

**UNIVERSITY OF NAIROBI**

**INSTITUTE OF DIPLOMACY AND INTERNATIONAL  
STUDIES**

**GENDERED NATURE OF AFRICAN CONFLICTS  
THE CASE OF DEMOCRATIC REPUBLIC OF CONGO**

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REG. NO.: R50/80173/2012**

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FULFILLMENT OF THE REQUIREMENTS OF THE AWARD  
FOR THE DEGREE OF MASTERS OF ARTS, INSTITUTE OF  
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OF NAIROBI**

**OCTOBER 2014**

## DECLARATION

I, the undersigned, declare that this is my original work and has not been submitted for a degree in this or any other university for examination

Signed \_\_\_\_\_

\_\_\_\_\_

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DATE: OCTOBER 2014

**REG. NO: R50/80173/2012**

This project has been presented for examination with my approval as the appointed supervisor

Signed \_\_\_\_\_

\_\_\_\_\_

**PROF. MARIA NZOMO**

DATE: OCTOBER 2014

**(Supervisor)**

## **DEDICATION**

This project is dedicated to the survivors of Sexual Gender Based Violence who have suffered immensely. To the women and girls, whose lives have changed drastically and irreversibly and also, to the men who have suffered in silence.

## **ACKNOWLEDGEMENT**

This research paper has been made possible due to my interaction with FIDA Kenya's Gender Based Violence Project. I also wish to express my gratitude to Professor Maria Nzomo for her expertise on gender issue, without her direction, this research would not have been possible.

I want to thank scholars and organizations cited in this research for their work in DRC as they provided me with invaluable material on human rights, international instruments and Gender Based Violence during conflict.

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## **ABSTRACT**

The Democratic Republic of Congo (DRC) has experienced two successive wars, the first was a rebellion which started in 1996 to 1997 and saw the advancement of rebels to Kinshasa and the eventual overthrow of the Mobutu's regime. The second war started in 1998 to 2002 with the invasion of Eastern Congo by rebels with the support of regional governments, whereas the DRC government had its support from some African countries. The two wars led to loss of life which has been estimated at four million. The war has also witnessed massive violation of human rights against its citizens specifically women, girls and children. The findings of this research shows that women faced Sexual Gender Based Violence during the 1<sup>st</sup> and 2<sup>nd</sup> DRC conflict either as a result of failure on the part of commandants' giving express instructions on the non violation of their rights or express orders to sexually violate women and girls were given as a strategy to punish their enemies. The findings also show that strategies to end SGBV have focused largely on women and girls due to the attribution of SGBV as violence against women and not men. This has meant that men were not included in any program that was meant to address SGBV thereby rendering interventions ineffectual.



## ACRONYMS

ADF	Allied Democratic Forces
AFDL	Alliance des Forces Démocratiques pour la Libération du Congo-Zaïre
ANC	Armée Nationale Congolaise
AU	African Union
DRC	Democratic Republic of Congo
ECHO	European Community Humanitarian Organization
EU	European Union
FAC	Forces Armées du Congo
FAR	Forces Armées Rwandaises
FARDC	Forces Armées de la République Démocratique du Congo
FAZ	Forces Armées Zairoises
FDLR	Forces Démocratiques pour la Libération du Ruanda
ICJ	International Court of Justice
UN	United Nations
UNSC	United Nations Security Council
UNGA	United Nations General Assembly
CEDAW	Convention of the Elimination of Discrimination Against Women
GBV	Gender Based Violence
SGBV	Sexual Gender Based Violence
OCHA	United Nations Office for the Coordination of Humanitarian Affairs
UNIFEM	United Nation Development Fund for Women
ICC	International Criminal Court

UNITA	The National Union for the Total Independence of Angola
USA	United States of America – or (US – United States)
MLC	Movement for the Liberation of Congo
SADC	Southern Africa Development Community
DHDR	Declaration of Human Duties and Responsibilities
UNESCO	United Nations Educational, Scientific and Cultural Organization
ALiR	Armée du Rwanda
RPF	Rwanda Patriotic Front

# MAP OF DEMOCRATIC REPUBLIC OF CONGO

# CHAPTER ONE

## INTRODUCTION

### 1.1 Background of the Study

The African continent shares a unique history of colonialism which was marred with slavery, discrimination and conflict during the struggle for liberation. However, liberation has brought a new chapter of conflict perpetuated by African leaders in their quest for power. The continent is witnessing a metamorphosis from liberation struggle to a more sinister, brutal and opportunistic war tailored to benefit dictators and rebel leaders.

When we look at Africa between 1990 to 2007, we see a number of conflicts from Democratic Republic of Congo, Sierra Leone, Ivory Coast, Ethiopia and Kenya and others. Despite the number of death casualties, internally displaced persons and refugees being very high, the international community has paid very little attention to the causes and redress of conflict in Africa. Indeed Hawkins <sup>1</sup>*stated as follows:*

“.....[African] conflicts are frequently brushed off and dismissed as being chaotic, or worthy of some vague pity or humanitarian concern, but rarely of any in-depth political analysis.”

The Democratic Republic of Congo (DRC) is the third largest country in Africa, which boasts of natural and human resources. It gained its independence in 1960 and has had two successive and complex wars between 1996 and 2002. A number of countries like Rwanda, Burundi, Uganda

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<sup>1</sup> Hawkins V., *“What’s death got to do with it?: Stealth Conflicts*, 2008, retrieved on 14<sup>th</sup> April 2014 from <http://www.stealthconflict.wordpress.com>

and rebel groups have been involved in this war. The legacy of both colonial and autocratic rule made the situation more complex. The Eastern DRC has particularly experienced a gruesome war due to its strategic location which has led to countries such as Rwanda, Burundi, Uganda and a number of multinational companies being involved for its natural wealth.

However and like most wars in Africa, rebel leaders have organized groups, whose interests have moved from liberation to economical self interest. In DRC, young men or children are forcibly conscripted into rebel groups whereas female, mostly children, are forced into their camps and used either as domestic workers or sex slaves.

From 1996 – 2002 over 3.8 million Congolese have been killed majority being women. It is estimated that an average of 40 women are raped daily in South Kivu alone; of these, 13% are under 14 years of age, 3% die as a result of rape and 10-12% contract HIV/AIDS. Kidnappings, sexual slavery, gang rapes and forced marriages are the most prevalent forms of violence meted against women<sup>2</sup>.

Women have traditionally been considered private citizens playing very minimal or no role in political affairs of their respective countries. In most cases, and when conflict arises as is the case in most African countries, they are considered the spoils of war or they became the major victims of war.

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<sup>2</sup> C. Rodriguez ., *Sexual violence in South Kivu, Congo*: retrieved on 14<sup>th</sup> April 2014 from <http://www.fmreview.org>

However, it has been noted by various scholars that men also experience gender based violence during conflict but this has not been captured due to the concept of masculinity in the African context. Men are seen as the protectors of the society and therefore cannot experience gender based violence. For these reasons, they suffer in silence.

Human rights instruments recognize violence against women as crimes against humanity. The United Nation General Assembly defines "violence against women" as *"any act of gender-based violence that results in, or is likely to result in, physical, sexual or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life."* The 1993 Declaration on the Elimination of Violence against Women noted that this violence could be perpetrated by assailants, family members or even the "State" itself.<sup>3</sup>

It subsequently declared that:<sup>4</sup>

"Violence against women both violates and impairs or nullifies the enjoyment by women of their human rights and fundamental freedoms... In all societies, to a greater or lesser degree, women and girls are subjected to physical, sexual and psychological abuse that cuts across lines of income, class and culture."

The United Nation has also prioritized this issue through the Vienna Human Rights Conference (1993) and the Fourth World Conference on Women (Beijing 1995). It has been noted that militarism produces certain condition which creates an enabling environment for soldiers,

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<sup>3</sup> United Nation General Assembly Declaration on the Elimination of Violence Against Women (1993) (CEDAW)

<sup>4</sup> Beijing Declaration and Platform for Action, paragraph 112

combatants and civilians to engage in gender based violence against women, not just because they are women but in many instances to cause terror against their foes.

Between 1993 – 2003, United Nations (UN) publications and reports talk about democracy, economic (mainly natural resources) and governance issues when it comes to conflict in Africa and this is trivialized by western countries to a humanitarian crisis requiring their sympathy, while paying a quantitative listing of human casualties.

In the DRC for example, UN Security Council imposed sanctions on two active armed groups in 2013 that is the *Forces Démocratiques pour la Libération du Rwanda* (FDLR) and 23 March Movement (M23), however, this has achieved very little in terms of civilian security who are experiencing more violence especially women and children. Dr. Mukwege, described violence against women as<sup>5</sup>

“a weapon of war” in the hands of the Congolese armed forces, rebels and the numerous militias fighting over local control and the rich natural resources in the east.

## **1.2 Statement of the Problem**

Conflict in the DRC is endemic, this country has known no peace since it gained independence and the little peace that has been witnessed has been very fragile. During the period 1996 -2002 the conflict has witnessed massive violation of human rights with women and children being the main or majority target.

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<sup>5</sup> See <http://www.africareview.com/News/DR-Congo-rape-doctor-in-new-campaign-against-violence>

Even though both men and women experience violence, women suffer disproportionately as compared to their male counterpart, in that their livelihood is disrupted while fleeing for safety; they have to leave their land, cannot engage in productive activity and often than not have to leave their children behind. This has also been reinforced by the different international human rights instruments, which have recognized these disproportionate experiences by striving to protect the rights of women.

The definition of sexual violence during conflict has become synonymous with violence against women, leading to programs which exclude men. The definition also leads to stigmatization due to the concept of masculinity. According to Christian<sup>6</sup>

“As men struggle with no longer feeling “like a man” their family often experience social stigma if community members learn of the attack....”

The definition of Gender Based Violence, even though it includes both men and women, is used interchangeably with violence against women. This has led to some form of discrimination against men in that policies and programs do not include them. As noted earlier, international instruments have only captured the rights of women and children and not men who are majorly considered as perpetrators.

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<sup>66</sup> Christian M, *Rape as a “weapon of war” against Men*: Retrieved on 8<sup>th</sup> October 2014 from [www.irinnews.org](http://www.irinnews.org)



This research is critical in that it will enable UN and other key players to consider the protection of men and boys as an emerging issue, as it has also done with women and children. it will also inform the implementation gaps on women's rights.

### **1.3 Research Objectives**

1. To analyze the role women play in conflict and post conflict situation in Africa and DRC in particular.
2. To analyze whether Sexual and Gender Based Violence (SGBV) is a calculated weapon of war against women.
3. To analyze the differential ways in which women and men experience SGBV

### **1.4 Literature Review**

Turner<sup>7</sup>, analyses the conflict in Congo from the perspective of democracy, governance and economy and the role women have played as victims of war. He further notes that the Congo war has not received the attention it deserves. He analyzes human casualty in the form of numbers but does not look at the gender motives or question behind the causalities and the role they play. He further looks at the intervention by other African countries which are purely motivated by self interest and the role that the United Nations have played in not solving the conflict at all. His publication focuses on the changes required by the Congolese leaders, neighboring African states and the international community but does not analyze the role played by women in the conflict.

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<sup>7</sup> Turner T., *The Congo Wars: Conflict, Myth and Reality*: London, Zed Books, 2007

Judy El –Bushra and Ibrahim M.G. Sahl<sup>8</sup> have linked the concept of gender and conflict; and analyses the role women play in conflict which to them goes beyond being victims but also active actors in their role both as promoters and participants in the war especially in Uganda, Sudan, Somalia, Angola and Mali. Their book looks at the social and economic impact on poor communities, the role of men and women in these five thematic areas. They conclude that it would be prudent instead of concentrating on warlords, politicians; one should concentrate on how men and women influence war through their everyday choice.

Eichstaedt<sup>9</sup> concentrates on the minerals of Eastern Congo and how it has fostered conflict in the region. He looks at the "second" Congo war, which incorporated countries like Uganda, Rwanda, local miners, and numerous militias in their quest for the abundant natural resources like copper, cobalt, coltan, gold, and diamonds he notes that:

” It's a tragic irony that Congo's minerals' supply only a small percentage of those that end up in our electronic gadgets like cell ... But in a horribly impoverished country, a small percentage of a big number adds up to billions of dollars,...”

According to Eichstaedt, the Congo war is as a result of economic greed for the massive minerals that are extracted under the cover of the conflict. Stearns<sup>10</sup> looks at the conflict in the Congo through the people who were responsible for it and the victims. The author tries to make sense out of the conflict based on human experiences by laying down the political, social, and moral

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<sup>8</sup> Bushra E. J., & Sahl I.M.G., *Cycles of Violence – Gender Relations and Armed Conflict*: Nairobi, ACCORD, 2005

<sup>9</sup> Eichstaedt P., *Consuming the Congo; War and Conflict Minerals in the World's Deadliest Place*: Chicago, Lawrence Hill Books, 2011, pp 232

<sup>10</sup> Stearns J., *Dancing in the glory of monsters: The collapse of the Congo and the great war of Africa* - New York, Perseus Books, 2010

decay of the Congolese State. He also looks at the role of international actors especially multinational companies who profited from the Congo war. To him, they are liable at most for criminal neglect and not otherwise. He notes at the introduction of his book that:

“the Congo wars are not stories that can be explained through such stereotypes. They are the product of deep history, often unknown to the outside observers, the principal actors are far from just savages mindless killing and being killed but thinking breathing homines sapientes whose action however abhorrent are underpinned by political rational and motives..”

Lenda<sup>11</sup> analyzes how Rwandan, Ugandan, Zimbabwean and rebel forces who looted the natural resources of Congo have been replaced by a more organized economic crimes, the diversion of state funds and how the poor are made to pay for this. He also looks at the resulting human rights abuses.

Hoare<sup>12</sup> gives an account of his exploits as a mercenary when in July 1964, DRC was engulfed by an armed rebellion, where rebel fighters' stroke terror into the hearts of civilians and national army alike by raping, looting and burning. Hoare was commissioned to raise a force of Mercenaries with himself as Commanding Officer to quell the rebellion.

Twagiramariya<sup>13</sup> analyzes women experiences in conflict areas like Liberia, Chad, Namibia, Rwanda, Mozambique, Sudan and South Africa. The book shows how women respond to war

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<sup>11</sup> Lenda G., *Civil War and Looting in the Congo: How poor pay the bill: 2010* unpublished

<sup>12</sup> Hoare M., *Congo Mercenary: US*, Paperback edition, 1967

<sup>13</sup> Twagiramariya C. et al., *What Women Do in Wartime: Gender and Conflict in Africa* : Zed Books, 1998

either as victims or as combatants. It also captures Gender Based Violence meted out to women during conflict i.e. rape, gang rape etc.

*Theuri*<sup>14</sup> analyses how external forces have influenced and affected the nature, scope and dynamic of the DRC conflict. He looks at the role played by countries like Zimbabwe, Rwanda, Uganda, South Africa and Burundi in support of the government, largely due to its vast natural resources. The paper also looks at the peace initiative process that has achieved little in harnessing peace.

Abuodha Jo<sup>15</sup> analyses the humanitarian intervention in the DRC *vis a vis* mineral exploitation, the tribal or ethnic relation between the Hutu and Tutsis and further how the crisis has been ameliorated through the intervention of United Nations. According to him UN interventions have done little to foster peace due to the focus given by state actors to the mineral resources.

Perdigao<sup>16</sup> notes that men are the invisible victims suffering in silence due to the patriarchal nature of the DRC, where men are viewed culturally as the providers, protectors and caretakers of their communities hence cannot be victims of SGBV. This stigmatization has led to less discussion among the government, aid agencies and human rights organization. Sexual violence against men is viewed as a means to disempower men and thus undermine the strength of the community.

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<sup>14</sup> Theuri MMA., *The impact of African external forces in the Democratic Republic of Congo (DRC) conflict 1990-2002*: University of Nairobi, Unpublished p5

<sup>15</sup> Jo' A., *Humanitarian intervention in African conflict in the post cold war era: a critical study of the democratic republic of Congo conflict (1985-2005)*: University of Nairobi, Unpublished

<sup>16</sup> Perdigao Yovanka, *Invincible Victims: Sexual Violence against Men in The Great Lakes.*, retrieved on 8<sup>th</sup> October 2014 from <http://m.thinkafricapress.com>

Sivakumaran<sup>17</sup> notes that violence against men manifest itself in the form of rape, forced sterilization etc during conflict. He is of the view that violence against men occurs during conflict even though there is no precise number as in the case of violence against women. The lack of data is due to stigma, shame, confusion, guilt and fear due to the perception of masculinity where men are discouraged from talking about their emotions. Men as victims of masculine stereotyping do not have the right words to express themselves. He is of the opinion that when the issue is given more attention it may lead to better understanding of the role women and men play in conflict thereby dispelling the concept of women as “victims” and men as “perpetrators”

### **1.5 Justification of the Study**

The project paper examines SGBV in the context of African conflict and analyzes the role played by both women and men. As noted from literature review by various scholars, much of the focus on the DRC conflict is on economy and politics. There are very few documented studies on the subject.

Violence against men, on one hand, is now acknowledged as an emerging issue. Women’s rights, on the other hand, have been captured in numerous international instruments leading to disproportionate or differential treatment of both men and women in policy response and programs. Further, SGBV has been captured as a consequence of conflict where both men and women can be either perpetrator or victim.

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<sup>17</sup> Sivakumaran S., *Sexual Violence Against Men in Armed Conflict: The European Journal of International Law*, Vol 18, 2007 pp253 -276

This project analyzes the traditional roles played by both women and men in an African context and how it affects them during conflict. This paper will also strengthen the understanding of gender and how men and women are differentiated during conflict despite similar experiences and the legal gaps

This paper will inform not just the women fraternity but also policy makers on steps that need to be taken to address the gender question from an African perspective.

### **1.6 Theoretical Framework**

SGBV is endemic in any conflict and noting the general and specific consideration given by UN and other international humanitarian organization. Whereas women have traditionally been considered as the most likely victim of conflict, due to the patriarchal nature of the world's society, it is now being accepted by scholars that men are also victims and doubly so due to patriarchal nature of the society.

Feminists' theorists view the international system as constituted by socially constructed gender hierarchies which contributes to gender subordination. Constructivists are more concerned about how gender influences global politics as well as how global politics influences gender. Constructivists state that gender politics creates rules which governs the relation between the State and its citizen.

Constructivist have demonstrated how security of the individual is related to national and international politics and how international politics impacts on the security of the individual at national level. War is a cultural construction that men fight war to protect the weak being women

and children. Militarism is a threat to women's security and competition for scarce resources on which women depend. Wartime rape is considered as a military strategy as in the case of Yugoslavia.<sup>18</sup>

According to Connell<sup>19</sup>, masculinity concerns the role of men in a gendered hierarchy which can be defined by the practice of pattern by which both men and women engage in that position. She is of the opinion that gender is a complex structure that relates to and organizes human's reproduction. Masculinities are a configuration of practice that is constructed, unfold and change through time. This theory looks at the socially constructed norms of masculinity, femininity and power in establishing social order. Social order is characterized by the domination of people who wield great political, economic, and social resources.

Rape during conflict has existed since ancient time and has prevailed through time. Strategic rape theory provides that rape is a tactic executed by soldiers in the service of larger strategic objectives<sup>20</sup> this leads to diminishing resistance from the civilians who become demoralized whilst the enemy is humiliated and emasculated for failing their basic protective duties.

Rape in this theory is considered as "genocidal rape" since it is designed to annihilate a population and its culture. However it is important to note that there is sparse evidence to prove that military have adopted the strategy of rape but in most cases it can be implied from the actions of the soldiers.

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<sup>18</sup> Dunne T., Kurki M., & Smith S., *International Relations Theory: London, Oxford University Press, 2013*

<sup>19</sup> See [www.raewynconnell.net/p/masculinities\\_20.html](http://www.raewynconnell.net/p/masculinities_20.html)

<sup>20</sup> See [www.catherinecollegelibrary.net](http://www.catherinecollegelibrary.net)

According to Kelly<sup>21</sup> SGBV during conflict serves a large strategic purpose as a means of warfare with diverse yet predictable consequences. The strategic rape theory states that SGBV is a tool to subjugate populations, instil fear, curtail movement and economic activity, stigmatize women, undermine community and family structures, contribute to bonding of perpetrators through the common act of rape, and in some cases, deliberately pollute the bloodline of the victimized population.” Kelly also analyzes the response, motivation and attitude of militia towards sexual violence. It is important to note that from Kelly’s report women combatants in the DRC were limited to manning check points or conducting minor errands that did not involve active combat.

### **1.7 Hypothesis**

1. Women are more likely than men to become victims of gender based violence during conflict.
2. Sexual gender based violence in conflict is a deliberate political and economical weapon of war.
3. Patriarchy and discriminatory cultural norm increase women’s vulnerability to sexual gender Based Violence during conflict.

### **1.8 Approach/methods**

The project paper will be based on library research both primary and secondary sources will be analyzed. Secondary sources will include reports, relevant articles, academic papers and journals. Reports from key institution like United Nations, Medicin San Frontier (MSF), American Medical Association, Human Rights Watch, Action Aid etc will be analyzed. The project will also rely on research studies conducted by other notable individuals and institutions.

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<sup>21</sup> Kelly J., *Rape in War: Motive of Militia in DRC: p3*, retrieved on 14<sup>th</sup> April 2014 from [www.usip.org](http://www.usip.org)



## **1.9 Scope and Limitation of the Study**

The study will be restricted to Eastern DRC where research on sexual violence and human rights abuses has been documented. Further, there is sparse information on violence against men due to the sensitivity of the topic and the inability of men, due to gender positioning, to report such cases. It has further been noted that in the field of SGBV, focus is generally directed towards women and children.

## **1.10 Chapter Outline**

### **Chapter one: Introduction**

This chapter constitutes the research proposal. It is the skeleton of the entire project.

### **Chapter 2: Contextualizing Sexual Gender Based Violence in African Conflicts**

Provides the historical background of conflict in Africa and the paradigmatic move from war crimes to specific crimes against women, humanity e.t.c since the end of World War 2 (WW2)

### **Chapter 3: The effectiveness of international instruments in countering SGBV**

This chapter will analyze the nuances of international instruments and resolutions in countering SGBV, its effectiveness and shortcomings in Africa.

### **Chapter 4: Peace resolution and its effectiveness in the DRC**

This chapter focuses on women's participation in resolving conflict and the extent to which it can work in the DRC.

### **Chapter 5: Conclusion and Recommendation**

This chapter will prove or disprove the research hypothesis. It will also provide policy recommendations with regards to the issue of SGBV during conflict.

## CHAPTER TWO

### CONTEXTUALIZING SEXUAL GENDER BASED VIOLENCE IN AFRICAN CONFLICTS

#### 2.1 Introduction

Gender based violence and conflict is a subject that dates from ancient time to modern day. It is only that the term Gender Based Violence has been used interchangeably with violence against women and that's where the misperception starts. Africa as a continent has witnessed conflicts which started with the struggle for liberation and was later replaced with internal struggle for power. The DRC has had a turbulent history largely due to its abundance natural resources. This chapter will analyze the historical contest of the DRC conflict and the emerging human rights violation.

#### 2.2 Actors in the DRC Conflict

Conflict in the DRC has been fuelled by both internal and external actors largely due to lack of state authority. This section will analyze the different actors and their motives

##### 2.2.1 Main Actors

###### i. **Forces Démocratiques de Libération du Rwanda (FDLR)**

FDLR is the largest armed group in the Kivu provinces. It is a politico-military movement that originated from ex- soldiers of *Forces Armées Rwandaises* (FAR), Hutu Civilians and ex-Interahamwe militiamen.. The FDLR succeeded *Armée de Libération du Rwanda* (ALiR), which was also the successor of *Rassemblement pour le Retour des Réfugiés et la Démocratie au Rwanda* (RDR).

Romkema has estimated that there are approximately 200-300 direct suspects of genocide within the FDLR.<sup>22</sup> Their main demand is the creation of an inter-Rwandan dialogue for repatriation of its combatant. The FDLR is divided into 3 brigades; first, the North Kivu Brigade which is composed of four battalions, second, the South Kivu Brigade, composed of four battalions and finally, the Reserve Brigade, composed of 3 battalions. Their influence extends all over the two Kivu provinces. FDLR have committed a wide range of human rights violations ranging from extortion, plunder, sexual violence and armed robbery.

**ii. The Mayi-Mayi**

The Mayi-Mayi are local militias operating in the Kivu area. Their main force is the *Coalition of Patriotic Congolese Resistants* (PARECO). It is led by Colonel La Fontaine of the Nande ethnicity. Their main agenda is to defend the marginalized Congolese people. They also collaborate with FDLR in various military operations. Their main activities are mining and other commercial activities.

**iii. Rally for Congolese Democracy**

This is a rebel group that operated from Eastern DRC with support of the Rwandan Government. It is composed of Banyamulenge who are Congolese of Rwandan origin or Tutsis to be precise. It was formed by Rwanda and Uganda due to its disaffection with

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<sup>22</sup> Romkema H., *Opportunities and Constraints for the Disarmament & Repatriation of Foreign Armed Groups in the Democratic Republic of Congo*, MDRP commissioned report, June 2007, p. 66.

the Government. They have been accused of human rights violation due to their brutality against civilians

**iv. Movement for the Liberation of Congo**

It was backed by Ugandan government and operated in the Equateur region. It was led by Jean-Pierre Bemba. This group was used by Uganda as its proxy in the DRC conflict.

**2.2.2 External Actors**

**i. Rwanda**

The Rwandan genocide of 1994 was perpetuated by the Rwandan government, its army, the Force Armées Rwandaises (FAR), and members of the Interahamwe. Over 900,000 people mainly Tutsis died including those who were perceived to be their sympathizers. After their defeat by Rwandan Patriotic Army (RPA), large number of Hutus fled into exile in Congo. Rwanda's concern was that the Hutu militia who were involved in the Rwandan genocide<sup>23</sup> and now entrenched in refugee camps in Eastern Zaire would regroup and launch attack on Rwanda and therefore their justification to send incursions inside DRC.

Rwanda also has historically claimed part of Eastern Congo and their entry to the conflict was supposedly motivated by their desire to protect the ethnic tutsi's of Congo, the Banyamulenge. This led to the formation of RCD which was financed by both Rwanda and Uganda, with their support, RCD was able to conquer various towns in the East.

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<sup>23</sup>Rwandan Genocide commenced from 7<sup>th</sup> April to 15<sup>th</sup> July 1994 wherein Hutu targeted Tutsi's in a killing orgy. It is estimated that over 900, 000 people lost their lives – retrieved on 14<sup>th</sup> October 2014 from [www.wikipedia.com](http://www.wikipedia.com)

**ii. Uganda**

The entry of Uganda to DRC has a long history which dates back to the overthrow of Idi Amin wherein Tutsi refugees from Congo and Rwanda joined forces with Uganda and aided Yoweri Museveni into power. Some of these troops also fought in Rwanda's civil war which saw the ascension of Paul Kagame into power. The two countries as allies supported RCD and their allies in DRC. It's important to note that Uganda has been accused of plundering minerals in DRC by collaborating with rebels.

**iii. Angola**

It was involved in the Congo war because Mobutu supported the National Union for the Total Independence of Angola (UNITA) a rebel group during the Angolan civil war (1975-2002) and who were trading in diamond for weapons. For this reason Angolan government wanted to eliminate UNITA's operations in Southern Congo.

**iv. Chad**

Chad supported Kabila due to encouragement from France as a means of regaining popularity in the region. Their stay was not long due to accusation of gross violation of human rights and looting which resulted in backlash from national and international actors.

**v. Zimbabwe**

Robert Mugabe, an ardent supporter of Kabila, was one of the main contributors of military aid to the conflict by providing a modern air force. His intentions were to expel rebel forces From DRC. However, it sustained heavy air loss, captured ground forces and

loss of international credibility, coupled with the denial of funds by World Bank and International Monetary Fund (IMF) they withdrew from DRC.

**vi. Namibia**

The president at the time, Sam Nujoma was an ally of Kabila and also became involved in the war due to its commitment to SADC. It is also worth noting that Namibia had commercial interests in Kinshasa especially fishing and mining. This move by President Nujoma cost him criticism from the opposition and western donors. This eventually led to the withdrawal from Kinshasa in 2002.

**vii. Others**

Countries like Burundi, Ethiopia and Eritrea to a lesser extent took part in the conflict; however their involvement was hampered with their own internal conflict.

### **2.3 The War in DRC**

The DRC was colonized by Belgium until 1960 when it gained its independence. Thereafter it was under the leadership of Colonel Joseph Desire Mobutu from 1965 to 1996. Even though Colonel Mobutu enjoyed the support of United States of America's (USA), this support was withdrawn following the end of the cold war. The Zairean economy fell due to the authoritarian nature and policies of the government<sup>24</sup>. The population was left to rely on informal economy. Rebel groups began to emerge and sought refuge on the Eastern part of Zaire.

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<sup>24</sup> See Nzomo M., *Gender, Governance and Conflicts in Africa*: UON, 2002 p 4 - wherein she states that undemocratic governance was the major casual factor for conflict in Africa.

The 1<sup>st</sup> civil war erupted in October 1996 to 16<sup>th</sup> May 1997 when Rwandan troops led by Laurent-Desire Kabila<sup>25</sup> entered DRC, Colonel Mobuto fled leading to Kabila being declared the president. This led to the renaming of Zaire to Democratic Republic of Congo. To avert a coup, Kabila expelled Rwandan and Ugandan forces from DRC thereby breaking all ties with his allies and this led to the 2<sup>nd</sup> war in DRC.

It is important to note that ethnic tensions in the DRC were rampant, especially with agrarian tribes native to DRC and semi nomadic emigrants from Rwanda mainly Tutsis who arrived either before, during colonialism or others after independence. These ethnic tensions between ethnic Congolese and those who are perceived to be outsiders have partly led to a number of massacres. This also includes conflict fuelled by quest for the abundant natural resources in Eastern DRC.

## **2.4 Second Congo War**

This is also referred to as the “Great War of Africa”. It started in August 1998 till July 2003 when the transitional government of DRC took power. President Kabila expelled his allies from DRC due to the perception by civilian that he was a puppet of his foreign backers. The expulsion of Rwandan forces led to tensions in Eastern DRC among locals with Rwandan heritage<sup>26</sup> and a mutiny erupted in August 1998. A rebel group named Rally for Congolese Democracy (RCD) and supported by Rwanda and Uganda emerged. Kabila on the other hand sought the assistance of refugees mainly Hutus in Eastern DRC urging resistance against the Tutsi’s.

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<sup>25</sup> A Marxist and an admirer of Mao Zedong. He had been waging war for nearly three decades in Eastern DRC

<sup>26</sup> Banyamulenge Tutsis of Eastern DRC

It is also important to note that Uganda also supported the rebel group “ *Movement for the Liberation of Congo (MLC)*” while the rebels were advancing to Kinshasa, government forces were fighting for control of Eastern DRC.

The rebel advancement was reversed due to diplomatic intervention by Southern African Development Community (SADC). Zimbabwe, Namibia, Angola, Libya, Chad and Sudan joined the conflict in support of Kabila leading to a multisided war. The *Lusaka cease fire Agreement* was entered into on July 1999 between DRC, Namibia, Angola, , Rwanda, Zimbabwe and Uganda. The terms of the ceasefire was the cooperation in tracking, disarming and documentation of all armed groups in the Congo. UNSC sent Ninety (90) liaison personnel to supervise the ceasefire but it failed due to mistrust by key players.

In 2000, the UN in further support to the ceasefire sent 5,537 (MONUC)<sup>27</sup> troops to monitor the ceasefire however fighting continued between rebel and government forces and between Uganda and Rwandan forces.<sup>28</sup> In January 2001, Laurent Kabila was assassinated by his bodyguard and this paved way for his son, Joseph Kabila to ascend to power.

## **2.5 The Death Toll**

In Eastern DRC, forces supporting RCD committed killings against civilians indiscriminately. Killings of villagers were often in retaliation for their supposed support of local militia known as

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<sup>27</sup> The United Nations Organization Mission in the DRC

<sup>28</sup> There was a fallout between Uganda and Rwanda in Kisangani between May and June 2000



"Mai-Mai," or former Rwandan soldiers or militia, known as "Interahamwe."<sup>29</sup> Soldiers acting for the RCD arbitrarily detained many of its supposed opponents, often holding them in irregular facilities to which their families and humanitarian agencies had no access. Once arrested, some individuals were not seen again.<sup>30</sup>

According to Human Rights Watch<sup>31</sup>, human rights abuses have occurred in Eastern Congo since 1998 whereby Uganda, Rwanda and Burundi while supporting RCD have committed abuses ranging from recruitment of child soldiers, arbitrary arrests and detentions, harassment of human rights defenders and abuses against women more so rape. This report simply quantifies human casualty in their hundreds based on its research. It further found that women were subjected to torture including rape and arbitrary arrest on suspicion of supporting Mai –Mai, Militia or hiding arms. Men disappeared and were never heard of after arrest. The arrest of men, according to the research was based on ethnicity as one was considered Interahamwe if they were Hutu or Mai Mai if they were Hunde.<sup>32</sup>

Even though it is generally accepted that over 5.4 Million people have lost their lives due to the Congo War<sup>33</sup>, The Human Security Report<sup>34</sup> estimates this figure at 2.83 million lives when using an appropriate baseline rate.

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<sup>29</sup> During the Rwandan genocide, Interahamwe militia was composed of ethnic Hutus who took flight to Eastern DRC and it is claimed that they had formed an alliance with the Mai-Mai in their fight against the Rwanda, Burundi, Uganda and RCD.

<sup>30</sup>Human Rights Watch Report., *Democratic Republic of Congo: Casualties of War: Civilians, Rule of Law, and Democratic Freedoms.*, (1998)

<sup>31</sup> Ibid

<sup>32</sup> Ibid

<sup>33</sup> International Rescue Committee (2008)

<sup>34</sup> Simon Fraser University (2009)

## 2.6 Gender Based Violence in DRC

Gender based violence (GBV) in conflict is not a new concept but the gravity and severity against the victims is on the increase. According to European Institute for Gender Equality, GBV is directed against a person based on their gender. It reflects and reinforces inequality between men and women. They further note that GBV has been used synonymously with violence against women.

The Council of Europe<sup>35</sup> has further defined violence against women as:

“all acts of gender-based violence that results in, are likely to result in, physical, sexual, psychological or economic harm or suffering to women including threats of such acts, coercion or arbitrary deprivation of liberty....”

GBV in conflict is also based on gender ideologies which are linked to the unequal gender power relations in war and peaceful time. Gendered inequalities are core to the production and reproduction of gender norms, which regulate the character and behavior of “good men and women”. These norms are produced and reproduced at different levels in the daily life of individuals, government institutions, and international interventions. For example the impunity for sexual violence cements the notion that a woman has no right over her body; a lack of women’s representation in political institutions reproduces the idea of women as not suitable for politics.<sup>36</sup> GBV during conflict is therefore linked to the general gender ideologies and gendered power relations.

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<sup>35</sup> Council of Europe, Ad Hoc Committee on preventing and combating violence against women and domestic violence (CAHVIO), 2011

<sup>36</sup> Eriksson B.M., *The Complexity of Violence: A Critical Analysis of Sexual Violence in the Democratic Republic of Congo*: The Nordic Africa Institute, 2010 p 42

The African Charter on Humans and Peoples Rights has also recognized GBV has a human rights issue particularly violence against women. They have reinforced their resolve to protect the rights of women through its Protocol.<sup>37</sup>

Rape against women was brought to the forefront with the Rwanda and Yugoslavia civil war. Popular explanation for this phenomena ranges from the male desire to conquer women, to strategic or genocidal theory which categorizes “rape as a weapon of war”. To understand this concept one has to look at the social structures preceding and situate within the conflict.

Eastern DRC has been described as the “Rape Capital of the World” due to the prevalence and the intensity of sexual violence; this coincided with the 1<sup>st</sup> and the 2<sup>nd</sup> armed conflict. As noted earlier, much research has focused on rape against women<sup>38</sup> perpetuated by armed militia groups overshadowing sexual violence against men and boys<sup>39</sup>. The perpetrators have also traditionally been assumed to be men, this contradicts a report by the American Medical Association wherein 41.1% of victims reported that the perpetrators were women.

## **Conclusion**

It is evident that thousands of people have lost their lives in the DRC between the period 1996 - 2002 (during the 1<sup>st</sup> and the 2<sup>nd</sup> Congo war). The agreements executed for cessation of hostilities did not address the issue of violence against the Congolese but was majorly political concessions

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<sup>37</sup> Adopted by the meeting of Ministers held in Addis Ababa Ethiopia on 28<sup>th</sup> March 2003 and the assembly of the African Union at the second summit of the African Union in Maputo Mozambique on 21<sup>st</sup> July 2003

<sup>38</sup> Kilonzo N., Ndungu N., Ajema C., Taegtmeier M., Theobold S., Tolhurst R., *Sexual Violence Legislation in Sub Saharan Africa: the need for strengthened Medico – Legal Linkages*: Nairobi, Reproductive Health Matters, 2009

<sup>39</sup> Autesserre S., *Dangerous Tales: Dominant Narratives on the Congo and their unintended Consequence: African Affairs 111(443)*, Oxford University Press 2012 pp202 -222

between the main and external actors. It is only until the International Criminal Court (ICC) started persecuting culpable individuals for crimes against humanity that we see the issue of gender based violence being addressed and even so, much focus is given to violence against women and not men. Unfortunately, the strategies laid down by international communities have to a larger extent ignored the reality on the ground but opted for massive programs to address women victims.

## CHAPTER THREE

### THE EFFECTIVENESS OF INTERNATIONAL INSTRUMENTS IN COUNTERING SEXUAL GENDER BASED VIOLENCE

#### 3.1 Introduction

As noted in chapter 1, conflict in Africa is endemic. The DRC war (1<sup>st</sup> and 2<sup>nd</sup> war) which started in 1996 and ended in 2002 witnessed massive human rights violations. According to Human Rights Watch<sup>40</sup>, there is a second war being fought against women and girls in eastern DRC, which is controlled by RCD and their patron, the Rwandan army, in the form of sexual violence. This group is opposed by armed groups operating in eastern Congo, including Hutu Militia, Mai Mai and rebels associated with the Rwandan genocide of 1994. The rape against women and girls could be systematic or a general attack aimed at terrorizing the population into accepting their control or as a punishment for aiding opposing forces.<sup>41</sup>

Women, who have been affected by war from this region, are the sole breadwinners of their families, must earn a living by cultivating the fields, foraging in the forest or going to the market, this makes them extremely vulnerable to attacks or abduction by combatants (this included also government forces and UN peacekeepers)<sup>42</sup>. These attacks have a profound and life changing effect on its victims who cannot report due stigmatization and fear of reprisals.

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<sup>40</sup> Human Rights Watch., *The War Within a War: Sexual Violence against Women Ana Girls in Eastern Congo: New York, Human Rights Watch, 2002*

<sup>41</sup> Ibid pp 11

<sup>42</sup> United Nations Special Rapporteur on violence against women, its causes and consequences (1994-2009) pp24

### 3.2 Societal Status of Congolese Women and Girls

Prior to Europe's scramble for Africa<sup>43</sup>, women and other members of the society provided economic and social support to their families. Women were generally responsible for subsistence agriculture for food production while men did the strenuous task of cattle herding and hunting. New households were formed through marriage and headed by men who managed the unit of production and reproduction<sup>44</sup>. In DRC it is the men who ruled the intellectual world while the women had no legal status but at the mercy of either their husbands or male victims. According to Guy women were "precious objects of exchange and control".<sup>45</sup>

Prior to the war, women were still considered as second class citizens. Social norms dictated the role of women as subordinate to that of men both customarily and in practice. What is of further importance is that the Congolese Family Code required women to obey their husbands. Education for boys was also more valued than girls whose status was and still is premised on marriage.<sup>46</sup> Rape cases were solved by men usually through payment of agreed damages or arranged marriages.

In cases of death by murder or negligence, the victim's family would accept an equivalent of bride price as compensation for not pursuing legal action.<sup>47</sup> Men were allowed by customs to engage in extra marital affairs without question. A woman's independence was limited by the

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<sup>43</sup> Gann LH. Et al., *Colonialism in Africa: The history and politics of colonialism, 1870–1960.*, Cambridge University Press (1982)

<sup>44</sup> Tanga P.T., "The women are coming: Women's participation in Lesotho local governance", *Advancing Women in Leadership Online Journal* 28: 2008, p. 6.

<sup>45</sup> Guy J., *Gender oppression in Southern Africa's pre-capitalist societies: in Walker C, (eds) Women and Gender (Item 4226)*, 1990 pp. 33–48

<sup>46</sup> According to World Bank; primary school enrolment in 1999 was 33% for boys against girls at 31%, youth illiteracy rate (1990) was 19% boys and 48% girls. <http://genderstats.worldbank.org>

<sup>47</sup> Human Rights Watch *Supra* p30

wishes and whims of her husband. Women were also not included as leaders in the political sphere as they were confined to their homes engaged in agricultural activities.

### **3.3 Rape as a Weapon of War**

The conflict in Rwanda, Yugoslavia and DRC as well as accounts of other conflicts around the world, demonstrate that sexual violence plays an important role in conflict as a wartime strategy. Actors in the DRC conflict have all taken part in sexual violence against women and girls as a way of controlling civilians or winning their territories. Due to the frequency and the brutality of the offence in Eastern DRC, it has been christened the rape capital of the world<sup>48</sup>

In interviewing victims, government representatives, international agencies, witnesses, churches, and Non Governmental Organizations, Human Rights Watch reported that in the past fifteen years, “tens of thousands of women and girls in Congo have become victims of sexual violence.” There were 4,820 cases in North Kivu alone.<sup>49</sup> While researching the Rwandan Genocide in 1994, Mullin,<sup>50</sup> noted that:

“Rape itself is infused with gendered power dynamics; scholars have long acknowledged that rape is as much about power as it is about sex.”

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<sup>48</sup> Clark M., *Congo: confronting rape as a weapon of war.*, The Christian Science Monitor 4<sup>th</sup> August 2009

<sup>49</sup>Human Rights Watch: *Soldiers who rape, commanders who condone sexual violence and military reform in the Democratic Republic of Congo.* New York, Human Rights Watch, 2009

<sup>50</sup> Mullins C., *We are going to rape you and taste Tutsi women: rape during the 1994 Rwandan genocide.* Br J Criminol (2009) 49:719-35.

Whereas combatants would rape their victims due to the enabling circumstances, it was also motivated by the “power” they wielded. Pratt and Werchick<sup>51</sup> in their assessment noted that there were different categories of rape in DRC. They found that GBV as a weapon of war, was effective in subduing, punishing or taking revenge on entire communities. The ages of victims according to their assessment ranged from four months to 84 years.<sup>52</sup>

It is also important in this research to mention the study conducted by International Alert<sup>53</sup> in Eastern DRC. Through their interview of victims and combatants, they identified four types of rape. One, Individual rape where a victim was raped by one perpetrator (20% had endured this category). Second, gang rape involving more than one combatant (79% endured this category). Third, forced rape wherein family members were forced to have incestuous sexual relations with one another and lastly, rape by insertion of objects.

### **3.4 Situational Analysis in Eastern DRC**

#### **i. Patriarchy**

As noted above, women are considered inferior to men due to the patriarchal nature of DRC society. Mullins<sup>54</sup> in his research notes that women were considered as property and could therefore be plundered and dealt with in any way the owner wished. This is also not different with the Congo conflict where women are subordinate to men.

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<sup>51</sup> Pratt M., & Werchick L., *Sexual terrorism: rape as a weapon of war in eastern Democratic Republic of Congo: USAID/DCHA Assessment Report*, 2004, pp6-7.

<sup>52</sup> Ibid

<sup>53</sup> Ohambe M. et al., *Women's bodies as a battleground: sexual violence against women and girls during the war in the Democratic Republic of Congo.*, International Alert, (2005) pp11-62.

<sup>54</sup> Ibid



A study by Oxfam International and Harvard Humanitarian Initiative<sup>55</sup> found that women in DRC were sexually violated as a strategy to shame, demoralize and humiliate the enemy with the aim of asserting power and dominion not just over the women but their men. Gottschall<sup>56</sup> further categorized this kind of rape as “genocidal rape” rape whose intention was to annihilate an entire community. She states that rape whether in war or peace is motivated by man’s desire to exert dominance over women, in her words,

“Rape in war is deemed as a result of a conspiracy, not necessarily conscious but still systematic, of men to dominate and oppress women. While men may fight on different sides and for different reasons, in one sense they are all warriors on behalf of their gender – and the enemy is woman.

## ii. Poverty

DRC has been ravaged by war since 1996, the economy has seen a down ward spiral where most of its citizen live below poverty lines. Women who have been left as providers of their families<sup>57</sup> are vulnerable to the poorly paid combatants and who are partly driven by economic desperation to rape women in order to steal whatever resources they have in their possession<sup>58</sup>

### 3.5 Male Rape in DRC

The traditional view of GBV being crime against women, and that perpetrators are men, has come under attack in recent time. The invincibility of sexual violence against men has resulted in

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<sup>55</sup> . Harvard Humanitarian Initiative., “*Now, the world is without me*”: An investigation of sexual violence in eastern Democratic Republic of Congo: HHI & Oxfam International, 2010

<sup>56</sup>Gottschall J., *Explaining wartime rape*: The Journal of Sex Research, Vol 41 No 2, 2004 p 36.

<sup>57</sup> Ibid

<sup>58</sup> Carlsen E., *Rape and war in the Democratic Republic of the Congo*: Peace Review, 2009 21:4,474-83

the continual cycle of violence. Baaz<sup>59</sup> has challenged the rape strategy since it obscures the complexity of GBV and other related crimes during conflict. According to her, men also experience GBV since they are also raped, forced to have incestuous sex, forced to watch as relatives are being raped or forced to perform violent and degrading sexual acts and were therefore as much a victim as women. Her research was majorly focused on masculinity, femininity and sexual violence in the DRC conflict. Baaz notes that reports and media coverage have contributed to the recycling and reinforcement of racialized stereotypes<sup>60</sup> and that the treatment of SGBV as a phenomena *sui generis* has led to flawed conclusions and strategies.

The report distinguishes DRC from Rwanda and Yugoslavia where mass rape was used strategically and along ethnic lines. Mai Mai rebel group for example raped women regardless of their ethnicity. It also found out that the number of SGBV during peace time was relatively high and that women were still affected even in areas where peace prevailed. The report therefore concludes that if rape by combatants is to be conceptualized as a 'weapon of war' in the DRC, it is an implicit authorization followed by a lack of specific orders not to rape, and coupled with an attitude that rape is unavoidable<sup>61</sup> largely due to the consumption of alcohol and drugs.

Researchers and scholars seem to agree that much focus has been given to violence against women overshadowing the violence against men and boys who have been given very little attention thereby rendering them the invincible victims<sup>62</sup> of the DRC due to lack of research and Under reporting.

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<sup>59</sup> Eriksson B.M., *The Complexity of Violence: A Critical Analysis of Sexual Violence in the Democratic Republic of Congo*: The Nordic Africa Institute, 2010

<sup>60</sup> Eriksson Supra p 12

<sup>61</sup> Ibid

<sup>62</sup> See the story of Jean Paul who was abducted and raped severally by armed groups: The Guardian: *The Rape of Men.*, 17<sup>th</sup> July 2011

According to Sivakumaran<sup>63</sup>, sexual violence against men is committed in every conflict and that what is unknown is the extent since current evidence is anecdotal due to underreporting. That silence of victims is a result of masculine stereotype. He further finds that when violence is found to exist it is buried under the rubric of “torture” or “abuse”. In DRC, reports of sexual violence against men are interspersed with those of sexual violence against women.

To explain this phenomena of shifting traditional power dynamics which are susceptible to reconfiguration, Sivakumaran notes that when law and order has broken, the societal balance of power is reshaped and there may be movements within the social hierarchies and therefore rape and other forms of sexual violence are about maintaining and restoring certain power balances,<sup>64</sup> he further notes that rape is likely to occur during conflict where male power has become unstable and therefore rape becomes a tool to lower the social status of the male survivor by reducing him to a “feminized male”

According to Nzomo<sup>65</sup>, women participation in African conflict has been underestimated, in that they are also active actors since they incite men to either defend group interest, honour and collective livelihood, while at the same time she notes that violence against women is rampant in Africa even in non conflict situation. She also states that women take the role of preserving order and normalcy while their men are engaged either in war, are killed, disappear or take refuge in other countries.

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<sup>63</sup> Sivakumaran S., *Sexual Violence Against Men in Armed Conflict*: EJIL, 2007, Vol. 18 No. 2, 253–276

<sup>64</sup> Sivakumaran supra 267

<sup>65</sup> Nzomo M., *Gender, Governance and Conflicts in Africa*: UON, 2002 pp3

### **3.6 International Instruments of Human Rights and SGBV**

Human rights treaties can be classified into two, that is; Declarations, which are adopted by UN General Assembly, they are not legally binding but can be used as soft law and Conventions which are legally binding agreements under international law. I will now consider the international instrument, to which DRC is a party to by virtue of its membership to the UN, that govern human rights generally and in particular during conflict:

#### **i. Universal Declaration of Human Rights**

The 1<sup>st</sup> and 2<sup>nd</sup> world war saw a massive loss of human life. The establishment of United Nation led to the formation of the universal declaration of human rights in 1948. It has laid down the principles to which all human beings are entitled to including the right to be treated with dignity, liberty and equality. It is also important to note that DRC has committed itself in securing and observing the rights set out under the declaration.

The fundamental purpose of the Declaration is to define the meaning of “human rights” and “fundamental freedoms”. It is a constitutive document of UN<sup>66</sup> and in most cases used diplomatically in cases of violation of rights by its members. Most notably it provides for freedom of association, thought and political life.

#### **ii. Vienna Declaration and Programme for Action**

This declaration was as a result of the World Conference held in 1993 and was adopted by consensus with 171 countries; this was the second major event to focus exclusively on the issue of human rights. It provided for the interdependence of human rights with economic

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<sup>66</sup> The UN International Conference on Human Rights of 1968 concluded that the Declaration “constitutes an obligation for members for the members of International Community” to all persons. [www.wikipedia.org](http://www.wikipedia.org)

and political rights, in the sense that rights were indivisible.<sup>67</sup> Most notably for this research, it called for the publication and protection of rights of women, children and indigenous people.

**iii. Declaration of Human Duties and Responsibilities (DHDR)**

DHDR was specifically formulated for the workings of UNESCO and the interest of the UN High Commissioner for Human Rights during the 50<sup>th</sup> commemoration of Universal Declaration of Human Rights. It provides that members of the global community collectively or individually have duties and responsibility of promoting human rights and fundamental freedoms.

The most critical aspect of this declaration is the protection of human family by ensuring the survival of present and future generations through the promotion of culture of peace, global security and cooperation. It also provides for rapid disarmament for the sake of peace and for international intervention to prevent gross violation of human rights i.e. genocide, crimes against humanity, war crimes, torture or rape.

**iv. Beijing Declaration and Platform for Action (1995)**

The main purpose of the Platform for Action is the participation of women in private and public life through equitable share in social, cultural, political and economic decision making by establishing the principle of shared power and responsibility between women and men at home, workplace, national and international sphere. It emphasizes that equality of men and women is human rights issue.

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<sup>67</sup> The UN endorsed this declaration as Resolution 48/121 and created a new position known as UN High Commissioner for Human Rights on 20<sup>th</sup> December 1993

It is also worth noting that the Platform for Action reaffirmed the principles that the rights of women and girls was integral, inalienable and indivisible as set out under the Vienna Declaration and Programme of Action. It emphasized that women's concern could be better addressed when men were included or partnered with in the gender issue. The Platform required the creation of a peaceful, humane and just world based on the fundamental rights of human beings including the principles of equality for all.

**v. Declaration on the Elimination of Violence against Women**

It was adopted by UNGA unanimously;<sup>68</sup> it recognized the need for the universal application of rights and principles to women on issues of equality, integrity, liberty and dignity. It is seen as complimentary or strengthening of CEDAW.

It notes at its preamble that violence against women manifests the historical unequal power relations between women and men. This has led to the domination and discrimination of women by men. As a consequence women are prevented from enjoying their fundamental rights.

**vi. African Charter on peoples and human rights (ACHPR)**

The intense lobbying by women rights group led to the introduction of an addendum to the ACHPR known as the Protocol on the Rights of Women in Africa,

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<sup>68</sup> Resolution 48/104 of 20<sup>th</sup> December 1993

### 3.7 Conventions

#### i. Geneva Convention

It comprises four treaties and additional protocols<sup>69</sup> that establish international law for the humanitarian treatment of war. It provided for the protection of prisoners of war, wounded and civilians, more so non combatants<sup>70</sup> the Convention outlaws cruel treatment, humiliating, degrading treatment and torture etc.

#### ii. Convention on the Elimination of Discrimination Against Women

It was adopted by the UNGA on 18<sup>th</sup> December 1979. It is also known as the Bill of Rights for women as it brings to the fore areas in which women have been denied equality with men including sex stereotyping. At its preamble the convention acknowledges the continued existence of discrimination against women which violates the fundamental principles of equality. It also looks at cultural factors and its impact on gender as it restricts the women's enjoyment to their fundamental rights. It therefore advocates a change in the traditional roles of men and women for full equality to be achieved.

#### iii. Rome Statute<sup>71</sup>

It is also known as the Rome Statute of the International Court which is a treaty that establishes the International Criminal Court (ICC). It recognizes four types of crime; that

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<sup>69</sup> Additional protocols I and II to the Geneva Conventions in 1977 relating to "protection of Victims of International Armed Conflicts" and "protection of Victims of Non-International Armed Conflicts", respectively

<sup>70</sup> Bugnion F., *The Geneva Convention of 12 August 1949: From the 1949 Diplomatic Conference to the Dawn of the New Millennium*" International Institute of Royal Affairs (2000) pp 41-51

<sup>71</sup> Rome Statute was adopted at a Diplomatic Conference in Rome on 17<sup>th</sup> July 1998: *See also* Scharf P.M., *Results of the Rome Conference for an International Criminal Court.*, The American Society of International Law (1998)

is, genocide, war crime, crimes of aggression and crimes against humanity<sup>72</sup>. The ICC can only prosecute cases where States are unable or unwilling to do so. Cases can also be referred to it by UNSC. Due to the limited funding, the court has been very selective in the cases it handles. Gender based crimes have been initiated in six out of seven countries, these are; Kenya, DRC, Central African Republic, Uganda, Darfur and Ivory Coast. In the DRC, the most culpable individuals have been prosecuted.

### **3.8 Strategies End the war in DRC**

#### **i. Ceasefire and Peace Agreement**

As noted earlier on in the research, Democratic Republic of the Congo, Namibia, Rwanda, Uganda, Zambia, and Zimbabwe entered into a ceasefire agreement<sup>73</sup>. This also led to the deployment of peacekeepers. Parties agreed to stop military operations and to respect human rights and protect civilians.<sup>74</sup> The agreement was not gender specific and assumed the societal norms which favored men were applicable to everyone.

#### **ii. Global and Inclusive agreement**

This agreement was signed in Pretoria South Africa on 16<sup>th</sup> December 2002 for the cessation of hostilities between combatants and restructuring the armed forces. It called for the reunification of territorial integrity and state authority. It also provided a power-sharing formula and the transitional arrangements until elections were held.

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<sup>72</sup> It has been defined to includes among others; serious attack on human dignity, rape, grave humiliation as part of a government policy or otherwise etc

<sup>73</sup> Lusaka Ceasefire Agreement signed on 10<sup>th</sup> July 1999 in Lusaka, Zambia with the assistance of SADC and UN.

<sup>74</sup> Baregu L. *Et al.*, *From Cape to Congo: Southern Africa's Evolving Security Challenges*: International Peace Academy, 2003 p. 214.



The agreement also urged the signatories to observe human rights through their support for the Universal Declaration of Human Rights and charters on Civil and Political Rights. The agreement was basically a political solution to the warring factions.

**iii. The United Nations Organization Stabilization Mission in the DRC (MONUSCO)**

MONUSCO was established to monitor the peace process of the Second Congo War. Subsequently it turned its attention to Kivu Conflict, Dongo Conflict and the Ituri Conflict. The initial peacekeepers were to ensure compliance with the peace agreements. More than 30 Nations contributed military and police personnel for peacekeeping effort.

However, MONUSCO were criticized for gross misconduct and engaging in trade relations with the rebels i.e. engaging with FDLR in the marijuana business and failing to disarm the group, exchanging UN rations for gold and dollar.<sup>75</sup> Its credibility was therefore an issue.

**iv. Inter Congolese Dialogue**

As noted earlier on in the research, the Sun City Agreement was signed between some of the warring parties in the Second Congo War in South Africa and witnessed by former President Thabo Mbeki. It was anticipated that this agreement would end hostilities with finality. However parties were not able to establish a unified government and a constitution despite attempts towards that end. The agreement did not provide for unification of the army thus weakening its effectiveness. The treaty did not stop the violence as anticipated.

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<sup>75</sup> See report by United Nations Office of Internal Oversight Services (OIOS): [www.un.org](http://www.un.org)

**v. Criminal Prosecutions**

The second Congo war attracted the attention of International Criminal Court who commenced investigations into crimes that were committed. The investigations were pursuant to formal referrals made by the government of DRC.

Warrants of arrest were issued against Thomas Lubanga Dyilo (imprisoned), Germain Katanga(convicted) and Mathieu Ngudjolo Chui (acquitted), Bosco Ntaganda (surrendered to the Rwandan US embassy in 2013 and is awaiting extradition ), Callixte Mbarushimana, and Sylvestre Mudacumura (fugitives). The said persons were charged with various offences including inhumane acts, sexual slavery, rape which constituted crimes against humanity.

**3.9 International Response**

As noted above, UN established MONUSCO which was tasked with ensuring compliance of the peace agreements, despite its presence for over a decade it failed to protect civilian population and at the same time legitimized a corrupt and inept government. The US has provided over \$110 million in humanitarian assistance for Congolese refugees, internally displaced persons, and conflict-affected civilians. At the same time it has sanctioned regional actors by cutting security assistance.

It is clear from the strategies outlined above that focus was given to political solution in the DRC war. Humanitarian consideration was left to the whims of the warring partners who were left to decide whether to respect the fundamental rights of the Congolese people or not. The Rome Statute also gave recognition to GBV perpetrated in DRC with

the prosecutions of persons who were held more culpable as outlined above. However the definition of gender based violence as noted earlier as been equated with violence against women and thus no case of SGBV against men has been reported or is being investigated unless otherwise under the category of the other offences.

Is this then deliberate exclusion of men due to the socially constructed norms that classifies them as perpetrators and women as victims or is it internationally accepted that SGBV is equal to violence against women such that no provision has been made under any international instrument for the specific protection of male victims.

### **Conclusion**

The immense interest on SGBV, notably, violence against women during conflict, by the international community has led to the adoption of two key resolutions by UNSC. Resolution 1325 which was passed in 2000 on issues of women, peace and security, and Resolution 1820 in 2008 which recognized rape as a weapon of war and a threat to international security.

No resolution has been passed by UN acknowledging the male question and the next chapter will address the peace process in the DRC and its effectiveness. While this research acknowledges that the attention by international community may have contributed to the awareness of sexual violence in armed conflict, there is still much work that remains to be accomplished in terms of men and boys victim, compliance, implementation and accountability.

## CHAPTER FOUR

### PEACE RESOLUTION AND ITS EFFECTIVENESS IN THE DRC

#### 4.1 Introduction

Ethnic tension in the Eastern DRC was on the increase majorly due to the influx of Hutu refugees after the Rwandan war. These refugees were still under the control of the perpetrators of the Rwandan genocide and were using the camps for incursions into Rwanda with the sole intent of resuming power. This opened the door for the Rwandese government to cross over to DRC in order to disband the camps. However, ethnic tensions as noted earlier, were based on ethnic division in the DRC where the Banyamulenge were considered foreigners due to their Rwandese origin.

The DRC has abundance natural resources such as diamond, coltan, gold and other minerals. This has encouraged rebel groups and foreign fighter to blunder these resources at the altar of peace leading to massive violation of human rights, forced displacement and conflict.

It is important to note that the Eastern region of DRC has little or no government control and is largely controlled by rebels. SGBV in this area is rampant and it has been christened the “rape capital of the world” whereas a number of peace agreements have been executed between DRC and other external combatants, women have been excluded in its implementation. This chapter is set out in three parts, the first will look at the peace accords signed by DRC and the role of women, the second will analyze peace resolution by UN and how it has been implemented whereas the third part will analyze the prospects of inclusivity in international instruments.

## 4.2 The Peace Process in DRC

The DRC war has been referred to as “Africa’s First World War” due to its spillover effects in the region. The massive loss of life led to mediations efforts by international communities which resulted in the Lusaka Ceasefire Agreement in 1999 and the deployment of MONUC (or MONUSCO). However warring factions undermined the agreement by accusing each other of failing to implement or honour the terms of the agreement or as in the case of Rwanda – unresolved security issues. However failure has also been placed on the economic driven war with warring parties’ interest on the minerals in DRC.<sup>76</sup> The UN panel report has provided empirical evidence that violence is fueled in order to exploit the natural resources by the combatants as well as the external actors.

The economic interest of the combatants including the government superseded the Lusaka ceasefire agreement. This is evident by the fact that even the DRC government abandoned basic social services which became commercialized i.e. security of the citizen became a commodity for sale.<sup>77</sup> The people who profited from the DRC war disguised their actions as a military necessity and the weakened state machinery could not take legal action against these profiteers. This essentially meant that when in 2001 negotiations were resumed, the situation was classified as stalemate

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<sup>76</sup> UN expert panel Report of 2000, the experts concluded that, “ The war in the DRC has become mainly about access, control and trade of key mineral resources(...) Because of its lucrative nature, [the war] has created a win-win situation for all belligerents. Adversaries and enemies are at times partners in business, enemies get weapons from the same dealers and use the same intermediaries. Business has superseded security concerns. The only loser in this huge business venture is the Congolese people”(UNSC, 2001a 213; 218).

<sup>77</sup> UNSC Panel of Expert report (2002) pp 7

It is also worth noting that other factors that led to the failure of the Lusaka Ceasefire Agreement was the incorporation of gender biases which tended to exclude women through the usage of masculine norms as applicable to everyone. Article III(10) states as follows:

“The Parties shall facilitate humanitarian assistance through the opening up of humanitarian corridors and creation of conditions conducive to the provision of urgent humanitarian assistance to displaced persons, refugees and other affected persons”

This article assumes that displaced persons and refugees are gender neutral and fail to acknowledge that the vast majority of displaced persons and refugees were women and children it however acknowledges women’s issue indirectly by its adoption of the Geneva Conventions of 1949 and the Additional Protocols of 1977, the Convention on the Prevention and Punishment of the Crime of Genocide of 1948, as reiterated at the Entebbe Regional Summit of 25 March, 1998.<sup>78</sup>

Article 27 of the Geneva Convention provides that "Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution or any form of indecent assault." Whereas Article 4(2)(e) of the Additional Protocol II prohibits: "Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault". It is evident that sexual offences and rape during conflict was trivialized by the classification of the said offences as “Honour”. It also excludes male victim from its definition. Women, however, benefited from the International Criminal

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<sup>78</sup> United States Institute of Peace (1999).

Tribunal for the Former Yugoslavia (ICTY) when mass rape was classified as crimes against humanity.

Article 1(3)(c) of the Cease-fire Agreement has also excluded male victims by categorizing sexual violence as a violent crime that violates “women's bodily integrity” ironically, the only gender aware clause in found in Annex A, for the provision of a facilitator who is to be selected based on *her/his* moral authority, international credibility and experience. It thus recognized the important role women could play in the peace process. This was an improvement to the Lusaka Protocol which rendered women invisible by integrating their issues with “civilians or “displaced persons”.

The Lusaka Ceasefire Agreement having failed for reasons stated above led to further negotiations which culminated into the All Inclusive Peace Agreement (also known as Pretoria 11)<sup>79</sup> signed by the warring parties in 2002 committing themselves to peace and cooperation to the transitional government. However the peace process was fragile as it was threatened by political instability and security issues, even with the expanded mandate of MONUSCO to a more forceful and proactive approach. It is important to note that Rwandan and Ugandan forces withdrew from DRC subsequently, flares up of violence threatened the little peace that had been achieved due to demands and interests of the warring factions specifically the government, former war elites and rebels.

The Global and Inclusive Agreement provided for the end of hostilities and power sharing but did not promote democracy, good governance and development it was mainly a political tool that

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<sup>79</sup> Also known as the Global and Inclusive Agreement (December 2002)

did not also adopt benchmarks and targets for human rights and reconstruction.<sup>80</sup> Even with the stabilization programs, humanitarian assistance was focused mainly in Eastern Congo while economic intervention and poverty reduction was focused mainly on western Congo.

### **4.3 United Nations Resolutions**

#### **4.3.1 Resolution 1325**

The UNSC in recognizing women rights adopted Resolution 1325 which was adopted unanimously on 13<sup>th</sup> October 2000. The UNSC called for the adoption of a gender perspective which included women and girls special needs during repatriation, resettlement, rehabilitation, reintegration and post conflict reconstruction. It is a document which required parties involved in an armed conflict to respect women's right and support their participation in the peace process and reconstruction.

The Council acknowledged that women and children were the majority victims of war and who were specifically targeted by armed combatants and therefore their contribution to the peace process was a necessity. They therefore felt that it was time to engender the peace process by training personnel on women's rights.

The resolution called on all countries to increase women representation at all levels, increase of women participations in UN key activities<sup>81</sup> by appointing more women as special envoys and representatives, peace keeping operations,, military observers, police, human rights observers and humanitarian personnel.

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<sup>80</sup> Aust B. et al., *from resource war to violent peace: transition in the Democratic Republic of Congo (DRC)*., BICC, Bonn, 2006

<sup>81</sup> Neutwirth J., *Women, Peace and Security: The Implementation of U.N. Security Council Resolution 1325*: Duke Journal of Gender Law and Policy, 22<sup>nd</sup> June 2002, pp 253



The Resolution also urged armed combatants to take measures to protect women and girls against GBV which included rape and other forms of sexual violence and for refugee camps to take into consideration the special needs of women in its design.

The Resolution has been criticized that the language used still victimizes women thus limiting its scope of implementation<sup>82</sup> however, it has also been acknowledged as a milestone in gender equality noting that states are incorporating the resolution into their local legal mechanisms including DRC.

#### **4. 3.2 Resolution 1820 of 2008**

This is another key resolution passed by UNSC on 19<sup>th</sup> June 2008 and which condemned the use of rape as a tool of war. It further declared rape and other forms of sexual violence as war crimes, crimes against humanity or constituting genocide. The resolution called for the cessation of sexual violence against civilians in armed conflict.

It further noted that women and children are targeted as a means to humiliate, dominate, instill fear, disperse and/or forcible relocate civilians of a community or ethnic group. Armed combatants are therefore expected to take necessary disciplinary measures, command responsibility, engendering troops by training them on gender based violence and debunking social norms that fuel sexual violence.

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<sup>82</sup> Peuchguirbal N., *Peacekeeping, Peace Building and Post Conflict Reconstruction: In Gender Matters in Global Politics*: New York, 2010 pp161-175

UNSC Resolution 1325 and 1820 are international platform through which women can attain their rights especially during conflict. They acknowledge that civilians (which may be interpreted to include men) can be punished through their women and children. They therefore advocate for the inclusion of women into processes of conflict resolution, peacekeeping and settlement. In the DRC for example MONUSCO has organized various workshops and sponsored research for the development of a national action plan.<sup>83</sup> Both resolutions' does not recognize male as victims of sexual violence during conflict.

#### **4.4 Women's Participation in Decision Making Structures in DRC**

During colonialism, the Congolese did not play any role in the country's governance or economy and neither were they consulted by the colonialist, it is therefore not surprising that at the time of independence women played no role in public decision making until the end of the civil war in 1964<sup>84</sup> as a result of awareness on collective participation. During the leadership of Mobutu, women were allowed to take part in election and he even appointed Sophie Kanza as the first Congolese woman in a ministerial position. However, as in most African countries the progress towards women's access to formal political leadership positions, was slow due to a combination of structural obstacles which include but was not limited to deeply embedded patriarchal socio-cultural values, undemocratic institutions and policy frameworks and, low levels of civic and gender awareness<sup>85</sup>.

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<sup>83</sup> [www.monusco.unmissions.org](http://www.monusco.unmissions.org)

<sup>84</sup> United Nations, Department of Economic and Social Affairs, *"Introduction: How do you assess the current level of women's participation in decision-making in Africa?":* 1999, retrieved on 8<sup>th</sup> October 2014 from <http://www.esaconf.un.org>

<sup>85</sup> Nzomo M., *Women In Political Leadership In Kenya: Access, Agenda Setting & Accountability:* Institute of Diplomacy and International Studies, UON p 2

However, the increase of women in politics did not change gender inequality at the grassroots level and their rights were not constitutionally assured despite the changes to the Family Code which then allowed them to work without seeking the consent of their husbands. They were therefore lagging behind in terms of political participation and public decision making as male politicians were also unwilling to accept gender expansion into politics.<sup>86</sup> It was considered unusual for women to participate in other specialized fields.<sup>87</sup>

The non inclusion of women into decision making position was also as a result of the dictatorial leadership that did not recognize women's participation in the public sphere due to societal structure that confined women to private life. Statistics shows that<sup>88</sup>

‘...In the transitional period after the civil war (1998–2002) many women were involved in political negotiation... this was demonstrated in the transitional parliament where 37 seats amongst 738 were given to women,... the number represents [only] 5% compared to 95% men in parliament’.

The reason for these dismal figures was that during the transitional period, parliamentarians were selected for appointment by leaders of political parties, such selection tended to be biased towards men. MONUSCO's Office of Gender Adviser (OGA), United Nations Development

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<sup>86</sup> DRC, ‘Code de la Famille’., Journal Officiel de la Republique Democratic du Congo, Special 44th anniversary issue, 2003

<sup>87</sup> Doorgapersad S. et al., *The status and political participation of women in the Democratic Republic of Congo (1960–2010): A critical historical reflection*: North West University, unpublished pp 100

<sup>88</sup> Inter-Parliamentary Union (UN)., *Progress and setbacks of women in national parliaments between 1 July 1995 and 1 February 2006*: New York, 2006

Fund for Women (UNIFEM), and United Nation Development Programme (UNDP) cooperated with local women's group with the aim of increasing women's participation in the elections.<sup>89</sup>

## **Conclusion**

Gender Based Violence (GBV) in conflict is not a new phenomena, historically, GBV has been defined to mean violence against women as is evidenced by international instruments and Resolutions of the UN. This essentially means that male victims are locked out of programs and their issues are not redressed legally as shown in this chapter. The international community intervention in DRC has been focused on political solution whereas humanitarian intervention has focused much of its attention in addressing GBV against women.

There is also a general assumption due to social constructs that men are the perpetrators of conflict whereas women are the victims. It was therefore felt that women's participation in peace process and public decision making would benefit such societies. It is also note worthy that despite DRC adopting a new constitution guaranteeing women equal political rights, social economic rights, its implementation runs counter to existing social norms regarding gender where division of labour has not changed in favor of women thus making their active involvement in national affairs impracticable. MONUSCO in partnership with local NGOs has made efforts to create awareness on women's participation in politics, this however has not guaranteed improvements in the lives of women in general<sup>90</sup>.

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<sup>89</sup> See also: Schroeder E., *A window of opportunity in the Democratic Republic of Congo: Incorporating a gender perspective in the disarmament, demobilization and reintegration process*: 2010 retrieved on 8<sup>th</sup> October 2014 from <http://www.iss.org.za>

<sup>90</sup> Nzomo M. Supra, p 6

The ICC has prosecuted a number of individuals for crimes against humanity which term includes rape and other forms of sexual violence. However, there has been no ripple effect on the convictions such that rape in Eastern DRC has increased to such level that it has been dubbed the “rape Capital of the World”. This chapter has also shown that structural norms make women more vulnerable to attacks since combatants find them an easier target in bringing down a community and their values.

Combatants have also denied receiving instructions to sexually violate women based on ethnicity, however the manner in which the violence is executed paints a different picture of either direct instructions or acquiesces from their commandants who are concerned with aggrandizement through plundering of DRC resources.

It is important for both women and men in decision-making positions to understand the reality of women's lives in conflict situations. They should be sensitive and alive to gender issues and committed to working towards greater equality between men and women in the DRC.

## CHAPTER FIVE

### CONCLUSION AND RECOMMENDATIONS

#### 5.1 Introduction

The chapter summarizes the findings of the study in relation to the objectives of the research. It provides valuable recommendations, policy recommendations and way forward for issues under discussion.

#### 5.2 Conclusion

This study sought to analyze the role women play in conflict and post conflict situation in DRC, whether sexual violence was a calculated weapon of war against women and whether women and men experienced sexual violence in different ways during conflict.

The findings of this study show that social structures in African countries and DRC in particular determine the roles women and men play in the society. Women are generally confined or are expected to confine themselves with family issues while men are generally considered as the heads of their families hence the decision makers. Whereas efforts have been made to elevate the status of women as equal to that of men, the stride is hindered by societal resistance to change.

The study has shown that even though men and women are victims of violence, women are more likely to face SGBV than men because during conflict they are more accessible than men. Women have also been seen as actors in conflict either through instigating their men into violence or by being the perpetrators themselves. Therefore women must take active role in the peace processes of the DRC.

In Eastern DRC, sexual violence, even during the transition, is on an unprecedented level that it has been considered the rape capital of the world. It has been considered an insecure place to be a woman due to lack of protection from the government or the combatants. Research done and cited in this study indicate that sexual violence was committed against women either as punishment against a community, or to humiliate the men who were unable to offer protection to their women.. That being the position then it is right to say that rape is a tool of weapon which can be used to subjugate a community.

Men also suffered sexual violence during the conflict; however their experiences tended to differ from women. The study has shown that men would be made to watch as their women and girls were being raped, impregnated or subsequently killed as a show of their weakness. For those who were raped, majority did not report due to societal repercussions.

Interventions have also tended to discriminate against men in that international instruments and programs focus entirely on women rendering male victims invincible. In the face of such discrimination, real issues were not addressed and SGBV spiraled upwards regardless of the immense humanitarian focus.

The success of any Nation can be best achieved when equality becomes the basis of governance, this can be achieved through social reconstruction requiring the redefining of the social foundation.

### 5.3 Recommendations

Women's rights movement in DRC is critical to the struggle for gender equality as they will act as a bridge between the society and government through lobbying and advocacy. There is therefore need to empower local NGOs dealing with women and human rights issues. It is important to note that in cases of sexual violence, programs are run by foreign or international NGOs whose supply cannot meet the demand.<sup>91</sup>

Despite the adoption of a new constitution, women are still marginally represented in high level decision-making structures. The number of women vying for political position is also dismal. A study by Peace Women showed that as of 2011, women occupied only 7.2% of higher position in government and parliament with the highest being Kinshasa at 17%, Equateur Province at 5% and Eastern Province at 3%<sup>92</sup>. The cause was the fact that political parties were struggling to convince women to join their parties, their standard responses were either "I don't like politics" or "I have to ask my husband".<sup>93</sup>

The electoral rules also require women to have a university degree of not less than three years which works against them taking the history of DRC into consideration. There is need therefore to lessen the electoral rules with regards to women's participation in politics and also the enactment of gender responsive legislative measures and policies inclusive of affirmative action.

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<sup>91</sup> See Bosmans M., *Challenges in the Aid to Rape Victims: the case of Democratic Republic of Congo*, *Essex Human Rights Review*, Vol 4 No 1 (2007)

<sup>92</sup> <http://irinnews.org/report/93645/drc-women-politicians-key-to-promoting-rights> - accessed on 8th October 2014

<sup>93</sup> Supra Irinnews



The DRC women must also have the initiative of becoming active players in public decision making and the management of conflict.<sup>94</sup>

The research has also shown that the term SGBV in practice is used synonymously with violence against women which is not the case. According to research done by Journal of the American Medical Association, it has challenged the traditional perception of female victims and male perpetrators. The study showed that 23% of men reported suffering sexual violence – mostly rape. 10% of the male victims stated that the perpetrator was a woman.<sup>95</sup> There is therefore need for definition of sexual violence in conflict to include both men and boys and the same to reflect in UN policy documents, Treaties and Resolutions. NGO's should also make reporting of violence by male and boys easier.

The limited funding of ICC has meant that it has been selective in its cases. The ICC is required to give a detailed report on how selected countries under investigations have affected victims of SGBV. CEDAW's committee has emphasized that in undertaking this inquiry, ICC must take into consideration that victims of SGBV have experienced multiple layers of discrimination.<sup>96</sup> However, despite the strides made in prosecuting such crimes, the ICC and other war tribunals have been criticized for inadequate<sup>97</sup> investigation and prosecution.<sup>98</sup> The ICC therefore needs to prioritize the investigation and prosecution of SGBV.

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<sup>94</sup> Supra Nzomo M.

<sup>95</sup> <http://irinnews.org/report/90081/analysis-rethinking-sexual-violence-in-drc> - accessed on 8th October 2014

<sup>96</sup> CEDAW General Recommendation no. 19 on violence against women, HRI/GEN/Rev.7 (1992)

<sup>97</sup> See the case of Prosecutor -vs *Katanga*, case no. ICC 01/04-01/06: on confirmation of charges – wherein a witness was barred from testifying because prosecution could not offer adequate protection leading to the dropping of charges of sexual slavery.

<sup>98</sup> See Nowrejee B., *Your Justice is Too Slow, will the ICTR fail Rwanda? – Occasional Paper No. 10: UN Research Institute for Social Development (2005)*

The eastern DRC has witnessed a great humanitarian crisis with an ever increasing death toll. Even though UNSC imposed an arms embargo in 2003 which was extended to the whole of DRC in 2005 plus asset freeze of culpable individuals, it has been difficult for it to implement the sanctions. Former Secretary General Kofi Annan had appealed for more funding for MONUSCO and more international interest to address foreign threats, the same was opposed by USA who felt that the expenditure as it stood at One Billion Dollars was an expensive affair. UNSC having agreed that there was a link between natural resources and armed conflict should take necessary actions against actors responsible for illegal exploitation and trafficking of natural resources.

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