

**SOCIAL-LEGAL IMPLICATIONS OF VIOLENCE AGAINST WOMEN: CASE  
STUDY OF THE NORTH AND SOUTH KIVU PROVINCES IN  
DEMOCRATIC REPUBLIC OF CONGO DURING THE ARMED  
CONFLICT**

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**In Partial fulfillment of the Requirements for the Award of Masters Degree  
in Law**

**BY**

**KAHINDO ZAWADI MISSY**

**LLM-P/42783/92/DF**

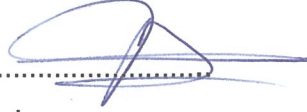
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## DECLARATION

This thesis is my original work and has not been presented for a degree or any other academic award in any university or institution of learning

KAMINDO ZANADI MISSY




Name and signature of candidate

18<sup>th</sup> June 2012

Date

## DECLARATION B

I confirm that the work reported in this thesis was carried out by the candidate under my supervision.

Godard Busingye   
.....  
Name and signature of supervisor

20/6/12  
.....  
Date

## APPROVAL SHEET

This thesis report entitled "Social-legal implication of violence against women: case study of the North and South Kivu Provinces in Democratic Republic of Congo during the Armed Conflict 2004" was prepared and submitted by myself, KAHINDO ZAWADI Missy in partial fulfilment of the requirements for the award of a Master of Laws Degree has been examined and approved by the panel on oral examination with a grade of PASSED.

.....  
Name and signature of Chairman

Godard Busingye  
Name and signature of Supervisor

Godard Busingye  
Name and signature of Panel

.....  
Name and signature of Panel

.....  
Name and signature of Panel

Date of Comprehensive Examination: .....

Grade: .....

## DEDICATION

This work of research dedicated to my parents Mr Deogratias KATEMBO LOLWAKO and my mother Sabine KAHINDO KAGHOMA, to my late uncle Sylvester PALUKU LOLWAKO, my elder brother Richard MUMBERE MUSAVULI, brothers and sisters and all my friends.

Signed.....



Date .....

18<sup>th</sup> June 2012

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To all the above named and those that I could not name because of space, I am truly grateful for their contributions.

## **ABBREVIATIONS**

AFDL : Allied Democratic Forces for the Liberation of Congo  
APESKI: Health Professional's Association for Human Rights  
CEDAW: The Convention on the Elimination of All Forms of Discrimination against Women  
CNF: National Council of Women  
DRC: Democratic Republic of Congo  
FDLR: Forces Démocratiques de Libération du Rwanda  
FNI : Lendu Militia  
HIV : Human Immuno Virus  
AIDS : Acquired Immune Deficiency Syndrome  
MLC : Mouvement de Libération du Congo  
MONUC : Mission de l'Organisation des Nations Unies au Congo  
MPR : Mouvement Populaire de la Révolution  
MSF: Médecin Sans Frontières  
NGOs: Non-Governmental Organization  
OCDH: Congolese Observatory of Human Rights  
RCD: Rassemblement Congolais pour la Démocratie  
UN: Nations Union  
UNFPA: United Nations Fund for Population Activities  
UNICEF: United Nations International Children's Emergency Fund  
VAW: Violence Against Women

## **INTERNATIONAL INSTRUMENTS**

International Signatures and Ratifications by the DRC of Human Rights Treaties

The Convention on the Elimination of All Forms of Discrimination against Women.

Status of International Treaties in Domestic Law

The International Covenant on Civil and Political Rights,

The International Covenant on Economic, Social and Cultural Rights,

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, and both of its Optional Protocols,

The Rome Statute of the International Criminal Court

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



## **LIST OF NATIONAL LEGISLATION**

The Family Code.

The Penal Code.

The Labour Code.

The Status of Women and Girls in the DRC

The Third Republic's Constitution

The National Council of Women

The Constitution of the Democratic Republic of Congo

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## **ABSTRACT**

This study examined aspects of sexual violence in the North and South Kivu provinces of DRC during armed conflict. Literature was reviewed based on the various sub themes; in all its aspects it alluded to sexual violence as a practice that emanates from unequal power relations and discrimination between men and women in all spheres of life. The study employed a descriptive study design with a triangulation of qualitative methods of data collection and analysis. The qualitative methods involved, in depth interviews with key informants, observation, documentation, and focus group discussions.

The recommendations in terms of measures to combat sexual violence against women included in activities for combating violence, transforming socio-cultural norms, the need for new legislation, domestic violence legislation, and a transformation of traditional legal system, all this aimed at improving the status of the women within society and to enable them participate meaningfully in the development process.

## **CHAPTER ONE**

### **GENERAL BACKGROUND**

#### **1.0 Introduction**

The North and South Kivu Provinces are located in Eastern part of Democratic Republic of Congo (DRC); bordering Rwanda, Burundi, Tanzania and Uganda. They experience a tropical climate that is good for human settlement and agriculture. The provinces are also richly endowed with mineral and other wealth: gold, diamond, coltan, cassiterite, tree for timber, Virunga National Park with a variety of animal species. The area attracts many tourists annually. They are densely populated. The density is 200 persons per square kilometre. The people in these provinces are hard working. They are largely the Nande, Bahunde, Banyaka, Bakumu, Banyabwisha, Basi, Barenga, Babembe and some other smaller communities.

#### **I.1 Background to the Conflict in the Kivu Provinces**

The armed conflict in the Kivu Provinces which has spurred an increase in crimes of sexual violence against women in the Eastern Congo is the local manifestation of a complex regional conflict which began in 1996. At one time it involved seven nations and many groups of armed combatants. The situation in DRC, despite democratic elections and the approval of a Constitution by public referendum in 2006, continues to be one of the gravest humanitarian crises and women are wedged at its centre.<sup>1</sup>

The recent history of the DRC is marked by two major armed conflicts, involving a multitude of actors. The first was an aftermath of the 1994 Rwandan genocide, when Rwanda, supported by Uganda, invaded the DRC in 1996. The second phase of the armed conflict erupted in 1998, this time putting Laurent Kabila's forces, supported by several African countries, including Zimbabwe, Angola and Namibia, against an alliance of armed groups supported by Rwanda, Uganda and Burundi.

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<sup>1</sup> *Referendum tenue à Goma en 2006 sur concernant la situation critique de violences faites à la femme en RDC.*

Control over the rich natural resources of this poverty stricken country is central to the conflicts.<sup>2</sup>

Between four to five million people died as a result of the direct and indirect consequences of these armed conflicts. Since the election, armed hostilities involving the State security forces, dissident factions of the Congolese Army (FARDC) and various non-State armed groups are continuing to take lives. The Eastern Congo region is particularly unstable due to the presence of estimated 6,000 to 7,000 members of foreign non-State armed groups, including the Forces *Démocratiques de Libération du Rwanda* (FDLR).<sup>3</sup>

During the armed conflicts, a lot of people were massacred, displaced and many women raped. To date no action has been taken to bring those who committed these crimes to justice. The UN made effort to document these war crimes but has failed to complete its work. After a team of experts appointed by the Secretary-General delivered a Report on June 30, 1998 to the Security Council implicating Congolese and Rwandan soldiers in crimes against humanity against and possible genocide of displaced Rwandans, and charged the Congolese and Rwandan governments with carrying forward the investigation.<sup>4</sup> None of these countries has done so.

In January 2008, a Conference on Peace, Security and Development for the Kivu Provinces led to the signing of the 23 January, 2008 "Act of Engagement" by Congolese armed groups and to the creation of the government-led *Amani* Programme for Security, Pacification, Stabilization and Reconstruction of the Kivus. In spite of these promising initiatives, the situation in the Kivus has not fundamentally improved and there are well grounded reasons to believe that the

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<sup>2</sup> See Reports of the UN Panel of Experts on the Illegal Exploitation of Natural Resources and other Forms of Wealth of the Democratic Republic of Congo (S/2001/357 and S/2002/1146).

<sup>3</sup> See Human Rights Watch, "What Kabila is Hiding, Civilian Killings and Impunity in Congo," *A Human Rights Watch Report*, vol. 9, no. 5(A), October, 1997 and Human Rights Watch, "Uncertain Course: Transition and Human Rights Violations in the Congo," *A Human Rights Watch Report*, vol. 9, no. 9(A), December, 1997 (both also available in French and available on the Human Rights Watch web site: <http://www.hrw.org>).

<sup>4</sup> See Presidential Statement dated July 13, 1998 S/PRST/1998/20).

hostilities and human rights violations are continuing and might continue to escalate if urgent action is not taken. The continued gender based violence targeting largely women in the DRC takes place against such a backdrop.

While women in the DRC encounter violence of all forms, sexual violence has become the defining feature of the country's turmoil. Extreme levels of sexual violence, perpetrated by foreign non-State armed groups, State security forces and civilians, persist in the areas of Eastern Congo where fighting is continuing. However, sexual violence is not restricted to zones of armed conflict; it is rampant in the whole country.<sup>5</sup>

There is no comprehensive data about the extent of sexual violence in the country, but NGOs and UN Reports give a sense of its gravity. For example, according to MONUC, there were 14,000 and 13,000 estimated rapes in 2005 and 2006. UNICEF and partners recorded 12,226 victims of sexual violence in the two Kivus from January to August 2007.<sup>6</sup> Women are also subjected to sexual abuse under detention. In the first six months of 2007, MONUC documented 16 such cases in prisons, police stations or other detention facilities. Reports from Kinshasa Central Prison in Makala also indicate that prison guards have forced female detainees into prostitution.

What is worrisome is that the number of rapes committed by civilians is on the rise. Reports show that 40 to 60 per cent of the rapes are now committed by civilians.<sup>7</sup> While some of these perpetrators are said to be demobilized militiamen, who were reintegrated without any rehabilitation measures, others are ordinary men who have

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<sup>5</sup> See the report of impunity and sexual violence in the DRC, May 2008, by the Swedish Foundation for Human Rights.

<sup>6</sup> See Humanitarian Action Plan for the DRC, December 2007.

<sup>7</sup> See report by the Secretary-General on the DRC, 3 July 2008 (S/2008/433) and report of the International Parliamentary Expert mission addressing impunity for sexual crimes in the DRC, Justice, Impunity and Sexual Violence in the DRC, May 2008, by the Swedish Foundation for Human Rights and the All Party Parliamentary Group on the Great Lakes Region from Africa. See also Amnesty International' report 'No End to war on women and children, North Kivu, DRC, July 2008, noting that an NGO network active mainly in Masisi and Goma areas recorded 224 new rape cases in the first three months of 2008, of which 30% were attributed to armed group fighters, 8% to FARDC soldiers and the rest to civilians.



adopted wartime conduct simply because it is possible to do so. Clearly, the atrocities of the war, committed in absolute impunity, have eroded all social sanctions in the Congolese society, thereby unleashing an unrestrained transgression on women's bodies. As one woman's rights activist explained: "In the past, burglars would rob a house and then leave. Today, they will first rape all the women in the house and then steal".<sup>8</sup>

The victims are increasingly young girls. Violence in some cases is motivated by the myth that raping a virgin cures HIV and AIDS. The Hospital of *Médecins sans Frontières* in Bunia (Ituri), for example, reported that one in six patients (17 per cent) who was treated at the hospital for rape -related injuries in the first half of 2007 was younger than 12 years of age.

While sexual violence continues to terrorize women in the DRC, there has been a heightened threat on local women who have been working under dire conditions to provide support for victims and raise international awareness of the human rights situation in the country. The lives of these women and their families are at extreme risk and require that legislative and institutional measures be taken to address the threats and violence they face, and ensure a protective environment for their work.

The complexity and multidimensionality of the conflict has caused the progressive deterioration of the social fabric and made very difficult its resolution. Apart from economic crisis and the ongoing collapse of the State, the main challenge for the peace process is represented by the social fragmentation associated with widespread violence and the so called "private indirect government".<sup>9</sup> The North and South Kivu Provinces and Ituri are at the centre of the armed conflict. In these regions, the proliferation of militias and rebel armies has led to continued fights and human rights abuses (above all, abuses concerning women and children) have become ordinary.

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<sup>8</sup> *ibid*

<sup>9</sup> Bayart (2000). *The democratization of Violence*, p.8.

The armed conflict in this area has a relatively long history dating to the early 1990s. It is believed to have started in Masisi, a region North of Goma in the North Kivu province. In 1991 the first clashes exploded between the “autochthonous groups” and the immigrants coming from neighbouring Rwanda, the so-called Banyarwanda, a mix of Hutu and Tutsi. In 1993, the intervention of Division *Spéciale Présidentielle* (DSP), Mobutu’s elite force, led to a delicate truce. Nevertheless, the following year the Rwandan genocide definitively destabilized the entire region. More than a million Hutu left Rwanda and took shelter in Kivu, fearing the reprisal of the Rwandan Patriotic Front, the filo-Tutsi armed group led by Paul Kagame. In the Kivu refugees camps the *Interahamwe* militias, responsible for the Tutsi genocide, quickly reorganised themselves and took control of humanitarian aid. In the following months, the *Interahamwe* allied with local Congolese militias (Mayi-Mayi) and started to persecute the Tutsi population living in Kivu: previous hate towards Banyarwanda was partially replaced by an exacerbation of the anti-Tutsi feeling, provoking new massacres.<sup>10</sup>

The conflict in Kivu accelerated the dissolution of Mobutu’s regime. In August 1996, Rwanda decided to remove by force all the refugee camps around Goma and Bukavu. At the same time, Rwanda and Uganda sustained the organisation of an armed movement, the Allied Democratic Forces for the Liberation of Congo (*Alliance des Forces Démocratiques pour la Libération du Congo* (AFDL), which aimed to overthrow Mobutu’s regime. Laurent-Désiré Kabila, a former Congolese rebel, became the leader of the AFDL, and started his military campaign against Mobutu’s troops moving from the Eastern regions towards the capital. The AFDL easily defeated the government army and conquered Kinshasa in July 1997: at the time Kabila proclaimed himself President of the Democratic Republic of Congo (DRC), the new name of former Zaire.<sup>11</sup>

As a result of a successful campaign of the AFDL, the alliance between Kabila, Rwanda and Uganda quickly deteriorated. The new Congolese president accused his

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<sup>10</sup> Amnesty International Report No End to war on Women and Children, North Kivu, DRC, July 2008.

<sup>11</sup> See the report of the Secretary-General on the DRC, 5 August 2007 (S/2007/433), how stop war and sexual crimes in the DRC.

former allies of plundering the country's natural resources and in July 1998 he compelled General James Kabarebe—a Rwandan Tutsi who had led the AFDL campaign and was at the head of the new Congolese army to resign. Some days later, a new rebel movement started to wage war in Kivu, the *Rassemblement Congolais pour la Démocratie* (RCD), mainly supported by Rwanda. The RCD attempt to conquer Kinshasa from Kitona— a military camp south of the capital – was blocked by the prompt intervention of Angola which saved Kabila's regime.

Nevertheless the rebels occupied Goma and Bukavu establishing themselves firmly in the eastern regions, controlling also Kisangani and its diamond traffic. Since then, Kivu's political and military history has coincided with that of the RCD and its numerous internal splits which gave life to a multitude of rebel movements and militias. Among the most active rebel movements we should mention are the RCD-Goma (supported by Rwanda), the RCD-Kisangani (sustained by Uganda) and the MLC (Mouvement de Libération du Congo, based in the Equator region and led by Jean-Pierre Bemba with the support of Uganda).<sup>12</sup>

In April 2003 a transitional government took power in Kinshasa but the armed conflict in the Eastern regions did not cease. Since then, many events have occurred weakening the fragile peace process and bringing new suffering to the population. In May 2003, the conflict between Lendu and Hema militias in the Ituri province degenerated into a reciprocal attempt at genocide. In May 2004 the troops of Jules Mutebutsi and Laurent Nkunda, two former Generals of RCD-Goma, assaulted and plundered Bukavu massacring civilians and raping tens of women. In February 2005, new clashes between Mayi-Mayi militias and other armed groups spread out in Ituri provoked the flight of about 15.000 refugees towards Uganda.<sup>13</sup>

These are just a few examples of a long and uninterrupted series of atrocities and mass crimes. The UN mission (one of the most expensive in the history of the UN)

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<sup>12</sup> Human Rights Watch, *The War Within the War*, June 2002, p.3

<sup>13</sup> Human Rights Watch interview, Bujumbura, July 2001. See also the report by the International Crisis Group, "Disarmament in the Congo: Investing in Conflict Prevention," the Congo government continues to provide material support for these groups, p.4-5.

continues to fail to disarm local militias and end violence against civilians. In some cases, MONUC troops were attacked by the armed groups and some of them are either killed or injured.

Similar events occurred in June 2005 and a member of MSF's staff was kidnapped. This confused scenario and the ineffectiveness of UN action contribute to generate a sense of widespread frustration and mistrust.<sup>14</sup> The armed conflict in these provinces is largely pegged on natural resources control. However, there are also political issues at play.

Parallel to the natural resources and land struggle, there was an earlier conflict about citizenship. In January 1972, at the height of his power, General Bisengimana had managed to get the political Office of the *Mouvement Populaire de la Revolution* (MPR) to pass a citizenship decree whereby all persons originating from Rwanda, Burundi and residing on them Belgian Congolese territory in or before January 1950 were automatically Zairian citizens (Article 15)<sup>15</sup>. When Bisengimana fell from power in 1977 there was intense pressure to change the law, and a new one was passed on June 29<sup>th</sup>, 1981 (Law 81, 2002), abrogating the famous Article 15. Although new law had vague provisions for the eventual acquisition of Zairian nationality, it left this important point to political arbitrariness. The results were immediate. In 1987 elections could not be organized in North-Kivu because nobody was capable of saying exactly who was not Zairian in order to draw polling lists.

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<sup>14</sup> International Rescue Committee, Mortality in Eastern Democratic Republic of Congo, Results from Eleven Mortality Surveys, 2001. The full report can be found on the IRC web site: [www.theIRC.org/mortality.cfm](http://www.theIRC.org/mortality.cfm), accessed May 22, 2002). The situation is so bad that IRC found that in some districts an estimated 75 percent of children have died or will die before their second birthday-children who have known nothing but war in their short lives.

<sup>15</sup> See, for example, "Casualties of War: Civilians, Rule of Law, and Democratic Freedoms," *A Human Rights Watch Report*, vol. 11, no. 1(A), February 1999; "Eastern Congo Ravaged: Killing Civilians and Silencing Protest," *A Human Rights Watch Report*, vol.12, no 3 (A), May 2000; "Uganda in Eastern DRC: Fuelling political and ethnic strife," *A Human Rights Watch Report*, vol. 13, No. 2(A), March 2001; and "Reluctant Recruits: Children and Adults Forcibly Recruited for Military Service in North Kivu," *A Human Rights Watch Report*, vol. 13, No. 3(A), May 2001 (all also available in French and available on the Human Rights Watch web site: <http://www.hrw.org>).

Local Banande worthies counterattacked and tried to cut down Banyarwanda landholdings and businesses. The autochthons sent delegate to the Conference National Souveraine in Kinshasa and managed to bar a the Assembly under the pretext that they were not Zairians (Congolese); then they used the decisions to completely overhaul the local administration in North-Kivu, putting new judges and police in place who were Banande, Bahunde or Banyanga. The whole justice and repressive apparatus then become slanted the Nanyarwanda.<sup>16</sup>

In the meantime, war had broken out in neighbouring Rwanda and the Tutsi-Hutu conflict there was carried over the Kivu. Then later Paul Kagame took over the power in Rwanda in 1994; the majority of Tutsi came from Congo to Rwanda where they were secured. Two years later, they stated a rebellion against Mobutu's government; this rebellion was led by Tutsi who were staying at Mulenge Mountain in South-Kivu; then the Tutsi who had fled from Congo to Rwanda came and joined the rebellion in supporting Laurent Desire Kabila.<sup>17</sup> The problem of violence against women, particularly sexual violence has therefore been an on-going for quite a long time in Eastern DRC.

## **I.2 Statement of the problem of study**

The violence against women is one of the dark sides of the society life, especially in the family life, which is inflicted on the family's weakest members, women, children, the very old and the disabled. It manifests itself in habitual physical abuse, psychological torture, deprivation of basic needs, and sexual molestation, among other punitive acts which involves violent actions on especially the female gender. There are rooted in the aspect of un-equal power relations between men and women.

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<sup>16</sup> The *Interahamwe* (meaning literally "those who stand or attack together" in Kinyarwanda) officially referred to the youth wing of the former ruling party, the *Mouvement Republicain Nationale Démocratique* (MRND), but it came to describe all militia participating in the genocide regardless of party affiliation. See Human Rights Watch/ Fédération Internationale des Ligues des Droits de l'Homme, *Leave None to Tell the Story: Genocide in Rwanda* (New York: Human Rights Watch/ Fédération Internationale des Ligues des Droits de l'Homme, 1999), and see Human Rights Watch, *Shattered Lives. Sexual Violence during the Rwandan Genocide and its Aftermath* (New York: Human Rights Watch, 1996).

<sup>17</sup> *Op. cit.* note 19.

Violence against women is prevalent in rural areas where there is general lack of respect of human rights. It is a human rights violation. Women and children, who are often vulnerable to human rights abuses, are also those who suffer most from the gender-based violence. This is therefore a serious problem and one which requires concerted effort.

Violence against Women during armed conflicts is a phenomenon which has been in existence in the Eastern of DRC since times immemorial. It has affected and continuously deprives women level of co-existent with men and reduces women to a lower status compared to men. In spite of international pressure on perpetrators of violence against women in DRC, rape continues to be used in the conflict torn DRC as a purposeful strategy to subdue and destroy communities, and an atmosphere of impunity prevails. The problem of investigation, therefore, is how to come up with findings, conclusions and recommendations that can be relied upon to eliminate gender based violence against women in eastern DRC during the on-going armed conflict.

### **1.3 Objectives of the study**

#### **1.3.1 Main objective**

To main objective of the study is to establish the reasons why sexual violence against women, in particular rape continues to be used a purposeful strategy of armed conflict to subdue and destroy women's dignity in Eastern DRC.

#### **1.3.2 Specific Objectives**

The specific objectives of the study are:

- i. To bring out the impact of sexual violence women during armed conflict.
- ii. To discuss the legal framework relating to protection of women from violence during armed conflict in the Kivu Provinces of DRC.
- iii. To draw conclusions and make recommendations based on the findings of the study.

#### **1.4. Research questions**

- i. What are the reasons why sexual violence against women, in particular rape continues to be used a purposeful strategy to subdue and destroy communities during armed conflicts in DRC?
- ii. What is the impact of sexual violence against Women during armed conflict on their social and legal development?
- iii. What conclusions and recommendations can be drawn based on the findings of the study?

#### **1.5 Hypothesis**

There is no social and legal protection of women against sexual violence during armed conflict in Eastern DRC.

#### **1.6. Scope of the study**

The research was conducted in the North and South Kivu Provinces which are located in the Eastern DRC. It focuses on two provinces in order to have a critical analysis of the cases of sexual violence against women during armed conflicts. The subject of study is socio-legal analysis of the implications of sexual violence against women during armed conflict. It covers the period from the year 2004 up to day. It, however, gives a historical period before that date in order to give a firm background to the study.

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

The study will significantly contribute towards creating a better working and schooling environment of the female population, i.e. where they are not raped sexually as well as helping the government to create policies that protect the women. The findings of this study will also be instrumental to persons for purpose of reviewing their respective approaches to mainstreaming gender attributes and right to justice for victims of sexual violence and other violence. While seeking to ensure an environment free of sexual violence especially against women and mutual respect for both men and women.

It is equally worth noting that the findings will be of great contribution to the knowledge base on a matter that has for long been regarded as a none issue, better still, the findings will create impact towards a sustained good life for families, communities victims of violence. Most important it will provide appoint of reference to the relevant by authorities. Above all the study shall create impact, especially through empowering the predominantly rural population of women in North and South Kivu Provinces.

### **1.8 Limitation of the study**

This study is limited in terms of time, scope and space. In respect to time, this work concerns the period from the armed conflict that took place around the year 2004 when there was a new crisis in the Eastern DRC. In respect to scope and space, the study applies only in the Eastern DRC.

### **1.9 Operational definition**

**Violence against women and girls** is a major health and human rights issue. The Declaration on the Elimination of Violence Against Women, adopted by the United Nations General Assembly in 1993, defines violence against women as “any act of gender based violence that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life”.



## CHAPTER TWO

### REVIEW OF RELATED LITERATURE

#### **2.1 The forms of Violence against Women**

Violence against women in DRC occurs in different forms and in a context widely influenced by socio-cultural factors, discriminatory laws, ethnic conflicts, wars, bad governance, etc. Violence against women is perceptible at various levels, in the family, in society and at the State level. Several important cases of violence against children in the form of sexual violence are perpetrated by private persons such as parents or other relatives, neighbours, etc. The following examples show that in such cases few offences are reported. Offenders are rarely arrested by the police even when there is a report. When they are arrested, the offenders are rarely processed. When impunity is so widespread, the State must be considered responsible.

Recently, the fight against violence against women has been inscribed in constitutional texts. It could be physical, psychological, social, cultural, economic, institutional or political violence. Physical violence is the most visible form of violence. Psychological violence is generally based on prejudices concerning Congolese women, regardless of their level of instruction or their social position, and which can strangle their personal fulfilment. These prejudices place women in a secondary position in society. Consequently, women are often insulted, denigrated, rejected, and abandoned, which causes damage to their self-esteem. At the same time, several retrograde traditions and customs that shame women continue to occur.

In 2000, the CEDAW Committee was worried by the persistence of customs and practices which represent a violation of fundamental women's rights, such as dowry, inheritance, polygamy, forced marriage, and female genital mutilation<sup>18</sup>. The Committee recommended that the government adopt legislation forbidding these

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<sup>18</sup> Paragraph 215 of the report A/55/38

practices, and that it work with non-governmental organisations and media to change the mentality by linking information and sensitisation campaigns<sup>19</sup>.

In June 2006, the National Assembly voted to enact the proposed law on the repression of sexual violence, encouraged by organisations of Congolese civil society. In spite of the fact that this represents a great step, much needs to be done in order to assure the implementation of these new measures.

## **2.2 Initiatives fighting against sexual violence**

### **a. At the legal level**

The common Congolese law was for a long time lacking concerning sexual violence. The new law should modify these provisions, but is awaiting presidential approval. However, for the moment, the Penal Code does not recognise rape as an offence and gives a partial definition of rape in the context of local realities and international norms. The only other existing offences concern sexual violence in terms of sexual molestation, attack on good morals, and public moral outrage (*attentat à la pudeur*), which are inadequate and insufficient: victims of rape are necessarily women, excluding men. Moreover, a victim of rape must show that she was sexually penetrated. All sexual violence without such penetration is qualified as an attack on good morals, which is considered less grave than a rape.

### **b. The new law against sexual violence**

The draft passed on 22nd June 2006 by Congolese members of Parliament and now awaiting presidential approval, corrects the deficiency of the Congolese Penal Code, in terms of:

- Definition of rape;
- Expansion of the definition of rape beyond sexual penetration only;
- Extension of the crime of rape to male victims;
- Acknowledgment of sexual slavery, sexual harassment, forced pregnancy, pedophilia, forced zoophilia, and other sexual crimes in the Penal Code;
- Inclusion of unambiguous language;
- Correlation of the penalty with the gravity of sexual violence crimes;

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<sup>19</sup> Paragraph 216 of the report A/55/38

- Prohibition of the compromise fine;
- Swiftess in the investigation of the causes of sexual violence;
- Judicial in camera hearing (huis clos) to protect victims' confidentiality;
- Waiver of court costs for victims of sexual violence;
- Psycho-medical assistance for victims;
- strengthening of the protection of children;
- Legal assistance to victims during all phases of the procedure

Therefore, the proposed law takes into account the gravity of sexual violence. It recognises new sentences by reforming penalties and reinforcing victims' protection, including children.

#### c. Concerted initiative on sexual violence<sup>20</sup>

A concerted initiative on sexual violence brings together the United Nations, the Congolese Government and NGOs which help victims of sexual violence. This initiative is composed in part by legal and psycho-medical assistance, and in part by advocacy. The limited means, the limited restoration of the State's authority on the whole territory, the lack of independence and efficiency of the courts, the high number of cases of sexual violence in certain parts of the country where residual armed conflicts continue, make considerably relative the impact of this initiative.

This initiative is not limited to a proposition of law but also proposes health, legal, economic, psychosocial and security assistance to victims of sexual violence. Indeed, when victims register complaints, a mechanism of protection must be assured in order to encourage them to break the silence and to fight for their rights.

#### d. Awareness-raising actions<sup>21</sup>

Such actions have begun with the solidarity of women from eastern parts of the country and have focused on the fight against impunity. In spite of this, the number of victims continues to grow, and offenders need not worry even if they have been reported. During March 2005, an awareness raising campaign against impunity for

<sup>20</sup> Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, CEDAW/C/COD/Q/5

<sup>21</sup> International Convention on the Suppression and Punishment of the Crime of Apartheid, CEDAW/C/COD/Q/5.

rape was initiated by the Human Rights Ministry. According to Mrs. Madeleine Kalala, the Human Rights Minister, the campaign especially targets civil and military magistrates. This campaign continues.

We wish to compliment the Congolese Government's engagement in the fight against sexual violence and the assistance of some UN agencies and other bilateral partners for the assistance of victims. The implementation of the new law and of the Military Code concerning sexual violence is attentively awaited.

Violence against women takes many forms: beyond rape and sexual harassment, it also includes child marriage, wife beating, female genital cutting/mutilation, dowry-related violence, and trafficking, sexual violence during wars, femicide, 'honour' killings, forced sterilization, pornography and bride kidnapping. Violence against women may also take many forms of psychological abuse, intimidation and harassment.

## **2.3 Violence occurring within the Family**

### **2.3.1 Domestic violence**

Physical violence in the family often is committed by a husband against his wife. The fact that some husbands believe they have correctional power over their wives allows them to be violent with their wives. In such cases, the perpetrators often remain unpunished. Indeed, unfortunately, women do not report them fearing to be repudiated.

The Penal Code does not punish violence more severely when it occurs between spouses. There is no aggravating circumstance in the case of murder or of intentional bodily harm toward her/his spouse. Moreover, the new law on sexual violence makes no specific mention of sexual violence within marriage. The State must devote attention to this phenomenon, and could integrate into the legislation an aggravating circumstance linked to the situation of inequality between spouses, which can lead to the practice of sexual violence.

### **2.3.2. Incest**

Concerning the situation of younger girls, they often are victims of sexual violence by the male members of their family living in the same home. These acts of violence generally remain cloaked in silence. No one reports this terrible situation, which is extremely destructive for girls' development and fulfilment.

Many such cases have been registered. For example, Chantal, a 15 year old girl, in December 2003 was raped by her brother-in-law with whom she lived. Taking advantage of the absence of his wife, the brother-in-law of Ch. B. had called her into the house to speak with her. Once inside, he ripped off her clothes and raped her. Her family submitted a complaint to the OCDH (Congolese Observatory of Human Rights) in July 2004, only to finally withdraw it once they were faced with the prospect of a criminal trial initiated against Ch.B.'s brother-in-law.

Article 319.3 of the Family Code removes the parental authority of a person who puts in peril the security, health or morality of a child by committing mistreatment, abuse of authority or grave neglect. The Penal Code provides in its article 174 on the attack on morals that if the attempt was committed by the father or the mother, the guilty party will be deprived of his/her rights or advantages as to the child's person and goods.

Moreover, the new law against sexual violence adds in article 171bis that the minimum penalty under articles 167.2, 168 and 170.2 of the current Penal Code will be doubled if the guilty parties are parents or descendents of the victim. However, in practice such cases are rarely reported. The State's action must also assure real access to justice to all its citizens, by first beginning to inform them of their rights.

### **2.3.4 Forced marriage**

By authorising girls to get married at the age of 15 years old, the legislation in article 352 of the Family Code facilitates situations of forced or premature marriage. Moreover, the parental authority over children as well as poverty encourage parents to arrange the marriage of their daughters according to their own wishes, and to

ignore the principle of free consent of the future spouses. The practice of levirate and sororate also persists and violates the principle of the free consent of women.

This situation seems more frequent in villages in certain provinces, such as the Yansi in Bantundu. However, no studies exist on forced marriage. Fearing familial sanctions, reports of these practices are very rare.

The State must be engaged in the fight against these practices, especially by supporting information campaigns aimed at girls regarding their rights. A system of checks and restrictions should also be established for girls, in order to give them the possibility of recourse to a venue in which exercise their right to a marriage of consent. Families must be concerned about penalties for perpetrating such practices. A check during the ceremony could be considered to be sure that the future spouses really want to be married.

The new Penal Code reform concerning sexual violence includes in its article 174.6.f. on forced marriage, that "a person exercising the parental authority on a person and who would give her or obligate her to contract a marriage, will be punished from one to twelve years of penal servitude and with an amend of minimum 100.000 Congolese Francs . This penalty is doubled when the victim of forced marriage is aged of less than 18 years old."

## **2.4 Violence against Women in the Armed Conflict Situation<sup>22</sup>**

The CEDAW Committee recognised during its last consideration of the Congolese State report in 2000 that one of the principal obstacles to the full implementation of the Convention was the context of war, which has negative repercussions on the population, and more specifically on women and girls, who are often victims of rape and other sexual violence.

The rape of women has been used as a war crime during the different armed conflicts of the DRC. Nowadays, in certain parts of the country, women and children

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<sup>22</sup> Marie Mossi (ASADHO-RAF), Violence Against Women in the Democratic Republic of Congo (DRC), 7-25 August 2006, p.22

continue to undergo rapes, which generally go unpunished due to the weakness of the legal system and the inefficiency of the justice system. Despite the insufficiency of statistics on the subject, it is possible to affirm that most women who were raped during the war were often detained by their aggressors, who could regularly abuse them. Such cases were principally noted in the East of the country, in the provinces of North and South Kivu, of eastern Maniema and of Kalémie (Katanga).

In the province of North Kivu, sexual violence has become the new weapon of war. Women remain the individuals most affected by this crime, and there are numerous consequences for women victims and the entire community. On 12 April 2005, a 28 year-old married woman, mother of six children, residing at Kitchanga in the suburb of Remblaie, was raped when returning from the fields by two armed men in military uniform. This woman was eight months pregnant. The armed men took her by force and first subjected her to acts of torture before raping her and then left her unconscious<sup>23</sup>.

According to information from the Health Professionals' Association for Human Rights (APESKI), in the context of an identification project and medical and psycho-social assistance provided to women victims of sexual violence in the territory of Uvira (South-Kivu) in 2003 and 2004, 463 cases of rape were recorded in the centre of Uvira; 784 in the Ruzizi plain and 179 cases in middle highlands of Uvira.<sup>24</sup>

The Congolese State must control its justice system in order to systematise the application of laws and corresponding penalties against perpetrators of sexual violence. Such measures against impunity are indispensable to the pacification of the DRC, which is why we ask the Government to engage itself seriously in the fight against impunity.

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<sup>23</sup> Cf. Solidarity for Social Promotion and Peace (SOPROP), Rapport sur la situation des droits de l'homme dans la province du Nord Kivu à l'est de la République démocratique du Congo, February-June 2005.

<sup>24</sup> See the communications of the UN Special Rapporteur on Violence Against Women, Yakin Ertürk, in her report of 27 March 2006: E/CN.4/2006/61/Add.1

## **2.5 The legal framework allowing for the prosecution of perpetrators of violence against women within the context of the war**

The military Penal Code is relatively adapted to this issue since it invokes international humanitarian law principles. Sexually violent acts in the Code correspond to those enunciated in the Rome Statute for the International Criminal Court. Article 169 § 7 of the military Penal Code states that rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilisation and all other forms of sexual violence of a comparable gravity are considered crimes against humanity punishable by the death penalty.

However, this article only applies to acts perpetrated in the context of a systematic or generalised attack against the DRC or the civilian population. This signifies that individual cases of rape or isolated instances of forced slavery are not covered by this legal text, which unfortunately excludes a considerable number of victims of such acts.

The new law on sexual violence amends some provisions of the Penal Code and addresses the above deficiencies. For example, article 42 bis and 42 ter specify that regardless of the offender's rank, hierarchical order or the command of a legitimate civil or military authority cannot exonerate his penal responsibilities. Finally, article 15 of the Constitution condemns as crimes against humanity all sexual violence on all persons with the intention to destabilise, to dislocate a family and to eliminate an entire people. The Constitution recalls the State's responsibility to eliminate sexual violence. Most jurisdictions have already sanctioned authors of sexual violence on these bases. For example, in the affair Songo Mboyi, the High Military Court took a decision the 12 May 2006 on the basis of the Rome Statute.

## **2.6 Rapes committed by MONUC agents<sup>25</sup>**

At the same time, Congolese women were also victims of rapes committed by MONUC agents. More than 75 allegations were gathered in 2004, and around twenty cases were verified. The authors of these rapes had to leave the DRC to return to

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<sup>25</sup> Rome Statute of the International Criminal Court, CEDAW/C/COD/Q/5



their country. However, we do not know whether these agents were pursued for their acts. Victims must have compensation. We regret that the Congolese State does not follow-up on these issues. The situation allowed MONUC, however, to establish a disciplinary and ethical group in order to prevent exploitation or other bad behaviour by MONUC agents.

## **2.7 Violence against Women within the Community**

### **a. Sexual violence**

The war in the Democratic Republic of the Congo is formally over, but women and girls remain targets for violence. Physical and economic insecurity still characterize the lives of women and girls. The threat of and the use of violence are constants.

As before the war, discrimination against women and girls underlies the violence perpetrated against them. The current climate of impunity allows the many forms of gender-based violence, including sexual violence, to flourish.

All armed groups involved in the conflict have perpetrated sexual violence. Today, several armed groups still use sexual violence as a weapon of war in the DRC.<sup>26</sup> Further, international actors, including UN personnel, have been implicated in perpetrating sexual violence in the DRC.<sup>27</sup> Armed actors systematically violate women and girls in the streets, fields, and homes.<sup>28</sup> The armed actors in the DRC have perpetrated gender-based violence through various forms, including sexual slavery, kidnapping, forced recruitment, forced prostitution, and rape. The Congolese victims of sexual violence include men and boys, who have also suffered rape, sexual humiliation, and genital mutilation.<sup>29</sup>

Towards midnight, I heard the crackle of gunfire all around the village...As I was trying to escape with my children; seven soldiers broke down the door to my house, threw me down to the ground and raped me. I lost consciousness till the next day...When I walk I have to hold my abdomen with my skirt, because it hurts so

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<sup>26</sup> Human Rights Watch, *The War within the War: Sexual Violence against Women and Girls in Eastern Congo*, 2002, <http://www.hrw.org/reports/2002/drc/> and Réseau des Femmes pour un Développement Associatif (RFDA), Réseau des Femmes pour la Défense des Droits et la Paix (RFDP) and International Alert, *Women's Bodies As Battleground : Sexual Violence Against Women and Girls During the War in the DRC*, 2005 <http://www.international-alert.org/publications/getdata.php?doctype=Pdf&id=32> (accessed 03 July 2007).

<sup>27</sup> Conduct Unit: Background, MONUC

<http://www.monuc.org/News.aspx?newsID=855&menuOpened=About%20MONUC> (accessed 11 July 2007).

<sup>28</sup> Human Rights Watch, 2002; The Women of South Kivu, "Plaidoyer des femmes du sud-kivu à l'occasion de la journée internationale des femmes de l'an 2005" Bukavu (2005).

<sup>29</sup> Wynne Russell, "Sexual Violence against men and boys," *Forced Migration Review* 27 (2007), 22-23

much. I cannot walk very far now and as the soldiers took everything, I can hardly manage to look after my children."<sup>30</sup>

Many survivors of sexual violence suffer from grave long-term psychological and physical health consequences, such as traumatic fistula and HIV. However, health infrastructure in the DRC is almost entirely absent. Shortage of medical services is particularly critical given the prevalence of sexually-transmitted infections and HIV among soldiers and irregular combatants.<sup>31</sup>

Survivors of sexual violence face enormous barriers in securing justice through the courts or more informal, community-based mechanisms. At the community level, survivors usually suffer in silence, fearing stigma and ostracism if their ordeal is made public. Following her visit to the Great Lakes Region, the UN High Commissioner for Human Rights noted that "while victims (of sexual and gender-based violence) were stigmatized and socially ostracized, there was virtually no stigmatization of perpetrators." Corrupt, under-capacitated justice systems hamper survivors' attempts to bring perpetrators to justice through formal legal processes.<sup>32</sup>

The extent of gender-based violence in the DRC can only be estimated, though sexual violence is understood to be widespread. In the province of South Kivu alone, local health centres report that an average of 40 women is raped daily.<sup>33</sup> Sexual violence in Congo is vastly underreported due to insecurity in or inaccessibility to many areas and the physical or material inability of some victims to travel. Further, survivors may fear reprisals by perpetrators if they were to come forward.<sup>34</sup>

"Sexual violence is regarded as the most widespread form of criminality in Congo...The government that is elected will be challenged to implement the

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<sup>30</sup> Amnesty International, *Democratic Republic of Congo: Mass rape – time for remedies*. AI Index: AFR 62/018/2004, 26 October 2004. (Testimony given to Amnesty International by a 40 year old woman named Pauline, who comes from a rural area in South-Kivu)

<sup>31</sup> Human Rights Watch, 2002.

<sup>32</sup> Louise Arbor, Press conference by the United Nations High Commissioner for Human Rights 31 May 2007, United Nations News Centre Department of Public Information, [http://www.un.org/News/briefings/docs/2007/070531\\_Arbour.doc.htm](http://www.un.org/News/briefings/docs/2007/070531_Arbour.doc.htm) (accessed 28 June 2007).

<sup>33</sup> Claudia Rodriguez, Sexual Violence in South Kivu, Congo, *Forced Migration Review* 27 (2007).

<sup>34</sup> OCHA, 2007

principles of the constitution and address discrimination against women, in particular sexual violence."<sup>35</sup>

According to recent information from the NGO LIZADEEL, numerous acts of sexual violence have taken place mainly in Kinshasa separate from the armed conflict. This phenomenon principally affects young girls and women, and the majority is under 18 years old<sup>36</sup>; young boys and men are equally subjected to sexual abuse. The perpetrators of these acts are generally military personnel, police officers, prison guards, care staff, teachers, parents, pastors, neighbours and even young delinquents living on the streets. Very often the act is not even reported. When it is, the process usually concludes with an arrangement between the family of the victim (if a child, his/her interest is rarely taken into consideration) and the author of the act.

Concerning women victims of rape, judges often tend to display a discriminatory attitude regarding their complaints. The question of evidence is aggravated by the fact that for cultural reasons, women abstain from complaining, or they submit a complaint some time after the facts, rendering it difficult for forensic doctors to collect evidence of the offence. The right of women to submit a complaint for acts of torture or ill-treatment or any other offence is subject to the authorisation of their husband (in cases involving married women). Indeed, article 448 of the Family Code expressly provides that "a woman must obtain the authorisation of her husband to effect all legal acts for which she must present herself in person". However, when the author of violence is her husband, the woman is not obliged to seek his permission in order to take action against her husband, in accordance with article 451 of the Family Code.

#### b. Forced prostitution<sup>37</sup>

The prostitution phenomenon is principally caused by poverty. Brothels have appeared. Sometimes they are run by aged women who oblige young girls to follow

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<sup>35</sup> International Crisis Group, "Beyond Victimhood: Women's Peacebuilding in Sudan, Congo and Uganda" (June 2006), <http://www.crisisgroup.org/home/index.cfm?id=4185> (accessed 13 July 2007).

<sup>36</sup> About 79.1% according to the figures given by NGO LIZADEEL

<sup>37</sup> Cf. items 11 and 12 of the CEDAW list of issues, CEDAW/C/COD/Q/5

men. These men pay the aged woman, the manager of the house. Most prostituted girls are children abandoned by their parents or children who have run away from their control. However, it is difficult to find statistics on this phenomenon. Few studies exist. The main reason for this lack of information is the silence kept by prostituted women and girls.

Article 174bis of the second book of the Penal Code forbids pimping. Concerning children, article 44.2 of the Constitution provides that the State must protect children against prostitution, pimping, homosexuality, incest, pedophilia, sexual harassment and all other forms of sexual perversion.

The CEDAW Committee made known its concern about the extent of prostitution and especially the prostitution of girls. The Committee encouraged the government to adopt and to implement laws forbidding girls' prostitution<sup>38</sup>. The State must adopt and enforce measures to give prostitutes the possibility to find new places in society and to assure them psychological and educational assistance. Also, in considering the pandemic of HIV/AIDS in the DRC, the Committee recommended that the government devote more attention to health services targeting prostitutes<sup>39</sup>.

The new law against sexual violence, in article 174.3.c, condemns forced prostitution. Article 174.5.e. also condemns sexual slavery.

In practice, there is no concrete measure of protection nor specific programme in this regard. In spite of the fact that the prostitution of children is often due to the poverty resulting from the economical and structural crises as well as the war, the State must overcome these difficulties and protect its youth from these practices. Its response should consist of restrictive measures toward persons encouraging child prostitution, but also educative measures toward children and prostituted women. The State must assure to these women satisfactory sanitary conditions, and inform them of the risks linked to sexually transmitted diseases. Plans must be established in order to assure to these women the means for a potential change of profession.

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<sup>38</sup> Paragraph 219 of report A/55/38

<sup>39</sup> Paragraph 220 of report A/55/38

c. Sexual harassment

Sexual harassment is intimidation, bullying or coercion of a sexual nature, or the unwelcome or inappropriate promise of rewards in exchange for sexual favors.<sup>40</sup> In some contexts or circumstances, sexual harassment may be illegal. It includes a range of behaviour from seemingly mild transgressions and annoyances to actual sexual abuse or sexual assault.<sup>41</sup> Sexual harassment is a form of illegal employment discrimination in many countries, and is a form of abuse (sexual and psychological) and bullying. For many businesses, preventing sexual harassment, and defending employees from sexual harassment charges, has become key goals of legal decision-making. In contrast, many scholars complain that sexual harassment in education remains a "forgotten secret," with educators and administrators refusing to admit the problem exist in their schools, or accept their legal and ethical responsibilities to deal with it.

d. Prostitution and trafficking

Many women are forced into prostitution either by their parents, husbands or boyfriends -- or as a result of the difficult economic and social conditions in which they find themselves. They are also lured into prostitution, sometimes by "mail-order bride" agencies that promise to find them a husband or a job in a foreign country. As a result, they very often find themselves illegally confined in brothels in slavery-like conditions where they are physically abused and their passports withheld.

Most women initially victimized by sexual traffickers have little inkling of what awaits them. They generally get a very small percentage of what the customer pays to the pimp or the brothel owner. Once they are caught up in the system there is practically no way out, and they find themselves in a very vulnerable situation.

Since prostitution is illegal in many countries, it is difficult for prostitutes to come forward and ask for protection if they become victims of rape or want to escape from brothels. Customers, on the other hand, are rarely the object of penal laws.

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<sup>40</sup> Paludi, Michele Antoinette; Brickman, (1991). *Academic and Workplace Sexual Harassment*. SUNY Press. pp. 2-5. ISBN 0791408299

<sup>41</sup> Dziech et al. 1990, Boland 2002

In Thailand, prostitutes who complain to the police are often arrested and sent back to the brothels upon payment of a fine.

The extent of trafficking in women and girl children has reached alarming proportions, especially in Asian countries.

Many women and girl children are trafficked across borders, often with the complicity of border guards. In one incident, five young prostitutes burned to death in a brothel fire because they had been chained to their beds. At the same time, sex tours of developing countries are a well-organized industry in several European and other industrialized countries.

## **2.8 Women in Detention**

At the CPRK, women and men prisoners are separated, and the women are monitored by female guards. They are detained in ward 9, which is strictly reserved for women. Women can consult general medical practitioners; however, no medical specialists are at their disposal, such as gynaecologists.

In police stations, detainees are not separated according to sex, nor are there any rights to medical care as there are no medical professionals available. There exists no organised assistance concerning basic physiological needs.

In July 2004, Ms A.M., placed in detention on remand in ward 9 for theft (stealing), was beaten, kicked, whipped and stripped in the main court of the prison centre within the view and earshot of everyone, by Serge, Arthur and Kangala, prisoners delegated to supervise chores. Ms A.M was being punished for having refused to transport 30 buckets of excrement because she was ill. Following the beating, she had pains in her lower stomach for which she received no treatment. Punished for having refused to obey orders, she was confined to a cell, isolated from the other detainees, and during the night, she was sexually harassed by the prisoners who tortured her. She continued to fight off the advances of Serge, Arthur and Kangala, and during the night of 7 December 2004, Ms A.M was raped at the CPRK by police officer Puku Ya Libanga and prison officer Loboto. Medical examinations revealed that Ms A.M had been infected with HIV and had contracted AIDS. Although Ms. A.M has been released, she suffers psychological problems which her parents cannot

manage and has no access to the medical care she requires. Following the rape of Ms A.M in 2004, the Human Rights Minister was contacted by a NGO. She commanded an enquiry, which confirmed the facts. However, no proceedings have to date been opened, in spite of the fact that the authors are known.<sup>42</sup>

## **2.9 The causes of violence against women**

Discrimination and unequal power relations lie at the heart of women's greater vulnerability to violence and that addressing the inequality that is deeply entrenched in all societies must be central to our responses to the issue. Throughout history, violence has been used as a way of controlling women, both within the family and the wider society, and reinforcing their subordinate position to men. There are a number of cultural, social and political factors which perpetuate and exacerbate the problem. Factors such as cultural norms, military tactics, negative media images, inadequate laws to prohibit violence against women, government complacency and the absence of educational programmes to address the causes and consequences of violence.

Equally, the issue of violence against women cannot be separated from other important issues affecting women, such as HIV and AIDS. Women are at a heightened risk of infection due to violence; but are also subject to violence if their positive status is disclosed.

## **2.10 The effects of violence against women**

Womankind believes that violence against women is an abuse of their fundamental human rights, including their rights to health and freedom from torture. Aside from the physical, emotional and mental toll on women, violence prevents women from participating fully in society. Violence limits women's access to resources, such as land, water and food and their ability to participate in activities such as work, education, travel and community meetings.

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<sup>42</sup> See the communications of the UN Special Reporter on Violence Against Women, Yakin Ertürk, in her report of the 27th March 2006 : E/CN.4/2006/61/Add.1

Violence against women also carries economic costs for both the individual and society, including missed work, health care for survivors, emergency shelters and legal procedures to bring perpetrators to justice. For these reasons, violence against women constitutes a major obstacle to development, peace and security.

Worldwide, it has been estimated that violence against women is as serious a cause of death and incapacity among women of reproductive age as cancer, and a greater cause of ill-health as traffic accidents and malaria combined. The abuse of women is effectively condoned in almost every society of the world. Prosecution and conviction of men who beat or rape women or girls is rare when compared to numbers of assaults. Violence therefore operates as a means to maintain and reinforce women's subordination.

## **2.11 How to stop violence against women in the Kivu Provinces**

### **Sixteen Ways to End violence against women**

- a. Calling for an end to impunity for those who perpetrate violence against women. Both the Secretary-General's Unite campaign and our Executive Director's statement make it clear that violence against women can no longer be tolerated.
- b. Highlighting the need to include involve women in peace and reconciliation processes. This year's State of World Population report focused on the impact of war and humanitarian crises on women, and on the importance of fully implementing Security Council resolutions that address women's role in the peace and reconciliation process. See also the Stop Rape Now campaign and our social media space.
- c. Protecting women and girls in the aftermath of humanitarian crises. Following the earthquake in Haiti and flooding in Pakistan, UNFPA played a lead role in setting in place and coordinating displaced women and girls.
- d. Delivering as one to end violence against women. UN agencies, governments and civil society are working together in Burkina Faso, Chile, Fiji, Jamaica, Jordan, Kyrgyzstan, Paraguay, Philippines, Rwanda and Yemen to support



survivors of violence and change the attitudes and structure that perpetuate it.

- e. Engaging boys in their formative year with messages of gender equality. Breakaway, an electronic football game, launched at the time of the World Cup, aims its social messages about respecting girls at 8- to 15-year-old boys.
- f. Calling for an end to female genital mutilation/cutting in a generation. Accelerating Change, the Joint UNFPA/UNICEF programme to encourage abandonment of FGM/C, is setting in motion a dynamic for positive change in communities that support this harmful practice.
- g. Calling attention to sexual violence as an instrument of war. Congo/Women, an international photography exhibition and educational campaign, compel (force or require) viewers to acknowledge the suffering endured by women and girls in the Democratic Republic of Congo, and to recognize the human faces behind it. See also this related documentary.
- h. Enlisting sports heroes to speak out against gender-based violence. A public service announcement by football star Sam Eto'o urges men to be champions in life by taking a stand against gender-based violence.
- i. Addressing the needs of women in refugee camps. Refugee camps are intended to be safe havens – but displaced women often face many forms of gender-based violence. UNFPA is part of an interagency team that sends gender advisers to humanitarian settings to ensure that women's needs are being addressed.
- j. Using culturally sensitive approaches Gender-based violence is a deeply rooted problem that demands strategic, comprehensive and culturally sensitive approaches. In ten countries, UNFPA has applied such approaches and documented the experiences for development practitioners as well as other interested parties. See the multi-media exhibit. See also these case studies.
- k. Highlighting the injustice of child marriage and too-early pregnancy. Child marriage is a human rights violation with social, cultural and economic dimensions, including high rates of maternal mortality and injury.

- l. Working with religious leaders to end tolerance for gender-based violence. UNFPA values the influence of religious leaders in preventing violence within families and reducing maternal mortality. The Fund works hard to build bridges between faith-based practitioners and development practitioners.
- m. Giving people who have lived with violence new channels for self-expression. Around the world, various forms of art – from break dancing and painting to puppetry and crafts, are used to soothe tormented spirits and teach lessons about war and peace.
- n. Forming partnerships with men to end violence against women. Constructive engagement of men and boys aims to encourage them to play positive roles in the lives of women and girls, while improving their own lives.
- o. Assisting survivors of domestic violence. Women often stay with abusive partners because they have no other place to go. UNFPA-supported shelters offer an alternative. Read the feature story, view a related video.
- p. Documenting the long-lasting effects of rape and torture. The psychological impact of rape – as well as the physical scars – can fester for decades, as portrayed in this feature story and photographs.

## **CHAPTER THREE**

### **METHODOLOGY**

#### **4.1 Research Design**

The research design used for the study enabled the researcher to obtain field information and then analyse it in a manner that provided answers to the research questions set.

##### **4.1.1 Primary Data**

The study utilized mainly qualitative methods of investigation. These were in depth-interviews, field observation, focus group discussions and key informant interviews were used to generate information regarding the effects of rape against women during armed conflicts in the Kivu Provinces of DRC. The quantitative methods involved structured interviews where a questionnaire were used to gather information about the socio-legal characteristic of the respondents, the causes and forms of rape against women and its effects to collect primary data.

##### **4.1.2 Secondary Data**

Secondary data was gathered from available documentation concerning women's rights violation and other gender related issues. This information was obtained from books, journals, internet reports and relevant documentations from organisations such as hospitals and Women Organizations concerning women's issues.

#### **4.2. Data Processing and Analysis**

##### **4.2.1 Data Processing**

The research objectives, research questions, and theoretical framework guided the processing stage. This was realized through a careful segmentation of data in a thematic order. Data was analyzed co-currently to avoid duplication, and this guided the entire aspect of the study for a balanced and critical analysis.

#### **4.2.2 Data Analysis**

Data was analyzed in line of the research objectives in order to realize a harmonious flow during the study and this depended on the response from the field study. Thematic procedure of analysis was used; in which case the researcher clarified on the views of the respondents on sexual violence against women. The tools such as documentation, in-depth interview methods, questionnaires and focused group discussion methods were applied. The researcher qualitatively analyzed the views of the different respondents in order to get the various views put together according to the various themes.

## **CHAPTER FOUR**

### **THE LEGAL FRAMEWORK PREVENTING SEXUAL VIOLENCE AGAINST WOMEN IN DRC**

#### **4.1 Introduction**

The DRC is a party to several international human rights treaties that address women's rights, such as the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, and both of its Optional Protocols, the Rome Statute of the International Criminal Court, and the Convention on the Elimination of All Forms of Discrimination against Women.<sup>43</sup>

At the regional level, the DRC is a State Party to the African Charter of Human and People's Rights, which insists also on the elimination of all forms of discrimination against women. It is regrettable that in spite of the fact that the DRC is a Party to such an important instrument, the country has not yet ratified the Protocol to the African Charter of Human and People's Rights concerning women's rights in Africa must as the State contributed to its development.

#### **4.1.1. The Convention on the Elimination of All Forms of Discrimination against Women**

On 18 December 1979, the Convention on the Elimination of All Forms of Discrimination against Women was adopted by the United Nations General Assembly. It entered into force as an international treaty on 3 September 1981 after the twentieth country had ratified it. By the tenth anniversary of the Convention in 1989, almost one hundred nations had agreed to be bound by its provisions. The Convention was the culmination of more than thirty years of work by the United Nations Commission on the Status of Women, a body established in 1946 to monitor

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<sup>43</sup> Convention on the Elimination of All Forms of Discrimination against Women New York, 18 December 1979.

the situation of women and to promote women's rights.<sup>44</sup> The Commission's work has been instrumental in bringing to light all the areas in which women are denied equality with men. These efforts for the advancement of women have resulted in several declarations and conventions, of which the Convention on the Elimination of All Forms of Discrimination against Women is the central and most comprehensive document.

Among the international human rights treaties, the Convention takes an important place in bringing the female half of humanity into the focus of human rights concerns. The spirit of the Convention is rooted in the goals of the United Nations: to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women. The present document spells out the meaning of equality and how it can be achieved. In so doing, the Convention establishes not only an international bill of rights for women, but also an agenda for action by countries to guarantee the enjoyment of those rights.<sup>45</sup> In its preamble, the Convention explicitly acknowledges that "extensive discrimination against women continues to exist", and emphasizes that such discrimination "violates the principles of equality of rights and respect for human dignity". As defined in Article 1, discrimination is understood as "any distinction, exclusion or restriction made on the basis of sex...in the political, economic, social, cultural, civil or any other field". The Convention gives positive affirmation to the principle of equality by requiring States parties to take "all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men".<sup>46</sup>

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<sup>44</sup> *Ibid.*

<sup>45</sup> *Ibid.*

<sup>46</sup> Article 3 Observations of the CEDAW concerning the DRC: 01/02/2000. A/55/38, paragraphes. 194-238.

### **4.1.3. Status of International Treaties in Domestic Law**

The DRC is a monist state.<sup>47</sup> According to Article 215 of the Third Republic's Constitution, "regularly concluded international treaties and agreements have, when published, greater authority than the law, provided that each treaty or agreement is implemented by the other Party."

In practice, however, courts and tribunals do not apply the principle of superiority of international law over domestic law. In an almost instinctive manner, they apply national law, generally out of ignorance of the international instruments related to human rights, which stems largely from the fact that the Official Journals in which these international texts are published are not published regularly nor are they distributed widely. Further, Congolese courts and tribunals are not equipped with libraries, and judges' salaries do not permit them personally to acquire all necessary documents.

In addition, the Congolese authorities do not uphold any policies aiming to promote the principle of the superiority of international treaties in national law, nor do they conduct any training in this respect. Some training was undertaken with the financial support of bilateral and multilateral partners.

## **4.2 The Status of Women and Girls in the DRC**

### **4.2.1 Legal and Institutions Frameworks Concerning the Status of Women<sup>48</sup>**

#### **4.2.1.1 The Third Republic's Constitution, 2006**

Article 14 of the Third Republic's Constitution, promulgated on 18 February 2006, provides that "the State shall have the duty to ensure the elimination of all forms of discrimination with regard to women and to ensure the respect and promotion of their rights." It must "take measures to fight against all forms of violence against

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<sup>47</sup> A legal doctrinal concept according to which domestic and international law are manifestations of the same legal order. Monist systems that give primacy to domestic law undermine the obligatory nature of international law and thereby reduce it to a status of external public law which the State can unilaterally modify. Definition from : Raymond Guillien and Jean Vincent, *Termes juridiques*, Dalloz, Paris 10<sup>th</sup> Edition, 1995, p.365.

<sup>48</sup>Source: <http://www.cabemery.org/publications/juricongo/>, Rubrique « Codes et Lois », Sous-rubrique « Condition féminine».

women in public and private life”, and assure the “full participation of women in the development of the nation” particularly guaranteeing the “right to significant representation in national, provincial and local institutions”. The State must guarantee the application of the principle of parity between women and men in these institutions, by regulating the application of these rights.

Unfortunately, these provisions are not implemented, since the State does not further its legal texts, and does not establish effective mechanisms assuring the effectiveness of these provisions. The State must concretise these provisions with implementing legislation without further delay.

#### **4.2.1.2 The National Council of Women**

Ministerial order n°CAB/V.M/AFF.SO.F/015/98 provides for the creation and the organisation of the National Council of Women (*Conseil National de la Femme* - CNF).<sup>49</sup> The CNF is a consultative organ of the government regarding the promotion of women, under the mandate of the Minister concerned with the status of women (currently, the Minister on the Status of Women and the Family). The CNF has the tasks of:

- promoting equality of rights and responsibilities of men and women in all domains,
- proposing actions to be undertaken towards promoting the status of women in accordance with international recommendations,
- Encouraging women to become aware of their responsibility within society, to prepare them for public life on a local, national and international scale,
- Reinforcing relations and solidarity among women from Congo, elsewhere in Africa and other continents,
- Giving necessary guidance regarding actions to be taken in order to carry out the national programme on the promotion and protection of Congolese women.

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<sup>49</sup> Ministerial order n°CAB/V.M/AFF.SO.F/015/98 of the National Council of Women.



Currently, several NGOs specialised in women's rights have consultative status with the CNF, along with ministers' delegates, public and private institutions, public and private companies, religious organisations, trade unions, persons working on gender, representatives of international organisations and donors. The ministerial order is in the process of being amended in order to open up the CNF to other women's organisations grouped by theme.

The CEDAW Committee underlined upon its examination of the DRC's initial, second and third reports that this Ministry did not have available enough resources for executing the plan of action<sup>50</sup>. The insufficiency of State resources can be explained by its lack of interest in questions concerning the situation of Congolese women.

#### **4.2.2 Discriminatory Provisions in Relation to Women**

Despite the provisions contained in article 51 of the 2006 Constitution, Congolese legislation remains discriminatory towards women on many different levels.<sup>51</sup> The following overview of discriminatory clauses contained in national laws is not exhaustive.<sup>52</sup> However, the CEDAW Committee underlined this situation in the concluding Report of the 22<sup>nd</sup> Session of the Committee (17<sup>th</sup> January-4<sup>th</sup> February 2000). Despite some positive legislative developments, the Committee was concerned by the Family Code, the Penal Code and the Labour Code, which continue to contain discriminatory provisions.<sup>53</sup>

The Committee recommended that the Congolese Government give the highest priority to the adoption and implementation of legislation guaranteeing de jure and de facto gender equality.<sup>54</sup> As of now, very few measures have been adopted to abolish the discriminatory provisions of these laws.

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<sup>50</sup> Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/COD/Q/.

<sup>51</sup> Forth and fifth periodic reports of DRC (CEDAW/C/COD/4-5) examine methodically each text and law regarding its conformity with the CEDAW.

<sup>52</sup> Me Odyia Kalinda, Présidente, Droits de la Femme et Internet (DFNET). Websites : [www.societecivile.cd/membre](http://www.societecivile.cd/membre) ; <http://rencontreweb.com/odyia>.

<sup>53</sup> Paragraph 211, report A/55/38.

<sup>54</sup> *Ibid.*

#### 4.2.2.1. The Family Code<sup>55</sup>

The Family Code, promulgated in 1987 and renewed in 1999, contains several discriminatory clauses.<sup>56</sup> Many provisions are incompatible with the Convention on the Elimination of All Forms of Discrimination against Women, as is underlined in the CEDAW report CEDAW/C/COD/4-5. Moreover, the discriminatory aspect of several articles had already been emphasised by the CEDAW during its 22<sup>nd</sup> Session.<sup>57</sup>

Article 330 of the Family Code concerning Marriage Contracts sets forth the principle of equality between spouses. This law designates both spouses' reciprocal rights and obligations: obligations related to living together, obligations regarding mutual care and assistance, the obligation of fidelity, mutual respect and affection, etc. However, flagrant contradictions which violate the basic principle of equality between spouses persist.

Article 148.1 provides the delivery of the family registry booklet (*livret de famille*) only to the husband during the celebration or the registration of the marriage. This is in contravention of article 16.1.c of CEDAW, which requires that both spouses enjoy the same rights and responsibilities during the marriage or during its dissolution. Concerning the replacement of a lost family registry booklet, the Family Code allows only the husband to request another.

Article 165 stipulates that the wife must live at the domicile of her husband, instead of establishing that the married couple chooses together its home. However, articles 15.4 and 16.1 of CEDAW require member States to accord to men and women the same rights under laws relating to the movement of persons and the freedom to choose their residence and domicile.

Article 215 limits the abilities of the wife, which contradicts CEDAW article 15.1, which requires States Parties to grant to women equality with men before the law.

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<sup>55</sup> cf. pages 15 to 18, forth and fifth periodic reports of the DRC to CEDAW, CEDAW/C/COD/4-5.

<sup>56</sup> cf. items 24, 25, 26 of the CEDAW list of issues during the examination of the last periodic reports, CEDAW/C/COD/Q/5.

<sup>57</sup> Paragraph 197, report A/55/38.

Articles 444 – 448 of the Code place married women in a position of dependence and submission to their husbands, to the extent that they cannot affect any legal act without their husband's agreement. These articles are flagrant contradictions of CEDAW article 16.1.c, which grants the same rights and responsibilities to spouses during marriage and its dissolution (its equivalent in Congolese domestic law is article 330 of the Family Code). In practice, these provisions pass the married woman from the guardianship of her parents to that of her husband. Ultimately, a considerable disparity is established between the spouses. Violation of the principles of equality before the law and respect for human dignity obstruct women's full participation in social, economic and political life.

Indeed, article 444 stipulates that "the husband is the head of the household. He must protect his wife; the wife must obey her husband". Article 445 provides that "Under the direction of the husband, the spouses work together, in the interest of the marriage, to guarantee the moral and material responsibility of their marriage". Article 448 provides that "the wife must obtain her husband's authorisation to effect legal acts for which she must present herself in person". However when the person accused is the husband himself, the husband consent is no longer required, in conformity with article 451.1 of the Family Code.

Articles 490.2 and 497.2, 515, 524 and 531 state that regardless of the type of legal agreement under which the marriage was concluded, the management of all property is entrusted to the husband. This is in contradiction of articles 15.3 and 16.1.f of CEDAW, which stipulate that States Parties agree that all contracts and all other private instruments of any kind with the legal effect of restricting women's legal capacity shall be deemed (believed, considered) null and void (invalid), and that the same rights and responsibilities apply to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the child shall be paramount.

Articles 361, 367, 382, 388, 426, 543 and 579, which address the dowry, insist on the symbolic and compulsory nature of this practice. Without the dowry, a marriage

would be impossible. One or several donations must be offered to the woman's family as a validation, a proof of the union. The dowry could be used as a pretext by the husband to mistreat his wife.

According to the State's Report, the President of the Congolese Republic must, in consultation with the provincial councils, determine the value of the dowry, in order to avoid abuses. The Minister on the Status of Women (Ministère de la Condition Feminine) regrets that the value of the dowry has not been fixed since the entry into force of the Family Code in August 1988.

However, the fact that the husband pays a dowry encourages the Congolese legislator to institute the husband as the head of the family with all the consequences which can follow. The practice of paying a dowry in order to contract a marriage is discriminatory toward women. Thus, the CEDAW General Recommendation No 19<sup>58</sup>, in articles 2.f, 5, and 10.c, establishes that "Traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision. Such prejudices and practices may justify gender-based violence as a form of protection or control of women. The effect of such violence on the physical and mental integrity of women is to deprive them the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms. While this comment addresses mainly actual or threatened violence the underlying consequences of these forms of gender-based violence help to maintain women in subordinate roles and contribute to the low level of political participation and to their lower level of education, skills and work opportunities".

To regulate such a discriminatory practice through legislation instead of abolishing it symbolically preserves its discriminatory nature by perpetuating the idea of male domination over women. This practice contradicts many CEDAW articles as well as the Congolese Constitution of 2006. Moreover, we can consider that this practice

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<sup>58</sup> General Recommendation No 19 on violence against women (11th session, 1992)

enables situations of forced marriage, since the dowry constitutes an agreement between the future spouses' families. A law prohibiting this practice should be adopted.

The DRC should immediately undertake to reform its legislation, which must conform to its own Constitution and to its international obligations.

#### **4.2.2.2 Toward a Reform of the Family Code<sup>59</sup>**

The struggle to reform the Family Code in order to change the legal status of women recently made significant strides. A memorandum was presented in 2002 to Congolese legislators, and was defended in 2004 before the Commission for the Revision of Congolese Laws. In March 2006, the RAF (Réseau Action Femmes) took part in a workshop on proposed reform of the Family Code organised by the Studies and Research Service of the Ministry of Justice, in order to guarantee women's and children's rights. Currently, a proposed amendment to the Family Code is pending. It is essential that this proposed legislation be a priority for the future parliament, which will be installed after the July 2006 elections.

It is important to remember that the revision of the Family Code encompasses the four books, on nationality, the person, the family, and succession and liberality. This reform would revise the discriminatory provisions regarding women in the book on the person, namely those concerning parental authority and the legal capacity of married women and in the book on the family notably the principle of marital authority and the rights of women after the death of their husbands.

Concerning acquisition of Congolese nationality, decree-law (décret-loi) 197 of 29 January 1999, which modifies and complements Act 81-002 of 29 June 1981, recognises that Congolese women can transmit Congolese nationality to their children, just as Congolese men can. However, in practice, the Congolese population disregards this provision: usually, children born of a foreign father and of a Congolese mother are considered foreigners, notably in the cases of children born during wartime to a father from an enemy country of the DRC. These children are

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<sup>59</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment , CEDAW/C/COD/Q/5

often rejected, which is why it is important that the State be attentive to the full implementation of this recommendation.

#### **4.2.2.3 The Penal Code**

Article 3 of the complementary provisions of the Penal Code, which summarises article 467 of Book IV of the Family Code, does not place spouses on equal footing in terms of the definition of the crime of adultery. Adultery committed by a woman is punishable in all cases, whereas that committed by a man is only punishable if it is induced. This seems to indicate that where a man's will is altered or inhibited by a married woman, for example through the use of alcohol, followed by the commission of a sexual act with her, the man is not at fault. Inequality also exists in the sanctions imposed for adulterous acts: article 467 of the Family Code prescribes a punishment of imprisonment for six months to one year as well as a fine for married women who commit adultery, whereas a married man may receive this punishment only if his act is judged to have an 'injurious quality' (article 467.2).

During the examination of the DRC's initial, second and third periodic reports, the CEDAW Committee underlined this point<sup>60</sup>. These provisions have to date not been corrected.

#### **4.2.2.4. The Labour Code**

##### *a. Marital authorisation*

The CEDAW Committee was concerned during its examination of the DRC's last reports by the de jure and de facto discrimination against women reflected by the obligation to obtain marital authorisation before accepting a salaried job, and the reduction of mothers' wages during maternity leave<sup>61</sup>. The Committee persistently invited the government to revise its discriminatory labour laws in accordance with article 11 of the Convention.<sup>62</sup>

Thus, Act No 015/2002 of 16 October 2002, regarding the Labour Code, included language to reinforce anti-discrimination measures for female workers. Article 1

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<sup>60</sup> Paragraph 197 of report A/55/38.

<sup>61</sup> Paragraph 225 of report A/55/38.

<sup>62</sup> Paragraph 226 of report A/55/38.

removed the husband's ability to oppose his wife's hiring. However, article 6 of this law, which treats the "ability to contract", creates certain confusion. This provision states that one's ability to offer his/her services is determined by the laws of his/her native country, or if that country is unknown, by Congolese law. By referring the ability to contract back to common Congolese Law, the Family Code is effectively enforced; article 215 of the Family Code limits the married woman's ability to exercise her independent decision to take a salaried job. Moreover, article 448 states that a woman must obtain her husband's authorisation for all activity of a legal nature. Additional efforts must be made in order to render all laws consistent. The proposed revision of the Family Code, elaborated by the Ministry of Justice, would remove these discriminatory provisions.<sup>63</sup>

*b. Sexual and moral harassment*<sup>64</sup>

Articles 73 and 74 of the 16 October 2002 law relating to the Labour Code consider sexual harassment serious enough to justify the breach of a labour contract without advance notice. According to information gathered, most women who work, look for a job, or are students are victims of sexual harassment. The offenders are very seldom prosecuted. However, this significant step lacks precision. Any such behaviour simply justifies the cancellation of the contract and the perpetrator is not criminally at risk. As for the amount of the indemnity to be granted to the victim as provisioned in article 75, it is subject to evaluation by the judge (under the conditions set in article 63 of the code).

The Provisional Law Against Sexual Violence (see Chapter III) amending the Penal Code sets forth in article 174.d a precise definition of harassment:

"Anyone who would adopt a persistent behaviour toward others, with words, gesture, by giving to him or her orders or by uttering threats, or by imposing constraints, or by exercising grave pressures, or by abusing of the authority given by his/her function in order to obtain of the person sexual favour, will be punished of a penal servitude comprised between

<sup>63</sup> cf. page 10, forth and fifth periodic reports of the DRC to CEDAW, CEDAW/C/COD/4-5.

<sup>64</sup> International Covenant on Civil and Political Rights , CEDAW/C/COD/Q/5.

one and twelve years and a fine comprised between 50.000 and 100.000 Congolese unchanging Francs or only of one of these penalties.”

c. Night-work of women<sup>65</sup>

In public and private industries is forbidden by article 124 of the new Labour Code. This is discriminatory because it focuses only on women. Women should have the same right as men to decide themselves if they do or do not wish to accept such work. Moreover, the work of women is extremely dependent on the question of child care. Urging women to work cannot be effective without child care solutions. The State must address that issue in order to effect change.

**4.2.2.5. The Department of Public Services<sup>66</sup>**

The State report admits a problem in article 25 of the Labour Code, which does not recognise the social function of motherhood by depriving a woman of her right to annual holidays if she has already taken maternity leave in the same year.

Yet, articles 41, 85, and 88 of law No 81 – 003 of 17 July 1981, concerning the status of civil servants, also note that the husband of a female public servant is deprived of family benefits, survival and survivor benefits.

Entire legal texts must be reviewed in order to achieve equality between women and men in all measures<sup>67</sup>.

**4.3 Discrimination Toward Women in Education and Politics**

The CEDAW Committee noted in 2000, during its examination of the initial, second and third periodic reports, that prejudices and stereotypes concerning the place of women and men in the family and in society persist. The idea of male superiority and female subordination is incompatible with the Convention.

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<sup>65</sup> cf. item 22 of the CEDAW list of issues, CEDAW/C/COD/Q/5.

<sup>66</sup> cf. p. 19 of the report of the DRC CEDAW/C/COD/4-5.

<sup>67</sup> Optional Protocol to the International Covenant on Civil and Political Rights, CEDAW/C/COD/Q/5



#### 4.3.1. Education<sup>68</sup>

Insufficiency of education for Congolese women contributes to their absence in the decision-making processes. The female illiteracy rate is very high, and for this reason many non-governmental organisations have set up centres for the elimination of illiteracy of Congolese women, without State support.

The political, economic and social systems do not favour children's education, especially for girls. Sometimes children must themselves finance their studies, due to their parents' lack of means. Girls can be forced to exploit their bodies. To increase the level of girls' education, the government together with UNICEF began a campaign entitled "all girls at school". This campaign did not reach its stated objectives. It failed to consider that the State could finance the studies of girls. Effectively, primary education which must be free, according to international texts, continues to cost money.

The State report presents quite honestly the situation of its impaired educational system. The State does not allot enough money and does not pay teachers' wages every month. A new State strategy must be designed in order to make available children's education.<sup>69</sup> This strategy must be based on several considerations, such as: Child labour, which seems to occupy an important role in certain parts of the country, especially in the mining provinces of the two Kasai, Bandundu and Lubumbashi, where mining work prevents children from attending school.

In the same way, in the province of Equateur, fishing is also massively based on the exploitation of child labour. The DRC ratified the Convention on the Rights of the Child on 27 September 1990 and must respect its responsibilities concerning the right to education and the regulation of child labour.

Due to the failure of the school system, parents trust less and less in the benefits of schooling, which is no longer a source of social progress. A campaign targeted to parents, in addition to education reform, should improve the situation. Particular

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<sup>68</sup> cf. p. 31 of DRC report CEDAW/C/COD/4-5.

<sup>69</sup> cf. item 17 of the CEDAW list of issues, CEDAW/C/COD/Q/5.

attention must be focused on girls' education since they are more greatly affected by the decline in rates of education.<sup>70</sup>

#### **4.3.2. Access to politics or to positions of responsibility**

In spite of the fact that equality is established in the 2006 Constitution, inequalities and disparities between women and men remain.<sup>71</sup>

The CEDAW Committee noted in 2000 the under representation of women in political life and in leadership positions, such as in the judicial system.<sup>72</sup> When transitional institutions were installed in June 2003, after an inter-Congolese dialogue, resolutions insisted on the representation of women in all political institutions. At the presidential level, of 5 presidents, there was no woman; at the ministerial level, there were 7 women among 61 ministers or vice-ministers; at the parliamentary level, 60 women out of 500 deputies; in the desk of the General Assembly 2 women among 8 officials; in the Senate 3 women among 120 senators and no woman among the 8 officials at the senatorial desk. The situation was better at the territorial level, in public enterprises, and in diplomatic positions. Unfortunately, few women occupied high level positions in these institutions.

Finally, when electoral lists were established, political parties did not respect the principle of parity. During the development of the electoral law, which entered in force on 9 March 2006, the Congolese legislature developed a contradictory provision by making it possible for political parties not to ensure the representation of women in their lists. Article 13.3 of the electoral law stipulates that "each political party's list is established in consideration of the equal representation between women and men, and of the promotion of handicapped persons". In article 13.4 it is added that "the non-realisation of the equality between men and women during the upcoming elections does not make the list inadmissible ". This last annotation insidiously allows parties not to apply the principle of parity. This reveals a lack of political will among the political leadership to promote the respect for parity as established in the Constitution.

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<sup>70</sup> cf. item 18 of the CEDAW list of issues, CEDAW/C/COD/Q/5

<sup>71</sup> <sup>32</sup> cf. item 20 of the CEDAW list of issues, CEDAW/C/COD/Q/5

<sup>72</sup> Paragraph 221 of the report A/55/38.

An initiative aimed at basic (fundamental) and higher education would enhance the capabilities of more numerous women to attain positions of responsibility. Incentives if not compulsory measures dictated by the State should encourage such access to education and institutions for women.

#### **4. 4 Women's Right to Health<sup>73</sup>**

##### **4.4.1. Maternal mortality**

During the last consideration of the Congolese report, the CEDAW Committee was worried by the high maternal mortality and infant death rate, by the low rate of contraceptive use, especially in rural areas, and by the deterioration of health services. Some efforts are being made with the help of partners in order to reduce maternal mortality rates. In 1999, there was a decrease in the maternal mortality rate, from 1,837/100,000 living births to 1,289. However, most women who die during labour are persons of few resources, who did not have money to pay for prenatal consultations.

All maternity hospitals must have the material and financial means in order to assume the payment of wages. Such requirements would allow the provision of care prior to payment. Moreover, in 2000 the CEDAW Committee encouraged the government to improve the utilisation of contraceptive methods, to abrogate article 178 of the Penal Code which forbids the distribution of contraception and sex education to young people<sup>74</sup>. This recommendation has not yet been implemented, and this article still exists. Nevertheless, the latter is not applied, in part due to the fact that president Mobutu by an ordinance has created a committee for the planning of births. This ordinance is still effective but constitutes a legal problem which must be reformed.

##### **4.4.2. Sexually transmitted diseases**

The protection of women from sexually transmitted diseases, principally HIV/AIDS, is rarely guaranteed. Most women infected by AIDS were infected by their husbands, and they do not receive free treatment. Indeed, women often have difficulties in

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<sup>73</sup> cf. items 13, 14, 15 of the CEDAW list of issues, CEDAW/C/COD/Q/5.

<sup>74</sup> Paragraph 228 of the report A/55/38.

convincing their husbands to wear condoms, and their husbands often have several sexual partners. Women who dare protest against their husbands' refusal to wear condoms risk being punished.

The State must initiate an information and sensitisation health campaign that focuses on AIDS and contraception. The national multisectorial programme fighting against HIV/AIDS (PNMLS) should make available free antiretroviral to persons living with HIV. Sensitisation of the population regarding the virus and the necessity to wear condoms should also be undertaken by the programme.

We deplore the fact that the government has simply adopted a wait-and-see policy toward donors and does not directly assist persons living with HIV.

The State must also promote equality and justice between the sexes in terms of reproduction and sexuality. These actions must be aimed at both women and men since women often need their husband's agreement to use a contraceptive. These actions must also be conducted throughout the country, even in remote parts. It is important to note that 46% of Congolese women know that condoms can prevent HIV. 31% of Congolese women used contraceptives between 1996 and 2004.

According to the United Nations Special Reporter on Violence Against Women<sup>75</sup>, generalised and systematic sexual violence affects the uncontrolled transmission of HIV and other sexually transmitted diseases. It was reported that health centres, clinics, and hospitals, especially in rural areas, cannot care for infected persons because they do not have sufficient financial, material and human resources. At the same time, victims do not have access to these centres due to instability inside the country and the lack of means of transportation.

To fight against the stigmatisation of persons living with HIV, a legislative proposal was made by the Réseau Action Femmes (RAF) in November 2005, linked with its plan of action financed by the PNMLS. This document was completed in March 2006

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<sup>75</sup> Report of the Special Reporter on Violence Against Women, Its Causes and Consequences, Yakin Ertürk, 27 March 2006, E/CN.4/2006/61/Add.1, page 22, paragraph 46.

during a workshop organised by UN/AIDS with the participation of members of Parliament. Currently there exists a proposed law condemning discriminatory behaviour toward persons living with the virus, as well as acts committed with the intention to contaminate another person. Moreover, we note that the provisional law on the elimination of sexual violence amending the Penal Code condemns in paragraph 9, article 174.i the intentional transmission of incurable sexually transmitted diseases.

#### **4. 5 Rural women**

To focus our attention on the situation of rural women, who constitute the majority of the female population, we emphasise that discriminatory traditions and beliefs are widely accepted and followed.<sup>76</sup> In 2002, the CEDAW Committee urged the government to pay attention to the needs of rural women and to assure their benefits provided by policy and public programmes such as the recognition of farm workers' labour rights. It was recommended that the State assure to rural women the equal right to participate in decision-making and their access to the health system and to credit. More studies with statistical information were mandated for the shaping of new policies<sup>77</sup>. It seems that there is no specific policy supporting rural women's rights. Rural women simply benefit sometimes from governmental actions linked to general programmes for decreasing poverty in the least developed and most indebted countries.

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<sup>76</sup> cf. item 26 of the CEDAW list of issues, CEDAW/C/COD/Q/5

<sup>77</sup> Paragraph 231 of the report A/55/38

## **CHAPTER FIVE**

### **FINDINGS, CONCLUSIONS AND RECOMMENDATIONS**

#### **5.0 Introduction**

Since 1996, sexual violence as described in the study has been used to intimidate, humiliate, and torture hundreds of thousands of women and girls in the Eastern Democratic Republic of the Congo. Rape in the Eastern DRC has frequently been described as a "weapon of war," and the United Nations officially declared rape a weapon of war in 2008. War Rape makes a particularly effective weapon in genocide because not only does it destroy its physical victims, but entire communities as well.

Today, the Democratic Republic of the Congo, particularly the eastern region of the country, is known as the rape capital of the world. While "the law specifically prohibits and provides penalties of 10 to 20 years' imprisonment for child and forced prostitution, pimping, and trafficking for sexual exploitation....There were no reported investigations or prosecutions of traffickers during the year." There is no law against spousal sexual assault.

Rape is simply a fact of life in the DRC. As Noel Rwabirinba, a sixteen year old who had been a militiaman for two years said, "If we see girls, it's our right...we can violate them". This casual statement reflects a generally callous attitude towards the female sex as well as the normalization of rape in the DRC. "The unimaginable cruelty of sexual violence reported in the DRC conflict includes public rape in front of the family and community, forced rape between victims, the introduction of objects into the victims' cavities, pouring melted rubber into women's vaginas, shooting women in the vagina and inducing abortions using sharp objects."

#### **5.1. Findings**

The situation of Eastern DRC, especially the violence against women still remains the main preoccupation of this part of DRC.

Women don't speak out the problem they faced because they fear to be rejected by their husband and the society. The Government still keeps silent about this situation; no respect of the principle of parity, no equality between men and women, no

access to justice even if there is some reports. Women remain at the lower level than man.

We also find out that the new law against sexual violence is not yet adopted by the parliament and not promulgated by the president in order to enable the punishment of authors of that violence and to protect and assist victims socially, legally, psychologically, physically...

Government and NGOs tried to help the situation faced by women by doing some campaign on the elimination of all form of discrimination against women. They tried to monitor the situation of women and to promote women's rights. They tried to bring the female half of humanity into the focus of human rights concerns, to reaffirm faith in fundamental human rights, in dignity and worth of the human person, in the equal rights of men and women. They also tried to increase the level of girls' education by doing campaign entitled "all girls at school", but this campaign did not reach its stated objectives. It failed to consider that the state could finance the studies of girls. Effectively, primary educations which must be free, according to international texts; continues to cost money.

Due to the failure of the school system parents trust less and less in the benefits of schooling, which is no longer a source of social progress: A campaign target to parents, in addition to education reform, should improve the situation. Particular, attention must be focused on girls' education since they are more greatly affected by the decline in rates of education.

According to the sexually transmitted diseases, the victims was not treated because health centers, clinics, and hospitals, especially in rural areas, could not care for infected persons because they do not have sufficient financial, material and human resources. At the same time, victims do not have access to these centres due to instability inside the country and the lack of means of transportation.

Socially, women, girls were rejected by their family, husband and finally by the Society (Community). There were not equality of rights and responsibilities of men

and women in all domain as education, politics, publics and private services,...They were traumatized by this situation because no body, even the Government could not take care of them, no protection even by their family, their husband.

Legally, the provisions which should protect women were not implemented, since the state does not further its legal texts, and does not establish effective, mechanisms assuring the effectiveness of these provisions.

No access to justice even if the cases were reported.

No Social legal protection of women against sexual violence during armed conflict implemented by the state.

Article 3 of the complementary provisions of the Penal Code, which summarises article 467 of Book IV of the Family Code, does not place spouses on equal footing in terms of the definition of the crime of adultery. Adultery committed by a woman is punishable in all cases, whereas that committed by a man is only punishable if it is induced

## **5.2. Conclusion**

In Eastern DRC, women and girls are subjected to physical, sexual and psychological abuse that cuts across lines of income, class and culture. Poverty, marginalisation and specific aspects of women's identity leave some women more vulnerable to violence especially during armed conflict situations. While men also experience violence, women's lower social status puts them at particular risk and the number of cases of sexual violence against women continues to grow at an alarming rate.

The DRC population is estimated at 60 million inhabitants, of which 51% are women. For 15 years, DRC experienced instability caused by internal conflict and external pressure. It has one of the most serious human rights violation records in the world. Women and girls are the victims of sexual violence perpetrated mostly by combatants from both sides. Rape and sexual violence is used as a weapon of war. Victims are discouraged from filing complaints because of lack of confidence in the



legal system and strong presence of men in the judiciary. But there is growing mobilisation of women and human rights organisations in the fight to end violence against women (VAW) in partnership with the United Nations and international organisations.

Some women in Eastern DRC experience domestic sexual violence in the family at the hands of an abusive partners or relatives because of the environment created by the on-going armed conflict. Others face sexual harassment in the workplace. Some women in Eastern DRC are forced into prostitution by traffickers and, in times of conflict, it is women who are most likely to be the target of sexual violence, especially rape. Sexual and abuse is not just physical, but may also be emotional, sexual or psychological.

### **5.3 Recommendations**

#### **Ratification the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women**

The DRC ratified the Convention on the Elimination of All Forms of Discrimination against Women and presents the periodical reports to the CEDAW. However, it is regrettable that the DRC has neither ratified nor signed the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. The country should ratify this instrument.

#### **Reform of the Family Code and of other discriminatory legislation toward women.**

In spite of the ratification of the Convention in 1986, the Congolese State did not respect its commitment at the moment of the elaboration of the Family Code in 1987. That Code was supposed to improve the Congolese Civil Code with regard to women. Indeed, the Congolese legislators chose to work on the organisation of the family by upholding for example the father's authority preferring parental authority instead. The Code also affirms the principle of freedom of marriage. The promotion of the status of Congolese women partly constituted the Congolese reform.

However, at the same time the State tried to promote the status of Congolese women, the Family Code has limited the legal capacity of married women by considering them as incapable persons, like children. The Family Code has installed an unequal system between women and men, which is completely in contradiction with the CEDAW. So, the legal age to contract a marriage, the rights of married women, parental authority, lineage, married women's juridical capacity, adultery provisions, and also the presumption of male superiority within discriminatory laws and traditions are various domains where the international texts and the Congolese Constitution are not respected.

The country should revisit this position and provide for women's equal rights with men in all the social spheres and also criminalise acts of sexual violence during armed conflict.

#### **Reinforce the role of the National Council of Women (*Conseil National de la Femme*)**

The State should allocate the necessary budget for the effective implementation of the national programme for the promotion and protection of Congolese women. The State's actions are limited to the written word and not enough concrete action. Currently the national programme for the promotion of Congolese women does not generally work due to the lack of real commitment by the State, who principally waits for a gesture from donors.

The State's engagement must also be more perceptible concerning the promotion of girls' and women's education. Campaigns of information and awareness rising on women's rights and on the fight against violence against women must be established.

#### **Real effectiveness of the new law on the repression of sexual violence**

The law against sexual violence, recently adopted by the Parliament, should quickly be promulgated by the President in order to enable the punishment of authors of sexual violence.

The government should introduce laws in order to pursue the authors of violence, to protect victims and to give them adequate reparation and psychological, social and sanitary assistance.

A plan for helping victims of sexist violence must be set up in order to secure psychological, social and health assistance to women victims of rape and other forms of physical violence.

A specific goodwill must be accorded in Kivu Provinces where women are particularly victims of sexual violence linked to the armed conflict.

The DRC Government should take action to protect young girls from being recruited as prostitutes and to closely monitor recruiting agencies.

### **Consideration of the criteria of gender**

The criterion of gender has not been taken into consideration regarding the recruitment of civil and military personnel responsible for law enforcement. In fact, this holds true for every sector of public life in the DRC. Consequently, the number of men is promoted in comparison to women and the training dispensed does not integrate gender-specific aspects to respecting human rights in law enforcement. The impact of culture on a subject as sensitive as rape and sexual violence against women and female children necessitates employing a significant number of women in the police, armed forces, security services, penitentiary administration, judiciary and the bar. On the base of an entrance exam considering gender dimension, it will be important to recruit police officers, military personnel, policy officers, security services agents and prison administrators.

### **Information, awareness rising regarding HIV and access for infected women to medicine and care**

The use of condoms must be encouraged by information actions and women facilitated to access such measures of prevention of unwanted pregnancies and sexually transmitted diseases.

### **Non-sexist education at any age**

As well as larger access to education for Congolese girls, it would be opportune to sensitise children from the younger age, in order to prevent future sexist violence in the direction of future victims and authors. Most children have been witnesses or victims of sexual violence. The impact on boys of violence against their mothers or other women risks influencing their perception and representation of women. In the same way girls will internalise fear, suffering and a vision of a masculine domination that it is difficult to change later.

Such education could also be taught as widely as possible, such as in to administrators, police and hospital staff, in order to sensitise adults to the problem of equality between women and men, especially in their familial and intimate relationships.

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