impact of poverty on the child.⁷⁸

The peculiar and persistent conflicting nature of the situation in the DRC as Williams observes, provides a basis for the review of the matrix between localised events and international occurrences.⁷⁹ From the literature reviewed, it appears clear that the effect of poverty on the Congolese child has not been a central point of focus. While the works of Kaime and Sloth-Nielsen provide insights into the nature of who is a child, it does not take into consideration the demands placed on the child in the DRC with the attendant responsibilities often occasioned by child headed households. It is based on these identified gaps that this research leverages on the above reviewed works and other available literature to try and fill the gap on the effect of poverty on the rights of the child in the DRC.

8. Structure

The study is divided into six chapters. Chapter one is the introduction, which sets the background and the problem statement of the study. In addition, definition is given on a number of concepts and the methodology for the study is discussed. The chapter also identifies the contribution of the study to the discourse on the rights

⁷⁵ TT Saskia, S van Hoyweghen & S Smis 'State failure in the Congo: Perceptions and realities' (2007) *Review of African Political Economy* 575-581.

⁷⁶ Saskia, van Hoyweghen & Smis '(n 75 above) 575-581.

⁷⁷ Khanna (n 41 above).

⁷⁸ GJ Duncan & J Brooks-Gunn *Family Poverty, Welfare Reform, and Child Development* (2000).

⁷⁹ Williams (n 10 above) 89.

of the child in the DRC and makes a review of some important literature on the subject. Chapter two discusses various international conventions and regional treaties relating to the protection of the rights of the child, while chapter three looks at the national laws that guarantee protection on the rights of the child in the DRC. Chapter four examines the causes of poverty in the DRC, with emphasis on the endless conflict, political issues and corruption. Chapter five analyses the challenges posed by poverty to the implementation of children's rights in the DRC, looking particularly at the rights to life, education and adequate standard of living. It makes suggestions on how the rights can be achieved, leveraging on the laws discussed in chapters two and three. Chapter six makes conclusions on the findings and proposes recommendations on how the challenges relating to the rights of the child in the DRC could be alleviated.

Chapter Two

International and Regional Laws on the Protection of the Rights of the Child

1. Introduction

In this chapter the various international and regional instruments that are applicable and relevant for the protection of the rights of the child in DRC are analysed. Since independence the Democratic Republic of Congo (DRC) has signed, ratified and domesticated a number of international treaties. As a monist state,⁸⁰ the DRC does not need special act of parliament to domesticate an international treaty. The Universal Declaration on Human Rights (UDHR),⁸¹ the International Covenant on Economic, Social and Cultural Rights (ICESCR)⁸² and the International Covenant on Civil and Political Rights (ICCPR)⁸³ all enshrine provisions that protect the rights of individuals, which includes children as individuals. The Convention on the Rights of the Child (CRC) is specifically dedicated to the protection of the rights of the child.⁸⁴ On the African continent, the African Charter on Human and Peoples' Rights (ACHPR)⁸⁵ provides for the protection of the rights of every individual, including every single African child and of all peoples, which includes

⁸⁰ For further discussion on the dualist and monist system of applying international law instruments by states see generally M Killander (ed) *International Law and Domestic Human Rights Litigation in Africa* (2010) 3, 25; FX Bangamwabo 'The implementation of international and regional human rights instruments in the Namibian legal framework' available at: <http://www.kas.de/upload/auslandshomepages/namibia/HumanRights/bangamwabo.pdf> (accessed: 12 October 2014).

⁸¹ Universal Declaration of Human Rights adopted by General Assembly resolution 217 A (III) of 10 December 1948.

⁸² International Covenant on Economic, Social and Cultural Rights 1966.

⁸³ International Covenant on Civil and Political Rights 1966.

⁸⁴ Convention on the Rights of the Child 1989 (CRC).

⁸⁵ African Charter on Human and Peoples' Right 1981.

children as a whole. Meanwhile like the CRC, the African Charter on the Rights and Welfare of the Child (ACRWC) specially protects the rights of the child in Africa.⁸⁶

Accordingly, the international legal system imposes obligations on states parties to respect, protect and fulfil human rights in general and the rights of the child, specifically where applicable. The responsibility to respect means that states have to refrain from obstructing the enjoyment of human rights. The responsibility to protect obligates states parties to ensure the security of all individuals against human rights abuses. The responsibility to fulfil compels states to assist individuals to peacefully enjoy their basic human rights. Premised on the above, some of the international human rights instruments are examined with particular focus on the protection of the right to right to life, the right to education and the right to an adequate standard of living and how they apply to children.

2. International Human Rights Instruments

2.1 Universal Declaration of Human Rights (UDHR)

The UDHR is a revolutionary document in the history of human rights. Drafted by representatives with different legal and cultural backgrounds from all regions of the world, the Declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 as a common standard of achievements for all peoples and all nations.⁸⁷ It set out for the first time fundamental human rights to be universally protected.⁸⁸ The declaration was meant to be morally and politically binding but from the point of view of hard law, it is not justiciable and enforceable and therefore, there was no need for it to be signed or ratified.⁸⁹ However, the two International Covenants (the ICCPR and the ICESCR) have developed most of

⁸⁶ African Charter on the Rights and Welfare of the Child (ACRWC) 1990.

⁸⁷ UDHR (n 81 above).

⁸⁸ UDHR (n 81 above).

⁸⁹ M Hansungule 'Socio-economic rights under comparative and International Law course' (2013) *University of Pretoria*.

the rights enshrined in the UDHR, making them effectively binding on states parties that have ratified them.⁹⁰

The UDHR articulates two types of rights: civil and political rights contained in articles 1 to 21 as well as economic, social and cultural rights lined up in articles 22 to 29.⁹¹ Articles 3, 25 and 26 respectively declare that everyone including children has the right to life, to an adequate standard of living and to education. Despite the non-justiciable nature of the UDHR it remains the main human right instrument on which several other instruments have drawn inspiration.

2.2. International Covenant on Economic, Social and Cultural Rights (ICESCR)

The ICESCR enshrines rights that are popularly known as second generation rights. In most cases, these rights are not seen as fundamental rights but rather as directive principles of state policies.⁹² The perception of the rights contained in the ICESCR as non-justiciable remains a major clog in the wheel of the implementation and respect of the rights. Despite committing to the ICESCR⁹³ it is evident that several provisions of the Covenant are yet to be realised by the DRC. The DRC has an obligation to protect, promote and fulfil the rights contained in the ICESCR. For instance, it is provided that:⁹⁴

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.
2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

⁹⁰ UDHR (n 81 above).

⁹¹ Hansungule (n 89 above).

⁹² F Viljoen *International Human Rights Law in Africa* (2012).

⁹³ The DRC ratified the CESCR on 1 November 1976.

⁹⁴ ICESCR (n 82 above) art 11.

- (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;
- (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

The Covenant further imposes the obligation to ensure that education is made available and accessible to everyone,⁹⁵ most importantly to children. Consequently, the questions that the study envisages to respond to are covered by the ICESCR with regard to addressing the negative impact of poverty on realising the fundamental right of the child in the DRC.

2.3. International Covenant on Civil and Political Rights (ICCPR)

Unlike the ICESCR that does not have an enforcement mechanism; the ICCPR is seen as a justiciable charter containing the civil and political rights envisaged in the UDHR. It contains such rights as the right to life,⁹⁶ the right to freedom of speech,⁹⁷ and the right to movement.⁹⁸ Other rights such rights as the right to the prevention of torture and all forms of discrimination, which relates to the welfare of the child, is also enshrined in the Covenant.⁹⁹ Upon ratification of the ICCPR¹⁰⁰ the DRC thus commits to ensure the protection of the civil and political rights not only of the Congolese adult population but most importantly of Congolese children as well. As the most vulnerable category of human beings, children deserve special protection from violations or discrimination and all forms of torture.

Emerging jurisprudence on ESCR shows that denial of such rights as the right to food culminates into deprivation of the right to life. This example has been espoused in the Indian jurisdiction in the case of *Unni Krishina JP v State of*

⁹⁵ ICESCR (n 82 above) art 13.

⁹⁶ ICCPR (n 83 above) art 6(1).

⁹⁷ ICCPR (n 83 above) art 19.

⁹⁸ ICCPR (n 83 above) art 9 & 12.

⁹⁹ ICCPR (n 83 above) art 7.

¹⁰⁰ 1 November 1976.

*Andhra Pradesh and others*¹⁰¹ were the court held that the right to food and the right to education are intrinsically linked to the right to life.¹⁰² The obligation imposed by the ICCPR makes it clear that the DRC has a legal responsibility to ensure that the rights contained in the ICCPR, which are applicable to the child, must be adhered to.

2.4. U.N. Convention on the Rights of the Child 1989 (CRC)

As stated in chapter one, the DRC signed the CRC on 20 March 1990 and ratified it on the 27 September 1990. The CRC recognises that every child has the right to life.¹⁰³ It adds that every child has the right to an adequate standard of living.¹⁰⁴ It also guarantees the right of the child to education; and proposes that in order to achieve this right on the basis of equal opportunity, primary education shall be compulsory and free to all.¹⁰⁵ The DRC has also acceded to The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography on 11 November 2001.¹⁰⁶ It has also signed on 8 September 2000 and ratified on 11 Nov 2001¹⁰⁷ the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict. Article 12 of the CRC makes provision that the best interest of the child must be given priority in protecting children's rights. In this regard, the DRC is bound to take measures in terms of decision making and policy formulation to enhance the rights of the child.

¹⁰¹ Supreme Court in Unni Krishnan's case SC 2178 (1993) available at: <http://indiankanoon.org/docfragment/471358/?formInput=unni%20krishnan%20air%201993%20sc%202178> (accessed: 20 November 2014).

¹⁰² Krishnan's case (n 101 above).

¹⁰³ CRC (n 84 above) art 6.

¹⁰⁴ CRC (n 84 above) art 27.

¹⁰⁵ CRC (n 84 above) art 28.

¹⁰⁶ DRC Treaties ratification available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-b&chapter=4&lang=en (accessed: 20 November 2014).

¹⁰⁷ DRC treaties ratification (n 106 above).

The CRC has a Committee on the Rights of the Child, which entertains state reports from all the states parties to the treaty. The DRC has so far submitted five state reports in its reporting cycle to the Committee.¹⁰⁸ The challenges identified by the Committee in its Concluding Observations identify the continued armed conflict as a serious challenge to realising the rights of the child.¹⁰⁹ Resources and poor child monitoring mechanisms are some of the numerous other factors inhibiting the realisation of the rights of the child in the DRC.¹¹⁰ This is exacerbated by the fact that since ratification, the DRC is yet to accede to the individual complaints mechanism,¹¹¹ which makes it difficult for individual complaints to be made to the Commission.

2.5. Worst Forms of Child Labour Convention (WFCLC)

The DRC signed the Convention on the Worst Forms of Child Labour Convention (WFCLC) on 20 June 2001 and ratified it on 28 March 2001. The WFCLC provides in Article 7 that each state shall eliminate child labour and ensure access to free basic education for every child, and where possible and appropriate, make vocational training accessible to all children removed from the worst forms of child labour.¹¹² To make the application of the treaty explicit, the WFCLC makes clear that a child is a person under the age of 18.

Child labour is defined as work, which includes all activities, except attendance at school and occupations which children themselves describe as games, regardless of the status assigned to them in their social environment.¹¹³ Even though the DRC has ratified the WFCLC, the National Labour Code states in article 133 that a 15

¹⁰⁸ UN Human Rights (n 108 above).

¹⁰⁹ Child rights Committee Report CRC/C/COD/CO/2 10 February 2009 available at: www.ohchr.org (accessed: 24 November 2014)

¹¹⁰ Child rights Committee Report (n 110 above).

¹¹¹ UN Human Rights 'Ratification status for Democratic Republic of the Congo' available at: http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=57&Lang=EN (accessed: 18 November 2014).

¹¹² Worst Forms of Child Labour Convention 1999.

¹¹³ M Bonnet 'Child labour in Africa' (1993) 132 *International Labour Review* 371.

years old child can work under special conditions thus, ignoring the provisions of the CRC and the WFCLC, which stipulate that 18 years is the uppermost limit of childhood.

The preamble to the African Charter on the Rights and Welfare of the Child states that the situation of most African children remains critical due to the unique factors of their socio-economic, cultural, traditional and developmental circumstances, natural disasters, armed conflicts, exploitation and hunger. The poor economic and social environment in which families live constrains parents to send children to work. Parents often think that they will only be at work for a limited period, until the situation improves. In most instances however, family poverty has grown worse, which tends to complicate the situation of the children that are caused by the circumstances to go and work. Sending a child out to work is most often for a family, an attempt to escape from a situation that keeps deteriorating day by day.¹¹⁴ The poverty situation has been confounded as the government of the DRC has since the period of the structural adjustment scaled down budget allocations, thus impacting directly on children's health, education and social protection. Family poverty thus makes child labour inevitable.¹¹⁵

3. African Human Rights Law Instruments

3.1. African Charter on Human and People's Rights (ACHPR)

The DRC ratified the Charter on 20 July 1987 and signed it on 23 July 1987.¹¹⁶ Articles 4, 17 and 24 of the Charter guarantee the rights to life, education and adequate standard of living, respectively. Since the adoption of the Constitutive Act of the African Union (AU), Africa has been busy constructing a highly complicated institutional architecture designed to ensure justice for the victims of human and peoples' rights violations, as well as for the protection of states within

¹¹⁴ Bonnet (n 113 above) 375.

¹¹⁵ Bonnet (n 113 above) 375.

¹¹⁶ African Charter (n 85 above).

the AU.¹¹⁷ Prior to the Constitutive Act (the Act), the only body that victims of human rights violations could turn to for relief was the African Commission on Human and Peoples' Rights (African Commission).¹¹⁸

In October 2004 the people of Kilwa became victims of rights violation. They petitioned the African Commission with a communication in November 2010. The communication was filed before the African Commission against the Democratic Republic of Congo on behalf of Pierre Kunda Musopelo, Ulimwengu Lukumani, Ulimwengu Nombele (all of late) and two victims who elected anonymity for fear of reprisals.¹¹⁹ The complainant, which alleged violation of the rights of the people of Kilwa by the military, equipped by an Australian Mining Company in Katanga called Anvil Mining was dismissed at the national level.¹²⁰ The complainants alleged that the events which took place in the south-eastern rural area of Kilwa and the subsequent failure of the government of the DRC to ensure reparation for victims was in violation of several provisions of the African Charter.¹²¹ The case is still pending. However, if the African Commission decides in favour of the IHRDA, the cases will contribute substantially in advancing the protection of human rights under the African human rights system.

3.2. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa

The DRC has signed and ratified the African Women's Right Protocol on 05 December 2003 and 09 June 2008 respectively. The Protocol provides for the rights to life,¹²² education,¹²³ and an adequate standard of living,¹²⁴ which every African

¹¹⁷ M Hansungule 'African courts and the African Commission on Human and Peoples' Rights' available at: www.chr.up.ac.za (accessed: 2 December 2014).

¹¹⁸ Hansungule (n 117 above).

¹¹⁹ Communication 393/10: IHRDA, ACIDH and RAID v DR Congo communication filed before African Commission available at: <http://www.ihrda.org/> (accessed: 2 December 2014).

¹²⁰ Communication 393/10 (n 119 above).

¹²¹ Communication 393/10 (n 119 above).

¹²² Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa 1995 (Protocol to African Women's Rights) art 4.

woman and girl is entitled to. It states that every woman has the right to respect for her life and the integrity and security of her person.¹²⁵ Article 12 extols the elimination of all forms of discrimination against women and guarantees equal opportunity and access in the area of education and training. Additionally, article 10 obligates states parties to increase the participation of women in programmes of education for peace and a culture of peace as well as in the structures and processes for conflict prevention, management and resolution at all levels. It also recommends states parties to reduce military expenses in order to allocate more resource for social development and the empowerment of women.

3.3. African Charter on the Rights and Welfare of the Child

The DRC has not yet signed or ratified the African Charter on the Rights and Welfare of the Child. The government of the DRC is thus, encouraged to ratify the Charter so as to enable children to benefit from the African traditional value systems and conceptions of human rights enshrined in the Charter because sometimes the international norms promoting children's rights are more impregnated with the 'western' rights ideology, which lack a meaningful African contribution.¹²⁶ By ratifying the Charter, the opportunity will be granted for complaints relating to the abuse of children's rights to be brought before the Commission on Children's Rights. Ratification will guarantee that Congolese children who become victims of abuse will be able to bring their complaints to the Commission on Children's Rights for adjudication.

4. Conclusion

In this chapter, I examined the framework for the protection of the rights of the child in the DRC from the perspective of international law. I figured out that at the international and African regional levels, there is a wide range of treaties that

¹²³ Protocol to African Women's Rights (n 122 above) art 12.

¹²⁴ Protocol to African Women's Rights (n 122 above) art 16.

¹²⁵ Protocol to African Women's Rights (n 122 above) art 17 & art 18.

¹²⁶ Kaime (n 2 above) 2.

enjoin the DRC to ensure the protection of children's rights in general and specifically against abuse and the threats posed by poverty. In terms of the obligations deriving from the international and African regional treaties, I pointed out that since independence the DRC has signed and ratified a good number of the treaties and is thus in principle legally bound to ensure that the rights of the child provided for by those treaties are protected. However, it seems that the commitment to affiliate to international treaties is for African states in general and the DRC in particular more a political motivation to conform to international standards than to give effect to the treaty provisions.

In this regard, the responsibility has been on the DRC to incorporate the treaty provisions guaranteeing protection of the rights of the child into domestic law. Domestication has not been too much of a challenge because as a monist state, the DRC does not need special acts of parliament to incorporate the provisions of a treaty into national legislation. The difficult thing is that the DRC has not yet ratified the African Charter on the Rights and Welfare of the Child, which obviously is the most important treaty instrument for the protection of the rights of the African child. In the next chapter, I look at the extent to which the government of the DRC has taken measures in terms a national legal framework to ensure the protection of the rights of the child in the DRC.

Chapter Three

National Laws Guaranteeing Protection on the Rights of the Child in the DRC

1. Introduction

This chapter focuses on the national laws that guarantee protection on the rights of the child in the Democratic Republic of Congo (DRC). In the previous chapter, I discussed the international and regional legal instruments on the protection of the rights of the child. In order for human rights law to be respected, it is required to establish the rule of law both at international level as well as at the national level.¹²⁷ Among the international and regional instruments that guarantee protection on the rights of the child, the DRC has signed and ratified some, meaning that it is legally bound to implement those at domestic level.

Accordingly, some of the treaty provisions have been incorporated into the Constitution and other national laws that officially protect fundamental human rights. This is evident in the preamble to the Congolese Constitution that declares compliance to the Universal Declaration of Human Rights, the African Charter on Human and Peoples' Rights and other the international instruments relating to the protection and promotion of human rights, particularly the United Nations Convention on the Rights of the Child as well as of the rights of women.¹²⁸

2. Constitution of the DRC

¹²⁷ International law available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx> (accessed: 12 March 2014).

¹²⁸ The preamble to the Congolese Constitution (Loi n° 11/002 du 20 Janvier 2011 portant révision de certains articles de la Constitution de la République Démocratique du Congo du 18 Février 2006).

The Constitution¹²⁹ is the state's fundamental law that sets out the organisation and functioning of the government and its different political and judicial organs and citizenship.¹³⁰ It is important to note that in most African countries where there has been conflict, constitutions have come to symbolise an obligation to make a complete break from the past.¹³¹ During Mobutu's regime, the DRC was governed under the Constitution enacted on 24 June 1967, after Mobutu seized power through a coup d'état in 1965. In the 1990s, with the wind of *perestroika*,¹³² the population started agitating for democracy, which caused Mobutu to enact a Transitional Constitution.¹³³ The Transitional Constitution was supposed to cease to apply after elections but unfortunately it was never brought to an end until Mobutu was overthrown by Kabila in 1997.¹³⁴

After the reign of Mobutu, the DRC has given birth to more than two constitutions.¹³⁵ The first constitution, which marked the end of 'Mobutism', was enacted under the reign of Laurent-Desire Kabila in May 27 1997.¹³⁶ It however, contained so many irregularities to the point that it was modified more than 3

¹²⁹ Constitution de la République Démocratique du Congo telle que modifiée par la Loi No 11/002 du 20 Janvier 2011 portant révision de certains articles de la Constitution de la République Démocratique du Congo du 18 Février 2006.

¹³⁰ Legal definition of Constitution available at: <http://www.duhaime.org/LegalDictionary/C/Constitution.aspx> (accessed: 18 November 2014).

¹³¹ JT Gathii 'Popular authorship and constitution making: Comparing and contrasting the DRC and Kenya' (2008) 49 *William & Mary Law Review* 1110.

¹³² *Perestroika* in English means 'restructuring', which was former Soviet Union President Mikhail Gorbachev's program to restructure the Soviet economy in an attempt to revitalize it. To restructure, Gorbachev decentralized the controls over the economy, effectively lessening the government's role in the decision making processes of individual enterprises available at: <http://history1900s.about.com/od/1980s/qt/perestroika.htm> (accessed: 19 November 2014).

¹³³ L'Acte Constitutionnel de la Transition du 09 Avril 1994.

¹³⁴ DK Dibwa '*Du Contentieux Constitutionnel en République Démocratique du Congo. Contribution à l'étude des fondements et des modalités d'exercice de la justice constitutionnelle*' (2010) PhD thesis, Université de Kinshasa 24.

¹³⁵ Gathii (n 130 above) 1111.

¹³⁶ Décret-Loi Constitutionnel No 003 du 27 Mai 1997 relatif à l'Organisation et à l'Exercice du Pouvoir en République Démocratique du Congo.

times.¹³⁷ The second constitution was the Transitional Constitution enacted on 4 April 2003 after Laurent-Desire Kabila's death. The constitution emanated from the Pretoria Agreement, according to which the Constitution and the army were to last only for the period of the transitional government and to eventually lead to national democratic elections. Under this agreement, a new constitution was to be written and promulgated and national elections were to be held by the end of July 2006. The Constitutional Commission that drafted the 2003 Transitional Constitution was appointed by President Kabila. This followed an agreement on 11 March 2003 among parties to the inter-Congolese dialogue, to begin a program for the drafting of the new constitution and to build a unified army for the country.¹³⁸

The Constitution was drafted with the assistance of many countries and organisations.¹³⁹ The draft constitution was presented to the Senate and the President of the Chamber of Parliament on 29 October 2004. It was then adopted by the DRC transitional parliament known as the National Assembly on 13 May 2005 and submitted to popular referendum on 18-19 December 2005.¹⁴⁰ According to official results, 84 per cent of voters approved the Constitution, which was officially promulgated on 18 February 2006. The Constitution got its first amendment on 20 January 2011.¹⁴¹

¹³⁷ Le Décret-loi Constitutionnel No 074 du 25 Mai 1998 modifiait le Décret-loi Constitutionnel No 003 du 27 Mai 1997 et opérait un transfert du pouvoir législatif du Chef de l'Etat qui l'exerçait jusque là seul à l'Assemblée Constituante et Législative 69; Le décret-Loi Constitutionnel No 122 du 21 Septembre 1998 portant modification du Décret-loi No 003 du 27 Mai 1997 Relatif à l'Organisation et à l'Exercice du Pouvoir en République Démocratique du Congo 70; Le Décret-loi Constitutionnel No 180 du 10 Janvier 1999 modifiant et complétant le décret-loi Constitutionnel No 003 du 27 Mai 1997 Relatif à l'Organisation et à l'Exercice du pouvoir en République Démocratique du Congo 71; Le décret-loi Constitutionnel No 096/2000 du 1er Juillet 2000 72.

¹³⁸ Gathii (n 131 above) 1113.

¹³⁹ France, Mauritius, Belgium, and the United States; International Electoral Institute of South Africa (EISA), the Konrad Adenauer Foundation (KAF), USAID, UNDP and the United Nations office in the DRC; The Justice and Peace Commission of the Catholic Church, The US-based National Democratic Institute for International Affairs (NDI).

¹⁴⁰ Gathii (n 131 above) 1114.

¹⁴¹ Gathii (n 131 above) 1115.

The present Constitution of the DRC guarantees the right to life,¹⁴² the right to education,¹⁴³ and the right to an adequate standard of living.¹⁴⁴ It provides for the right to education for all children without discrimination and declares that primary education is compulsory and free in every public educational establishment.¹⁴⁵ However, free and compulsory education has remained just like a slogan because in reality education is not free in public schools. Many children are unable to go to school because of the inability to afford school fees and other levies that children are required to pay at school.¹⁴⁶ Although the Constitution guarantees the right to adequate standard of living, the realisation of the right has in reality, remained a major challenge for a couple of reasons: For example, the daily provision of some very basic necessities like electricity, energy and water pose real difficulties. Clean water cannot be afforded even in the capital city, Kinshasa. While in the provinces, the people are forced by the circumstances to go for kilometres to fetch water, which in most cases is not clean.¹⁴⁷

3. Other National Legislation

3.1. Child protection law.

In the advent of the CRC, the government of the DRC adopted in January 2009, the law on Child Protection.¹⁴⁸ This law incorporates some articles of the 1950 colonial Penal Code on juvenile delinquency, which was used to deal with delinquent children. In the previous law, the age of criminal responsibility was 16 years, which

¹⁴² Loi No 11/002 du 20 Janvier 2011 portant révision de certains articles de la Constitution de la République Démocratique du Congo du 18 Février 2006) art 16.

¹⁴³ Loi No 11/002 (n 142 above) art 43.

¹⁴⁴ Loi No 11/002 (n 142 above) art 48.

¹⁴⁵ Loi No 11/002 (n 142 above) art 43.

¹⁴⁶ La Situation des Droits de l'Enfant en République Démocratique du Congo, Sixième Examen Périodique Universel, Mécanisme de Surveillance de l'Influence des Droits de l'Homme du Conseil des Droits de l'Homme des Nations Unies, Avril 2009.

¹⁴⁷ La Situation des Droits de l'Enfant (n 146 above).

¹⁴⁸ Loi No 09/001 du 10 Janvier 2009 portant protection de l'enfant (Child Protection Law).

meant that many children from the ages of 16 to 18 were subject to severe penalties, life imprisonment and the death sentence.¹⁴⁹ The child protection law however, sets the childhood age at below 18 years and states that every child has the right to life,¹⁵⁰ the right to education¹⁵¹ and the right to an adequate standard of living.¹⁵² The child protection law also establishes rules applicable to a child in penal procedure.¹⁵³

3.2. Family law

According to Congolese family law, a child is a person who has not reached the age of civil majority.¹⁵⁴ The Constitution of the DRC sets the age of majority at 18 years. Family law protects the nationality of the child. Congolese nationality is acquired by *jus sanguinis*, which means “right by virtue of blood”. However, according to “the best interest of the child” principle, family law provides that in the case where a child is born in the DRC from both non-citizen parents, the child can acquire Congolese nationality if for some obvious reasons it is impossible to acquire the parent’s nationality; for example if the parent’s nationality is transferable by *jus soli* only, depending on the place where the child is born.¹⁵⁵

Family law protects the right of the child to a name, the right to be registered, the parent’s duty to take care of the child; it also protects the rights of the child in case of adoption, divorce and also in the case of the death of one or both parents.¹⁵⁶ However, under certain circumstances, article 352 of the Family Law Act authorises the marriage of girls at the age of 15. This disposition constitutes gender discrimination since marriage for boys is permitted at the age of 18. Such envisaged early marriage for girls may infringe on their right to education and

¹⁴⁹ Loi No 09/001 (n 148 above).

¹⁵⁰ Loi No 09/001 (n 148 above) art 13.

¹⁵¹ Loi No 09/001 (n 148 above) arts 13, 24, 38, 39.

¹⁵² Loi No 09/001 (n 148 above) art 44.

¹⁵³ Loi No 09/001 (n 148 above) art 102.

¹⁵⁴ Loi No 87/010 du 1er Aout 1987 Portant Code de la Famille (Congolese Family Law) arts 5 & 219.

¹⁵⁵ Loi No 87/010 (n 154 above) art 9.

¹⁵⁶ Loi No 87/010 (n 154 above).

health, may promote premature interruption of the schooling process and may expose the girls to early pregnancies. More so, some of the rules regulating engagement and marriage according to the traditional customs and practices are retrogressive and particularly harmful for girls.¹⁵⁷

It can be said that article 352 is influenced by the Congolese culture according to which, a girl who is physically mature is considered ready for marriage while a boy is ready only if he is able to take care of the wife economically. In reality, when a girl falls pregnant, the girl's family usually would take the girl to the boy's family until she is delivered of the baby and in most cases the relationship transforms into marriage. This family law provision is thus in breach of the norms of the CRC.

3.3. Labour law

Article 36 of the Constitution of the DRC states that work is a sacrosanct right and a sacrosanct duty and that all Congolese have the duty to contribute with their work to the progress and wealth of the nation. In spite of the special consideration that is attached to work, which obviously is reserved for adults, the labour law provides for the protection of children¹⁵⁸ against all forms of exploitation.¹⁵⁹ According to article 133 of the Congolese Labour Code, a 15-years old child is allowed to work under special care. The labour law also protects the child when it comes to termination of work. It forbids night shift work for children, implying that a child cannot work during the period between 7 pm and 5 am.

Even though the Labour Code regulates child labour relating to time and working conditions, the legislation remains inadequate in terms of regulating economic conditions. The country is dominated by the informal economy that enables violations by employers and even parents who allow their children to hawk in the streets, thus exposing the child to the risk of being raped, assaulted or forced into

¹⁵⁷ Bureau International Catholique pour l'Enfance, Section Protection de l'Enfant de la MONUC Save the Children UK and UNICEF La Protection Légale et Judiciaire des Enfants en RDC (2004) 4

¹⁵⁸ Idzumbuir (n 51 above) 23.

¹⁵⁹ Loi No 015/2002 du 16 Octobre 2002 portant Code du Travail.

prostitution and drugs.¹⁶⁰ In the DRC as in most developing countries, child labour has its roots mainly in poverty and social disorganisation. To be able to eliminate child labour and to facilitate the education of children, there is need for gradual and broad-based transformation within all sectors of society.

3.4. Penal law

Faced with the need to prevent and remedy offences involving sexual violence and to ensure systematic support to victims of such offences, the penal law of the DRC¹⁶¹ was revised by provisions of the law of 2006. Before then Congolese criminal law did not contain all the offences criminalised by international law; thus denying the population the right to protection.¹⁶² Some provisions of the law provide protection to the child by imposing stricter sanctions or aggravating the punishment for infractions committed against children.¹⁶³

Article 167 of the Congolese Penal Code states that any indecent act committed against a child shall be punishable by a prison term of between six months to five years. Article 168 further stipulates that an indecent act committed with violence, deception or threat on or with a child shall be punishable by imprisonment ranging from five to fifteen years. If the assault is committed on or with a child who is below the age of ten, the penalty is five to twenty years. The law states that it amounts to rape with violence for any individual to expose his genital parts close to any part of a child's body.¹⁶⁴

Sexual violence against children has been documented by many organisations, especially in the war-torn areas where it is used as “a weapon of war” to terrorise, punish or take revenge on entire communities. Information provided by UNICEF and other international agencies report that between 10% and 40% of children are

¹⁶⁰ Bureau International Catholique pour l'Enfance (n 157 above) 5.

¹⁶¹ Loi No 06/018 Du 20 Juillet 2006 modifiant et complétant le Décret du 30 Janvier 1940 Portant Code Penal Congolais (Congolese Penal Code).

¹⁶² Loi No 06/018 (n 161 above) preamble.

¹⁶³ Loi No 06/018 (n 161 above).

¹⁶⁴ Loi No 06/018 (n 161 above) art 168.

victims of rape. The figures are however, underestimated as many cases remain unreported for fear of reprisals, lack of confidence in the justice mechanism, lack of knowledge of guaranteed rights and lack of the means to pursue a case.¹⁶⁵

There is also a strong legal framework to punish abuses that happen under the pretext of sorcery. Sections 74 and 75 of Penal Code Book II¹⁶⁶ make it a punishable offence to accuse a person of wickedness. It is considered prejudicial to the honour and reputation of the individual. Article 57(1) and (2) of the CPL II also criminalises superstitious trials and barbaric practices.¹⁶⁷ However, hundreds of tortured or abused children have been documented in the DRC. By the end of 2003 the Ministry of Social Affairs recorded over 500 cases of children accused of witchcraft and abused in revivalist churches in Kimbanseke and Masina.¹⁶⁸

3.5. Civil responsibility law

In Congolese law, civil responsibility which is different from criminal responsibility has to do with liability for harm caused by individuals in their private relationships.¹⁶⁹ The principle of civil reparation is enshrined in article 258 of the Civil Code Book III. This article states that the wrongdoer has the obligation to remedy his wrongful conduct. In the same sense, it is appropriate to mention article 259 of the Civil Code Book III, which states that everyone is responsible for the damage they have caused not only by their actions but also by their negligence or carelessness. Regarding the wrongdoing of a child who by law cannot be held legally responsible, in order to guarantee sufficient protection while also satisfying the victim, the law states that parents are responsible for the wrongdoings of their

¹⁶⁵ Bureau International Catholique pour l'Enfance (n 157 above) 5.

¹⁶⁶ Code Pénal Livre II.

¹⁶⁷ Bureau International Catholique pour l'Enfance (n 157 above) 5.

¹⁶⁸ Bureau International Catholique pour l'Enfance (n 157 above) 6.

¹⁶⁹ La loi du 30 Juillet 1888; Décret des Contrat sous des Obligations Conventionnelles tel que modifiée par La loi du 10 Septembre 1916; La loi du 16 Juin 1947; La loi du 26 Aout 1959; La loi du 23 Juin et la loi No 73-21 du 20 Juillet 1973.

children.¹⁷⁰ If a child commits an offence that needs reparation for example, the parents become legally responsible to repair the damage.

4. Conclusion

The discussion in this chapter has focused on the national legal framework for the protection of the rights of the child in the DRC in which I looked at the constitutional provisions as well as other national laws that guarantee protection on the rights of the child. These domestic instruments reveal that the DRC is compelled by its own laws to ensure the protection of every child in the country against abuse and the threats posed by poverty. The Constitution of the DRC, which was inspired and drafted following the model of the South African Constitution guarantees a range of socio-economic rights; including the right to education, standard of living and the right to food to everyone including children.

These guarantees however, remain far-fetched owing to the fact that the socio-economic rights enshrined in the Constitution are yet to be realised, resulting in deteriorating standard of living in the DRC. Regardless of the universal standard which states that a person is a child until the age of 18, family law in the DRC contradicts this principle as it allows a girl child to marry at the age of 15. The labour law that is supposed to prohibit child labour rather encourages it by stipulating that a child can work under special conditions. Under the informal circumstances in which children are employed, this disposition is not really applicable because those who employ children take advantage of the severity of poverty that drives children to seek employment. In the next chapter, I look at the causes of poverty in the DRC and how it affects the protection of children's rights.

¹⁷⁰ Article 260 of the Congolese Civil Code Book III.

Chapter Four

Causes of Poverty in the Democratic Republic of Congo

1. Introduction

In the Democratic Republic of Congo (DRC), poverty perceptions are different depending on social groups or environment. In urban areas people perceive poverty as joblessness, lack of income, opportunities, clothes or lack of material possessions. Poverty is also seen as the inability to send children to school or the inability to fulfil basic needs. In rural areas poverty is perceived as the inability to afford electronic gadgets such a mobile phone, inability to stock food in the house or to keep animals like chickens, goats or pigs in the farmyard or the lack of basic needs like soap, salt, sugar, milk, palm oil, coffee or oil. Poverty in the rural areas is also seen as lack of public transport facilities, recreational facilities like stadiums, hotels, bars, cafes, shops or malls, lack of agricultural land or farming tools. Poverty is also considered in some rural communities as the fact of being unmarried, widowed, sterile, or monogamous. The inequalities in gender resulting from the practice of traditional and retrograde customs against women and girls have helped in feminising poverty.¹⁷¹

Louise Arbour¹⁷² has argued that poverty is too often accepted by the majority of people as unfortunately accidental, natural or inevitable, or even the fault of the poor rather than the outcome of conscious policy choices.¹⁷³ Economists have identified many factors that are directly responsible for instigating poverty such as low levels of education or lack of access to land.¹⁷⁴ A human rights approach goes beyond the economist perspective and requests to find where poverty is created by human actions or policy choices, rather than by nameless economic forces. It

¹⁷¹ Ministère du Plan, Province du Kasai Occidental (n 26 above) 16.

¹⁷² The former United Nations High Commissioner for Human Rights from July 2004 to July 2008.

¹⁷³ Centre for Economic and Social Rights (n 21 above).

¹⁷⁴ Centre for Economic and Social Rights (n 21 above) 2.

rejects the belief that poverty is unavoidable and seeks to understand why poverty is persisting.¹⁷⁵

Poverty issues often involve many actors, including private organizations, social organizations and public actors at local, regional, national and international levels.¹⁷⁶ According to human rights standards, states bear the primary responsibility to provide protection to their citizens against violations that may be perpetuated by non-state actor's and therefore, are charged with regulating of all activities, both public and private within the country.¹⁷⁷

As already stated, the DRC has been engulfed in war since 1997. Beside the impact of the war, poor governance has also contributed immensely to the entrenchment of poverty. In addition to war and poor governance, the dearth of strategic policies; corruption and lack of political will to implement existing legislation remain a fuelling factor in exacerbating poverty and its ultimate impact on the rights of the child in the DRC. This chapter proceeds to examine some factors that can be pinpointed as the basis of continued entrenchment of poverty in the DRC.

2. Internal Causes of Poverty

2.1 Lack of good governance

The concept of good governance is not new as many people seem to think, it is as old as human history.¹⁷⁸ Many academics and international practitioners use the term 'governance' to connote a complex set of structures and processes both public and private, while other commentators tend to use it when talking about government. The World Bank defines governance as the manner in which power is exercised, the management of a country's economic and social resources, while

¹⁷⁵ Centre for Economic and Social Rights (n 21 above) 2.

¹⁷⁶ Rapports PNUD 'Profil de pauvreté, statistiques choisies sur les pays africains' (1999) *Banque Africaine de Développement*.

¹⁷⁷ Centre for Economic and Social Rights (n 21 above).

¹⁷⁸ TG Weiss 'Governance good governance and global governance: Conceptual and actual challenges' (2000) 21 *Third World Quarterly* 795-814.

“bad governance” as opposed to good governance is conceptualised as the personalisation of power, lack of human rights, endemic corruption and un-elected and unaccountable governments.¹⁷⁹

During Mobutu’s reign, the institutions of the DRC were lacking in good governance. In fact, all the characteristics of bad-governance were present within state institutions. In terms of the personalisation of power: Joseph Desire Mobutu as ‘father’ of the Nation had accumulated the positions of Head of State, Head of Government, Commander-in-Chief of the National Army and Security Forces and also serving as the repository of the judiciary. Such long personal rule established patronage and entrenched vested interests among collaborators, which could only be sustained through the continued survival of the leader. Mobutu’s reign was also characterised by widespread abuse of human rights and endemic corruption. The Congolese population during Mobutu reign experienced violations of their fundamental human rights. The country’s resources served to enrich the political elites, external political allies and business partners rather than meet the basic needs or improve the lives of the Congolese people.¹⁸⁰

The DRC under Mobutu was ruled by an unelected and unaccountable government since 1970 when the country embraced a single-party system that was plagued with inadequate democratic principles. Mobutu was unconstitutionally elected to seven years terms in 1970, 1977 and 1984. He contested for the presidential seat unopposed not because there was no opposition but because of the dictatorial regime that allowed him to score himself 99% of the vote during each of those elections. By the late 1970s Congo had officially become a one-party-state with two supreme institutions, the presidency and the political bureau of the party. All Congolese people automatically became members of the *Mouvement Populaire de la Revolution* (MPR) party from birth.¹⁸¹

¹⁷⁹ Weiss (n 178 above) 795-814.

¹⁸⁰ GN Ntalaja *The Congo from Leopold to Kabila: A People’s History* (2002) 3.

¹⁸¹ EF Kisangani & SF Bobb *Historical Dictionary of the Democratic Republic of Congo* (2009) 130.

The economy of the country plunged into crisis in 1974 as a result of the decision to nationalise foreign companies, a phenomenon that became known as *zairianisation*, coined from the name 'Zaire'. Through the *zairianisation* policy, Mobutu decided in 1973 to confiscate properties and companies owned by white people with the pretext to boost development and economic independence and to nationalise Zaire's economy.¹⁸² In order to achieve this, ownership of all foreign firms were transferred to Zairian citizens and the former owners chased away empty handed.¹⁸³ Those who took over the companies were not able to manage them and as a result all nationalised companies collapsed and economic crisis set in.¹⁸⁴ Poverty aggravated towards the end of the 1990s, reaching its highest in 1991 and 1993. Frustrated by the actions of the government, the impoverished Congolese people descended into the streets plundering and destroying almost all industrial and commercial infrastructures, which action completely paralysed the national economy.¹⁸⁵

2.2. Inept policies

The aftermath of poor governance led to a series of policies that were not people friendly. The dictatorial regime of Mobutu helped to impoverish the average DRC family. Among these were the policy of *zairianisation* and the World Bank's structural adjustment programmes (SAP) that were largely not in the interest of the child in the DRC. Relating to education for instance, the effect of the structural adjustment programme meant that the majority of children in Africa were denied access to basic education. As Hansungule has argued, by construing basic education as human capital rather than as a human right SAP became the bane of the African child.¹⁸⁶

The *zairianisation* of foreign enterprises marked the beginning of the Congolese crisis. The crisis affected the mining sector as the state was not able to run the

¹⁸² M Paoletti *Congo/Zaire la Faillite d'un Pays* (2000) L'Harmattan 25.

¹⁸³ Paoletti (n 182 above) 25.

¹⁸⁴ Paoletti (n 182 above) 25.

¹⁸⁵ Paoletti (n 182 above) 25.

¹⁸⁶ Hansungule (n 91 above).

copper mines which constituted the primary source of state income. The situation gradually led to the privatisation of state structures in what became known as “radicalisation”.¹⁸⁷ Subsequently, the Congolese economy became increasingly informal as many important public institutions and services collapsed and poverty became a lifestyle among the Congolese people.¹⁸⁸ The standard of education began to fail as public investment in primary education disappeared.¹⁸⁹

The World Bank’s structural adjustment programmes forced the government to address budget insufficiencies by reducing expenses in “non-productive” sectors such as health, education, research and culture while increasing investments in trade and production.¹⁹⁰ The government was thus compelled to cancel scholarships, the provision of food and transport at universities and higher learning institutions; while salaries were concentrated at the bottom grades, operational costs removed, and economic and social subsidies for education and healthcare were closed down.¹⁹¹ In reality, the suppressed expenditures were the ones that enabled economic operations and a comfortable social life. Consequently, the industrial sector could not flourish for the population was too poor to purchase what the industries produced.¹⁹² From 1983 to 1986 the impact became noticeable in the area of public finance, particularly in the increase in prices and exchange rates. The SAP policies however, boosted the supplies and services distribution system and the regeneration of private investments.¹⁹³ Mobutu’s regime did not suffer from structural adjustment because of the high levels of corruption.¹⁹⁴

While the population suffered from poverty, Mobutu was spending roughly 60% of the national budget in the construction of *Gbadolite*, his native province; the

¹⁸⁷ Saskia, van Hoyweghen & Smis (n 75 above) 575-581.

¹⁸⁸ U Engel & P Nugent *Respacing Africa* (2010) 145.

¹⁸⁹ Imoh and Ansell (n 6 above) 73.

¹⁹⁰ Saskia, van Hoyweghen & Smis (n 75 above) 575-581.

¹⁹¹ NA Kabwa *Bâtir le Congo* (2012) 112.

¹⁹² Kabwa (n 191 above) 112.

¹⁹³ Paoletti (n 182 above) 25.

¹⁹⁴ Saskia, van Hoyweghen & Smis (n 75 above) 575-581.

maintenance of his multiple overseas residences. This affected the realisation of the reform agreed with the International Monetary Fund (IMF). In the last part of 1986, Mobutu got tired of the economic structural adjustment programme and ended it. It is said that the IMF's controlling attitude restricted Mobutu's financial independence.¹⁹⁵ The economic situation degenerated more particularly in the area of elementary infrastructures, public finances and the public sectors. By 1990 the DRC was in debt of USD 7.781 due from rescheduling of the principal debt.¹⁹⁶

The structural adjustment programme introduced did not really help to increase foreign capital but rather caused large proportions of capital flight from the DRC. The validation of huge capital movements by the IMF and the World Bank helped the political elite in the DRC as well as other African politicians to transfer huge sums of money abroad.¹⁹⁷ In other words, the liberalisation of capital movements facilitated and increased corruption.¹⁹⁸

2.3. Corruption

Corruption is a complex phenomenon impacting on a broad range of human actions.¹⁹⁹ The word covers different forms of abuses but can be defined briefly as the abuse of delegated power for private gain.²⁰⁰ Both street-level and grand forms of corruption are present in DRC, involving a wide range of state officials from low level civil servants to the highest members of government.²⁰¹ Corruption constitutes a violation of the government's positive duty to fulfil human rights. For example, the government may have enough resources to pay teachers or build

¹⁹⁵ Paoletti (n 182 above) 25.

¹⁹⁶ Paoletti (n 182 above) 25.

¹⁹⁷ E Toussaint 'Endettement de l'Afrique Sub-Saharienne au début du XXIe siècle L'Afrique: créancière ou débitrice ?' available at: www.cadtm.org/ (accessed: 21 March 2014).

¹⁹⁸ Toussaint (n 197 above).

¹⁹⁹ World Bank Group 'Helping countries combat corruption: The role of the World Bank' available at: <http://www1.worldbank.org/publicsector/anticorrupt/corruptn/cor02.htm> (accessed: 20 November 2014).

²⁰⁰ World Bank Group (n 199 above).

²⁰¹ Department for International Development 'DFID's Anti-corruption strategy for the Democratic Republic of Congo' (2013) UKAID 2.

roads but is deviated into private pockets instead of serving the public interest. In a situation where resources are available like in the DRC, it cannot be argued that the government is not able to fulfil human rights because of lack of resources. When the country's revenue is diverted into private bank accounts of those in power, it can be seen as corruption. When this happens, it leaves little for investment in human development, causing the majority of people to remain in perpetual poverty; lacking basic needs relating to health care, education, housing, water and food.²⁰²

The failure to prioritise available resources for the realisation of socio-economic rights caused the DRC to plunge further into poverty,²⁰³ and thus aggravated the chaotic situation in the country which grew from being sporadic to endemic. These situations have enabled some scholars to describe the DRC as taking on the appearances of a 'shadow state'.²⁰⁴ During Mobutu's regime there was no separation between the state treasury and Mobutu's personal accounts. The treasury's greatest function was to fill the President's purse; hence his reiterated Louis XV catchphrase, '*L'état c'est moi*', meaning 'I am the state'.²⁰⁵

After Mobutu's regime, current data and reports still show widespread corruption in the DRC.²⁰⁶ The two Kabila regimes were more concerned with gaining economic control over the economic networks that operate within the country than about actually administering the country.²⁰⁷ Because of the level of corruption, Transparency International classified the DRC at 160th position out of 174 countries in the Corruption Perception Index in 2012. The 2010 World Bank Enterprise Survey showed that more than 65% of firms interrogated projected to have made informal payments to "get things done", which amounted to corruption.²⁰⁸ The World Bank

²⁰² Centre for Economic and Social Rights (n 21 above) 9.

²⁰³ Centre for Economic and Social Rights (n 21 above) 9.

²⁰⁴ Saskia, van Hoyweghen & Smis (n 75 above) 575 - 581.

²⁰⁵ Saskia, van Hoyweghen & Smis (n 75 above) 575-581.

²⁰⁶ Department for International Development (n 200 above) 3.

²⁰⁷ Saskia, van & Smis (n 75 above) 575-581.

²⁰⁸ Department for International Development (n 200 above) 8.

Governance Indicators also portray a dismal situation in the deteriorating level of corruption in the country due to the on-going conflict and instability.²⁰⁹ Corruption in the administration of taxes and levies, as well as in public management, destabilises the state's capacity to collect revenues that may help the country to overcome poverty.²¹⁰ Although the DRC has acceded to the UN Convention against Corruption on 23 September 2010 and that the Penal Code contains dispositions criminalising corruption,²¹¹ the government seems not to have firmly resolved to stop the on-going practice of corruption.²¹²

Within the framework of a protocol cooperation agreement signed in 2008 with South Africa and UNODC on fighting corruption, the DRC established in December 2009 a *Forum National sur la Lutte Contre la Corruption* (National Forum on the Fight against Corruption). The Forum recommended the creation of a number of anti-corruption institutions, including a consultative body, a national council of ethics, an independent commission of ethics in the fight against corruption, a government anti-corruption agency and an ombudsman.²¹³ If created, these institutions would go a long way in combating corruption. The good intentions have however, remained a pipedream due to high levels of patronage as well as a complete lack of political will to build robust, transparent and accountable institutions to curb corruption.²¹⁴

2.4. Unfair distribution of resources

The allocation of government resources is deliberately designed to prioritise the wealthy over the poor, or to prioritise the interests of officials over the needs of the population. Most often government's actions help to perpetuate poverty, in violation of its duty to fulfil human rights, such as the rights to education and

²⁰⁹ Department for International Development (n 200 above) 8.

²¹⁰ M Chêne 'Overview of corruption and anti-corruption in the Democratic Republic of Congo (DRC)' (2010) 257 *Transparency International* 6.

²¹¹ Article 147-150 of the Penal Law.

²¹² Chêne (n 210 above).

²¹³ Chêne (n 210 above) 7.

²¹⁴ Chêne (n 210 above) 5-6.

adequate food.²¹⁵ The government's failure to ensure that state resources reach the poorest also violates the right to equality and non-discrimination.²¹⁶ It is clear that government officials may need cars. However, prioritising the purchase of top quality cars over the very basic necessities of the majority of the population indicates a failure to maximise available resources for the realisation basic human rights.²¹⁷

The relatively uneven distribution of wealth in the DRC is manifested in the excessive influence in deciding how to use state resources, with elites giving preferentiality to their own interests over the interests of the community.²¹⁸ Traditionally, elite retention of state resources has rarely been considered a human rights issue. Currently, human rights norms suggest that elite influence over government policies and public expenditure may constitute a violation of civil and political rights as well as the human rights principles of participation and accountability.²¹⁹

After the *zairianisation* policy, the transformation of public enterprises to private ownership by national politicians resulted in the concentration of wealth in the hands of a few privileged elites. Politicians, industrial leaders and private corporations abused their powers in order to enrich themselves to the detriment of the population.²²⁰ Global Witness has reported that the DRC's enormous natural wealth is exploited for the commercial benefit of a small number of businesses and political actors to the detriment of the impoverished population.²²¹

2.5. The Congolese war

²¹⁵ Centre for Economic and Social Rights (n 21 above) 10.

²¹⁶ Centre for Economic and Social Rights (n 21 above) 10.

²¹⁷ Centre for Economic and Social Rights (n 21 above) 10.

²¹⁸ Engel & Nugent (n 188 above) 145.

²¹⁹ Engel & Nugent (n 188 above) 145.

²²⁰ Engel & Nugent (n 188 above) 145.

²²¹ Chêne (n 210 above) 3.

The first Congolese war of liberation lasted from 1996 to 1997 where Laurent Desire Kabila brought about the collapse of Mobutu's authoritarian regime. It was followed by the second war from 1998 when Rwanda invaded the DRC and thus led to a chain of reactions.²²² Insecure states operating under the interesting thinking of 'the enemy of my enemy is my friend' jumped into the war.²²³ There was widespread insecurity in the region due to the strategy of states using rebel groups as another course of action to weaken central and eastern African states.²²⁴ Even with the signing of a peace accord in 2003, hostility is still going on in the east of the country.²²⁵

The International Rescue Committee (IRC) has reported that between 1998 and 2002 about 3.3 million individuals died as a result of the conflict.²²⁶ The records show that the conflict has been the most fatal since the end of World War 2, with a death rate exceeding those of contemporary crises around the world such as in Bosnia, Rwanda, Kosovo, and Darfur.²²⁷ Even so, the Congolese crisis has received the least reaction from the international community.²²⁸ The population of the DRC faces extermination with little intervention by the international community, which may be said to have distanced itself from the war while the Rwandan army continues to loot Congolese resources with impunity. Despite the mounting death toll, the country receives only a trickle of aid and even less media attention.²²⁹

Initially, the foreign troops gave as pretext for invading the DRC security reasons; to fight off rebel groups like the UNITA, the LRA or *Interahamwe* that were causing nuisance to the peace. Today, they are clearly looting Congolese wealth, while

²²² Imoh & Ansell (n 6 above) 75.

²²³ Williams (n 10 above) 90.

²²⁴ Williams (n 10 above) 90.

²²⁵ Williams (n 10 above) 90.

²²⁶ Coghlan *et al* (n 11 above) 44-51.

²²⁷ Coghlan *et al* (n 11 above) 44-51.

²²⁸ Coghlan *et al* (n 11 above) 44-51.

²²⁹ D Montague 'Stolen goods: Coltan and conflict in the Democratic Republic of Congo' (2002) 12:1 *SAIS Review* 103.

security concerns have been replaced by what is vaguely referred to as ‘war economy’.²³⁰ Gold and diamonds transit through Bujumbura and Kigali although neither Burundi nor Rwanda produces them.²³¹

The government may also be accused of looting because in a sense, corruption involves looting the resources that belong to the population.²³² Angola is paid in petroleum for its war efforts and Zimbabwe has been given large mining concessions in Katanga.²³³ Mining is still being related with violence and conflict, while the mining sector is supposed to contribute to reconstruction and in improving people’s lives.²³⁴ As a result, the DRC and its institutions have remained weak. The state is not able to effectively deliver public services, provide protection to its population, control its territory, generate taxes or enforce legislation.²³⁵ The consequence has been a humanitarian crisis that has never been seen in recent decades, characterised by human rights violations, death, displacement and deforestation, poverty and the collapse of the public sector.²³⁶

3. External Causes of Poverty

3.1 Activities of multi-national entities

Traditionally, it was hard to hold non-state actors directly accountable under human rights law as only states were parties to human rights treaties. However, realising that some non-state actors have become more powerful than states, the human rights agenda saw the need to make non-state actors accountable and responsible under the international legal system. Today, the need for

²³⁰ Saskia, van Hoyweghen & Smis (n 75 above) 575-581.

²³¹ Saskia, van Hoyweghen & Smis (n 75 above) 575-581

²³² Saskia, van Hoyweghen & Smis (n 75 above) 575-581.

²³³ Saskia, van Hoyweghen & Smis (n 75 above) 575-581.

²³⁴ S Geenen & K Claessens ‘Disputed access to the gold sites in Luhwindja, Eastern Democratic Republic of Congo’ (2013) 51 *Journal of Modern African Studies* 85-108.

²³⁵ Geenen & Claessens (n 233 above) 85-108.

²³⁶ Geenen & Claessens (n 233 above) 85-108.

accountability of non-state actors is one of the biggest and thoughtful challenges that international law is facing.²³⁷

In the struggle for non-state accountability, human rights scholars have shown that international organisations do have legal personalities under international law and may therefore be held accountable for human rights obligations.²³⁸ New developments within international human rights law have also shown that it is possible to hold corporations accountable for complicity in human rights abuses by the state, particularly where they participate on purpose and where there are damaging consequences.²³⁹ Furthermore, the adoption of the Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with regard to Human Rights by the UN Sub-Commission on the Promotion and Protection of Human Rights on 13 August 2003 established the normative framework for the direct accountability of private corporations.²⁴⁰ The IMF, World Bank and the World Trade Organisation (WTO) exercise a huge influence on the policies and programmes of national governments and therefore inhibit government efforts to realise human rights.²⁴¹

For example, at the end of the Cold War the IMF, the World Bank and western donors refused financial assistance to the Mobutu regime, which caused the poverty situation of the Congolese people to worsen.²⁴² The United Nations Conference on Trade and Development (UNCTAD) established in its report in 2000 that due to IMF and World Bank's structural adjustment programmes investments did decrease.²⁴³ Indeed, between 1975 and 1982 private investment capital constituted 3.9% of the gross national product of sub-Saharan African countries.²⁴⁴

²³⁷ Centre for Economic and Social Rights (n 21 above) 9.

²³⁸ Centre for Economic and Social Rights (n 21 above) 9.

²³⁹ Centre for Economic and Social Rights (n 21 above) 9.

²⁴⁰ Centre for Economic and Social Rights (n 21 above) 9.

²⁴¹ Centre for Economic and Social Rights (n 21 above) 9.

²⁴² Imoh & Ansell (n 6 above) 7.

²⁴³ Toussaint (n 197 above).

²⁴⁴ Toussaint (n 197 above).

From 1983 to 1998 when most African countries were subject to structural adjustment policies, GNP dropped to below 1.8%, representing a decrease of roughly more than 50% compared to the preceding period.²⁴⁵

The IMF and the World Bank also prohibited African governments from intervening in the agriculture sector in order to encourage private initiatives with the aim to improve the farmers living conditions. Research carried out by the UNCTAD shows that the decision never really helped farmers. Various indices show that the reform rather restricted small farmers to grow because of lack or insufficiency of state subsidies.²⁴⁶ Throughout the 1990s over 90 countries, amongst them the DRC have rewritten their mining and investment codes under considerable pressure from the World Bank.²⁴⁷ These reforms were particularly aimed to increase investments in the industrial and mining sectors but the reforms overrode issues of socio-economic and community development and ecological protection. The reforms succeeded in attracting foreign capital to boost investments but was accompanied by conflicts resulting from the co-existence of industrial companies, miners and local communities that were working in those mines before and those who were living around the mining sites and had to be displaced without compensation. In the course of the conflict, those who were financially robust and favoured by government officials were advantaged. The reforms helped to create conflict, displacement and poverty in the local communities around the mining sites.²⁴⁸

With the intervention of the United Nations Organisation Mission in the Democratic Republic of the Congo (MONUSCO), the reality is that the organisation currently spends huge sums of money on its members' personal comfort at the expense of actually carrying out the tasks for which they are deployed. The organisation does not support local social services like education and health. A UN official in the DRC is said to have acknowledged that about a third of MONUSCO's budgetary

²⁴⁵ Toussaint (n 197 above).

²⁴⁶ Toussaint (n 197 above).

²⁴⁷ Loi No 004 du 21 Février 2002 Code des Investissements.

²⁴⁸ Geenen & Claessens (n 233 above) 85-108.

allocations are spent on transportation costs alone, while this amount could be used in supporting local NGOs,²⁴⁹ particularly those working in the area of promoting children's rights. The salaries of Congolese agents working in the organisation are far inferior to the international staff. While MONUSCO has been in operation in the DRC for decades, it is unable to end the war that has claimed so many lives in the eastern provinces.

3.2. Unfair international trade rules

Thomas Pogge says that “states” have the responsibility to renounce to be involved in an unfair institutional system when that participation helps to create, maintain or aggravate the conditions of the poor.²⁵⁰ The effects produced by globalisation and international trade are often treated as the result of blameless economic forces or as accidental and inevitable occurrences.²⁵¹ Meanwhile, it is established that unconditional international trade rules are profitable to rich countries.²⁵² On the other hand, globalisation is driven by the decisions of policy-makers, and the choice of the rules and their application is the result of the pursuit of national benefits by government officials at international trade negotiations.²⁵³

According to Oxfam's report, world trade has the possibility to reduce global poverty, but currently the rules that govern trade are designed to help rich countries to rob poor countries and keep their markets unreachable or to exclude the poor countries merchandises by means of tariff obstacles.²⁵⁴ Regardless of the rhetoric of free trade, rich countries continue to impose these unfair rules on poor

²⁴⁹ JE Wanki 'Disarming war, arming peace: The Congo crisis, Dag Hammarskjöld's legacy and the future role of MONUSCO in the Democratic Republic of the Congo' (2011)11 *African Journal on Conflict Resolution*.

²⁵⁰ Centre for Economic and Social Rights (n 21 above) 11.

²⁵¹ Centre for Economic and Social Rights (n 21 above) 11.

²⁵² T Pogge '*Recognized and violated by international law: The human rights of the global poor*' available at: www.ochcr.org/ (accessed: 24 January 2014).

²⁵³ Centre for Economic and Social Rights (n 21 above) 11.

²⁵⁴ N Birdsall, D Rodrik & A Subramanian 'How to help poor countries' (2005) 84:4 *Foreign Affairs* 136-152.

countries.²⁵⁵ As an example of unfair rules, rich countries fund their own agriculture; poor countries are forbidden to do the same.²⁵⁶ Oxfam reports that developed countries' agricultural subsidies costs around USD100 billion per year to developing countries, more than twice as much as they receive in aid.²⁵⁷ American and European agricultural subsidies have negatively affected the living condition of over 10 million Africans who depend on cotton trade in Central and West Africa.²⁵⁸ America gives USD 3.9 billion in subsidies to its 25,000 cotton farmers in the US every year, which allows those farmers to sell their cotton worth below the cost of production.²⁵⁹ This has consequently reduced world cotton prices to the level that create poverty amongst African farmers trying to sell their cotton. The amount of subsidies given to a small number of rich and powerful American farmers is more than three times the amount of the entire USAID budget for Africa.²⁶⁰ This means that while America and Europe are charitably supporting Africa with one hand, they are with the other hand taking away opportunities and thus, helping to perpetrate poverty.²⁶¹

Even if it is hard to hold governments responsible under human rights law for the impact that their rules have on people living in another country, it has been argued that all governments have a duty to refrain from harming peoples' lives in other countries.²⁶² If countries use trade rules in ways that create poverty amongst people living in poorer countries, then this may constitute a violation by rich countries of their duty to respect the human rights of people in other countries who are affected by their actions.²⁶³

²⁵⁵ Centre for Economic and Social Rights (n 21 above) 10.

²⁵⁶ Centre for Economic and Social Rights (n 21 above) 10.

²⁵⁷ Centre for Economic and Social Rights (n 21 above) 10.

²⁵⁸ Centre for Economic and Social Rights (n 21 above) 11.

²⁵⁹ Centre for Economic and Social Rights (n 21 above) 11.

²⁶⁰ Centre for Economic and Social Rights (n 21 above) 11.

²⁶¹ Centre for Economic and Social Rights (n 21 above) 12.

²⁶² Centre for Economic and Social Rights (n 21 above) 12.

²⁶³ Centre for Economic and Social Rights (n 21 above) 12.

This has resulted in the conceptualisation of the principle of “extra-territorial obligations”,²⁶⁴ intended to hold states accountable for the impact of their actions on the citizens of other countries. National governments have a primary duty to protect their citizens, which signifies that the governments of African countries would have to refrain from signing up to international trade rules that negatively affect the human rights of their citizens and also limit their capacity to implement policies and programmes for the realisation of a variety of rights.²⁶⁵ In practice however, African states in general and the DRC in particular are weak in making firm decisions and more so, concluding international trade agreements with developed countries is more of an obligation than an arrangement.²⁶⁶

4. Conclusion

In this chapter, I have endeavoured to outline the main causes of poverty in the DRC and the extent to which it affects the rights of the child. Poverty in the DRC is multidimensional and primarily man-made, ranging from internal to external causes and remains the most serious challenge to the effective realisation of the rights of the child. The rights that are universally guaranteed to children are predominantly economic, social and cultural rights, which on the most part impose obligations that necessitate positive action in terms of the provision of resources to ensure their realisation. However, because of the extreme levels of poverty in the DRC with the resultant effect of acute shortage of resources, children’s rights become seriously affected. I illustrated how internal as well as external causes breed and sustain poverty in the DRC and thus affect the rights of the child.

I pointed out the internal causes to poverty as resulting from lack of good governance, inept state policies, corruption, and the unfair distribution of resources as well as the endless conflict in the eastern provinces, all of which contribute to draining the resources that could have been used to ensure the

²⁶⁴ Centre for Economic and Social Rights (n 21 above) 12.

²⁶⁵ Centre for Economic and Social Rights (n 21 above) 12.

²⁶⁶ Centre for Economic and Social Rights (n 21 above) 12.

realisation of children's rights. Evidence from the internal causes of poverty shows that politics in the DRC is not one that is intended to promote human rights, lest to talk of the rights of the child. It is rather a politics of aggrandisement, which is designed and prioritised to benefit only the few privileged elites in power to the detriment of the most essential livelihood needs of the majority of the citizens, especially children. Besides the internal causes, I also pointed out that the poverty situation in the DRC is aggravated by external causes. The external causes includes the activities of multinational entities operating within the DRC as well as the unfair international trade rules that are imposed on the DRC by international trade organisations.

In spite of the international law obligations to respect human rights universally, I illustrated that the influence of international actors on the policies and programmes of the DRC inhibits the government's efforts to realise human rights in general and the rights of the child in particular. International competition for scarce resources in the DRC remains a key factor to the instability and unrest in the country.²⁶⁷ Though the language of the Security Council is clear in condemning the illegal and violent activities of multinational corporations in the eastern part of the country, it has done little to deal with the exploitative actions of the multinational corporations, which constitute a motivating factor for the continued violence in the region.²⁶⁸ The level of poverty in the DRC is likely to continue to grow and therefore, as long as the country's resources are not equitably distributed, efforts to protect children's rights would remain compromised.

²⁶⁷ Montague (n 228 above) 104.

²⁶⁸ Montague (n 228 above) 113.

Chapter Five

Challenges of Poverty to the Implementation of Children's Rights in the Democratic Republic of Congo

1. Introduction

The argument that socio-economic rights are not justiciable because of the budgetary implications involved in enforcing them is obviously premised on the fact that the protection of such rights is dependent on the availability of resources. So, it is argued, providing for socio-economic rights without the resource capacity to ensure their realisation is meaningless.²⁶⁹ It is estimated that up to 80% of all the people in the Democratic Republic of Congo (DRC) now live below the poverty line of US \$1 per person per day, a situation that an independent expert interviewed by the evaluation team described as “infra-human”.²⁷⁰ The endless conflict has aggravated the precarious situation in the country and damaged the environment for the proper up-bringing of children.²⁷¹ There is widespread deterioration in the standard of living; exacerbated by natural disasters and decline in the tourism industry.²⁷²

Poverty has impacted negatively on the lives of Congolese children, driving them to the streets where they become delinquent and are exposed to abuse. Because of poverty, some children are accused of witchcraft. Poverty also increases the risk of HIV infection, particular in broken families²⁷³ thus, rendering children orphaned

²⁶⁹ JC Mubangizi & BC Mubangizi ‘Poverty, human rights law and socioeconomic realities in South Africa’ (2005) *Development Southern Africa* 278.

²⁷⁰ Faubert (n 12 above).

²⁷¹ DRC information available at: http://www.unicef.org/infobycountry/drcongo_58942.html (accessed: 19 June 2014).

²⁷² DRC information (n 270 above).

²⁷³ Mubangizi & Mubangizi (n 268 above) 3.

and vulnerable to other societal ills and vices such as child headed households, sexual abuse, prostitution, drug addiction, delinquency, child soldiers.²⁷⁴

2. Negative Impact of Poverty on the Lives of Children

2.1. Poverty and the right to life

In the DRC life expectancy in 2007 was 46.5 years, lower than the African average. Nearly 1,200 people, half of them children die every day in the DRC due to violence, disease and hunger.²⁷⁵ Statistics shows that the mortality rate for children under the age of 5, which was 207% in the period between 1990 and 1998, increased to 213% in 1999.²⁷⁶ Infant mortality is mostly caused by diseases that could be prevented by vaccination. Other factors accounting for increased mortality rates include; insufficient health care, insufficiency of budget allocation to the health sector (0.02% in 1999), low purchasing power of the population, inadequate staffing both in quality and quantity, and the discontinuation of structural cooperation.²⁷⁷

2.2. Poverty and the right to health

Malaria, which results from poor sanitation, is one of the primary causes of child mortality.²⁷⁸ Many childhood epidemics that are known to have been eradicated tend to reappear.²⁷⁹ In 2011, 93 polio cases were reported in the DRC.²⁸⁰ Since 2010 measles outbreaks have become frequent, while cholera outbreaks have also been reported in new areas.²⁸¹ While vaccination coverage remains insufficient, the proportion of children completely vaccinated has increased from 23% in 2001 to 42% in 2010. Health services have not been functioning properly in the past

²⁷⁴ Rappports PNUD (n 176 above).

²⁷⁵ Rappports PNUD (n 176 above).

²⁷⁶ Rappports PNUD (n 176 above).

²⁷⁷ Rappports PNUD (n 176 above).

²⁷⁸ UNICEF 'UNICEF Annual Report' (2011) *UNICEF Publication*.

²⁷⁹ Rappports PNUD (n 176 above).

²⁸⁰ UNICEF 2011 (n 278 above).

²⁸¹ UNICEF 2011 (n 278 above).

years because they are mainly financed by the population through “pocket payment”.²⁸² In rural areas, the decay of road infrastructure makes access to health care, education and administrative services extremely difficult.²⁸³

In the war-torn eastern provinces, women and girls are constantly raped by armed men, thus exposing particularly vulnerable children to the risk of HIV infection and unwanted pregnancies for girls. According to national sources, of the three million people living with HIV in the DRC, about 2% of those infected are children who contract the virus through mother to child transmission.²⁸⁴ Health infrastructures which for the most part do not conform to the standards prescribed by the World Health Organisation (WHO) are also insufficient to serve the population, as only 26% of the population is located within 5 km of available health services.²⁸⁵

2.3. Poverty and the rights to a standard of living, food and clean water

Water and sanitation are important factors that impact on the level of poverty. The poverty cycle cannot be eradicated without providing access to clean water and sanitation.²⁸⁶ Unclean water supplies and environmental deterioration play an important role in the epidemiological situation of the country.²⁸⁷ According to UNICEF, in 2010, only 14% of the population had access to suitable sanitary facilities compared to 9% in 2001. Similarly, in 2010 only 47% of the population had access to clean water compared to 46% in 2001.²⁸⁸ Malnutrition is one of the important issues concerning children’s health. It causes many diseases due to lack of iodine, proteins and vitamins. Approximately 43% of children below five years

²⁸² UNICEF 2011 (n 278 above).

²⁸³ Saskia, van Hoyweghen and Smis (n 75 above) 575-581

²⁸⁴ Rappports PNUD (n 176 above).

²⁸⁵ Rappports PNUD (n 176 above).

²⁸⁶ Ending Extreme Poverty in the Congo ‘Extreme poverty is a killer! What does extreme poverty look like? You can end extreme poverty in the Democratic Republic of the Congo, Africa’ available at: <http://www.endingextremepoverty.org/> (accessed: 20 June 2014).

²⁸⁷ Rappports PNUD (n 176 above).

²⁸⁸ UNICEF 2011 (n 278 above).

old suffer from chronic malnutrition, the same like in 2001.²⁸⁹ About 57% of children in rural areas and 46% in urban areas die because of malnutrition.²⁹⁰ In the eastern provinces, basic supplies such as medicines, batteries, petrol, soap, salt, and food have are no longer affordable by the local populations. Salt is not only important for providing taste to food but also for the iodine it provides. Therefore many children who lack salt in their food are bound to suffer from infections like goitre, a deficiency that had been almost eradicated by the end of the colonial period.²⁹¹ Clothing is also increasingly hard to find in some areas.²⁹²

2.4. Poverty and the right to education

As mentioned before, the idea that primary education is free and compulsory is just a slogan. Many children are not attending school because the parents or teachers cannot afford to pay school fees. Some children have to work in order to pay their fees.²⁹³ Out of every 100 children about 75 enrol in primary schools but only about 56 may succeed to complete the sixth year, of whom about 30 are boys and 26 are girls. The measures relating to the abolition of school fees have never been implemented.²⁹⁴ Because of the shortfalls in funding from the government, many public schools in the DRC have resorted to charging school fees in order to be able to cover operational costs. This is at the detriment of children whose families are too poor to be able to afford the fees.

According to a UNICEF report, the education rate has deteriorated by 33% in primary schools while the deterioration rate is below 12% in secondary schools.²⁹⁵ Since 2005, public school teachers have been claiming the implementation of the

²⁸⁹ UNICEF 2011 (n 278 above).

²⁹⁰ 'Congolese children's situation' available at: www.unicef.org/.../how.../edr_congo_demrepub_fr.d (accessed: 19 June 2014).

²⁹¹ Ending Extreme Poverty in the Congo (n 282 above).

²⁹² 'Congolese children's situation' (n 290 above)

²⁹³ La Situation des Droits de l'Enfant (n 146 above).

²⁹⁴ UNICEF 2011 (n 278 above).

²⁹⁵ UNICEF, Rapport de l'Enquête Nationale sur les Enfants et Adolescents en Dehors de l'Ecole, Février 2013, 29.

Salary Increase Agreement established in February 2004 with the Government (Mbudi agreement). This agreement fixed teacher's salary at 67USD per month. Due to disruptions in the school programme as a result of the demand for wages, the 2007/2008 school year was forced to delay.²⁹⁶ As the government was not able to pay the increment in teacher's salaries, some schools took the unilateral decision to increase fees in order to supplement teachers' salaries.²⁹⁷ The burden was of course shifted to parents who had to bear the additional costs of paying the teachers. In the 2008 budget the Congolese Parliament decided to allocate 18 billion (Congolese Francs) to settle teacher's salary though the increase was still not sufficient.²⁹⁸

In order to improve the educational system to meet with the vision of the MDGs, the government of the DRC has taken different measures, including the rehabilitation of 140 schools; enacted a policy for the quarterly allocation of funds to primary and secondary public schools with the purpose to gradually reduce the fees paid by parents.²⁹⁹ The government has also increased the budget allocated to education from less than 3% to 12% as a way of prioritising the education sector.³⁰⁰

2.5. Poverty and the right to fair trial

The judiciary is afflicted by a lack of resources and capacity, and faces major challenges such as independence, political interference and corruption,³⁰¹ insufficient territorial coverage of courts and tribunals, shortage of funds for compensating victims and for providing free legal assistance and dilapidated prison infrastructure.³⁰² Seven special tribunals for children aged between 14 and 17

²⁹⁶ UNICEF 2013 (n 295 above) 89

²⁹⁷ La Situation des Droits de l'Enfant (n 146 above).

²⁹⁸ Initiative Mondiale en Faveur des Enfants Non Scolarisé, Rapport de l'Enquête Nationale sur les Enfants et Adolescents en Février 2013.

²⁹⁹ Initiative Mondiale en Faveur des Enfants Non Scolarisé (n 298 above).

³⁰⁰ Initiative Mondiale en Faveur des Enfants Non Scolarisé (n 298 above).

³⁰¹ Chêne (n 210 above) 10.

³⁰² HM Aldersey 'Disability advocacy in Kinshasa, Democratic Republic of the Congo' (2013) *Disability and Society* 786.

years have been established in the country. In Kinshasa children's courts are temporarily located in the same building as the lower courts called "tribunaux de paix", literally meaning peace tribunals and also in the high courts. The lack of resources appears to be a problem at all levels of the justice system in the country. The moment a judge pronounces judgment sentencing a child to a rehabilitation centre, the child's situation becomes worse than before because of lack of resources and infrastructure to enable proper rehabilitation of the child.³⁰³

Among the eleven Children Rehabilitation Centres existing in the DRC, many are not operational. Thus, some children get incarcerated in a unit at the Makala prison in Kinshasa where boys are separated from adult men, but where girls share the same cells with adult women.³⁰⁴ Living conditions in the centres are unbearable. The centre only provides food once a week and the rest of the time parents and family members have to bring food to the children.³⁰⁵ According to UNICEF, two years after the DRC raised the age of criminal responsibility from 16 to 18 years in 2011, an estimated 3,000 children were still detained in prisons in the country.³⁰⁶

The child protection law³⁰⁷ introduced the courts for children to insure a proper legal protection of children in the DRC. These courts are meant to insure that the child benefits from suitable administrative and sanitary measures and protection against abandonment, neglect, exploitation and physical, moral, psychological and sexual abuse.³⁰⁸ The courts have a duty to promote the rights of the child and to

³⁰³ Report on Congolese children in prison available at: <http://www.irinnews.org/report/93100/drc-children-still-in-prison-despite-law> (accessed: 12 May 2014).

³⁰⁴ Report on Congolese children in prison (n 303 above).

³⁰⁵ Report on Congolese children in prison (n 303 above).

³⁰⁶ Report on Congolese children in prison (n 303 above).

³⁰⁷ Law no 09/001 of 10 January 2009

³⁰⁸ UNICEF 'RDC: L'UNICEF salue la nomination de nouveaux juges pour enfants' available at: http://www.unicef.org/wcaro/french/4501_7412.html (accessed: 28 October 2015).

raise awareness about children's rights and also encourage children participation matters concerning them.³⁰⁹

Such an ambitious program can only be successful if the children's courts are established throughout the country, as article 84 of the child protection law intends for one children's court to be established in every region and in every city. Accordingly, the number of courts envisaged for the whole country is supposed to sum up to about 1062. For this to become effective, some conditions needs to be met like the infrastructure, trained staffs (judges, clerks, secretaries, social workers, psychologists, special brigade for the protection of the child), as well as adequate rehabilitation centers. Currently, only one children's court is effective in each of the 10 former provinces and four in Kinshasa.³¹⁰

The provinces of Kasai Occidental, Kasai oriental, Eastern province and South Kivu will host their first judges after those of Bas-Congo, Bandundu, North Kivu, Equateur, Kinshasa and the Ituri districts. Because of the volume of cases handled by the children's courts, more judges have been assigned to the province of Kinshasa. A second court is planned to be created soon in the province of Bandundu.³¹¹ The creation of the children's courts across the country constitutes a significant progress after much advocacy by all partners working in the area of promotion justice for children.³¹²

It would take several years before the DRC would be able to create the required number of courts for children in the entire national territory due to challenges relating to infrastructure, financing and human resources. Meanwhile, those that are already operational are not even appropriately equipped. The court for children at Katanga has a spacious building but there is only one judge president

³⁰⁹ UNICEF (n 308 above).

³¹⁰ UNICEF (n 308 above).

³¹¹ UNICEF (n 308 above).

³¹² UNICEF (n 308 above).

while the court needs the presence of at least three judges.³¹³ The one at Mbandaka is experiencing financial difficulties. According to the president of the court, Andre Flory the court has never received financial support since its creation in April 2011. He indicates that the court lacks a proper place where delinquent children could be kept and so they are mostly placed with foster families from where they often escape to continue their unlawful activities.³¹⁴

2.6. Poverty and child prostitution

Poverty drives thousands of children onto the streets.³¹⁵ An estimated 30,000 children live on the country's streets in the capital city of Kinshasa. The majority of street children are girls working as prostitutes, some of them just as old as 10 years. This phenomenon of child prostitution is rampant in Kinshasa because in urban areas money is indispensable for every need,³¹⁶ whereas in the rural areas people make a living through hunting, gathering, fishing and farming.³¹⁷

2.7. Poverty and the phenomenon of children accused of witchcraft

Families who cannot fend for themselves frequently take refuge in the belief that their bad luck is rooted in the witchcraft of their children or other relatives and even neighbours.³¹⁸ A child accused of witchcraft becomes the victim of severe violence, abuse and neglect from parents, church leaders, witchdoctors and the community.³¹⁹ The child is often beaten, burned, abandoned, trafficked, illegally

³¹³ Le Congolais 'Tribunal pour enfants de Lubumbashi: Des juges en nombre insuffisant' available at:

<http://www.lecongolais.cd/tribunal-pour-enfants-de-lubumbashi-des-juges-en-nombre-insuffisant> (accessed: 28 October 2015).

³¹⁴ DESC-WONDO 'La justice congolaise dans la perspective de la décentralisation - Jean-Bosco Kongolo' available at: <http://desc-wondo.org/la-justice-congolaise-dans-la-perspective-de-la-decentralisation-jean-bosco-kongolo/#sthash.NSoG4zs8.dpuf> (accessed: 28 October 2015).

³¹⁵ DRC information available at: http://www.unicef.org/infobycountry/drcongo_58942.html (accessed: 19 June 2014).

³¹⁶ DRC information (n 307 above).

³¹⁷ Saskia, van Hoyweghen & Smis (n 75 above) 575-581.

³¹⁸ S Abate 'Children of the Congo: Memo to the concerned' (2011) *Child Survival Journal* 11.

³¹⁹ Abate (n 318 above) 11.

detained, forced to starvation, forced to participate in psychologically damaging exorcism ceremonies. Parents and church leaders perform such ill-treatment with the pretext to deliver the child from the witch spirit, which sometimes may lead to the death of the child.³²⁰ In Kinshasa, of the 15,000 children living on the streets, about 70% of them have been accused of witchcraft.³²¹ Even though there are numerous child-protection laws, many people, comprising government officials, believe in the idea of witchcraft and therefore, allow the illegal practice to be perpetuated without penalties.³²²

2.8. Poverty and the phenomenon of children involved in armed conflict

In the eastern parts of the DRC, militia youth claim that “with a gun you can eat”.³²³ Poverty thus drives many children to join the army or rebel troops like in the case of the child soldiers called “*kadogos*” who helped Laurent Desire Kabila to overthrow Mobutu.³²⁴ The National Commission for the Implementation of the Disarmament Demobilisation and Reintegration programme in Congo (CONADER) was established and charged with the administration of the national DDR programme (PNDDR).³²⁵ Many institutions, both public and private have offered to help those children trying to re-instate them with their family, school or training institution but the complexity of the situation has proved overwhelming.³²⁶

2.9. Poverty and the rights of children living with disability

The CRC is the only binding international human rights treaty that specifically refers to disability and prohibits discrimination against children with disabilities.³²⁷

³²⁰ Abate (n 318 above) 11.

³²¹ Abate (n 318 above) 10.

³²² Abate (n 318 above) 10.

³²³ Saskia, van Hoyweghen & Smis (n 75 above) 575-581.

³²⁴ Saskia, van Hoyweghen & Smis (n 75 above) 575-581.

³²⁵ Alderseya (n 302 above) 786.

³²⁶ Saskia, van Hoyweghen & Smis (n 75 above) 575-581.

³²⁷ L Gerntholtz, K Grant & J Hanass-Hancock “Disability rights and HIV/AIDS in Eastern and Southern Africa: A review of international, regional and national commitments on disability rights in the context of HIV/ AIDS in eastern and southern Africa” (2010) *HEARD, UKZN*.

With the enactment of the 2006 United Nations Convention on the Rights of Persons with Disabilities (CRPD), governments around the world have increasingly created national policies to promote and protect the rights of children with disabilities.³²⁸ The DRC has not yet signed or ratified the CRPD, but the rights of people with disabilities have been included in the 2006 Constitution.³²⁹ Article 49 of the Constitution provides special measures to protect the rights and needs and encourages the participation of persons with disabilities in developing the laws for the protection of their rights.³³⁰ In reality, the government of the DRC does not really have concern for persons with disabilities.³³¹

Actually, war and poverty justify the high incidence of disabilities in Congo. Due to protein-energetic malnutrition, vitamin A deficiency, iodine deficiency or polio many people, especially children became impaired. With the on-going war, the DRC is positioned to have many more citizens with physical disability.³³² Although an accurate measurement of disability prevalence in the DRC does not exist, the World Report on Disability shows a global prevalence rate of between 10% and 15% of the population. Based on these estimates, the DRC may have between seven million and eleven million citizens living with disabilities.³³³

3. Conclusion

In this chapter, I examined the challenges that poverty poses to the implementation of the rights of the child in the DRC. Poverty interferes with many of the universally recognised human rights that are guaranteed to children to the extent that some of the rights have simply become nonexistent. As I endeavoured

³²⁸ Aldersey (n 302 above) 786.

³²⁹ Aldersey (n 302 above) 786.

³³⁰ Gertholtz, Grant & Hanass-Hancock (n 327 above).

³³¹ Aldersey (n 302 above) 786

³³² MP Lutala *et al* 'Features of integrated professional training for physically disabled people in a community-based rehabilitation programme in the rural and urban areas of Congo' (2010) 52:3 *SA Fam Pract* 240-244.

³³³ Aldersey (n 302 above) 787.

to illustrate, poverty does not only pose a challenge to the realisation of children's rights, it also has a huge negative impact on their lives, wellbeing and upbringing. In an effort to give a true picture of the situation that children in the DRC are confronted with, I examined a number of the major category of rights that are guaranteed to children in relation to how they are negatively impacted by extreme levels of poverty in the country.

The sacrosanct right to life remains one of the most threatened of children's rights in the DRC as a result of extreme levels of infant mortality, caused by preventable diseases which unfortunately cannot readily be redressed because of lack of resources. A number of other socio-economic rights which directly relate to the right to life such as the rights to health, improved standard of living, food and clean water as well as education are also seriously implicated by acute poverty in the DRC, thus posing an enormous challenge to ensuring the welfare of children and in protecting their inalienable human rights. Besides the impact of poverty on the right to life and children's socio-economic entitlements, I also pointed out a number of other societal issues driven by poverty such as lack of a sufficiently protective legal system, child prostitution, witch-hunting, involvement in armed conflict as well as disability that impact negatively on the realisation of the rights of the child in the DRC.

Chapter Six

Conclusion and Recommendations

1. Concluding Remarks

The overall situation of children in the Democratic Republic of Congo (DRC) is a matter of great concern relating particularly to issues about food, housing, education and other basic necessities. In this study I have endeavoured to show that poverty impacts negatively on the rights of children. In terms of recognition and protection of the rights and welfare of the child, I identified a range of international and regional treaties as well as national legislations that make provision for the protection of the rights of the child in the DRC. However, many challenges stand in the way for the effective implementation of the universally recognised human rights guaranteed to children in the DRC, who remain exposed to some of the worst instances of human rights abuse in the world. I identified that the many challenges that inhibit the effective realisation of children's rights in the DRC are exacerbated by extreme levels of poverty in the country.

In this connection, I proceeded to investigate the principal causes of poverty, which I figured out could be grouped as both internal and external. I illustrated that the internal causes of poverty which include, lack of good governance, inept policies, corruption, unfair distribution of resources and the conflict in the eastern provinces pose serious challenges to the realisation of the rights of the child. This happens because the political system is designed to privilege political elites to the detriment of the livelihood needs of children.³³⁴ To a lesser but quite considerable extent, external causes resulting from the activities of multinational entities as well as unfair international trade policies also impact negatively on the poverty

³³⁴ See sub-sects 2.1; 2.2 and 2.3 of chapter 3.

situation and therefore also limit the DRC's ability to deal with human rights in general and the rights of the child in particular.³³⁵

On this note, I went further to examine the extent to which poverty impacts on the realisation of the rights of the child in the DRC. Poverty in the DRC is multidimensional and therefore also has an extensive negative impact on the survival and livelihood prospects for children in the country. I found that the extreme levels of poverty in the DRC impacts adversely on children's socio-economic as well as civic rights, such as the rights to life, health, improved standard of living, education and fair trial.³³⁶ A wide range of societal issues such as prostitution, witchcraft, involvement in armed conflict and disability³³⁷ also affect the welfare and survival of children. Besides the fact that poverty impacts negatively on the realisation of the rights of the child, the wide-ranging long term effects of neglecting children's welfare poses an even greater threat to the sustainable development prospects of Congolese society as a whole. To be able to redress the situation based on the findings of this study, I make the following recommendations.

2. Recommendations

The realisation of children's rights in the DRC needs a pragmatic policy and legislative framework that does not only provide abstract guarantees but one which makes provision for effective and efficient implementation. The law regulating social assistance, for example, is inadequate and out-dated. The Social Assistance Act dates back to 1992. Although a White Paper for social welfare was published as far back as 1997, legislation emanating from it has yet to see the light of day. In the particular context of human rights law, it has been observed that providing for constitutional rights as those enshrined in the Constitution of the DRC that are capable of alleviating poverty is one thing but the actual realisation of

³³⁵ See sub-sects 2.4; and 2.5 of chapter 3.

³³⁶ See sub-sects 2.1; 2.2; 2.3 and 2.4 of Charter 4.

³³⁷ See sub-sects 2.6; 2.7; 2.8 and 2.9 of Chapter 4.

such rights is another. In this regard, the government of the DRC needs to direct its focus more on pragmatic implementation strategies that prioritise the rights that are universally guaranteed to children.

The rule of law is necessary for the advancement of human rights. Relating to drafting legislation, the state must remove some provisions of laws and regulations that are in conflict with the CRC, in order to promote and improve domestic legal structures on children's rights and at the same time maintain the balance between Congolese traditional values and modern thinking, in the spirit of the African Charter on the Rights and Welfare of the Child. For example, some articles of the Family Code need to be changed or removed. The government of the DRC needs to ensure the integration of the CRC into domestic law, to ensure the effective implementation of those provisions and to put in place control and evaluation measures in order to reinforce the implementation of children's rights. At the executive level the state must ensure to conform and respect the laws and regulations relating to children, which entails the establishment of suitable structures to allow executive supervision and control. The government needs to create an enabling environment for the rule of law to apply, where everybody, including members of government is subject to the law.

The government of the DRC needs to create opportunities for access to justice, especially through representative action on issues relating to children's rights. This is essential because in spite of the guarantees on children's rights, the daily reality is that cases of violation are rarely taken to court despite the domestication of provisions of the CRC into national legislation. The fact that the DRC has acceded to and ratified the CRC and the ACRWC does not automatically translate into implementation. It is necessary that the government acts in conformity with the spirit of the CRC and the ACRWC.

At the level of the judiciary, the state needs to ensure that children are adequately protected by the law and that criminal law is applied in punishing offenders of children's rights. Bearing in mind the principle of the "best interest of

the child”, the juvenile justice system needs to adhere to the minimum rules for the administration of juvenile justice and the provisions of the CRC. Considering that the violation of children’s rights may also put their livelihood at stake, the judiciary needs to play an activist role in ensuring adequate protection of every single child in the DRC. This entails encouraging the entire Congolese population to bring cases relating to violation of children’s rights to court for adjudication. The government needs to speed up the process of creating children’s courts throughout the country in order to facilitate access to justice for children. Monitoring mechanisms also need to be put in place to check corruption and partiality in the adjudication of cases involving children.

Human rights law envisages an important role in poverty eradication and thus in guaranteeing protection of the rights and welfare of children in the DRC. This is only possible with informed knowledge about the relevant rights and the modalities for their enforcement. Owing to the widespread ignorance in the country on human rights issues and the need for government accountability on its treaty obligations, there is a great need for widespread human rights education campaigns and dissemination of relevant information, particularly relating to the implementation of the rights of the child. There is a serious need to educate the public, not only on the Bill of Rights enshrined in the Constitution and the processes and mechanisms for enforcement, but also on the existence and functions of the range of entitlements and institutions and how they are relevant and applicable for protecting children and for promoting their welfare. In the words of Nelson Mandela, ‘the experience of South Africans and of all peoples everywhere has taught that in order for the rights and freedoms embodied in constitutions to be realised, they must become a part of the everyday reality of citizens’ lives, and the institutions protecting them must be deeply entrenched’.³³⁸

To ensure broad-based knowledge of the rights of the child in the DRC, the text of the treaty instruments that make recognition and protection of the rights of the child must be translated into the four national languages namely Lingala, Swahili,

³³⁸ Mandela, 1998.

Kikongo, Tshiluba, if possible with images so that it is understandable by children and the predominantly illiterate adult population. The translated documents must then widely be disseminated throughout the entire DRC including in all schools, hospitals, churches and public places. Information about children's rights also need to be broadcast on television and radio, possibly in the local languages so that it creates more broad-based awareness.

Besides legislative measures, the government of the DRC needs to focus more attention on policy reforms and programmes for implementation. The realisation of children's rights requires the government of the DRC to take positive action necessitating the deployment of large amounts of resources, which unfortunately a large portion of such resources is misappropriated through corruption. This implies that if the rights of the child in the DRC are to be taken seriously, there is need for a mechanism to check corruption as well as an effective complaints mechanism to enable citizens to report corruption cases. This would help to resuscitate the resource base that could enable the realisation of children's rights.

As Frans Viljoen has pointed out, it is illogical to seek to improve people's lives through rights protection only.³³⁹ In accordance, the politics of child protection must walk together with the fight against poverty. Without a strategy to fight poverty, all the instruments and laws that make provision for the protection of the socio-economic rights of children may seem like simple theories without any real or lasting impact. Thus, the government needs to prioritise socio-economic rights in order that most of the country's resources could be directed towards combating poverty and thereby ensure effective realisation of the children's rights and welfare. Relating to dealing with the specific issues affecting the rights and welfare of children in the DRC, the following recommendations need to be considered seriously:

- To fight against the problems of access to water, the state needs to provide safe water in each village and neighbourhood, drilling water wells in each

³³⁹ F Viljoen *Beyond the Law: Multi-Disciplinary Perspectives on Human Rights* (2012) PULP 182-183.

village and neighbourhood and rehabilitation of the water supply system, ensure the regular supply and rational management of fuels and the revitalisation of national rural water services.

- The government needs to adopt and enforce a free and compulsory education policy at primary school level to ensure that every child in the DRC obtains at least elementary education. There is need for the government to augment teacher's salaries to ensure improvement of the living conditions of teachers by reducing some advantages given to politicians and parliamentarians, if necessary and to also rehabilitate the entire educational system in the country to meet with the standards envisaged by the Millennium Development Goals.
- Relating to health care, there is need for the construction, rehabilitation and equipment of qualified and competent public health institutions, provision of materials and drugs, the rehabilitation of health facilities and the improvement in the living standard of health personnel.
- Concerning children with disabilities, the Congolese government needs to ratify the Convention on the Rights of People with Disability in order to guarantee greater and more specific protection for children with disabilities in the DRC. The government also needs to help in the rehabilitation of those who became physically disabled because of war, without forgetting to create schools or adapt existing schools with facilities to accommodate children with disabilities.
- In order to address the problem of extreme poverty, which impacts on the realisation of children's rights, the government needs to stimulate the creation of employment within the public and private sectors to ensure that parents can find work and therefore, be able to provide the most basic needs for their children.

- Concerning the on-going conflict in the eastern region, the government together with the international community need to work together in taking concrete actions to bring the war that has claimed the lives and compromised the opportunities of hundreds of thousands of Congolese children to an end. The international community has a huge role to play in effectively intervening to save Congolese children by ending the war that has been going on in the country for decades.
- As a poverty eradication measure, it is important for the government of the DRC to promote the business climate in order to encourage foreign investment. This must however be done with precaution to ensure adequate protection of the Congolese population at large and children in particular against the exploitative tendencies of powerful investors.
- The government has a huge responsibility to put an end to impunity and corruption; promote human rights in general and children's rights in particular. It also has the obligation to create more courts and tribunals in each territory to ensure adequate protection for children's rights. The success of these strategies is anticipated to ensure adequate protection, improved welfare for children and therefore, requires the participation and involvement of all the active forces of the Congolese society such as local leaders, government officials and civil society.
- The role of civil society in the whole process cannot be over-emphasised. A vibrant civil society, comprising of children's rights non-governmental organisations (NGOs), local community organisations, churches and other community groups can play a crucial 'watch-dog' role in articulating the plight of the poor and in monitoring the state initiatives to ensure adequate protection of the rights and welfare of the child.

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