

Eliminating Violence against Women in the Democratic Republic of the Congo: A new model for further implementation of United Nations Human Rights Standards

**Thesis submitted for the degree of
Doctor of Philosophy
at the University of Leicester**

by

Jean-Claude Kalume Misenga

**School of Law
University of Leicester**

2020

Jean-Claude Kalume Misenga

**Eliminating Violence against Women in the Democratic Republic
of the Congo: A new model for further implementation of United
Nations Human Rights Standards**

ABSTRACT

There is an implementation gap between the obligation to eliminate violence against women (VAW) in the Democratic Republic of the Congo (DRC) and the State's action that has been partly attributed to the combined effects of the country's unwillingness and lack of capacity to live up to its commitment to end VAW. In reality, these two problems are also exacerbated by the fact that United Nations (UN) Human Rights bodies mandated with promoting and protecting women's right to be free from violence suffer from structural weaknesses that limit their ability to influence the domestic practices of States, such as the DRC. Adopting a sociolegal approach, this thesis develops an original five-step "Integrated and Multi-stakeholder Model of Human Rights Change". Through this new model I analyse how a broad array of international and domestic stakeholders, including UN Human Rights bodies, can use the persuasive power of "moral consciousness-raising", naming and shaming, dialogue and argumentation and the transformative power of capacity building to address, in an integrated, comprehensive and durable manner, implementation gaps that are likely to result from the DRC's unwillingness and lack of capacity to implement its obligation to eliminate VAW. While this thesis confirms the potential of the Integrated and Multi-stakeholder Model of Human Rights Change, it also reveals that using this model to end VAW in the DRC is a long-term and expensive undertaking whose magnitude may oftentimes exceed the mandate of, capacity of and/or resources available to UN Human Rights bodies.

ACKNOWLEDGEMENTS

First and foremost, I must thank my supervisors Dr. Loveday Hodson and Dr. Troy Lavers for providing me with invaluable guidance, direction, advice and ideas. I also thank them for thoroughly reviewing all my draft chapters, for pointing out areas that needed to be improved and for continuously challenging me. I believe I have improved academically as a result. I would not have been able to complete this thesis without their supervision.

My expression of gratitude also go to my external examiner, Professor Rhona Smith and my internal examiner, Dr. Onder Bakircioglu. Their critical assessment of my thesis and their feedback have helped me improved this study.

I would also like to thank my previous supervisors, namely Dr. Paul O'Connell, Professor Mark Bell, Dr. Yassin Brunger, and Professor Jill Marshall. I would also like to thank the various members of staff of the School of Law, particularly Ms. Jane Sowler and Ms. Teresa Rowe for their support and for always responding to my numerous questions.

My thanks also go my parents Léon Baroani Misenga and Apolline Molami Mukandwa, my sisters Nelly and Claudia, the rest of my family as well as all my friends for their support. I cannot conclude without thanking women and girls of my country, the Democratic Republic of the Congo (DRC). The discrimination and violence they continue to face played a decisive role in the choice of the subject of this thesis.

Last and not least, my gratitude goes to The Great Architect of the Universe without whom none of this would have been possible.

TABLE OF CONTENTS

ABSTRACT	1
ACKNOWLEDGEMENTS.....	2
List of abbreviations	11
Table of international and regional standards.....	14
Table of national legislation	15
CHAPTER ONE: INTRODUCTION	16
1. Background to the study.....	16
2. Overview of the socio-historical context of the DRC.....	16
3. VAW in the DRC: a multifaceted problem	21
4. Definition of key concepts	33
4.1. “Moral consciousness-raising”	33
4.2. Naming and shaming	35
4.3. Argumentation	36
4.4. Dialogue.....	37
4.5. Persuasion.....	38
4.6. Capacity building	39
5. The key argument of this thesis.....	41
6. The “Integrated and Multi-stakeholder Model of Human Rights Change”....	42
7. Original contribution to knowledge	46
7.1. Developing an original “Integrated and Multi-stakeholder Model of Human Rights Change” and applying it to the Congolese context.....	46
7.1.1. A model aimed at addressing implementation gaps more comprehensively	47
7.1.2. A model highlighting coherence and symbiosis between disparate strategies.....	49

7.2. Clarifying the distinct and debilitating effects of unwillingness and limitations of capacity and highlighting the need to address both problems in an integrated and comprehensive manner	54
8. Research method: the sociolegal approach	58
9. Significance of the study	61
10. Structure of the thesis	62
CHAPTER TWO: THE GAP IN THE IMPLEMENTATION OF THE OBLIGATION TO ELIMINATE VAW IN THE DRC	65
1. Introduction	65
2. Violations of the obligation to “respect” women’s right to be free from violence.....	67
3. Violations of the obligation to “protect” women’s right to be free from violence	71
3.1. The multiple dimensions of impunity resulting from the poor enforcement of anti-VAW laws	78
3.1.1. “Out-of-court settlements” and “amicable arrangements” favoured instead of enforcing the law punishing VAW	79
3.1.2. The non-provision and/or payment of reparations and/or compensations to victims of VAW	83
3.1.3. The discrepancy between the number of case of VAW recorded and/or reported and the number of cases prosecuted and/or punished	85
3.2. Impunity resulting from the fact that some forms of VAW are not criminalised: the case of domestic violence and marital rape	88
3.2.1. “Full impunity” resulting from a legal vacuum in the area of domestic violence and marital rape	89
3.2.2. “Partial impunity” or “full impunity” resulting from addressing domestic violence or marital rape through unsuitable generic laws.....	91

4. Violations of the obligation to “fulfil” women’s rights to be free from violence (4)	98
5. Conclusion	101

CHAPTER THREE: “VOLUNTARY NON-COMPLIANCE” WITH UN HUMAN RIGHTS STANDARDS AS POTENTIAL BARRIER TO ENDING VAW IN THE DRC

1. Introduction	103
2. The Spiral Model’s argument	103
3. The meaning of “unwillingness” to implement human rights obligations....	104
4. The potential link between “repression” and the gap in the implementation of the obligation to end VAW in the DRC	105
4.1. The meaning of “repression”	105
4.1.1. Activation of transnational advocacy networks of actors denouncing VAW committed in the DRC	107
4.1.2. Repression of actors denouncing VAW committed in the DRC....	108
4.2. “Repression” of actors who denounce VAW as a contributing factor to the gap in the implementation of the obligation to end VAW in the DRC	111
5. The possible link between “denial” of VAW and the gap in the implementation of the obligation to end VAW in the DRC	116
5.1. The multiple meanings and forms of “denial”	116
5.2. The potential link between “literal denial” and the gap in the implementation by the DRC of the obligation to end VAW.....	117
5.2.1. The meaning of “literal denial”: “nothing happened or is happening”	117
5.2.2. “Literal denial” as a contributing factor to the poor implementation of obligation to end VAW	118

5.3. The potential link between “interpretive denial” and the gap in the implementation of the obligation to end VAW in the DRC.....	121
5.3.1. The meaning of “interpretive denial”: “what happened or is happening is really something else”	121
5.3.2. “Interpretive denial” as a contributing factor to the poor implementation of the obligation to end VAW.....	122
5.4. The potential link between “implicatory denial” and the gap in the implementation of the obligation to end VAW in the DRC.....	125
5.4.1. The meaning of “implicatory denial”: “what happened or is happening is justified”	125
5.4.2. “Implicatory denial” as a contributing factor to the poor implementation of obligation to end VAW.....	126
6. Conclusion	131
CHAPTER FOUR: “INVOLUNTARY NON-COMPLIANCE” WITH UN HUMAN RIGHTS STANDARDS AS POSSIBLE OBSTACLE TO ENDING VAW IN THE DRC	132
1. Introduction	132
2. The Managerial Model’s argument.....	132
3. The meaning and debilitating effects of “limitations of capacity” to implement and/or comply with the obligation to eliminate VAW	133
4. The potential link between limitations of capacity and the poor implementation of the obligation to “respect”: the case of the Congolese national army.....	140
4.1. Individual capacity deficits as a contributing factor to the poor implementation of the obligation to “respect” women’s rights to be free from violence	142

4.2. Organisational capacity deficits as a contributing factor to the poor implementation of the obligation to “respect” women’s rights to be free from violence	147
4.3. The absence of an enabling environment as a contributing factor to the poor implementation of the obligation to “respect” women’s rights to be free from violence	150
5. The potential link between limitations of capacity and the poor implementation of the obligation to “protect”: the case of the Congolese justice system	158
5.1. Individual capacity deficits as a contributing factor to the poor implementation of the obligation to “protect” women’s rights to be free from violence	159
5.2. Organisational capacity deficits as a contributing factor to the poor implementation of the obligation to “protect” women’s rights to be free from violence	161
6. The potential link between limitations of capacity and poor implementation of the obligation to fulfil: the case of the Congolese Ministry of gender	165
7. Conclusion	170
CHAPTER FIVE: THE LIMITED POWER VESTED IN AND RESOURCES AVAILABLE TO UN HUMAN RIGHTS BODIES: A FACTOR EXACERBATING THE GAP	173
1. Introduction	173
2. The limited enforcement power vested in UN Human Rights bodies mandated with addressing VAW	174
2.1. Challenges to the enforcement of international human rights law in general.....	175
2.2. The limited enforcement power vested in UN Treaty and Charter Bodies mandated with addressing VAW.....	179

2.2.1. The limited enforcement power vested in Treaty Bodies: The case of the CEDAW Committee.....	180
2.2.2. The limited enforcement power vested in UN human rights Charter-based bodies: the case of the special rapporteur on VAW.....	182
3. UN Human Rights bodies' limited ability to deal with capacity deficits faced by States.....	186
4. UN Human Rights bodies' limited capacity to properly monitor the DRC's domestic practices and follow up on the implementation of their own recommendations	188
4.1. UN Human Rights bodies' limited capacity to properly monitor the DRC's domestic practices.....	188
4.1.1. The limits of monitoring the DRC's behaviour through periodic reports to Treaty Bodies	189
4.1.2. The limits of monitoring States' behaviour through responses to letters of allegations and urgent appeals sent by Special Rapporteurs	192
4.2. UN Human Rights bodies' limited capacity to properly follow up on the implementation of their own recommendations	198
4.2.1. Treaty Bodies' limited capacity to follow up on implementation of recommendations.....	199
4.2.2. Special Procedures' limited capacity to follow up on implementation of recommendations.....	200
5. The distance between UN Human Rights bodies and the real lives of women and girls affected by violence at the domestic level	202
5.1. The need for creating a bridge between "international" and "domestic" efforts.....	203
5.2. The need for increased efforts at the domestic level	209
6. Conclusion	212

CHAPTER SIX: BRIDGING THE IMPLEMENTATION GAP: THE “INTEGRATED AND MULTI-STAKEHOLDER MODEL OF HUMAN RIGHTS CHANGE” AT WORK.....	214
1. Introduction	214
2. The persuasive power of “moral consciousness-raising”	215
3. The persuasive power of naming and shaming	221
4. The persuasive power of dialogue.....	227
5. The transformative power of capacity building	230
5.1. Strengthening individual capacity of duty-bearers and rights holders .	230
5.1.1. Strengthening the capacity of “duty-bearers” to contribute to the implementation of the obligation to end VAW.....	231
5.1.2. Strengthening the capacity of “rights-holders” to claim their right to be free from violence	233
5.2. Strengthening organisational capacities of duty-bearers to implement the obligation to end VAW	235
5.3. Creating a more enabling environment for the enjoyment of women’s right to be free from violence	238
6. The persuasive power of argumentation	241
7. Challenges to eliciting Human Rights change through the “Integrated and Multi-stakeholder model of Human Rights change”	245
7.1. Eliciting Human Rights change through my Model: A long term and expensive undertaking.....	245
7.2. Mobilising stakeholders around “normalised” forms of VAW (perpetrated in the private sphere): A challenging but not impossible task	250
7.2.1. The need to constantly challenge the public/private divide	251
7.2.2. The need to shed more light on “normalised” forms of VAW	254
8. Conclusion	256

CHAPTER SEVEN: CONCLUSION	257
1. Key conclusions	270
1.1. The potential of the “Integrated and Multi-Stakeholder Model of Human Rights Change”	271
1.2. The need to look beyond UN Human Rights bodies	276
2. Limitations and Suggestions for Further Research.....	277
BIBLIOGRAPHY.....	279

List of abbreviations

ABA ROLI: American Bar Association Rule of Law Initiative

ASADHO-RAF: African Association for the Defence of Human Rights

OMCT: World Organisation Against Torture

AVIFEM : Agence nationale de lutte contre les violences faites à la femme, à la jeune et petite fille

CEDAW Committee: United Nations Committee on the Elimination of All forms of Discrimination Against Women

CEDAW Convention: United Nations Convention on the Elimination of All forms of Discrimination Against Women

CERD Committee: United Nations Committee on the Elimination of Racial Discrimination

CESCR Committee: United Nations Committee on Economic, Social and Cultural Rights

CRC Committee: United Nations Committee on the Rights of the Child

DESA/DAW: Department of Economic and Social Affairs/Division for the Advancement of Women

DHS: Demographic and Health Survey

DRC: Democratic Republic of the Congo

FARDC: Forces armées de la république démocratique du Congo (Armed Forces of the Democratic Republic of the Congo)

FIDH : Fédération internationale des ligues des droits de l'Homme

FONAFEM: Fond national de promotion pour la femme et la protection de l'enfant

GBV: Gender-based violence

GII: Gender Inequality Index

HDI: Human Development Index

ICC: International Criminal Court

ICG: International Crisis Group

ILC: International Law Commission

ITUC: International Trade Union Confederation

MONUSCO: United Nations Organisation Stabilization Mission in the Democratic Republic of the Congo

MPSMRM : Ministère du Plan et Suivi de la Mise en œuvre de la Révolution de la Modernité

MSP : Ministère de la Santé Publique

NGO: Non-Governmental Organisation

NHRIs: National Human Rights Institutions

OECD: Organisation for Economic Co-operation and Development

OHCHR: Office of the United Nations High Commissioner for Human Rights

RFDA: Réseau des Femmes pour un Développement Associatif

RFDP: Réseau des Femmes pour la Défense des Droits et la Paix

RFI: Radio France Internationale

SDGs: Sustainable Development Goals

SGBV: Sexual and Gender-based Violence

SRSG: Special Representative of the United Nations Secretary-General

SRVAW: United Nations Special Rapporteur on Violence Against Women

UN: United Nations

UN DEVAW: United Nations Declaration on the Elimination of Violence Against Women

UNDAW: United Nations Division for the Advancement of Women

UNDP: United Nations Development Programme

UNFPA: United Nations Population Fund

UNGA: United Nations General Assembly

UNJHRO: United Nations Joint Human Rights Office

UNSC: United Nations Security Council

VAW: Violence Against Women

WHO: World Health Organization

Table of international and regional standards

1. *Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War* (12 August 1949)
2. *Additional Protocol to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts* (8 June 1977)
3. *Additional Protocol to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of Non-International Armed Conflicts* (8 June 1977)
4. *Convention on the elimination of all forms of discrimination against women, United Nations General Assembly resolution 34/180* (18 December 1979)
5. *African Charter on Human and Peoples' Rights* (27 June 1981)
6. *Rome Statute of the International Criminal Court* (17 July 1998)
7. *Convention on the Rights of the Child, United Nations General Assembly resolution 44/25* (20 November 1989)
8. *Declaration on the Elimination of Violence against Women, United Nations General Assembly resolution A/RES/48/104* (20 December 1993)
9. *Optional Protocol to the Convention on the Elimination of Discrimination against Women, United Nations General Assembly resolution A/54/4* (6 October 1999)
10. *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa* (11 July 2003)

Table of national legislation

1. *Constitution de la République Démocratique du Congo du 18 Février 2006*
2. *Décret n° 09/38 du 10 octobre 2009 portant création, organisation et fonctionnement de l'Agence nationale de lutte contre les violences faites à la Femme et à la Jeune et Petite Fille*
3. *Décret n° 09/37 du 10 octobre 2009 portant création, organisation et fonctionnement d'un Etablissement public dénommé « Fonds National pour la Promotion de la Femme et la Protection de l'Enfant »*
4. *Loi n°87-010 du 1er aout 1987 portant Code de la famille*
5. *Loi n°015/2002 du 16 Octobre 2002 portant Code de Travail*
6. *Loi n° 024/2002 du 18 novembre 2002 portant Code Pénal militaire*
7. *Loi n° 04/00023 du 12 novembre 2004 portant organisation générale de la défense et des forces armées*
8. *Loi n° 06/018 du 20 juillet 2006 modifiant et complétant le Décret du 30 janvier 1940 portant Code pénal congolais*
9. *Loi n° 06/019 du 20 juillet 2006 modifiant et complétant le Décret du 06 août 1959 portant Code de Procédure Pénale Congolais*
10. *Loi n° 09/001 du 10 janvier 2009 portant protection de l'enfant*
11. *Loi organique n° 13/011 du 21 mars 2013 portant institution, organisation et fonctionnement de la Commission Nationale des Droits de l'Homme*
12. *Loi organique n° 13/011-B du 11 avril 2013 portant organisation, fonctionnement et compétences des juridictions de l'ordre judiciaire*
13. *Loi n° 15/022 du 31 décembre 2015 modifiant et complétant le Décret du 30 janvier 1940 portant Code pénal*
14. *Loi n° 16/008 du 15 juillet 2016 modifiant et complétant la loi n°87-010 du 1er aout 1987 portant Code de la Famille*
15. *Ordonnance-loi no 67-310 du 9 août 1967 portant Code du travail*
16. *Ordonnance n° 12/008 du 11 juin 2012 fixant les attributions des ministères*
17. *Ordonnance n° 15/015 du 21 mars 2015 fixant les attributions des ministères*
18. *Ordonnance n° 17/ 025 du 10 juillet 2017 fixant les attributions des ministères*

CHAPTER ONE

INTRODUCTION

1. Background to the study

The aim of this study is to investigate how and under what circumstances United Nations (UN) human rights law standards prohibiting violence against women (VAW) can play a more meaningful role in eliminating VAW in the Democratic Republic of the Congo (DRC). This, in a context where UN human rights bodies, which are mandated to promote and protect women's right to be free from violence have limited power and resources to properly influence the domestic practices of States, such as the DRC, which are unwilling and/or unable to implement their relevant human rights obligations. For the purpose of this thesis, VAW means "any act of gender-based violence (GBV) that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life".¹ My thesis deals with VAW in the specific context of the DRC. In terms of temporal scope, the study is limited to developments that took place up to 31 December 2018. Before going any further, it is therefore important to provide a short background on the DRC in order for the reader to understand better the context in which the issues discussed in this thesis occur.

2. Overview of the socio-historical context of the DRC

The DRC spans a surface area of more than 2.3 million square kilometres and had a population estimated at more than 81 million in 2017.² To put things in

¹ United Nations, *Declaration on the Elimination of VAW*, Resolution A/RES/48/104 (20 December 1993) article 1.

² United Nations Department of Economic and Social Affairs (UN DESA), *World Statistics Pocketbook 2017* edition (Series V, No. 41, 2017) 91
<<https://unstats.un.org/unsd/publications/pocketbook/files/world-stats-pocketbook-2017.pdf>>
accessed 29 December 2017.

perspective, the DRC is the eleventh largest country on the planet and the second largest country in Africa.³ In terms of surface area, the DRC is 9.66 times bigger than the United Kingdom.⁴ As far as populations are concerned, the DRC is the sixteenth most populated country in the world and the fourth in Africa.⁵ Again, to put things in perspective, in 2017 the DRC was 1.22 times more populated than the United Kingdom whose population was estimated at 66.18 million.⁶

A former Belgian colony, the DRC became independent on 30 June 1960.⁷ Since its independence, the DRC has experienced several episodes of political instability, including secessions and rebellions.⁸ For almost 60 years after its independence, the DRC never experienced a peaceful transition of power between the successive heads of state.⁹ In its recent history, the DRC has experienced two major armed conflicts. The first lasted from October 1996 to May 1997¹⁰ and the second from August 1998 to July 2003.¹¹ Discussing the multiple and complex causes of these two conflicts is beyond the scope of this thesis.¹² In terms of impact,

³ See: <<https://www.cia.gov/library/publications/the-world-factbook/rankorder/2147rank.html>> accessed 19 July 2016

⁴ UN DESA (n 2) 251.

⁵ See: <<https://www.cia.gov/library/publications/the-world-factbook/rankorder/2119rank.html>> accessed 29 December 2017.

⁶ UN DESA (n 2) 251.

⁷ Emizet Francois Kisangani, *Historical dictionary of the Democratic Republic of the Congo* (Fourth Edition, Rowman & Littlefield 2016) xxxv.

⁸ See for instance: Georges Nzongola-Ntalaja, *The Congo: From Leopold to Kabila: A People's History* (Zed Books, 2002) 94 – 264; Kisangani (n 7) xxxiv – L.

⁹ For more on this part of the history of the DRC, see for instance: Ch. Didier Gondola, *The History of Congo* (Greenwood Press 2002) 115 – 182; Kisangani (n 7) 12 – 39.

¹⁰ For more details about this armed conflict see for instance: Gérard Prunier, *Africa's World War: Congo, the Rwandan Genocide, and the Making of a Continental Catastrophe* (Oxford University Press 2009) 113 – 148.

¹¹ Ibid, 181 – 284.

¹² For more please go to: John F. Clark (ed), *The African Stakes of the Congo War* (Palgrave Macmillan 2002); Filip Reyntjens, *The Great African War: Congo and Regional Geopolitics, 1996–2006* (Cambridge University Press 2009).

all these conflicts were marked by massive human rights violations, including sexual violence against women and girls.¹³ In addition to these two major conflicts, the country continued to be a fertile ground for localized armed conflicts restricted to some provinces and which have also been characterized by massive violations of international human rights and humanitarian law standards, including sexual violence against women and girls.¹⁴

¹³ See for instance: Amnesty International, *DRC. Mass rape: Time for remedies* (October 2004) 13 - 25 <<https://www.amnesty.org/download/Documents/92000/afr620182004en.pdf>> accessed 04 April 2019; Réseau des Femmes pour un Développement Associatif (RFDA), Réseau des Femmes pour la Défense des Droits et la Paix (RFDP) and International Alert, *Women's Bodies as a Battleground: Sexual Violence Against Women and Girls During the War in the DRC (1996-2003)* (2005) <<http://www.international-alert.org/sites/default/files/publications/women%27s-bodies-as-a-english.pdf>> accessed 23 June 2015 ; Human Rights Watch, *Soldiers Who Rape, Commanders Who Condone: Sexual Violence and Military Reform in the DRC* (2009) <<https://www.hrw.org/sites/default/files/reports/drc0709web.pdf>> accessed 25 September 2017; Amnesty International, *Mass rapes in Walikale: still a need for protection and justice in Eastern Congo* (December 2010) <<https://www.amnesty.org/download/Documents/36000/afr620112010en.pdf>> accessed 14 March 2018.

¹⁴ See for instance: Human Rights Watch, *Ituri: "Covered in blood". Ethnically targeted violence in Northeastern DR Congo* (July 2003) <<https://www.hrw.org/sites/default/files/reports/DRC0703.pdf>> accessed 14 March 2018; Amnesty International, *DRC: Crisis in North Kivu* (November 2008) <<https://www.amnesty.org/download/Documents/52000/afr620142008en.pdf>> accessed 14 March 2018; Human Rights Watch, *"You Will Be Punished" Attacks on Civilians in Eastern Congo* (December 2009) <<https://www.hrw.org/sites/default/files/reports/drc1209webwcover2.pdf>> accessed 14 March 2018; Human Rights Watch, *Always on the Run: The Vicious Cycle of Displacement in Eastern Congo* (September 2010) <<https://www.hrw.org/sites/default/files/reports/drc0910webwcover.pdf>> accessed 14 March 2018.

Some have characterized the DRC as a “failed State”.¹⁵ Rotberg describes a failed state as “a polity that is no longer able or willing to perform the fundamental jobs of a nation-state in the modern world”.¹⁶ He explains:

“(…) in most failed states, regimes prey on their constituents (…) Failed states exhibit flawed institutions. (…) The judiciary is derivative of the executive rather than being independent, and citizens know that they cannot rely on the court system for significant redress or remedy, especially against the state.¹⁷ (…) Failed states are typified by deteriorating or destroyed infrastructures (…) ¹⁸ Corruption flourishes in many states, but in failed states it often does so on an unusually destructive scale. (…)”¹⁹

As it transpires throughout this thesis, these indicators of state failure have had negative effects on the implementation of the obligation to end VAW in the DRC. In addition, as has been discussed extensively by many, women and girls’ social and legal status in the DRC is low.²⁰ The low social status of women transpires from the country’s low ranking when it comes to international indicators such as the Gender Inequality Index (GII) where, for instance, in 2017, the country ranked 152

¹⁵ See for instance: René Lemarchand, ‘The Democratic Republic of the Congo: From Failure to Potential Reconstruction’ in Robert I. Rotberg (ed), *State Failure and State Weakness in a Time of Terror* (Brookings Institution Press, 2003) 29 – 70; Chiara Giorgetti, *A Principled Approach to State Failure: International Community Actions in Emergency Situations* (BRILL 2010) 43; Robert J. Jackson, *Global Politics in the 21st Century* (Cambridge University Press 2013) 286.

¹⁶ Rotberg, ‘Failed States, Collapsed States, Weak States: Causes and Indicators’ in Rotberg (n 15) 6.

¹⁷ Ibid, 6 – 7.

¹⁸ Ibid, 7.

¹⁹ Ibid, 8.

²⁰ See for instance: Joseph R. Oppong and Tania Woodruff, *Democratic Republic of the Congo* (Infobase Publishing 2007) 48 – 50; Jane Freedman, *Gender, Violence and Politics in the DRC* (Routledge 2016) 29 – 32; Allyson Dean, ‘Democratic Republic of Congo’ in Susan M. Shaw and others (eds.), *Women's Lives around the World: A Global Encyclopedia* (Volume 1, ABC-CLIO, 2018) 51 – 62.

out of 160 countries.²¹ In the DRC, women and girls have also been discriminated in the law, for instance, in some of the provisions of the Family Code of 1 August 1987.²²

Indeed, before being slightly amended on 15 July 2016,²³ the Code, adopted less than a year after the DRC joined the CEDAW Convention, provided in its article 444 that “The husband is the head of household. He must protect his wife; the wife must obey her husband”. The 1987 Code contained several other discriminatory provisions, including articles 59(1), 148(1), 150, 165, 190, 198, 200, 215, 352, 355, 407, 412, 420, 422, 444, 445, 448, 450, 454, 467, 468, 477, 490, 497. For instance, article 215 provided that married women (together with minors; certain categories of mentally disabled persons as well as adults who are feeble-minded, prodigal, weakened by age or infirm placed under curatorship) lacked legal capacity. The DRC has righted this wrong only partially. The amended Family Code adopted in 2016 still retains discriminatory provisions from the previous Code, including articles 165, 190, 355, 412, 444, 450, 490 and 497. For instance, its article 444 still provides that “the husband is the head of the household”. This provision can be used to justify violence against the rest of the household, particularly married women. Article 450 still requires married women to obtain marital authorization to go to court in a civil case, or to buy or sell property or enter into any obligation. The slightly amended article 490 (2) still provides that regardless of the matrimonial regime

²¹ See: UNDP, *Human Development Indices and Indicators: 2018 Statistical Update* (2018) 41 < http://hdr.undp.org/sites/default/files/2018_human_development_statistical_update.pdf > accessed 24 September 2019.

²² See: «Loi n°87-010 du 1er août 1987 portant Code de la famille » (01 August 1987) in Luhonge Kabinda Ngoy et al., *Les Codes Larcier. République Démocratique du Congo. Tome I. Droit Civil et Judiciaire* (De Boeck & Larcier s.a., 2003) 3 – 67 <<http://www.ambardcparis.com/pdf/Droit%20Civil%20et%20Judiciaire.pdf>> accessed 16 September 2018.

²³ See : *Loi n° 16/008 du 15 juillet 2016 modifiant et complétant la loi n°87-010 du 1er août 1987 portant Code de la Famille* <<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/102954/124711/F-2072890186/COD-102954.pdf>> accessed 02 January 2017.

which applies to a particular marriage, the management of both joint and individual property is presumed to be entrusted to the husband. Article 497 (2) still entrusts to the husband the management and administration of property acquired by the wife in the exercise of her profession “if the management and administration of these goods by the wife undermines the harmony and pecuniary interests of the household”. In a similar vein, before being repealed in 2002,²⁴ article 3 (c) of the Congolese Labour Code of 1967 provided that a married woman could not enter into an employment contract if her husband expressly opposed it.²⁵ In summary, for almost 40 years and 30 years respectively, the Congolese Labour Code and Family Code did not consider women, particularly married ones, as fully-fledged human beings who should enjoy equal rights with men. By including several provisions that placed married women under the authority of their husbands, the Congolese Family and Labour Codes legalised patriarchy. And, in addition to being discriminated against in law, women and girls of the DRC have suffered multiple forms of discrimination in practice. An illustration of the latter is the multiple forms of violence to which women and girls have been subjected.

3. VAW in the DRC: a multifaceted problem

The United Nations Declaration on the Elimination of VAW (UN DEVAW) breaks down VAW into three non-exhaustive categories. The first category is “physical, sexual and psychological violence occurring in the family”.²⁶ In the DRC,

²⁴ See : *Loi n°015/2002 du 16 Octobre 2002 portant Code de Travail* (16 October 2002) <https://www.droitcongolais.info/files/2.54.09.-Loi-du-16-octobre-2002_-Code-du-travail.pdf > accessed 21 January 2019.

²⁵ See: *Ordonnance-loi no 67-310 du 9 août 1967 portant Code du travail* (9 August 1967) <<http://www.ilo.org/dyn/natlex/docs/WEBTEXT/18956/64823/F67ZAR01.htm>> accessed 21 January 2019

²⁶ United Nations (n 1) article 2.

this category comprises domestic violence;²⁷ marital rape;²⁸ girl child marriage;²⁹ sexual abuse of female children in the household;³⁰ forced marriage;³¹ “levirate”³²

²⁷ Ministère du Plan et Suivi de la Mise en œuvre de la Révolution de la Modernité (MPSMRM), Ministère de la Santé Publique (MSP) and ICF International, *Enquête Démographique et de Santé en République Démocratique du Congo 2013-2014* (MPSMRM, MSP and ICF International 2014) 307 – 327 <<https://reliefweb.int/report/democratic-republic-congo/deuxieme-enquete-demographique-et-de-sant-eds-rdc-ii-2013-2014>>accessed 04 April 2019.

²⁸ Ibid, 313.

²⁹ Committee on the Elimination of Discrimination against Women (CEDAW Committee), *Combined sixth and seventh periodic report of States parties: DRC*, document no: CEDAW/C/COD/6-7 (21 December 2011) 22; United Nations Population Fund (UNFPA), *Marrying Too Young: End Child Marriage* (UNFPA 2012) 23 <<https://www.unfpa.org/sites/default/files/pub-pdf/MarryingTooYoung.pdf>> accessed 03 February 2017; MPSMRM, MSP and ICF International (n 27) 61 – 62 ; Jacques Elengemoke Mpilambo and others, ‘Determinants of Early Marriage among Young Women in Democratic Republic of Congo’ (2017) 52 (1-3) *Journal of the Social Sciences* 82-91, 83 – 90 ;

³⁰ MPSMRM, MSP and ICF International (n 27) 313.

³¹ Johns Hopkins Bloomberg School of Public Health Center for Communication Programs, *Community perspectives on sexual and gender-based violence in Eastern DRC. Report prepared by For International Medical Corps* (September 2011) 17 <<http://ccp.jhu.edu/documents/Community%20Perspectives%20on%20SGV%20in%20Eastern%20DRC.pdf>> accessed 03 April 2017; Free the Slaves, *Congo’s Mining Slaves: Enslavement at South Kivu Mining Sites. Investigative Field Report* (June 2013) 20 <<https://www.freetheslaves.net/wp-content/uploads/2015/03/Congos-Mining-Slaves-web-130622.pdf>> accessed 03 February 2017; Free the Slaves, *Wives in Slavery: Forced Marriage in the Congo, A Free the Slaves Field Research Exposé* (June 2013) 15 - 16 < <https://www.freetheslaves.net/wp-content/uploads/2015/03/FTS-ForcedMarriage-201306-V1-web.pdf> > accessed 03 February 2017; Maroyi Mulumeoderhwa, ‘A Girl Who Gets Pregnant or Spends the Night with a Man is No Longer a Girl’: Forced Marriage in the Eastern Democratic Republic of Congo’ (2016) 20 *Sexuality & Culture* 1042–1062.

³² CEDAW Committee, *Third periodic report of States parties: DRC*, document no: CEDAW/C/COD/1 (18 June 1999) 8; African Association for the Defence of Human Rights (ASADHO-RAF) and World Organisation Against Torture (OMCT), *Violence Against Women in the Democratic Republic of Congo (DRC): Alternative report prepared for the Committee on the Elimination of Discrimination Against Women. 36th Session – 7-25 August 2006* (July 2006) 21; Harvard Humanitarian Initiative and the Open Society Institute, *Characterizing Sexual Violence in the DRC: Profiles of Violence*,

[the (forced) marriage of a woman to her brother-in-law after the death of her husband]³³ also referred to by some as “widow inheritance”; ³⁴ “sororate”³⁵ (the marriage of a widower to his wife’s younger sister³⁶ which in some instances can be forced on the woman); and the mistreatment of widows.³⁷

The second category of VAW identified by the UN DEVAW is “physical, sexual and psychological violence occurring within the general community”.³⁸ In the DRC, this category includes girl child prostitution;³⁹ forced prostitution of adult

Community Responses, and Implications for the Protection of Women (2009) 28
 <http://hhi.harvard.edu/sites/default/files/publications/publications_-_women_-_characterizing_sexual_violence.pdf> accessed 03 February 2017; World Organisation against Torture (OMCT) and Synergie des Femmes pour les Victimes des Violences Sexuelles (SFVS), *Report on violence against women in North and South Kivu, in the DRC: Alternative report for the Committee on the elimination of all forms of discrimination against women* (55th session July 8 – 26, 2013) (2013) 3
 <http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/COD/INT_CEDAW_NGO_COD_13434_E.pdf> accessed 03 March 2014.

³³ Ranjana Subberwal, *Dictionary of Sociology* (Tata McGraw-Hill Publishing Company Limited 2009) L5; K. N. Dash, *Invitation to Social and Cultural Anthropology* (Atlantic Publishers & Distributors 2004) 55 – 56.

³⁴ See for instance: Marsha A. Freeman, ‘Article 16’ in Marsha A. Freeman, Christine Chinkin, Beate Rudolf (eds), *The UN Convention on the Elimination of All Forms of Discrimination Against Women: A Commentary* (Oxford University Press 2012) 422 and 424.

³⁵ CEDAW Committee, *Combined fourth and fifth periodic reports of States parties: DRC*, document no: CEDAW/C/COD/4-5 (30 November 2004) 27.

³⁶ Subberwal (n 33) L5; Dash (n 33) 56 – 57.

³⁷ See for instance: CEDAW Committee (n 32) 8; CEDAW Committee (n 35) 27; CEDAW Committee (n 29) 22; OMCT and SFVS (n 32) 3.

³⁸ United Nations (n 1) article 2.

³⁹ Free the Slave, *The Congo report: Slavery in Conflict Minerals* (June 2011) 18
 <<https://www.freetheslaves.net/wp-content/uploads/2015/03/The-Congo-Report-English.pdf>>
 accessed 04 April 2019; CEDAW Committee (n 29) 22; Coalition pour la convention sur l’élimination de toutes formes des discriminations à l’égard des femmes (C.CEDEF), *Rapport alternatif sur la mise en oeuvre de la Convention sur l’élimination de toutes les formes de discrimination à l’égard des femmes: examen des sixième et septième rapports périodiques de la RDC* (March 2013) 36 –

women;⁴⁰ trafficking in women and girls;⁴¹ sexual harassment in the workplace⁴² and educational settings.⁴³

37

<https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/COD/INT_CEDAW_NGO_COD_13298_F.pdf> accessed 12 August 2018; Free the Slaves (June 2013) (n 31) 18; Women's International League for Peace & Freedom (WILPF), *Life at the bottom of the chain: women in artisanal mines in DRC* (First Edition, WILPF 2016) 17 < https://wilpf.org/wp-content/uploads/2016/10/WomenInArtisanalMinesInDRC_web.pdf> accessed 21 March 2019.

⁴⁰ CEDAW Committee (n 29) 22; Free the Slaves (June 2013) (n 31) 18.

⁴¹ See for instance: Free the Slave (n 39) 17 – 19; Free the Slaves (June 2013) (n 31) 18; Jocelyn Kelly and others, *Assessment of human trafficking in artisanal mining towns in Eastern DRC* (2014) 17 - 20 <http://pdf.usaid.gov/pdf_docs/PA00K5R1.pdf> accessed 03 February 2017; United States Department of States, *2018 Trafficking in Persons Report* (2018) 145 – 148 <<https://www.state.gov/documents/organisation/282798.pdf>> accessed 21 February 2019.

⁴² See for instance: CEDAW Committee (n 35) 45; Radio Okapi, *Matadi: dans la rue, les femmes dénoncent le harcèlement sexuel* (27 February 2010) <<http://www.radiookapi.net/actualite/2010/02/27/matadi-dans-la-rue-les-femmes-denoncent-le-harcelement-sexuel/>> accessed 10 September 2016 ; CEDAW Committee (n 7) 45; Radio Okapi, *Kinshasa : 64 % de femmes connaissent un harcèlement sexuel au travail, selon une étude du ministère de la Santé* (27 April 2016) < <http://www.radiookapi.net/actualite/2012/04/27/kinshasa-64-3-de-femmes-connaissent-harcelement-sexuel-au-travail-selon-une-etude-du-ministere-de-la-sante>> accessed 10 September 2016 ; Jane Pillinger, *Violence and harassment against women and men in the world of work: trade union perspectives and action* (International Labour Organisation 2017) 25; 50; 140 – 142 <http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---actrav/documents/publication/wcms_546645.pdf> accessed 21 February 2019.

⁴³ See for instance: CEDAW Committee (n 35) 45; Human Rights Council, *Report of the independent expert on the situation of human rights in the DRC, Mr. Titinga Frédéric Pacéré*, document no: A/HRC/7/25 (29 February 2008) paragraph 49; ONG Lus et VITA, « Rapport du séminaire sur la prévention et le traitement des abus sexuels en milieu scolaire en République Démocratique du Congo » (2002) cited in Laetitia Antonowicz and Violet Diallo, *Too often in silence: A report on school-based violence in West and Central Africa* (UNICEF, Plan West Africa, Save the Children Sweden West Africa and ActionAid, Marc 2010) 23 <https://www.unicef.org/wcaro/VAC_Report_english.pdf> accessed 13 May 2017 ; M. Papinutto, « La violence à l'école » (UNICEF, DRC, 2009) cited in Marie Devers and others, *Gender-based violence at school in French-speaking sub-saharan africa: understanding its impact on girls' school attendance to combat it more effectively* (Directorate-

The third category of VAW identified by the UN DEVAW consists of “physical, sexual and psychological violence perpetrated or condoned by the State”, wherever it occurs.⁴⁴ In the DRC, this category includes rape and other forms of sexual violence in situations of armed conflict⁴⁵ including against children ⁴⁶ by State actors

General of Global Affairs, Development and Partnerships, French Ministry of Foreign Affairs 2012) 15 <http://www.diplomatie.gouv.fr/IMG/pdf/Rapport_Violences_de_genre_GB_bd_cle0d9e43.pdf > accessed 13 May 2017; Obul'Okwess, *Dénoncer le harcèlement sexuel à l'IFASIC de Kinshasa* (27 November 2012) <<http://genderlinks.org.za/classification/themes/dnoncer-le-harclement-sexuel-lifasic-de-kinshasa-2012-11-27/>> accessed 21 February 2019; Rosine Migabo, *Bukavu. Harcèlement sexuel : de plus en plus croissant dans les universités* (16 October 2014) <<http://speakjhr.com/2014/10/harcelement-sexuel-de-plus-en-plus-croissant-dans-les-universites/>> accessed 21 February 2019; Geneviève Mwadi, *Le harcèlement sexuel en milieu scolaire, un blocage pour le développement de la jeune fille* (16 February 2016) < <http://citaf.over-blog.com/2016/02/le-harcelement-sexuel-en-milieu-scolaire-un-blocage-pour-le-developpement-de-la-jeune-fille.html> > accessed 21 February 2019.

⁴⁴ United Nations (n 1) article 2.

⁴⁵ See: United Nations General Assembly (UNGA) and United Nations Security Council (UNSC), *Conflict-related sexual violence: Report of the Secretary-General*, document no: A/66/657–S/2012/33 (13 January 2012) 32; UNGA and UNSC, *Sexual violence in conflict: Report of the Secretary-General*, document no: A/67/792–S/2013/149 (14 March 2013) 31 - 32; UNSC, *Report of the Secretary-General on Conflict-related sexual violence*, document no: S/2014/181 (13 March 2014) 32; UNSC, *Report of the Secretary on Conflict-related sexual violence*, document no: S/2015/203 (23 March 2015) 33 - 34; UNSC, *Report of the Secretary-General on conflict-related sexual violence*, document no: S/2016/361 (20 April 2016) 32 - 33; UNSC, *Report of the Secretary-General on conflict-related sexual violence*, document no: S/2017/249 (15 April 2017) 31 - 32; UNSC, *Report of the Secretary-General on conflict-related sexual violence*, document no: S/2018/250 (23 March 2018) 33 – 34.

⁴⁶ UNGA and UNSC, *Children and armed conflict: Report of the Secretary-General*, document no: A/63/785–S/2009/158 (26 March 2009) 48; UNGA and UNSC, *Children and armed conflict: Report of the Secretary-General*, document no: A/64/742–S/2010/181 (13 April 2010) 46; UNGA and UNSC, *Children and armed conflict: Report of the Secretary-General*, document no: A/65/820–S/2011/250 (23 April 2011) 52 - 53; UNGA and UNSC, *Children and armed conflict: Report of the Secretary-General*, document no: A/66/782–S/2012/261 (26 April 2012) 49; UNGA and UNSC, *Children and armed conflict: Report of the Secretary-General*, document no: A/67/845*–S/2013/245* (15 May 2013) 49; UNGA and UNSC, *Children and armed conflict: Report of the Secretary-General*, document

such as members of the Congolese National Army, the Congolese National Police, and/or Intelligence Services.

According to article 215 of its Constitution, the DRC is a monist country, meaning a country in which International Law has a dominant role over municipal law.⁴⁷ The DRC is a party to several international, including UN, and regional instruments which, either explicitly or implicitly prohibit VAW. This thesis focuses on UN Human Rights instruments.

One of the UN instruments from which the DRC's obligation to eliminate VAW derives is the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW Convention) which the DRC joined on 17 October 1986. Its overall object and purpose is "to eliminate all forms of discrimination against women with a view to achieving women's *de jure* and *de facto* equality with men in the enjoyment of their human rights and fundamental freedoms".⁴⁸ In its General Recommendations No. 19 on VAW⁴⁹ and No. 35 on gender-based violence (GBV)

no: A/68/878-S/2014/339 (15 May 2014) 47 - 48; UNGA and UNSC, *Children and armed conflict: Report of the Secretary-General*, document no: A/69/926*-S/2015/409* (5 June 2015) 48 - 49; UNGA and UNSC, *Children and armed conflict: Report of the Secretary-General*, document no: A/70/836-S/2016/360 (20 April 2016) 37 - 38; UNGA and UNSC, *Children and armed conflict: Report of the Secretary-General*, document no: A/72/361-S/2017/821 (24 August 2017) 37 - 38; UNGA and UNSC, *Children and armed conflict: Report of the Secretary-General*, document no: A/72/865-S/2018/465 (16 May 2018) 38 - 39.

⁴⁷ Linda A. Malone, *International Law* (Aspen Publishers 2008) 31.

⁴⁸ CEDAW Committee, *General recommendation No. 25, on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures* (2004) paragraph 4

<https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_3733_E.pdf> accessed 21 January 2018.

⁴⁹ CEDAW Committee, *General Recommendation No. 19 on Violence against women* (1992) paragraph 6

<https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_3731_E.pdf> accessed 18 January 2018.

against women,⁵⁰ the Committee on the Elimination of Discrimination against Women (CEDAW Committee) authoritatively determined that the definition of discrimination (contained in article 1 of the CEDAW Convention) includes GBV.⁵¹ The latter is defined as “violence that is directed against a woman because she is a woman or that affects women disproportionately”.⁵² The CEDAW Committee underlined that GBV may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.⁵³ Therefore, as a State Party to the CEDAW Convention, the DRC has an obligation, under International Law, to eliminate VAW, given that VAW is a form of discrimination against women.

Other human rights instruments to which the DRC is a party also explicitly or implicitly prohibit VAW. They include the Convention on the Rights of the Child joined by the DRC on 28 September 1990 [article 24 (3)]; the African Charter on Human and Peoples' Rights adopted on the 27 June 1981 to which the DRC is a party since the 20 July 1987 [article 18 (3)]; and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa or “the Maputo Protocol” adopted on the 11th of July 2003 joined by the DRC on 09 June 2008 [articles 3 (4), 4 (2), 5, 22 and 23].

The DRC’s obligation to eliminate VAW also derives from International Humanitarian Law instruments. These include the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War adopted on 12 August 1949 which the DRC joined on February 1961 (article 27); the Additional Protocol I to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts to which the DRC is a party since 3 June 1982 [articles 75 (2) (b) and 76 (1)]; and the Additional Protocol to the Geneva

⁵⁰ CEDAW Committee, *General recommendation No. 35 on gender-based violence against women*, document no: CEDAW/C/GC/35 (14 July 2017) paragraphs 1 and 21 <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Assets/pdf.gif> accessed 21 January 2018.

⁵¹ CEDAW Committee (n 49) paragraph 6.

⁵² Ibid.

⁵³ Ibid.

Conventions of 12 August 1949 relating to the Protection of Victims of Non-International Armed Conflicts of 8 June 1977 which the DRC joined on 12 of December 2002 [article 4 (2) (e)].

Lastly, the DRC's obligation to eliminate VAW can be drawn from International Criminal Law treaties including Rome Statute of the International Criminal Court (ICC) which the DRC ratified on 11 April 2002 [article 7 (1) (g), 8 (2) (b) (xxii) and 8 (2) (e) (vi)].

However, as discussed in Chapter Two, despite some measures taken by the DRC, there is still a wide gap between the way in which the country is obligated to behave under UN instruments prohibiting VAW and the way in which the country actually behaves. This gap translates, in turn, into a discrepancy between the rights promised to women and girls of the DRC by those instruments and the rights actually delivered to them.

According to several UN Human Rights bodies,⁵⁴ including the UN Special Rapporteur on VAW (SRVAW),⁵⁵ and also several other sources,⁵⁶ this gap can be partly attributed to the combined effects of the country's unwillingness and lack of capacity to implement relevant human rights obligations. Chapter Three and Four

⁵⁴ See for instance: ; Human Rights Council (n 43) paragraphs 23 – 24, 27, 40 – 44; Human Rights Council, *Combined report of seven thematic special procedures on technical assistance to the Government of the DRC and urgent examination of the situation in the east of the country*, document no: A/HRC/10/59 (5 March 2009) paragraphs 14 – 15, 28, 57 and 60 – 62; and Human Rights Council, *Second joint report of seven United Nations experts on the situation in the DRC*, document no: A/HRC/13/63 (8 March 2010) paragraphs 34, 49 – 51, 53 – 54, 58 and 101.

⁵⁵ See: Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk. Addendum. Mission to the DRC*, document no: A/HRC/7/6/Add.4 (28 February 2008) paragraphs 66 – 69; 74 – 78; 83.

⁵⁶ See for instance: International Trade Union Confederation (ITUC), *Violence against women in Eastern DRC: Whose responsibility? Whose complicity?* (ITUC November 2011) 6 and 28 <https://www.ituc-csi.org/IMG/pdf/ituc_violence_rdc_eng_lr.pdf.pdf > accessed 03 February 2017; Fédération Internationale des ligues des Droits de l'Homme (FIDH) and others, *DRC. Victims of sexual violence rarely obtain justice and never receive reparation: Major changes needed to fight impunity* (October 2013) 15 <https://www.fidh.org/IMG/pdf/rapport_rdc_.pdf > accessed 29 January 2017.

discuss in more detail how unwillingness and lack of capacity can contribute to this gap.

I share the view that the problems discussed above are also exacerbated by the fact that UN Human Rights bodies that are mandated with promoting and protecting women's right to be free from violence enshrined in the various instruments mentioned earlier suffer from multiple structural weaknesses (discussed in more detail in Chapter Five) which limit their ability to positively influence the domestic practices of States, such as the DRC, which are unwilling and/or unable to implement their obligation to end VAW. Relevant UN bodies include the CEDAW Committee or SRVAW.

More specifically, first, although unwillingness constitutes one of the key sources of noncompliance with Human Rights standards, relevant UN Human Rights bodies are not legally empowered to compel recalcitrant States, such as the DRC, into compliance. Yet, those bodies are expected to positively influence the domestic practices of States. This weakness results, *inter alia*, from the fact that as discussed later in this thesis, the output of these bodies is generally considered as being not legally binding.⁵⁷ Moreover, as stressed by Smith-Cannoy, though States are legally obligated to respect their international commitments (*pacta sunt servanda*), the international community lacks a global enforcement body capable of forcing states to abide by their commitments.⁵⁸ Even scholars who refer to UN Human Rights as "enforcement mechanisms" acknowledge that, in reality, these bodies cannot compel compliance and that they can only "recommend".⁵⁹ This is

⁵⁷ See: Sarah Joseph and Joanna Kyriakakis, 'The United Nations and Human Rights' in Sarah Joseph and Adam McBeth (eds.), *Research Handbook on International Human Rights Law* (Edward Elgar Publishing 2010) 26; See also: Helen Keller and Geir Ulfstein, 'Conclusions' in Helen Keller and Geir Ulfstein (eds), *UN Human Rights Treaty Bodies: Law and Legitimacy* (Cambridge University Press 2012) 425.

⁵⁸ Heather Smith-Cannoy, 'Mainstreaming Human Rights' in Anja Mihr and Mark Gibney, *The SAGE Handbook of Human Rights* (Volume 1, SAGE Publications Limited, 2014) 81.

⁵⁹ See for instance: Carole J. Petersen, 'Bridging the Gap?: The Role of Regional and National Human Rights Institutions in the Asia Pacific' (2011) 13(1) *Asian-Pacific Law & Policy Journal* 174 –

because these bodies operate in an international system where the principle of state sovereignty curtails their (already) limited enforcement powers. As rightly emphasized by Higgins, consent and sovereignty are constraining factors against which the prescribing, invoking, and applying of international law norms must operate.⁶⁰ In summary, when acting on their own, UN Human Rights bodies have limited power to meaningfully contribute to narrowing implementation gaps resulting from States' unwillingness to implement their obligations. This means that unless other stakeholders step in to supplement the work of UN human rights bodies and use other strategies to influence the domestic practices of the DRC, implementation gaps resulting from the country's unwillingness to implement its obligation to end VAW are likely to persist.

Second, although limitations of capacity constitute one of the key sources of noncompliance with Human Rights standards, relevant UN Human Rights bodies are neither mandated nor appropriately resourced to respond to many of the capacity deficits that can contribute to the gap between the DRC's formal commitment to end VAW and the country's actual practices. In summary, when acting on their own, these bodies have limited ability to meaningfully contribute to narrowing implementation gaps resulting from limitations of capacity affecting States. This means that unless other actors step in and use other strategies to influence the domestic practices of the DRC, implementation gaps arising from the country's limitations of capacity to implement its obligation to end VAW are likely to persist.

Third, UN Human Rights bodies have limited capacity to properly monitor States' domestic practices. In this respect, Bayefsky stresses, "(...) International institutions should play a secondary role in the protection of international human

209, 179, 183 and 184; Yvonne M. Dutton, 'Commitment to International Human Rights Treaties: The Role of Enforcement Mechanisms' (2012) 34(1) University of Pennsylvania Journal of International Law 1 – 65, 12, 29 and 30.

⁶⁰ Rosalyn Higgins, *Problems and Process: International Law and How We Use It* (Clarendon Press 1996) 1.

rights standards. They have neither the resources nor the depth of knowledge of local circumstances to be able to monitor systematically (...).⁶¹ Besides, UN Human Rights bodies have limited capacity to properly follow up on the implementation of their own recommendations. In this regard, many have characterized the poor or lack of follow-up by UN Human Rights bodies as one of the “major weakness” or a “key missing component” in the UN human rights implementation regime.⁶² They have attributed the problem to multiple factors including time constraints as well as limited capacity and particularly funding and staffing available to these human rights bodies.⁶³ In other words, because of their limited capacity to properly monitor States’ domestic practices and/or follow up on the implementation of their own recommendations, UN Human Rights bodies can end up being blindsided. As a result, when acting on their own, these bodies can have difficulties detecting problems which occur at the domestic level, including situations where States, such as the DRC, show unwillingness and/or lack the capacity to properly implement their human rights obligations. This means that other stakeholders need to step in to supplement the work of UN Human Rights bodies and properly monitor whether the DRC is implementing its obligation to end VAW and also follow up on whether the country is implementing recommendations formulated by those bodies.

Lastly, there is some distance between UN Human Rights bodies and the real lives of women and girls affected by violence at the domestic level which can also limit those bodies’ ability to positively influence the DRC’s domestic practices. Speaking about this distance, the UN High Commissioner for Human Rights

⁶¹Anne F. Bayefsky, *The UN Human Rights Treaty System: Universality at the Crossroads* (Kluwer Law International 2001) 86.

⁶² Ibid, 8 and 59; Nigel S. Rodley, ‘The Role and Impact of Treaty Bodies’, in Dinah Shelton (ed), *The Oxford Handbook of International Human Rights Law* (Oxford University Press 2013) 615; Inga T. Winkler and Catarina de Albuquerque, ‘Doing It All and Doing It Well? A Mandate’s Challenge in Terms of Cooperation, Fundraising and Maintaining Independence’ in Aoife Nolan, Rosa Freedman, and Thérèse Murphy (eds), *The United Nations Special Procedures System* (BRILL, 2017) 208.

⁶³ Bayefsky (n 61) 8; Gay McDougall, *The First United Nations Mandate on Minority Issues* (Brill Nijhoff 2016) 30 and 33; Winkler and Albuquerque (n 62).

stresses, for instance that “the (treaty body) system is often described as disconnected from realities on the ground, with meetings confined to Geneva or New York”.⁶⁴ Related to that, many have pointed out that the UN Human Rights system is little known and/or understood by many outsiders.⁶⁵ In summary, because of the distance described above, the output of UN Human Rights bodies, which could have otherwise contributed to closing implementation gaps can fail to achieve that goal, including because it is poorly known or understood and/or is underused at the domestic level.

The situation and challenges presented in the paragraphs above may give the impression that narrowing the gap between the DRC’s formal commitment to end VAW and the country’s actual practices is an unachievable goal. Smith-Cannoy even argues that the treaty bodies, like all intergovernmental institutions, rely on states to abide by their recommendations and cannot overcome the gap between governments’ commitment to human rights principles and the actual enforcement of those rights on the ground.⁶⁶ However, this thesis is premised on the idea that despite being a challenging goal, narrowing the gap in the implementation by the DRC of its obligation to end VAW can be achieved provided that the right stakeholders use the right strategies.

⁶⁴ United Nations, *Concept paper on the High Commissioner’s proposal for a unified standing treaty body: Report by the Secretariat*, document no: HRI/MC/2006/2 (22 March 2006) paragraph 21.

⁶⁵ Aoife Nolan, Rosa Freedman and Therese Murphy, ‘Introduction’, in Aoife Nolan, Rosa Freedman, and Thérèse Murphy (eds), *The United Nations Special Procedures System* (BRILL, 2017) 5; Christof H. Heyns and Frans Viljoen, *The Impact of the United Nations Human Rights Treaties on the Domestic Level* (Kluwer Law International 2002) 31; United Nations (n 64) paragraph 21; United Nations Human Rights Committee, *A strategic approach to public relations, including relations with the media*, document no: CCPR/C/94/CRP.2/Rev.1 (23 October 2008) paragraph 5; OHCHR, *Strengthening the United Nations human rights treaty body system: A report by the United Nations High Commissioner for Human Rights Navanethem Pillay* (June 2012) 88 <<http://www2.ohchr.org/english/bodies/HRTD/docs/HCReportTBStrengthening.pdf>> accessed 09 April 2018.

⁶⁶ Smith-Cannoy (n 58) 84.

To investigate how the above-described gap can be narrowed, I build on Risse, Sikkink and Ropp's "Spiral Model of Human Rights Change" (predicated on the assumption that states are primarily unwilling rather than unable to or incapable of implementing and/or complying with their human rights obligations)⁶⁷ and on the Chayeses' "Managerial Model" (founded on the assumption that States' involuntary failures to implement and/or comply with their obligations result from limitations of capacity to do so).⁶⁸ More specifically, I develop an original model (described later in this Chapter) through which I examine the potential role that "moral consciousness-raising", naming and shaming, argumentation, dialogue and persuasion (promoted by the Spiral Model)⁶⁹ as well as capacity building (promoted by the Managerial Model)⁷⁰ can play in bridging the gap between the DRC's formal commitment to end VAW and the country's performance. To understand the key argument of this thesis, it is therefore important to clarify the meaning of these six strategies.

4. Definition of key concepts

4.1. "Moral consciousness-raising"

"Moral consciousness-raising" is a strategy through which human rights advocacy networks publicize information about human rights violations occurring in a particular State to put the latter on the international agenda.⁷¹ The end goal of

⁶⁷ See: Thomas Risse and Kathryn Sikkink, 'The socialization of international human rights norms into domestic practices: introduction' in Thomas Risse, Stephen C. Ropp and Kathryn Sikkink, *The Power of Human Rights: International Norms and Domestic Change* (Cambridge University Press, 1999) 22 – 24; Thomas Risse and Stephen C. Ropp, 'Introduction and Overview' in Thomas Risse, Stephen C. Ropp, Kathryn Sikkink (eds), *The Persistent Power of Human Rights: From Commitment to Compliance* (Cambridge University Press 2013) 15, 17.

⁶⁸ Abram Chayes and Antonia Handler Chayes, *The New Sovereignty: Compliance with International Regulatory Agreements* (Harvard University Press 1995) 13 – 15.

⁶⁹ Risse and Sikkink (n 67) 5 and 11.

⁷⁰ Chayes and Chayes (n 68) 25; 197 – 201.

⁷¹ Risse and Sikkink (n 67) 5.

“moral consciousness-raising” is to raise the level of international public attention on that State.⁷² Ultimately, the purpose of “moral consciousness-raising” is to generate “pressure from above” on the human rights violator. Through “moral consciousness-raising”, human rights advocacy networks remind “liberal states” (or any other concerned States or actors) of their own identities as promoters of human rights⁷³ and of their own standards in this area and demand that they live up to those identities and standards.⁷⁴ Human rights advocacy networks try to convince governments and public opinions (of liberal States or any other concerned States or actors) to pay attention to the situation in the norm-violating state⁷⁵ and to join the networks’ attempts to change human rights practices in target states.⁷⁶

The power of “moral consciousness-raising” derives from what Keck and Sikkink call “information politics”, or the ability to quickly and credibly generate politically usable information and move it to where it will have the most impact;⁷⁷ “symbolic politics”, or the ability to call upon symbols, actions, or stories that make sense of a situation for an audience that is frequently far away;⁷⁸ and “leverage politics”, or the ability to call upon powerful actors to affect a situation where weaker members of a network are unlikely to have influence.⁷⁹ Ultimately, moral consciousness-raising can lead to some initial pressure on the target state to improve its human rights conditions.⁸⁰

⁷² Ibid, 22.

⁷³ Ibid, 5.

⁷⁴ Ibid, 23.

⁷⁵ Thomas Risse and Stephen C. Ropp, ‘International human rights norms and domestic change: conclusions’, in Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink (eds), *The Power of Human Rights: International Human Rights and Domestic Change* (Cambridge University Press 1999) 251.

⁷⁶ Risse and Sikkink (n 67) 23.

⁷⁷ Margaret E. Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Cornell University Press 1998) 18 – 22.

⁷⁸ Ibid, 22 – 23.

⁷⁹ Ibid, 23 – 24.

⁸⁰ Ibid, 23.

4.2. Naming and shaming

Chong defines naming and shaming as “a methodology that involves carefully researching to pinpoint specific violators, publicizing the legal violation through report writing and media outreach, and mobilizing public campaigns in support of specific victims and vulnerable groups”.⁸¹ Echoing Chong, Cardenas defines the concept as “a strategy which consists in exposing violations and invoking moral authority to embarrass a state into changing its behaviour, or at the very least responding to accusations of abuse (...)”⁸² Put differently, the goal of naming and shaming is to generate public outrage against violators⁸³ and to embarrass, or shame them into implementing their human rights obligations by disseminating evidence of violations and drawing attention to the gap between human rights standards and targets’ practices.⁸⁴ Like “moral consciousness-raising”, the power of naming and shaming derives from what Keck and Sikkink call “information politics”⁸⁵, “symbolic politics”,⁸⁶ and “leverage politics”.⁸⁷ In summary, the power of naming and shaming is premised on the expectation that when human rights violators are publicly exposed for their poor human rights records they might feel deeply offended and may sometimes feel it sufficiently disturbing for either their international image or their domestic legitimacy that they are willing to make human rights concessions.⁸⁸ In other words, naming and shaming works by relying on the ability to use the target States’ reputational concerns as a leverage.

⁸¹ Daniel Chong, ‘Economic Rights and Extreme Poverty: Moving toward Subsistence’ in Clifford Bob (ed), *The International Struggle for New Human Rights* (University of Pennsylvania Press 2009) 115.

⁸² Sonia Cardenas, *Human Rights in Latin America: A Politics of Terror and Hope* (University of Pennsylvania Press 2010) 104.

⁸³ Chong (n 81)115.

⁸⁴ Sonia Cardenas, ‘Human Rights in Comparative Politics’, in Michael Goodhart (ed) *Human Rights: Politics and Practice* (Second Edition, Oxford University Press 2013) 84.

⁸⁵ Keck and Sikkink (n 77) 18 – 22.

⁸⁶ Ibid, 22 – 23.

⁸⁷ Ibid, 23 – 24.

⁸⁸ Risse and Sikkink (n 67) 15 and 27.

4.3. Argumentation

Van Eemeren and Grootendorst define “argumentation” as “a verbal, social, and rational activity aimed at convincing a reasonable critic of the acceptability of a standpoint by putting forward a constellation of propositions justifying or refuting the proposition expressed in the standpoint”.⁸⁹ Argumentation attempts to stimulate human rights change by putting violators in a situation where they cannot publicly denounce or renounce previously made commitments without contradicting themselves and/or losing credibility. In other words, the power of argumentation stems from what Keck and Sikkink call “accountability politics” (the effort to hold powerful actors to their previously stated policies or principles).⁹⁰ In this respect, Risse and Sikkink explain that the power of argumentation is premised on the expectation that the more States argue with their critics, the more likely they are to make argumentative concessions and to specify their justifications.⁹¹ In other words, they will start “talking the human rights talk”.⁹² Put simply, they will start making promises to better implement and/or comply with their human rights obligations or to justify their poor implementation or compliance with the later and promise to take corrective measures. Risse and Sikkink stress that oftentimes, States make those commitments because they tend to believe that “talk is cheap”.⁹³ However, they do not understand the degree to which they can become “entrapped” in their own rhetoric.⁹⁴ Progressively the exchange of arguments between States and their critics will put States in a situation where they have to start changing their practices because they cannot reasonably reconcile their past promises or commitments with

⁸⁹ Frans H. Van Eemeren and Rob Grootendorst, *A Systematic Theory of Argumentation: The pragma-dialectical approach* (Cambridge University Press 2004) 1.

⁹⁰ Keck and Sikkink (n 77) 24 – 25.

⁹¹ Risse and Sikkink (n 67) 28.

⁹² Ibid, 27.

⁹³ Ibid.

⁹⁴ Ibid.

their practices without contradicting themselves and losing credibility.⁹⁵ If States intend to deviate from previous commitments, they have to find a convincing reason why a certain normative standard should no longer apply.⁹⁶

4.4. Dialogue

The Oxford Dictionary of English defines dialogue as “a discussion between two or more people or groups, especially one directed towards exploration of a particular subject or resolution of a problem”.⁹⁷ Echoing this definition, Walton defines dialogue as “a normative framework in which there is an exchange of arguments between two speech partners (or more)⁹⁸ reasoning together in turn-taking sequence aimed at a collective goal”.⁹⁹ The problem to be resolved or the collective goals to be reached through dialogue include the prevention of human rights violations in the future¹⁰⁰ and the improvement of the human rights situation.¹⁰¹ Put simply, dialogue seeks to elicit human rights change by providing human rights violators and relevant stakeholders, including their critics, with an opportunity to exchange views on human rights problems and agree on appropriate measures to address those problems and ultimately elicit human rights change.

⁹⁵ Frank Schimmelfennig, *The EU, NATO and the Integration of Europe: Rules and Rhetoric* (Cambridge University Press 2003) 222. See also: Gerrit Kurtz, ‘Securitization of Climate Change in the United Nations 2007 – 2010’ in Jürgen Scheffran and others (eds), *Climate Change, Human Security and Violent Conflict: Challenges for Societal Stability* (Springer 2012) 671.

⁹⁶ Kurtz (n 95) 671.

⁹⁷ See: <<http://www.oxforddictionaries.com/definition/english/dialogue> > accessed 17 July 2015.

⁹⁸ Douglas Walton, *One-Sided Arguments: A Dialectical Analysis of Bias* (State University of New York Press 1999) 27.

⁹⁹ Douglas N. Walton, *The New Dialectic: Conversational Contexts of Argument* (University of Toronto Press Incorporated 1998) 30.

¹⁰⁰ Risse and Ropp (n 75) 253.

¹⁰¹ Risse and Sikkink (n 67) 28.

4.5. Persuasion

Perloff defines persuasion as “a symbolic process in which communicators try to convince other people to change their attitudes or behaviour regarding an issue through the transmission of a message, in an atmosphere of free choice”.¹⁰² Echoing Perloff, Mertus defines the concept as “the inculcation of norms so that one side ends up convinced of the truth, validity, or appropriateness of a norm, belief, or practice”.¹⁰³ One common denominator between these two definitions is that the goal of persuasion is to change the mind, attitude or behaviour of an actor regarding an issue. In summary, in the area of human rights, persuasion attempts to elicit compliance by changing the mind of the human rights violator and convincing the latter that implementing their human rights obligations is the right thing to do. Indeed, persuasion elicits human rights change by relying on the “logic of appropriateness”.¹⁰⁴ Under this logic, actor behaviour is based on notions of right and wrong, good or bad, or other normative and ideational values.¹⁰⁵ Actions that are taken using the logic of appropriateness are considered to be norm-governed.¹⁰⁶ From this perspective, states follow human rights norms because they want to “do the right thing”, and human rights are constitutive of their social identity.¹⁰⁷

¹⁰² Richard M. Perloff, *The dynamics of persuasion: Communication and Attitudes in the 21st Century* (Second Edition, Lawrence Erlbaum Associates Publishers 2003) 8.

¹⁰³ Julie Mertus, ‘Evaluating NHRIs: Considering Structure, Mandate, and Impact’, in Ryan Goodman and Thomas Pegram (eds), *Human Rights, State Compliance, and Social Change: Assessing National Human Rights Institutions* (Cambridge University Press 2012) 85.

¹⁰⁴ Risse and Ropp (n 67) 16.

¹⁰⁵ Melissa Labonte, *Human Rights and Humanitarian Norms, Strategic Framing, and Intervention: Lessons for the Responsibility to Protect* (Routledge 2013) 51.

¹⁰⁶ Ibid.

¹⁰⁷ Wolfgang Wagner, ‘International Relations Theories and Human Rights’ in Anja Mihr and Mark Gibney (eds), *The SAGE Handbook of Human Rights* (Volume 1, SAGE 2014) 111.

4.6. Capacity building

Capacity building is defined as “the process through which individuals, organisations and societies obtain, strengthen and maintain the capabilities to set and achieve their own development objectives over time”.¹⁰⁸ “Capacity”, on its part, is defined as “the ability of individuals, institutions, and societies to perform functions, solve problems, and set and achieve objectives in a sustainable manner”.¹⁰⁹ What transpires from these definitions is that capacity building is a process that deals with deficits at three levels namely the individual, organisational and societal (often called “the enabling environment”). At the individual level, capacity refers to interrelated elements such as knowledge, skills, abilities and experience.¹¹⁰ Organisational capacity include elements such as organisational internal policies, arrangements, procedures and frameworks, mission and strategy, culture, structure and competencies, processes, resources, infrastructure and

¹⁰⁸ United Nations Development Programme (UNDP), *Capacity Development Practice Note* (2008) 4 <http://www.unpcdc.org/media/8651/pn_capacity_development.pdf> accessed 29 January 2017.

¹⁰⁹ UNDP, *Measuring capacity* (2010) 32 <http://content-ext.undp.org/aplaws_publications/2679640/UNDP_Measuring_Capacity_July_2010.pdf> accessed 19 November 2017.

¹¹⁰ See definitions provided, for instance in: Joe Bolger, ‘Capacity Development: Why, What and How’ (2000) 1(1) *Capacity Development Occasional Series*, CIDA, Policy Branch 1 - 8, 4; Sakiko Fukuda-Parr, Carlos Lopes, and Khalid Malik, ‘Institutional Innovations For Capacity Development’ in Sakiko Fukuda-Parr, Carlos Lopes, Khalid Malik (eds), *Capacity for development new solutions to old problems* (Earthscan Publications Ltd and United Nations Development Programme 2002) 9 <<http://www.undp.org/content/dam/aplaws/publication/en/publications/capacity-development/capacity-for-development-new-solutions-to-old-problems-full-text/Capacity-Dev-NewSolutions-OldProbs-FULL.pdf>> accessed 04 April 2019; Monica Blagescu and John Young, ‘Capacity Development for Policy Advocacy: Current thinking and approaches among agencies supporting Civil Society Organisations’ (2006) 260 *Overseas Development Institute Working Paper* 1 – 50, 4; UNDP (n 108) 6; UNDP, *Capacity development: A UNDP Primer* (2009) 11 <http://www.undp.org/content/dam/aplaws/publication/en/publications/capacity-development/capacity-development-a-undp-primer/CDG_PrimerReport_final_web.pdf> accessed 29 January 2017; Charles Collins and Andrew Green, *Valuing Health Systems: A Framework for Low and Middle Income Countries* (SAGE Publications India Pvt Ltd 2014) 64.

equipment.¹¹¹ The enabling environment, on its part, is the term used to describe the broader system (or context) within which individuals and organisations function or operate.¹¹² Applied to this thesis, the enabling environment refers to the “macro-level” context within which VAW is perpetrated, perpetuated, justified or tolerated and within which both organisations and individuals (duty-bearers and rights holders) operate in the DRC. Capacities at the level of the enabling environment include factors such as policies, legislation and legal frameworks, power relations, social norms, rules, values, institutional roles and mandates; management and accountability issues, resources availability, political and economic environments, and commitment.¹¹³ In summary, in the context of this thesis, capacity building means identifying and addressing at the three levels mentioned above constraining factors or deficits that can prevent duty-bearers from playing their respective roles in the implementation of the obligation to eliminate VAW or which can prevent rights-holders from claiming their rights to be free from violence. The next Section presents the argument put forward by this thesis.

¹¹¹ UNDP, *Capacity assessment and development in a systems and strategic management context* (Technical Advisory Paper No. 3, 1998) xiii <<https://www.cbd.int/doc/pa/tools/Capacity%20assessment%20and%20development.pdf>> accessed 04 January 2017; Bolger (n 110) 4; Blagescu and Young (n 110) 4; The World Bank, *Using Training to Build Capacity for Development: An Evaluation of the World Bank's Project-Based and WBI Training* (2008) 6 <http://siteresources.worldbank.org/EXTTRABUICAPDEV/Resources/full_doc.pdf> accessed 04 April 2019; Kate O'Neill, *The Environment and International Relations* (Cambridge University Press 2009) 120; Collins and Green (n 110) 120.

¹¹² See: Bolger (n 110) 3; UNDP (n 108) 5; UNDP (n 110) 11; Blagescu and Young (n 110) 5; Stéphan Vincent-Lancrin, 'Developing Capacity through Cross-border Tertiary Education' in Stéphan Vincent-Lancrin (ed), *Cross-border tertiary education: A way towards capacity development* (2007) 56 <<https://openknowledge.worldbank.org/bitstream/handle/10986/6865/Cross-border%20Tertiary%20Education.pdf?sequence=5&isAllowed=y>> accessed 23 January 2019.

¹¹³ Ian P. Williamson, Abbas Rajabifard and Stig Enemark, 'Capacity Building for SDIs' (2003) Proceedings of 16th United Nations Regional Cartographic, Okinawa, Japan 1 – 14, 4; Stéphan Vincent-Lancrin (n 123) 56; UNDP (n 110) 5 – 6; O'Neill (n 111) 120; Collins and Green (n 110) 64.

5. The key argument of this thesis

The previous sections explained how UN Human Rights bodies tasked with the responsibility to promote and protect women's right to be free from violence worldwide suffer from structural weaknesses that can limit their ability to positively influence the domestic practices of States such as the DRC which are unwilling and/or unable to implement their obligation to end VAW. In light of the above, the key argument of my thesis is that despite the above-mentioned weaknesses, it is possible to influence the domestic practices of the DRC and ultimately narrow the gap between the country's formal commitment to end VAW and its actual practices provided that the following conditions are met. First, closing the above-mentioned gap required a much broader array of actors, in addition to UN human rights bodies, to step in and actively participate in efforts aimed at closing the gap in the implementation of the obligation to end VAW in the DRC. The involvement of this much broader array of actors was also needed to overcome some of the structural weaknesses affecting UN Human Rights bodies affecting UN Human Rights bodies responsible for promoting and protecting women's right to be free from violence. Second, and most importantly, bridging the above-mentioned gap required this broad array of actors to use the right strategy. Specifically, this calls for resorting to "moral consciousness-raising", naming and shaming, argumentation, dialogue, persuasion and capacity building in a coherent manner and in symbiosis. The end goal of this approach is to deal with implementation gaps resulting from both the DRC's unwillingness and lack of capacity to end VAW in an integrated, comprehensive and durable manner. To explore how the aforementioned broader array of stakeholders can use these strategies to address the DRC's lack of willingness and capacity to implement its obligation to end VAW, this thesis develops an original model called the "Integrated and Multi-stakeholder Model of Human Rights Change" (hereinafter, "Integrated and Multi-stakeholder Model") introduced in the next Section.

6. The “Integrated and Multi-stakeholder Model of Human Rights Change”

One might wonder I refer to my Model as “integrated” and “multi-stakeholder”. I develop an “integrated” Model because, as mentioned earlier, the gap between the DRC’s formal commitment to end VAW and the country’s actual practices has been partly attributed to the combined effects of unwillingness and lack of capacity on the part of the DRC. This means that neither unwillingness nor limitations of capacity alone can fully account for that gap. This means that both problems need to be addressed together and in an integrated manner to narrow the gap. Therefore, combining strategies that attempt to address both problems is the most appropriate approach to deal with the question which is at the heart of this thesis. That is the reason why I opt for an “Integrated” Model of Human Rights Change. Indeed, according to the Cambridge dictionary of English, the adjective “integrated” is used to describe something “with two or more things combined in order to become more effective”.¹¹⁴ My “integrated” Model of Human Rights Change uses multiple strategies (moral consciousness-raising, naming and shaming, argumentation, dialogue, persuasion and capacity building) in combination in an attempt to address both the DRC’s unwillingness and lack of capacity in a more effective manner.

The concept “Multi-stakeholder”, on its part, refers to “processes which, *inter alia*, “aim to bring together all major stakeholders in a new form of communication, decision-finding (and possibly decision-making) structure on a particular issue and to develop partnerships and strengthened networks between and among stakeholders”.¹¹⁵ In this respect, my “Multi-stakeholder” model is aimed at enabling a broad array of domestic and international stakeholders to play a stronger role in influencing the domestic practices of the DRC and ultimately contribute to closing

¹¹⁴ See: <<https://dictionary.cambridge.org/dictionary/english/integrated>> accessed 16 February 2019.

¹¹⁵ Minu Hemmati, *Multi-stakeholder Processes for Governance and Sustainability: Beyond Deadlock and Conflict* (Earthscan Publications Ltd 2002) 19 <http://www.wageningenportals.nl/sites/default/files/resource/multi_stakeholder_processes_for_governance_and_sustainability_hemmati_2002.pdf> accessed 16 January 2019.

the gap between the DRC's formal commitment to end VAW and the country's actual practices.

It is important to emphasise that while building on strategies promoted by the Spiral and the Managerial Models, my Model uses these strategies differently. Unlike the original Spiral Model which treated persuasion as a means,¹¹⁶ my Model addresses persuasion as an end which can be achieved by using moral consciousness-raising, naming and shaming, dialogue and argumentation.

As regards the "Integrated and Multi-stakeholder Model" itself, I analyse how a broad array of domestic and international stakeholders can contribute to narrowing the gap between the DRC's formal commitment to end VAW and its actual practices by successively using "moral consciousness-raising", naming and shaming, and dialogue (promoted by the Spiral Model), then capacity building (promoted by the Managerial Model), then finally argumentation (promoted by the Spiral Model). My "Integrated and Multi-stakeholder Model" can be subdivided into five major steps.

Firstly, I explore how the above-mentioned stakeholders can use "moral consciousness-raising" to put VAW occurring in the DRC on the international agenda to generate some initial "pressure from above" on the country. This pressure is essential to start the process of persuading the country to implement its obligation to end VAW. In practice, "moral consciousness-raising" could be achieved, for instance, through the publication by a coalition of national NGOs of a national report on sexual harassment against women and girls in educational settings on the International Day of Education (24 January) and the launching of a national campaign against the practice to which all diplomatic missions, national and international NGOs, United Nations agencies operating in the DRC could be associated. The same report could also be sent to various UN human rights bodies.

Secondly, I examine how these stakeholders can use naming and shaming to consistently expose violations of the obligation to end VAW occurring in the DRC and generate additional and sustained pressure on the country and thereby supplement "moral consciousness-raising". This additional and sustained pressure

¹¹⁶ Risse and Sikkink (n 67) 5 and 11.

“from below” and “from above” is essential to keep the process of persuasion alive. Using the same example above, naming and shaming could be achieved for instance through the publication of quarterly and/or annual reports that would include, *inter alia*, the number of cases of sexual harassment against women and girls in educational settings recorded nationally; measures that the DRC has taken (or failed to take) to prevent and/or respond to the problem including the number of alleged perpetrators held accountable; and more generally, the remaining gaps in the implementation of the country’s obligation to end sexual harassment in educational settings as a form of VAW.

Thirdly, I analyse how once and/or if the DRC starts showing signs indicating some level of commitment to better implement its obligation to end VAW (after being named and shamed), domestic and/or international stakeholders can use dialogue to agree with the country on time-bound and preferably signed action plans outlining appropriate measures that the DRC needs to take to translate into action its commitment to better implement its obligation to end VAW. In practice, such a dialogue could include the organisation of a national conference on sexual harassment against women and girls in educational settings whose outcome could encompass the adoption of a time-bound national action plan to end address the problem.

Fourthly, I study how when these appropriate measures are agreed upon, domestic and/or international stakeholders can use capacity building to address capacity deficits that could prevent the DRC from translating the commitment to eliminate VAW into action. Specifically, capacity building here would mean identifying and addressing individual, organisational and societal capacity deficits that could prevent the DRC from properly implementing its national action plan to end on sexual harassment against women and girls in educational settings.

Lastly, I show how throughout the process these stakeholders can use argumentation to persuade the DRC to refrain from actions and/or omissions that can hinder the implementation of its commitments. In other words, I examine how the above-mentioned stakeholders can use argumentation to hold the DRC as a duty-bearer to its previously stated or made formal commitment to eliminate VAW.

Specifically, this means, for instance, persuading the DRC that its commitment to end on sexual harassment against girls and women in educational settings exemplified by the adoption of the above-mentioned national action plan is likely to be defeated as long as the country does not require all schools and other educational settings to put in place confidential reporting mechanisms through which victims can safely complain. More generally, using argumentation also, means for instance, showing the DRC how failure to properly implement its national action plan to end on sexual harassment against women and girls in educational settings may undermine the country's ability to achieve some of the Sustainable Development Goals (SDGs) by 2030, including Goal number 4 ("By 2030, ensure that all girls and boys complete free, equitable and quality primary and secondary education leading to relevant and effective learning outcomes"). Indeed, it has been stressed that "(...) widespread gender-based violence in and around schools seriously undermines the achievement of quality, inclusive and equitable education for all children.¹¹⁷ (...) It has also been pointed out that "school-related gender-based violence can negatively impact school participation, learning levels and completion rates, and raises barriers to gender equality in education and wider society".¹¹⁸

In summary, through my Model, I examine how a broad array of international and/or domestic actors can use the persuasive power of "moral consciousness-raising", naming and shaming, dialogue and argumentation to address implementation gaps that are likely to result from the DRC's unwillingness to implement its obligation to end VAW and the transformative power of capacity building to address implementation gaps that are likely to result from the DRC's lack of capacity to implement that obligation.

It is important to stress that, unlike what may be suggested by the description above, these strategies are not supposed to elicit change in a mechanical and/or

¹¹⁷ The Education for All Global Monitoring Report (GMR), UNESCO and the United Nations Girls' Education Initiative (UNGEI), *School-related gender-based violence is preventing the achievement of quality education for all* (Policy Paper 17, March 2015) 1 <<http://unesdoc.unesco.org/images/0023/002321/232107e.pdf>> accessed 13 May 2017.

¹¹⁸ Ibid, 10.

linear sequence. The purpose of the above-mentioned description is to simply show how these strategies can work in symbiosis. Depending on the circumstances, they can be used simultaneously.

7. Original contribution to knowledge

This thesis contributes to existing knowledge by developing an original “Integrated and Multi-stakeholder Model of Human Rights Change” combining “moral consciousness-raising”, naming and shaming, argumentation, dialogue, persuasion and capacity building and by elucidating how and under what circumstances that Model can contribute to closing the gap in the implementation of the obligation to end VAW in the DRC. In addition, this thesis clarifies the distinct and debilitating effects of unwillingness and limitations of capacity to implement the obligation to end VAW in the DRC and highlights the need to better understand and address both problems in an integrated manner. The next two sub-sections elaborate on these two contributions.

7.1. Developing an original “Integrated and Multi-stakeholder Model of Human Rights Change” and applying it to the Congolese context

While I build on strategies advocated by the Spiral and the Managerial Models, my thesis contributes to knowledge by developing a model that is completely new and different in at least two respects.

Firstly, unlike the Spiral and Managerial Models which are incomplete, my “integrated” model seeks to address the sources of the gap between the DRC’s formal commitment to end VAW and the country’s actual practices in a much more comprehensive manner. Secondly, my “integrated” model goes beyond simply combining the strategies put forward by the Spiral and the Managerial Models together or applying them side by side. Through my model, I propose an original and completely different way in which those disparate strategies can work in a coherent manner and in symbiosis to address both unwillingness and lack of capacity in a more integrated, comprehensive and durable manner.

7.1.1. A model aimed at addressing implementation gaps more comprehensively

By ignoring two key contributing factors to noncompliance with International Law, the Spiral and Managerial Models can address implementation gaps only partially. The former overlooks lack of capacity while the latter underestimates lack of willingness to do so. Besides, it is worth stressing that the two models are incomplete by design not by accident.

First, the Spiral Model focuses only on implementation gaps that result from lack of willingness to implement human rights obligations. In this respect, it was only fourteen years after developing the Spiral Model that its proponents belatedly recognized that their original work on human rights had several weaknesses.¹¹⁹ They conceded that they had assumed the presence of fully functioning states, suggesting in turn that compliance with human rights norms and standards was a matter of state commitment and willingness rather than of institutional capacity.¹²⁰ They acknowledged that they did not pay attention to the fact that commitment might not lead to compliance when central state authorities lack the institutional and administrative capacity to enforce decisions including human rights standards.¹²¹

Indeed, as explained in Chapter Three, the Spiral Model is predicated on the assumption that states are primarily unwilling, rather than unable, to or incapable of, implementing and/or complying with their human rights obligations.¹²² Therefore, the Spiral Model argues that in order for States to implement and/or comply with their obligations they need to be put under “pressure from below” (domestic pressure) and “pressure from above” (or international pressure).¹²³ However, as shown throughout my thesis, “pressure from below” (domestic pressure) and “pressure from above” (or international pressure) are not appropriate tools for closing implementation gaps that results from limitations of capacity. For instance,

¹¹⁹ Risse and Ropp (n 67) 4.

¹²⁰ Ibid.

¹²¹ Ibid, 15.

¹²² Ibid, 15, 17.

¹²³ Risse and Sikkink (n 67) 18.

naming and shaming a State that is failing to prosecute perpetrators of VAW because its judicial system is in shamble is unlikely to bring about tangible human rights change.

In a similar vein, the Managerial Model, which is founded on the assumption that in general states show a propensity to implement and/or comply with their international obligations.¹²⁴ In so doing, it overestimates States' willingness to comply and does not address implementation gaps that are likely to result from lack of willingness to implement human rights obligations. Indeed, according to this model, States often unwillingly fail to implement and/or comply with international law for three main reasons, including limitations of capacity to implement and/or comply with international law.¹²⁵ The Managerial Model proposes three strategies to address implementation and/or compliance gaps including capacity building and technical assistance as way of addressing limitations of capacity.¹²⁶ Here as well, as shown in my thesis, capacity building is not an appropriate tool for addressing implementation gaps that result from the lack of willingness to implement human rights obligations.

To fill these gaps left by the Spiral and the Managerial Models, I develop a model that takes into account lack of willingness and lack of capacity and that is aimed at addressing implementation gaps resulting from both problems in an integrated manner and not in isolation like the Spiral and Managerial Models. Ultimately, my model seeks to address more comprehensively the DRC's unwillingness and limitations of capacity to implement its obligation to end VAW. However, while my Model builds on the multiple strategies advocated for by the Spiral and Managerial Models, it does not limit itself to the mere combination of those strategies or their application side by side. On the contrary, through my model, I propose an original and completely different way in which the strategies advocated for by the Spiral and the Managerial models can work in a coherent manner and in symbiosis to address both unwillingness and lack of capacity in a more integrated

¹²⁴ Chayes and Chayes (n 68) 3 – 8.

¹²⁵ Ibid, 13 – 15.

¹²⁶ Ibid, 25; 197 – 201.

and durable manner. And, this is the second difference between my Model and the Spiral and Managerial Models.

7.1.2. A model highlighting coherence and symbiosis between disparate strategies

One of the original Spiral Model's weaknesses is that its proponents undertheorized the various social mechanisms to induce compliance that they identified. When revisiting the Spiral Model, Risse and Ropp "(...) recognize(d) that (their) original work (...) had several weaknesses"; ¹²⁷ that they "(...) under-specified the processes and scope conditions by which and under which States as well as private actors could be moved from commitment to human rights norms to actual compliance with them".¹²⁸ They conceded that they had "(...) under-theorized the process leading from commitment all the way to sustained rule-consistent behaviour (...)".¹²⁹ In a similar vein, despite advocating for capacity building, the Chayeses do not clarify what they mean by "capacity building" and how the latter works to effect change. On the contrary, the Chayeses simply provide examples of how "technical assistance" (which they use interchangeably and mistakenly with capacity building) is provided.¹³⁰

To fill these gaps, I first seek to gain a better understanding of the meaning and the power of the five strategies advocated for by the Spiral and the Managerial Model before analysing how they can work together and contribute to closing the gap between in the implementation of the obligation to end VAW in the DRC. It is based on this better understanding of the meaning and power of persuasion and capacity building that I treat them as the two key components of my model. It is also based on a better understanding of persuasion that unlike the original Spiral Model which treated persuasion as a means, ¹³¹ I decide to treat persuasion as an outcome

¹²⁷ Risse and Ropp (n 67) 4.

¹²⁸ Ibid.

¹²⁹ Ibid, 11.

¹³⁰ Chayes and Chayes (n 68) 197 – 201.

¹³¹ Risse and Sikkink (n 67) 5 and 11.

which can be achieved by using “moral consciousness-raising”, naming and shaming, dialogue and argumentation. By treating persuasion as an outcome, my model also seeks to contribute to durable human rights change.

Indeed, the end goal of persuading human rights violators to change their practices is for them to internalize human rights norms and standards, so that external pressure is no longer needed to ensure compliance,¹³² and that actors follow those norms and standards because “it is the normal thing to do”.¹³³ In other words, the end goal of persuasion is to reach a situation where compliance with and/or implementation of human rights standards are simply “taken for granted”¹³⁴ and become a habitual practice of actors.¹³⁵ Given that persuasion relies on changing the minds of actors, the goal is to shift from what Koh refers to as “occasional or grudging compliance” to “habitual and internalized compliance” or “obedience”.¹³⁶ As rightly stressed by Risse and Sikkink, compliance that relies on the inculcation of internal obedience can be sustained despite the lack of pressure.¹³⁷ Echoing this point, Koh emphasises that the most effective form of “law enforcement” is not the imposition of external sanction, but the inculcation of internal obedience.¹³⁸

The same intent to elicit durable change applies to capacity building given that the latter is a “process through which the abilities of individuals, institutions, and societies to perform functions, solve problems, and set and achieve objectives *in a sustainable manner* are strengthened, adapted and maintained *over time*”.¹³⁹ And,

¹³² Ibid.

¹³³ Ibid, 17.

¹³⁴ Ibid.

¹³⁵ Ibid, 33.

¹³⁶ Harold Hongju Koh, ‘Why Do Nations Obey International Law?’ (1997) 106 The Yale Law Journal 2599 – 2659, 2646; Harold Hongju Koh, ‘How Is International Human Rights Law Enforced?’ (1999) 74(4) (9) Indiana Law Journal, 1397 – 1417, 1400.

¹³⁷ Risse and Sikkink (n 67) 11 and 17.

¹³⁸ Koh (n 136) 1401.

¹³⁹ UNDP (n 109) 32.

it is also based on a clearer understanding of the meaning and power of capacity building that, unlike the proponents of the Managerial Model, I specifically address capacity deficits at three levels, namely the individual, organisational and societal. In my thesis, I explain why limitations of capacity affecting the DRC need to be addressed at those three levels (Chapter Four). This because these three levels are mutually interdependent and interactive.¹⁴⁰ This inter-relatedness implies that any effort to assess or develop capacity necessarily needs to take into account capacity at each level, otherwise it becomes skewed or ineffective.¹⁴¹ In summary, the three levels of capacity work symbiotically.

In summary, building on this improved understanding, I develop a model that examines how the persuasive power of moral consciousness-raising, naming and shaming, argumentation, and dialogue (advocated by the Spiral Model) and the transformative power of capacity building (advocated by the Managerial Model) can work coherently and symbiotically and ultimately contribute to closing the gap between the DRC's formal commitment to eliminate VAW and the country's actual practices in a more integrated, comprehensive and durable manner.

In addition, it is worth stressing that although within the academic literature, persuasion is considered as one of the key strategies to address "voluntary non-compliance" (or unwillingness to implement human rights obligations) while capacity building is regarded as one of the key strategies to address "involuntary non-compliance" (or lack of capacity to implement human rights obligations),¹⁴² I did not come across a study combining these two strategies to address the combined effects of unwillingness and lack of capacity to implement the obligation to end VAW

¹⁴⁰ Ibid, 11.

¹⁴¹ UNDP (n 108) 5.

¹⁴² Chayes and Chayes (n 68) 25; 197 – 201; Tanja A. Börzel, Tobias Hofmann, and Carina Sprungk, 'Why Do States not Obey the Law? Lessons from the European Union' [Paper prepared for the EUSA Conference, Nashville, March 27-30, 2003 (2003)] 15 <http://userpage.fu-berlin.de/~europe/forschung/docs/boerzel_hofmann_sprungk_2003.pdf> accessed 13 May 2017; Risse and Ropp (n 67) 14 – 15.

in the DRC. This despite carrying out an extensive review of the existing literature. Therefore, my study appears to be the first to carry out such an undertaking.

Indeed, several authors have identified in their writings on VAW in the DRC (albeit not specifically) problems which may constitute indicators of unwillingness¹⁴³ and limitations of capacity¹⁴⁴ to address VAW. However, since these two issues are not the core of their papers, these authors do analyse how both problems can be addressed in a comprehensive manner.

Within the academic literature on VAW in the DRC, one of the few authors who has specifically dealt with both unwillingness and limitations of capacity in a single study is Grayson.¹⁴⁵ She makes several practical recommendations.¹⁴⁶ However, while her recommendations are pertinent, they appear to be incomplete when it comes to addressing unwillingness and limitations of capacity.

Grayson argues that in order to overcome the lack of capacity and political will to prosecute sexual violence, the DRC should embrace a number of judicial reforms informed by years of developments and lessons learned at other

¹⁴³ See for instance: Marleen Bosmans, 'Challenges in Aid to Rape Victims: the Case of the DRC' (2007) 4(1) *Essex Human Rights Review* 1 – 12, 7 and 10; Sara Meger, 'Rape of the Congo: Understanding sexual violence in the conflict in the DRC' (2010) 28 (2) *Journal of Contemporary African Studies* 119-135; 130 and 132; Gaëlle Breton-Le Goff, 'Ending Sexual Violence in the DRC' (2010) 34(1) *Fletcher Forum of World Affairs* 13 - 40, 17, 18, 19, 27, 28, 29, 30, 31, 33 and 34; Ryan S. Lincoln, 'Recent Developments: Rule of Law for Whom? Strengthening the Rule of Law as a Solution to Sexual Violence in the DRC' (2011) 26(1) (4) *Berkeley Journal of Gender, Law & Justice* 139 – 167, 154, 155, 156 and 159; Sophocles Kitharidis, 'Rape as a weapon of war: Combating sexual violence and impunity in the DRC, and the way forward' (2015) 15 *African Human Rights Law Journal* 449-472, 456, 458, 459, 470.

¹⁴⁴ See for instance: Bosmans (n 143) 7, 10 and 11; Meger (n 143) 128; Breton-Le Goff (n 143) 19, 22, 28, 30; Lincoln (n 143) 140, 141, 145, 156, 158; Kitharidis (n 143) 450, 456, 457, 458 and 464.

¹⁴⁵ Amanda Claire Grayson, 'Delivering Justice for Sexual Violence in the D.R. Congo and Beyond: Cooperation, Education, and Capacity-Building through National and International Courts' (2012) 2(2) *Journal of Global Citizenship & Equity Education* 123 – 141, 131 – 132.

¹⁴⁶ *Ibid*, 130 – 136.

tribunals.¹⁴⁷ She adds that “existing international tribunals in the former Yugoslavia, Rwanda, Sierra Leone, Cambodia, and The Hague must spread their best practices and legal developments on sexual violence to national jurisdictions such as the DRC through capacity-building, legal and judicial reform, training, and other innovative practices”.¹⁴⁸

Clearly, Grayson’s recommendations are an important part of the response to the problem. However, as it transpires throughout this thesis, it is difficult to see how capacity-building, legal and judicial reform, or training can address the lack of political will to investigate, prosecute or punish VAW, one of the two problems that she identifies. Similarly, when it comes to capacity building, Grayson recommends several initiatives through which “the international community should facilitate the cooperation and coordination of international experts to advance the collective knowledge on justice for sexual violence” in the DRC.¹⁴⁹ She lists, *inter alia*, outreach strategies, best practice manuals and guides, joint investigations, an online database of jurisprudence and resources, legal trainings and education, trial monitoring, and conferences of experts and donors.¹⁵⁰ In summary, when it comes to “building the capacity to prosecute sexual violence”, Grayson appears to mainly focus on enhancing the knowledge of judicial actors. In other words, Grayson’s recommendations seem to concentrate on one level of capacity deficits (the individual one) out of the three levels at which capacity deficits should be addressed. This is problematic because, as stressed earlier in this thesis, capacity-building is a multi-level process dealing with capacity deficits at three interdependent levels that require to be addressed in an integrated and comprehensive manner. For instance, it is difficult to see how enhancing the knowledge of judicial actors without addressing serious organisational capacity deficits, such as resources constraints faced by the Congolese justice system that Grayson also identifies¹⁵¹ can help end

¹⁴⁷ Ibid, 134.

¹⁴⁸ Ibid.

¹⁴⁹ Ibid, 136.

¹⁵⁰ Ibid, 135 and 136.

¹⁵¹ Ibid, 132.

impunity for sexual violence in a comprehensive manner. It is, in part, to mitigate the risk of formulating incomplete recommendations that before discussing “remedies” to the implementation gap (Chapter Six), I spend time to better understand the problem (Chapters Three to Five).

The aim of that undertaking is to ensure that my “Integrated and Multi-stakeholder Model” is comprehensive. In other words, my additional key contribution to knowledge is that unlike the Spiral and Managerial Models, my Model is grounded on a clear understanding of the distinct and debilitating effects of unwillingness and limitations of capacity and highlights the need to address both problems in an integrated manner.

7.2. Clarifying the distinct and debilitating effects of unwillingness and limitations of capacity and highlighting the need to address both problems in an integrated and comprehensive manner

Although the Managerial Model convincingly identifies limitations of capacity as a source of noncompliance with International Law, the distinct and debilitating effects of limitations of capacity as a source of noncompliance are not always fully appreciated in the existing literature. For instance, the proponents of the Spiral Model based the later on the assumption that states are primarily unwilling, rather than unable, to or incapable of, implementing and/or complying with their human rights obligations.¹⁵² Echoing this, some authors¹⁵³ and UN human rights bodies¹⁵⁴

¹⁵² Risse and Ropp (n 67) 15, 17.

¹⁵³ See for instance: Rosa Freedman, *The United Nations Human Rights Council: A critique and early assessment* (Routledge 2013) 42, 72 and 105; Alejandro Anaya-Munoz and Natalia Saltamacchia, ‘Factors blocking compliance with international human rights in Mexico’ in Alejandro Anaya-Munoz and Barbara Frey (eds), *Mexico's Human Rights Crisis* (University of Pennsylvania Press, 2019) 225 – 226.

¹⁵⁴ See for instance: Committee on Economic, Social and Cultural Rights (CESCR Committee), *General Comment No. 12: The Right to Adequate Food (Art. 11)*, document no: E/C.12/1999/5 (12 May 1999) paragraph 17; CESCR Committee, *General Comment No. 14: The Right to the Highest*

seem to be more receptive to the idea that States are unwilling to implement their human rights obligations and treat limitations of capacity with suspicion and/or scepticism. Linked to the above others appear to share the view that capacity building can be used by States to avoid scrutiny (through much stronger strategies).¹⁵⁵ These are legitimate and shared concerns. This is one of the reasons why I argue that capacity building must not be used in isolation. It has to be used in an “Integrated” Model of Human Rights Change together with the other strategies mentioned earlier in this thesis.

Understanding the distinct and debilitating effects of limitations of capacity and stressing the relevance of capacity building is also important because in the literature on VAW in the DRC, some appear to cast doubt on its relevance. For instance, Sahin and Kula point out that projects to challenge conflict-related sexual violence crimes in the DRC define the later as a security issue¹⁵⁶ and are therefore mainly focused on improving state capacity and strengthening state institutions.¹⁵⁷ In their view, these projects do not address enough the gender and socio-economic dimensions (including causes and impacts) of conflict-related sexual violence.¹⁵⁸

Attainable Standard of Health (Art. 12), document no: E/C.12/2000/4 (11 August 2000) paragraph 14.

¹⁵⁵ See for instance: Bayefsky (n 61) 83; Nicholas Howen, ‘The Fundamental Protection Function of the Human Rights Field Operation’ in Michael O’Flaherty, *The Human Rights Field Operation: Law, Theory and Practice* (Ashgate Publishing Limited 2007) 37; Freedman (n 153) 42, 72, and 105; Mark P. Lagon and Ryan Kaminski, ‘The Global Human Rights Regime: Assessing and Renovating the Architecture’ in Mark P. Lagon and Anthony Clark Arend (eds), *Human Dignity and the Future of Global Institutions* (Georgetown University Press 2014) 130; Rashida Manjoo, ‘WPS and the Human Rights Council’, in Sara E. Davies and Jacqui True (eds), *The Oxford Handbook of Women, Peace, and Security* (Oxford University Press, 2019) 322.

¹⁵⁶ Bilge Sahin and Sidonia Lucia Kula, ‘What Women Want before Justice: Examining Justice Initiatives to Challenge Violence against Women in the DRC (2018) 0 *International Journal of Transitional Justice* 1–18, 7 – 10, 16.

¹⁵⁷ *Ibid*, 9, 10, 11, 12, 16 – 17.

¹⁵⁸ *Ibid*, 9 – 10, 11, 12, 13, 16, 17, 18.

And most importantly, these projects do not properly respond to the socio-economic needs of survivors of conflict-related sexual violence.¹⁵⁹

The two authors raise valid points. However, before going any further, it is important to stress that from an International Law perspective, strengthening States' capacity to implement their obligation to eliminate VAW is vital because "States have the primary responsibility to respect, protect and fulfil human rights",¹⁶⁰ including women's right to be free from violence.

Going back to the objections made by Sahin and Kula about the state-centric approach taken by capacity building initiatives in the DRC, it is worth stressing that my "Integrated and Multi-stakeholder Model" is premised on the notion that capacity building is a multi-level approach and that enhancing the capacity of States (as duty-bearers) to end VAW should go hand in hand with addressing the gender and socio-economic dimensions of VAW and responding to the socio-economic needs of survivors (as rights-holders). These three undertakings are not mutually-exclusive. On the contrary, they are mutually-reinforcing. Actually, when carried out properly, capacity building should address these three issues together. Indeed, as it transpires later in this thesis, addressing the gender and socio-economic dimensions of VAW is part of strengthening the enabling environment; responding to the socio-economic needs of survivors is part of strengthening the enabling environment (for instance, by putting in place the appropriate institutions, legal and policy frameworks) and strengthening individual capacity of rights-holders (for instance, by providing survivors of domestic violence with shelter). In sum, an analysis informed by a proper understanding of what capacity building means and how capacity building works will certainly show that the valid criticisms levelled by Sahin and Kula seem to be more

¹⁵⁹ Ibid, 7, 10, 12, 13, 14, 15, 16, 17, 18.

¹⁶⁰ See: UNGA, *Report of the United Nations High Commissioner for Human Rights*, General Assembly Official Records, Sixtieth Session, Supplement No. 36 (A/60/36) (2005) paragraph 5. See also: Fourth World Conference on Women, *Beijing Declaration and Platform for Action. Annex II: Platform for Action* (15 September 1995) paragraphs 293 and 346 <<http://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf> > accessed 05 March 2017.

about the way in which capacity building has been poorly implemented in the DRC than about the relevance of capacity building itself.

In addition to what is said above, the other reason why limitations of capacity and/or capacity building are treated with suspicion could be an incomplete understanding or appreciation of the meaning and the distinct and debilitating effects of limitations of capacity as a source of noncompliance that can be seen with some authors.¹⁶¹ Jetschke perfectly summarizes this when she explains that the perspective put forward by the Managerial Model has not particularly resonated among human rights scholars, who assume that human rights violations occur because cold-blooded governments want to stay in power”.¹⁶² Chapter Four of this thesis shows how limitations of capacity at the societal, organisational and individual levels constitute separate problems from unwillingness to implement and/or comply with human rights obligations and can contribute to the gap between the DRC’s formal commitment to end VAW and the country’s actual performance.

Like with limitations of capacity, the distinct and debilitating effects of unwillingness as a source of noncompliance are not always fully appreciated in the existing literature. For instance, the Chayeses built the Managerial Model is based on the assumption of “a general propensity of States to comply with international obligations”.¹⁶³ Like Professor Louis Henkin oft-quoted observation that “almost all nations observe almost all principles of international law and almost all of their obligations almost all the time”, the Chayeses appear to overestimate States’ willingness to implement their international obligations. However, as shown throughout this thesis, particularly Chapter Three, this assumption of “a general propensity of States to comply with international obligations” is simply too optimistic and may not reflect the reality, particularly in the area of women’s right to be free from violence in the DRC.

¹⁶¹ See for instance: Risse and Ropp (n 67) 4 and 15.

¹⁶² Anja Jetschke, *Human Rights and State Security: Indonesia and the Philippines* (University of Pennsylvania Press 2011) 28.

¹⁶³ See: Chayes and Chayes (n 68) 4.

The scepticism and suspicion shown by some authors about the significance of unwillingness or limitations of capacity as explanatory factors behind States' noncompliance with human rights obligations highlights the importance of undertaking an in-depth analysis of the distinct effects of both unwillingness (in Chapter Three) and lack of capacity (in Chapter Four). This in-depth analysis shows the importance of addressing both problems in an integrated manner.

8. Research method: the sociolegal approach

Unwillingness and lack of capacity to implement the obligation to eliminate VAW can result from both legal and extra-legal factors. Addressing these factors therefore requires looking both within and beyond the law. That is the main reason why I adopt a sociolegal approach. This approach is defined by Clark as “the use of concepts or methods taken from social sciences and humanities in the study of legal phenomena”.¹⁶⁴ The sociolegal approach is the most adequate tool to address the question at the heart of this thesis for at least three reasons.

Firstly, like this thesis, the sociolegal approach deals with the gap between the “law in the books” and the “law in action”.¹⁶⁵ Indeed, this thesis attempts to identify ways and means of closing the gap in the implementation of UN standards prohibiting VAW at the national level in the DRC. Such an undertaking requires not only analysing legal provisions but also studying the legal and extra-legal factors that may contribute to the above-mentioned gap. This is the second and related reason why I adopt the sociolegal approach, namely the fact that this approach looks beyond the law.

Secondly, indeed, the primary mission of sociolegal scholarship is to better understand the social, cultural, political, and economic contexts in which law

¹⁶⁴ David S. Clark (ed), *Encyclopedia of Law and Society: American and Global Perspectives* (SAGE Publications 2007) 1529.

¹⁶⁵ Reza Banakar, ‘Law Through Sociology’s Looking Glass: Conflict and Competition in Sociological Studies of Law’, in Ann Denis and Devorah Kalekin-Fishman (eds), *The ISA Handbook in Contemporary Sociology* (SAGE Publications 2009)69; Eve Darian-Smith, *Laws and Societies in Global Contexts: Contemporary Approaches* (Cambridge University Press 2013) 2.

operates in practice.¹⁶⁶ The sociolegal approach considers not only legal texts, but also the contexts in which they are formed, destroyed, used, abused, avoided and so on; and sometimes their subtexts.¹⁶⁷ This thesis strives to comprehend the role played by both legal and extra-legal factors in the documented gap between the DRC's obligation to eliminate VAW and the country's actual practices. This study also endeavours to understand how and under what circumstances my "Integrated and Multi-stakeholder Model of Human Rights Change" can help address implementation gaps created by those legal and extra-legal factors. The socio-legal approach is therefore the most appropriate tool for such an undertaking.

The third and last reason why I adopt the sociolegal approach is because as stressed by many, this approach is interdisciplinary.¹⁶⁸ This is important for this thesis in two respects. First, understanding the reasons behind the gap at the heart of this thesis and identifying remedies to the problem requires building on insights from other disciplines. As rightly remarked by De Feyter, the legal discipline can offer a partial explanation of why there is a gap between the norms that are proclaimed (in human rights law) and their actual implementation.¹⁶⁹ Disciplines other than law offer more in-depth explanations of why compliance or implementation gaps arise at a particular regulatory level.¹⁷⁰ I extensively build on other disciplines to better understand the reasons behind the implementation gap and to identify the most appropriate ways and means of addressing the problem. More specifically, the

¹⁶⁶ Darian-Smith (n 165) 2.

¹⁶⁷ Amanda Perry-Kessaris, 'What does it mean to take a socio-legal approach to international economic law?' in Amanda Perry-Kessaris (ed), *Socio-legal Approaches to International Economic Law: Text, Context, Subtext* (Routledge 2013) 6.

¹⁶⁸ Paul Trowler, *Cultures and Change in Higher Education: Theories and Practices* (Palgrave Macmillan 2008) 25; Banakar (n 165) 68; Perry-Kessaris (n 167) 6; Darian-Smith (n 165) 1; Sarah Blandy, 'Socio-legal Approaches to Property Law Research', in Susan Bright and Sarah Blandy (eds), *Researching Property Law* (Palgrave Macmillan 2016) 26.

¹⁶⁹ Koen De Feyter, 'In defence of a multidisciplinary approach to Human Rights', in Koen De Feyter and George Pavlakos (eds), *The tension between group rights and human rights: A multidisciplinary approach* (Hart Publishing 2008) 20.

¹⁷⁰ Ibid.

Model that I develop draws from International Relations. In this respect, the Spiral Model is considered as being part of “International Relations theories of human rights change”¹⁷¹ or “international relations theories of human rights treaty compliance”.¹⁷² In a similar vein, the proponents of the Managerial Model are viewed as theorising across the International Relations – International Law divide.¹⁷³ In a similar vein, the discussions on capacity building extensively draw from the literature produced by international development practitioners. Indeed, as explained by Douglas Horton and others, capacity building has its origins in the realms of practice, not in an academic discipline.¹⁷⁴ As a consequence, much of the analysis and writing on capacity building has been done by individuals associated with development assistance or technical cooperation agencies rather than academics.¹⁷⁵

The additional reason why resorting to a multidisciplinary approach is extremely important is because as stressed by many, Human Rights itself, as a field of study is multidisciplinary.¹⁷⁶ In this respect, Freeman acknowledges that “(...)

¹⁷¹ Hans Peter Schmitz and Kathryn Sikkink, ‘International Human Rights’ in Walter Carlsnaes, Thomas Risse, and Beth A Simmons (eds), *Handbook of International Relations* (SAGE Publications Ltd., 2002) 521 – 533.

¹⁷² Laurence R. Heifer, ‘Overlegalizing human rights: international relations theory and the commonwealth Caribbean backlash against human rights regimes’ (2002) 102 (1832) *Columbia Law Review* 1832 - 1911, 1844.

¹⁷³ Kal Raustiala and Anne-Marie Slaughter, ‘International Law, International Relations and Compliance’ in Walter Carlsnaes, Thomas Risse, and Beth A Simmons (eds.), *Handbook of International Relations* (SAGE Publications Ltd., 2002) 542.

¹⁷⁴ Douglas Horton and others, *Evaluating Capacity Development: Experiences From Research And Development Organizations Around The World* (International Service for National Agricultural Research International Development Research Centre, and ACP-EU Technical Centre for Agricultural and Rural Cooperation 2003) 34 and Niyi Awofeso, *Organizational Capacity Building in Health Systems* (Routledge 2013) xvi.

¹⁷⁵ Douglas Horton and others (n 174) 34.

¹⁷⁶ Gaby Oré Aguilar, ‘The local relevance of human rights: a methodological approach’, in Koen De Feyter and others (eds), *The Local Relevance of Human Rights* (Cambridge University Press 2011) 127; Michael Freeman, *Human Rights: An Interdisciplinary Approach* (Second Edition Fully Revised and Updated, Polity Press 2011) viii.

some of the most important questions about human rights cannot be answered by legal analysis".¹⁷⁷ This is where other disciplines come into play. Indeed, an analysis of human rights problems that relies solely on the legal discipline is likely to be incomplete.

9. Significance of the study

The importance of this study derives from the fact that it proposes ways and means for addressing a persisting problem that affects a sizeable proportion of women and girls of the DRC. Indeed, existing data shows that, in addition to being a multifaceted problem, VAW affects an important proportion of women and girls in the DRC. This transpires, for instance, from information and statistical data on domestic violence,¹⁷⁸ marital rape,¹⁷⁹ sexual harassment against women in the workplace¹⁸⁰ and against schoolgirls and female students in educational settings.¹⁸¹ More specifically, for instance, the Demographic and Health Survey (DHS) conducted in the DRC in 2014 found that 45.9% of married women or women living in a marriage-like relationship had experienced physical violence by their current or the most recent husband/partner, at some point in their lives.¹⁸² The 2014 DHS also found that 68.1% of those women had been subjected to sexual violence by their current husband or partner¹⁸³ and that 24.2% of those women had been subjected to sexual violence by their former husband or partner.¹⁸⁴ Behind these statistical

¹⁷⁷ Freeman (n 176) viii.

¹⁷⁸ See for instance: MPSMRM, MSP and ICF International (n 27) 313 and 318.

¹⁷⁹ Ibid, 313.

¹⁸⁰ See for instance: CEDAW Committee, *Second periodic reports of States parties: Zaire*, document no: CEDAW/C/ZAR/2 (10 February 1997) 23 – 24; Radio Okapi (27 April 2016) n 42.

¹⁸¹ See for instance: Radio Okapi, *Equateur : harcèlement sexuel dans les écoles de Bolomba* (17 March 2007) <<http://www.radiookapi.net/actualite/2007/03/17/equateur-harcelement-sexuel-dans-les-ecoles-de-bolomba/>> accessed 10 September 2016; ONG Lus et VITA (n 43) 23 ; Papinutto (n 43) 15.

¹⁸² MPSMRM, MSP and ICF International (n 27) 318.

¹⁸³ Ibid, 313.

¹⁸⁴ Ibid.

data are women and girls who are *de jure* protected against violence by an array of UN human rights instruments but who do not enjoy *de facto* that protection. Finding ways and means of narrowing that gap is therefore an important undertaking.

Linked to the above, the significance of this thesis comes from the fact that the “Integrated and Multi-stakeholder Model” that it develops, while focusing on the DRC, can have application in many other countries. The findings and conclusions that it reaches will benefit not only women and girls of the DRC but also those living in countries where a similar implementation gap is observed. Indeed, gaps between States’ formal commitments to end VAW and their actual behaviour are a worldwide problem.¹⁸⁵ The next Section concludes this chapter.

10. Structure of the thesis

This thesis is divided into seven chapters. The aim of this introductory chapter is to set the context for the overall discussion that follows in the remainder of the thesis.

Chapter two then thoroughly analyses, from a human rights law perspective, the nature of the gap between the DRC’s obligation to end VAW and the country’s actual practice and the way in which that gap manifests itself. To this end, chapter two elaborates on the poor implementation by the DRC of its obligations to “respect”, “protect” and “fulfil” women’s rights to be free from violence.

The aim of chapters three and four is to respectively gain a better understanding, from a theoretical and a practical perspectives, of what is meant by unwillingness and limitations of capacity to implement human rights obligations and of how the latter can contribute to the gap in the implementation of the obligation to end VAW in the DRC. To this end, chapter three analyses the domestic practices of

¹⁸⁵ United Nations Division for the Advancement of Women (UNDAW), *Ending violence against women: From words to action. Study of the Secretary-General* (2006) 96 and 132; The United Nations Special Rapporteur on Violence against Women, Its Causes and Consequences, *15 years of the United Nations Special Rapporteur on violence against women, its causes and consequences* 24 and 31 <<https://www.ohchr.org/Documents/Issues/Women/15YearReviewofVAWMandate.pdf>> accessed 13 September 2018.

the DRC through the lenses of the Spiral Model. Chapter four then examines the same practices through the lenses of the Managerial Model.

After this, chapter five shows how the implementation gap discussed in chapter two is compounded by several structural weaknesses which affect relevant UN Human Rights bodies and which can limit their ability to positively influence the domestic behaviour and practices of States which are unwilling and/or unable to implement their obligation to end VAW such as the DRC.

Building on the above, chapter six then investigates how and under what circumstances the “Integrated and Multi-stakeholder Model” presented in chapter one can contribute to closing the gap between the DRC’s formal commitment to end VAW and the country’s concrete practices on the ground. Chapter seven concludes this thesis by providing a summary of the main points discussed, the key conclusions and recommendations formulated by this thesis.

Overall, this thesis reaches two main conclusions. First, the discussions in chapter six show that when used in a coherent and symbiosis, “moral consciousness-raising”, naming and shaming, argumentation, dialogue, persuasion and capacity building contributed to overcoming the structural weaknesses affecting UN human rights dealing with VAW and to narrowing the gap between the DRC’s formal commitment to end VAW and the country’s actual practices in a comprehensive, integrated and durable manner. In other words, this thesis confirms that although relevant UN Human Rights bodies suffer from structural weaknesses that could limit their ability to positively influence the domestic practices of States, such as the DRC, which are unwilling and/or unable to implement their obligation to end VAW it is still possible to significantly and durably influence those practices and ultimately narrow the gap between the country’s formal commitment and its actual behaviour by resorting to an “Integrated and Multi-Stakeholder Model of Human Rights Change”. Related to the above, it becomes clear that although cooperative

tools such as dialogue¹⁸⁶ or capacity building¹⁸⁷ are considered by some as soft or weak, they constitute powerful strategies when they are used in an integrated manner. Therefore, their potential needs to be better analysed, understood and harnessed.

However, and this is the second key conclusion, because of several structural weaknesses identified in Chapter Five of this thesis, UN Human Rights bodies can play a limited role in using my Model. Indeed, the discussions in Chapter Six suggest that narrowing the gap between the DRC's formal commitment and its actual practices by resorting to my Model is a long-term and expensive undertaking that would require the active participation of stakeholders who can operate at the domestic level and use the above-mentioned strategies in a sustained manner to address the DRC's unwillingness and lack of capacity to implement its obligation to eliminate VAW. The magnitude of such a long-term and expensive undertaking may oftentimes exceed the mandate of, capacity of and/or resources available to UN Human Rights bodies tasked with the responsibility to promote and protect women's right to be free from violence. In other words, more often than not, narrowing the gap between the country's formal commitment and its actual practices by resorting to my "Integrated and Multi-stakeholder Model of Human Rights Change" would require looking beyond UN Human Rights bodies.

¹⁸⁶ For criticisms levelled tools such as dialogue and cooperation, which are seen as a weak see for instance: Michael O'Flaherty and others, 'Introduction. Human Rights Diplomacy: Contemporary Perspectives' in Michael O'Flaherty and others, (eds), *Human Rights Diplomacy: Contemporary Perspectives* (Martinus Nijhoff Publishers 2011) 7; Surya Deva, *Regulating Corporate Human Rights Violations: Humanizing Business* (Routledge 2012) 116; Kyung-wha Kang, 'Foreword', in Michael O'Flaherty and others (eds), *Human Rights Diplomacy: Contemporary Perspectives* (Martinus Nijhoff Publishers 2011) vii; Bertrand G. Ramcharan, *Contemporary Human Rights Ideas* (Routledge 2008) 28; Jakob Th. Moller, 'Foreword', in Bertrand G. Ramcharan, *The Fundamentals of International Human Rights Treaty Law* (Martinus Nijhoff Publishers 2011) xiv.

¹⁸⁷ One of the main criticisms levelled against capacity building and/or technical assistance is that they can be used by States to avoid scrutiny (through much stronger strategies). See for instance: Bayefsky (n 61) 83; Freedman (n 153) 42, 72, and 105; Lagon and Kaminski (n 155) 130; Manjoo (n 155) 322.

CHAPTER TWO

THE GAP IN THE IMPLEMENTATION OF THE OBLIGATION TO ELIMINATE VAW IN THE DRC

1. Introduction

In a study published in 2009, the UN Secretary-General noted that “implementation of international standards (relating to VAW) at the national level remains inadequate, as evidenced by the continuing prevalence of VAW worldwide”.

¹ He added that “there is a significant and unacceptable gap between the international standards on VAW and the concrete commitment of political capital and resources to implement these standards”.² The extant literature has drawn the attention on a similar gap in the DRC.³

¹ United Nations Division for the Advancement of Women (UNDAW), *Ending violence against women: From words to action. Study of the Secretary-General* (2006) 96 <<https://www.unwomen.org/-/media/headquarters/media/publications/un/en/englishstudy.pdf?la=en&vs=954>> accessed 21 January 2018.

² Ibid, 132.

³ See for instance: United Nations Office of the High Commissioner for Human Rights (OHCHR), *Report of the Mapping Exercise documenting the most serious violations of human rights and international humanitarian law committed within the territory of the Democratic Republic of the Congo between March 1993 and June 2003* (August 2010) paragraph 537, 542, 544, 550, <http://www.ohchr.org/Documents/Countries/CD/DRC_MAPPING_REPORT_FINAL_EN.pdf> accessed 14 May 2017; United Nations Office of the High Commissioner for Human Rights (OHCHR), *Report of the Panel on Remedies and Reparations for Victims of Sexual Violence in the Democratic Republic of Congo to the High Commissioner for Human Rights* (March 2011) 43, 45, 49, <http://www.ohchr.org/Documents/Countries/CD/DRC_Reparations_Report_en.pdf> accessed 14 November 2016 ; United Nations Organisation Stabilization Mission in the Democratic Republic of Congo (MONUSCO) and United Nations Office of the High Commissioner for Human Rights (OHCHR), *Progress and obstacles in the fight against impunity for sexual violence in the Democratic Republic of the Congo* (April 2014) paragraph 59 <<https://monusco.unmissions.org/sites/default/files/UNJHRO%20-%20Report%20on%20Fight%20against%20Impunity%20Sexual%20Violence%20-%20April%202014%20-%20ORIGINAL%20VERSION.pdf>> accessed 30 December 2016.

Building on these findings, this Chapter aims to provide, from a human rights law perspective, a better understanding of the nature of that gap and how it manifests itself in the DRC. To that end, the remainder of this Chapter expands on the poor implementation by the DRC of its obligations to “respect”, “protect”, and “fulfil” women’s right to be free from violence.

The main reason why I adopt this tripartite typology is because it helps clarify the content of States’ human rights obligations by grouping them under three categories. Indeed, as stressed by den Exter, this typology of obligations is an important analytical tool for increasing understanding of human rights and clarifying the meaning of these rights, while, at the same time, guiding the obligations of States Parties.⁴ In a similar vein, Sepúlveda explains, “Typologies of obligations reflect the manner in which the State must behave in order to discharge its commitments. Hence, they assist us to assess the compliance of a State Party with its commitments under human rights instruments (...).⁵ All are tools that provide a clearer understanding of the scope and nature of the State obligations imposed by human rights treaties (...).⁶ It is worth stressing that this typology has been adopted by UN Human Rights bodies such as the CEDAW Committee⁷ and the Committee

⁴ André den Exter (ed), *International Health Law and Ethics: Basic Documents* (Maklu Publishers, 2009) 11.

⁵ M. Magdalena Sepúlveda, *The Nature of the Obligations Under the International Covenant on Economic, Social and Cultural Rights* (Intersentia 2003) 172.

⁶ *Ibid*, 173.

⁷ See for instance: CEDAW Committee, *General recommendation No. 28 on the core obligations of States parties under article 2 of the CEDAW Convention*, document no: CEDAW/C/GC/28 (16 December 2010) paragraphs 9, 16 and 37.

on Economic, Social and Cultural Rights (CESCR Committee)⁸ and within the academic literature.⁹

2. Violations of the obligation to “respect” women’s right to be free from violence

The CEDAW Committee explains that the obligation to “respect” requires States to refrain from making laws, policies, regulations, programmes, administrative procedures and institutional structures that directly or indirectly result in the denial of the equal enjoyment by women of their civil, political, economic, social and cultural rights and to abstain from performing, sponsoring or condoning any practice, policy or measure that violates the CEDAW Convention.¹⁰ The CESCR Committee adds that this obligation also requires that States repeal laws and rescind policies, administrative measures and programmes that do not conform to the provisions of human rights instruments, standards or norms.¹¹ In summary, as explained by the CEDAW Committee, “Under the Convention and general international law, a State party is responsible for acts or omissions of its organs and agents that constitute

⁸ See for instance: Committee on Economic, Social and Cultural Rights (CESCR Committee), *General comment No. 21: Right of everyone to take part in cultural life (art. 15, para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights)*, document no: E/C.12/GC/21 (21 December 2009) paragraph 48.

⁹ See for instance: Wouter Vandenhoe, *Non-Discrimination and Equality in the View of the UN Human Rights Treaty Bodies* (Intersentia nv 2005) 286; Scott Leckie and Anne Gallagher, *Economic, Social, and Cultural Rights: A Legal Resource Guide* (University of Pennsylvania Press 2006) xx; Carin Benninger-Budel, ‘Introduction’ in Carin Benninger-Budel (ed), *Due Diligence and Its Application to Protect Women from Violence* (BRILL 2008) 11; Cynthia Soohoo, Catherine Albisa and Martha F. Davis, *Bringing Human Rights Home: Portraits of the movement* (Greenwood Publishing Group 2008) 242.

¹⁰ CEDAW Committee (n 7) paragraphs 9 and 37(a). See a similar definition for instance in: CESCR Committee (n 8) paragraph 48.

¹¹ CESCR Committee, *General comment No. 16 (2005): The equal right of men and women to the enjoyment of all economic, social and cultural rights (art. 3 of the International Covenant on Economic, Social and Cultural Rights)*, document no: E/C.12/2005/4 (11 August 2005) paragraph 18.

GBV against women, which include the acts or omissions of officials in its executive, legislative and judicial branches (...).¹² The CEDAW Committee adds that “besides ensuring that laws, policies, programmes and procedures do not discriminate against women, in accordance with articles 2 (c) and (g), States parties must have an effective and accessible legal and legal services framework in place to address all forms of GBV against women committed by State agents, whether on their territory or extraterritorially”.¹³ In the context of this thesis, the obligation to “respect” women’s right requires the DRC and its agents to “abstain” or “refrain” from performing, sponsoring or condoning any practice, policy or measure that violates women’s right to be free from violence and to repeal laws and rescind policies, administrative measures and programmes that do not conform to the obligation to eliminate VAW.

As far as violations of this obligation are concerned, one of the most telling examples in the Congolese context is the well-documented “rape and other forms of sexual violence in situations of armed conflict”,¹⁴ including against children¹⁵

¹² CEDAW Committee, *General recommendation No. 35 on gender-based violence against women*, document no: CEDAW/C/GC/35 (14 July 2017) paragraph 22.

¹³ Ibid.

¹⁴ See: United Nations General Assembly (UNGA) and United Nations Security Council (UNSC), *Conflict-related sexual violence: Report of the Secretary-General*, document no: A/66/657–S/2012/33 (13 January 2012) 32; UNGA and UNSC, *Sexual violence in conflict: Report of the Secretary-General*, document no: A/67/792–S/2013/149 (14 March 2013) 32; UNSC, *Report of the Secretary-General on Conflict-related sexual violence*, document no: S/2014/181 (13 March 2014) 32; UNSC, *Report of the Secretary-General on Conflict-related sexual violence*, document no: S/2015/203 (23 March 2015) 33; UNSC, *Report of the Secretary-General on conflict-related sexual violence*, document no: S/2016/361 (20 April 2016) 33; UNSC, *Report of the Secretary-General on conflict-related sexual violence*, document no: S/2017/249 (15 April 2017); 32; UNSC, *Report of the Secretary-General on conflict-related sexual violence*, document no: S/2018/250 (23 March 2018) 34.

¹⁵ UNGA and UNSC, *Children and armed conflict: Report of the Secretary-General*, document no: A/63/785–S/2009/158 (26 March 2009) 48; UNGA and UNSC, *Children and armed conflict: Report of the Secretary-General*, document no: A/64/742–S/2010/181 (13 April 2010) 46; UNGA and UNSC, *Children and armed conflict: Report of the Secretary-General*, document no: A/65/820–S/2011/250

perpetrated by State's agents such as members of the Congolese national army, Police and/or Security Services. In addition to conflict-related sexual violence, other types of violations of the obligation to "respect" women's right to be free from violence include the rape and other forms of sexual violence against female detainees¹⁶ by prison guards given that in the DRC the latter are State's agents. Violations of the obligation to "respect" women's right to be free from violence also include acts of sexual harassment against women and girls in the workplace;¹⁷ and

(23 April 2011) 52; UNGA and UNSC, *Children and armed conflict: Report of the Secretary-General*, document no: A/66/782-S/2012/261 (26 April 2012) 49; UNGA and UNSC, *Children and armed conflict: Report of the Secretary-General*, document no: A/67/845*-S/2013/245* (15 May 2013) 49; UNGA and UNSC, *Children and armed conflict: Report of the Secretary-General*, document no: A/68/878-S/2014/339 (15 May 2014) 47; UNGA and UNSC, *Children and armed conflict: Report of the Secretary-General*, document no: A/69/926*-S/2015/409* (5 June 2015) 48; UNGA and UNSC, *Children and armed conflict: Report of the Secretary-General*, document no: A/70/836-S/2016/360 (20 April 2016) 37; UNGA and UNSC, *Children and armed conflict: Report of the Secretary-General*, document no: A/72/361-S/2017/821 (24 August 2017) 40; UNGA and UNSC, *Children and armed conflict: Report of the Secretary-General*, document no: A/72/865-S/2018/465 (16 May 2018) 40.

¹⁶ See for instance: IRIN, *Mass rape in Goma prison* (24 June 2009) <<http://www.irinnews.org/report/84982/drc-mass-rape-goma-prison>> accessed 03 April 2017; Freedom from Torture, *Freedom from Torture submission to the Committee on the Elimination of Discrimination against Women for its examination of the DRC: Torture of women in the DRC 2006-2011* (July 2013) <http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/COD/INT_CEDAW_NGO_COD_13430_E.pdf> accessed 03 April 2017; Freedom from Torture, *Rape as torture in the DRC: Sexual violence beyond the conflict zone. Country Reporting Programme* (June 2014) <https://www.freedomfromtorture.org/sites/default/files/final_web_-_a4.pdf> accessed 03 April 2017.

¹⁷ See for instance: CEDAW Committee, *Combined fourth and fifth periodic reports of States parties: DRC*, document no: CEDAW/C/COD/4-5 (30 November 2004) 45; Radio Okapi, *Matadi: dans la rue, les femmes dénoncent le harcèlement sexuel* (27 February 2010) <<http://www.radiookapi.net/actualite/2010/02/27/matadi-dans-la-rue-les-femmes-denoncent-le-harcèlement-sexuel/>> accessed 10 September 2016; CEDAW Committee (n 7) 45; Radio Okapi, *Kinshasa : 64 % de femmes connaissent un harcèlement sexuel au travail, selon une étude du ministère de la Santé* (27 April 2016) <<http://www.radiookapi.net/actualite/2012/04/27/kinshasa-64-3-de-femmes-connaissent-harcèlement-sexuel-au-travail-selon-une-etude-du-ministere-de-la->

in educational settings¹⁸ mentioned in chapter one whenever they can be attributed to State agents.

Indeed, as stressed by article 4(1) of the International Law Commission “Draft articles on Responsibility of States for Internationally Wrongful Acts”, “the conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions,

[sante](#)> accessed 10 September 2016 ; Jane Pillinger, *Violence and harassment against women and men in the world of work: trade union perspectives and action* (International Labour Organisation 2017) 25; 50; 140 – 142 <http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---actrav/documents/publication/wcms_546645.pdf> accessed 21 February 2019.

¹⁸ See for instance: CEDAW Committee (n 17) 45; Radio Okapi, *Equateur : harcèlement sexuel dans les écoles de Bolomba* (17 March 2007) <<http://www.radiookapi.net/actualite/2007/03/17/equateur-harcelement-sexuel-dans-les-ecoles-de-bolomba/>> accessed 10 September 2016; Human Rights Council, *Report of the independent expert on the situation of human rights in the DRC, Mr. Titinga Frédéric Pacéré*, document no: A/HRC/7/25 (29 February 2008) paragraph 49; ONG Lus et VITA, « Rapport du séminaire sur la prévention et le traitement des abus sexuels en milieu scolaire en République Démocratique du Congo » (2002) cited in Laetitia Antonowicz and Violet Diallo, *Too often in silence: A report on school-based violence in West and Central Africa* (UNICEF, Plan West Africa, Save the Children Sweden West Africa and ActionAid, Marc 2010) 23 <https://www.unicef.org/wcaro/VAC_Report_english.pdf > accessed 13 May 2017 ; M. Papinutto, « La violence à l'école » (UNICEF, DRC, 2009) cited in Marie Devers and others, *Gender-based violence at school in French-speaking sub-saharan africa: understanding its impact on girls' school attendance to combat it more effectively* (Directorate-General of Global Affairs, Development and Partnerships, French Ministry of Foreign Affairs 2012) 15 <http://www.diplomatie.gouv.fr/IMG/pdf/Rapport_Violences_de_genre_GB_bd_cle0d9e43.pdf > accessed 13 May 2017; Obul'Okwess, *Dénoncer le harcèlement sexuel à l'IFASIC de Kinshasa* (27 November 2012) <<http://genderlinks.org.za/classification/themes/dnoncer-le-harclement-sexuel-lifasic-de-kinshasa-2012-11-27/>> accessed 21 February 2019; Rosine Migabo, *Bukavu. Harcèlement sexuel : de plus en plus croissant dans les universités* (16 October 2014) <<http://speakjhr.com/2014/10/harcelement-sexuel-de-plus-en-plus-croissant-dans-les-universites/>> accessed 21 February 2019; Geneviève Mwadi, *Le harcèlement sexuel en milieu scolaire, un blocage pour le développement de la jeune fille* (16 February 2016) < <http://citaf.over-blog.com/2016/02/le-harcelement-sexuel-en-milieu-scolaire-un-blocage-pour-le-developpement-de-la-jeune-fille.html> > accessed 21 February 2019.

whatever position it holds in the organisation of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State". Article 4(2) adds that "an organ includes any person or entity which has that status in accordance with the internal law of the State".¹⁹ The next Section discusses the second component of the tripartite typology of States' human rights obligations.

3. Violations of the obligation to "protect" women's right to be free from violence

According to the CEDAW Committee, the obligation to "protect" a right requires States, their agents and officials to take action to prevent, prohibit and punish violations of that right by third parties, including in the home and in the community, and to provide reparation to the victims of such violations.²⁰ Third parties include individuals, groups, corporations and other entities as well as agents acting under their authority.²¹ Clarifying the meaning of the obligation to "protect", the CEDAW Committee explains that "States parties (...) have a due diligence obligation to take the legislative and other measures necessary to prevent and investigate acts of discrimination against women that are perpetrated by non-State actors, to prosecute and adequately punish perpetrators of such acts and to provide reparations to women who are victims of discrimination".²² In summary, as articulated by Cook:

¹⁹ International Law Commission (ILC), *Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries* (2001) article 4(2) <http://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf> accessed 30 January 2017.

²⁰ CEDAW Committee (n 7) paragraph 37. See a similar interpretation of that obligation, for instance: CESCR Committee (n 8) paragraph 48.

²¹ See for instance: CESCR Committee, *General Comment no. 19: The right to social security* (art. 9), document no: E/C.12/GC/19 (4 February 2008) paragraph 45.

²² CEDAW Committee, *General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women*, document no: CEDAW/C/GC/32 (14 November 2014) paragraph 8. See also: CEDAW Committee, *General Recommendation No. 19 on*

Acts of private persons that are violent to women or discriminatory against women do not necessarily implicate the responsibility of the state. If a State facilitates, conditions, accommodates, tolerates, justifies or excuses private denials of women's rights, however, the State will bear responsibility. The State will be responsible not directly for the private acts, but for its own lack of diligence to prevent, control, correct, or discipline such private acts through its own executive, legislative, or judicial organs.²³

Simply put, the obligation to "protect" a right can be seen as a continuum ranging from preventing violations by third parties to compensating victims of those violations. Applied to this thesis, the obligation to "protect" therefore requires the DRC to take steps to prevent, prohibit and punish VAW by third parties, including in the home and in the community, and to provide reparation to the victims of VAW.

Unlike the obligation to "respect" which is (generally) an obligation to "abstain from acting" in a way that violates human rights, the obligation to protect is clearly an obligation to "act". Supporting this point, Weissbrodt stresses that the obligation to "protect" consists of an "affirmative duty" to protect against human rights abuses that might be committed by non-State entities".²⁴ In a similar vein, Shelton and Gould describe it as "a positive obligation, requiring states to protect individuals and groups against human rights abuses by others".²⁵ In summary, as stressed by Leckie and Gallagher, in situations where the government has allowed the violative act to take place without taking effective measures to prevent it or to punish those

Violence against women (1992) paragraph 9. See also: United Nations General Assembly (UNGA), *Declaration on the Elimination of VAW*, Resolution A/RES/48/104 (20 December 1993) article 4(c).

²³ Rebecca J. Cook, 'State Accountability Under the Convention on the Elimination of All Forms of Discrimination Against Women' in Rebecca J. Cook (ed), *Human Rights of Women: National and International Perspectives* (University of Pennsylvania Press 2011) 229.

²⁴ David Weissbrodt, 'Non-State Entities and Human Rights within the Context of the Nation-State in the 21st Century' in P. Peter R. Baehr and others (eds), *The Role of the Nation-state in the 21st Century: Human Rights, International Organisations, and Foreign Policy: Essays in Honour of Peter Baehr* (Martinus Nijhoff Publishers 1998) 179.

²⁵ Dinah Shelton and Ariel Gould, 'Positive and Negative Obligations' in Dinah Shelton (ed), *The Oxford Handbook of International Human Rights Law* (Oxford University Press 2013) 566.

responsible, then the State itself is indirectly responsible for the human rights violations flowing from that private act.²⁶ As explained in the next paragraphs, one of the most illustrative features of the poor implementation by the DRC of its obligation to “protect” women’s right to be free from violence is the well documented impunity enjoyed by perpetrators of VAW in the country.²⁷

Simply defined, impunity refers to “exemption from punishment or freedom from the injurious consequences of an action”;²⁸ “exemption or freedom from punishment, harm, or loss”;²⁹ or “freedom from punishment or from the unpleasant results of something that has been done”.³⁰ In summary, impunity refers to the

²⁶ Leckie and Gallagher (n 9) xxiii.

²⁷ See for instance: International Federation for Human Rights (FIDH) and others, *Denial of justice for victims of crimes of sexual violence* (July 2013) 7, 10, <<https://www.fidh.org/IMG/pdf/175338103-rdcjustice612cedawuk2013.pdf>> accessed 17 January 2018; Fédération internationale des ligues des droits de l'Homme and others, *DRC. Victims of sexual violence rarely obtain justice and never receive reparation: Major changes needed to fight impunity* (October 2013) 7, 14 - 15, 49, 66 <https://www.fidh.org/IMG/pdf/rapport_rdc_.pdf > accessed 29 January 2017; MONUSCO and OHCHR (April 2014) (n 3) paragraphs 13 – 24; Human Rights Watch, *Democratic Republic of Congo: Ending Impunity for Sexual Violence. New Judicial Mechanism Needed to Bring Perpetrators to Justice* (10 June 2014) <https://www.hrw.org/sites/default/files/related_material/DRC0614_briefingpaper_brochure%20coverJune%209%202014.pdf > accessed 20 October 2017; United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) and Office of the United Nations High Commissioner for Human Rights (OHCHR), *Accountability for Human Rights Violations and Abuses in the DRC: Achievements, Challenges and Way forward* (1 January 2014 - 31 March 2016) (October 2016) <http://www.ohchr.org/Documents/Countries/CD/UNJHROAccountabiliteReport2016_en.pdf> accessed 11 January 2017; Commission Nationale des Droits de l'Homme (CNDH), *Rapport parallèle de la Commission Nationale des Droits de l'Homme présenté au titre du Huitième rapport périodique de la République Démocratique du Congo relatif à la mise en œuvre de la Convention sur l'élimination de toutes les formes de discrimination* (28 September 2018) paragraphs 2.3. and 2.5 <https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/COD/INT_CEDAW_IFL_CO_D_32605_F.pdf> accessed 25 January 2019.

²⁸ See: <<https://en.oxforddictionaries.com/definition/impunity>> accessed 14 March 2018.

²⁹ See: <<https://www.merriam-webster.com/dictionary/impunity>> accessed 14 March 2018.

³⁰ See: <<https://dictionary.cambridge.org/dictionary/english/impunity>> accessed 14 March 2018.

exemption from accountability, penalty, punishment, or legal sanctions for a crime.³¹ In the DRC, one of the most obvious manifestation of impunity is the weak enforcement of anti-VAW laws. Indeed, there is a consensus among analysts that most of anti-VAW laws adopted by the DRC have been poorly enforced and that impunity for VAW is still pervasive and widespread in the country.³²

As mentioned earlier, since the 2000s, the DRC has taken legislative action to address VAW. First and foremost, the DRC has enshrined the obligation to address VAW in its Constitution³³ whose article 14(3) provides that “the State shall take measures to combat all forms of VAW in public and private life”. Article 15(1) adds that “the State shall ensure the elimination of sexual violence”. Finally, article 15 (2) stipulates that “Without prejudice to international treaties and agreements, any sexual violence against any person, with the intention of destabilizing, dislocating a family and eliminating a whole people, is a crime against humanity punished by the law”.

These anti-VAW provisions supplement two other key constitutional provisions which protect women’s rights, namely article 12 which provides that “All Congolese are equal before the law and are entitled to equal protection of the laws” and article 14(1) which provides that “the Government shall ensure the elimination of all forms of discrimination against women and shall ensure the protection and

³¹ James A. Tyner, *War, violence, and population: Making the body count* (Guilford Press 2009) 40.

³² OHCHR (August 2010) (n 3) paragraph 36; 455, 457, 532, 537, 550, 551, 553, 555, 569, 576, 611, 629, 651, 652, 653, 654; International Federation for Human Rights (FIDH) and others (July 2013) (n 27) 7 and 10; Fédération Internationale des Ligues des droits de l’Homme (FIDH) and others, (October 2013) (n 27) 15; Human Rights Watch (n 27) 2, 8, 20, 21, 22, 23, 24; MONUSCO and OHCHR (n 3) paragraphs 4, 32 – 59; CRC Committee, *Concluding observations on the combined third to fifth periodic reports of the DRC*, document no: CRC/C/COD/CO/3-5 (28 February 2017) paragraph 25; CRC Committee, *Concluding observations on the report submitted by the DRC under article 12 (1) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*, document no: CRC/C/OPSC/COD/CO/1 (28 February 2017) paragraphs 26 and 28.

³³ See: *Constitution de la République Démocratique du Congo* (18 February 2006) <<https://www.wipo.int/edocs/lexdocs/laws/fr/cd/cd001fr.pdf> > accessed 15 January 2017.

promotion of their rights". This constitutional framework is supplemented by a set of laws adopted over the last two decades.

One of the key legal text is the Congolese military penal code of 18 November 2002³⁴ whose article 169(7) provides that rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization and other forms of sexual violence of comparable gravity constitute crimes against humanity and are punishable by death. Article 169(8) adds to the list of crimes against humanity the persecution of any identifiable group or community on various grounds including sexist ones.

The other key text is the Sexual Violence Act of 20 July 2006.³⁵ It prohibits and punishes, *inter alia*, indecent assault (articles 167 and 168), rape (article 170 and 171 bis), the exploitation of the prostitution of others [article 174 (b)], forced prostitution [article 174 (c)], sexual harassment [article 174(d)], sexual slavery [article 174(e)], forced marriage [article 174(f)], sexual mutilation [article 174(g)], trafficking and exploitation of children for sexual purposes [article 174(j)], forced pregnancy [article 174(k)], forced sterilization [article 174 (l)], child pornography [article 174(m)], and child prostitution [article 174 (n)].

In addition to the Sexual Violence Act of 2006, other legal texts include the Act no. 06/019 of 20 July 2006 amending and supplementing the Congolese code

³⁴ See: *Loi n° 024/2002 du 18 novembre 2002 portant Code Pénal militaire* (20 March 2003) < <http://www.leganet.cd/Legislation/Droit%20Judiciaire/Loi.024.2002.18.11.2002.pdf> > accessed 07 February 2014.

³⁵ See : *Loi n° 06/018 du 20 juillet 2006 modifiant et complétant le Décret du 30 janvier 1940 portant Code pénal congolais* (01 August 2006) < <http://www.leganet.cd/Legislation/JO/2006/JO.01.08.2006.C.P.P..pdf> > accessed 07 February 2014.

of criminal procedure;³⁶ the Child Protection Act no09/001 of 10 January 2009;³⁷ the Act no15/022 of 31 December 2015 amending and supplementing the Penal Code of 30 January 1940.³⁸

However, as mentioned earlier and explained below, the extant literature indicates that the country has poorly enforced these laws. For instance, in its most recent Concluding observations on the DRC, the CEDAW Committee stated that it was “deeply concerned about (...) the ineffective implementation of the 2006 law on sexual violence.”³⁹ OHCHR perfectly summarises the situation when it says, “The problem in the DRC is less a problem of inadequate provisions in criminal law than a failure to apply them”.⁴⁰ OHCHR concludes, “(...) the DRC has undertaken to

³⁶ See: *Loi n° 06/019 du 20 juillet 2006 modifiant et complétant le Décret du 06 août 1959 portant Code de Procédure Pénale Congolais* (01 August 2006) paragraph 1, 2, 3, 5 of the Preamble and article 7 bis, 9 bis, 14 bis, and 74 bis <<http://www.leganet.cd/Legislation/JO/2006/JO.01.08.2006.C.P.P.06.019.pdf>> accessed 14 May 2017.

³⁷ See for instance : *Loi n° 09/001 du 10 janvier 2009 portant protection de l'enfant* (25 May 2009) articles 48, 53(c), 60, 153, 169, 170, 171, 175, 179, 181, 182, 183, 184, and 189 <<http://www.leganet.cd/Legislation/JO/2009/JOS.25.05.2009.pdf>> accessed 11 July 2016.

³⁸ See: *Loi n° 15/022 du 31 décembre 2015 modifiant et complétant le Décret du 30 janvier 1940 portant Code pénal* (29 February 2016) article 222(7), 222(8), 223(2)(v) and 223(5)(f) <<https://www.google.ch/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwitmZvLjoLXAhVHJVAKHXR3DVsQFggoMAA&url=https%3A%2F%2Fihl-databases.icrc.org%2Fapplic%2Fihl%2Fihl-nat.nsf%2Fxp%2F.ibmmodres%2Fdomino%2FOpenAttachment%2Fapplic%2Fihl%2Fihl-nat.nsf%2F49C04B6F6300E1E2C1258043002924E5%2FTEXT%2FDRC%2520-%2520Law%252015-023%2520modifying%2520the%2520Military%2520Penal%2520Code%2520%255BFre%255D.pdf&usq=AOvVaw3NbN4Wb9Liww8ar0tbFRHj>> accessed 21 October 2017.

³⁹ CEDAW Committee, *Concluding observations on the combined sixth and seventh periodic reports of the DRC*, document no: CEDAW/C/COD/CO/6-7 (30 July 2013) paragraph 21 (b).

⁴⁰ OHCHR (August 2010) (n 3) paragraph 894.

punish the perpetrators of acts of sexual violence (...) however, in practice, impunity is still the rule”.⁴¹

Despite all that has been said above, it is important to acknowledge that the picture is not completely dark. Indeed, since the adoption of the above-mentioned laws, there have been several instances where Congolese courts have prosecuted and/punished perpetrators of (mostly conflict-related sexual) VAW.⁴² Nevertheless, despite these few prosecutions, in the DRC there is still a gap between, on the one hand, the formal commitment to eliminate VAW exemplified by the ratification of UN instruments prohibiting VAW and the adoption of domestic laws prohibiting and punishing VAW, and, on the other hand, the DRC’s actual practices characterized by the poor implementation of these UN instruments and the unsatisfactory enforcement of these domestic laws. This gap leads to a discrepancy between the rights and protections promised to women and girls of the DRC the rights and protections actually delivered to them.

In the DRC, impunity enjoyed by perpetrators of VAW comes in different forms depending on how one defines impunity. Impunity can be defined as “the absence or insufficiency of penalties and/or compensation for voluntary or involuntary violations of the rights and freedoms of individuals or groups of individuals”.⁴³ Within the Congolese context, this relates to impunity resulting from the poor enforcement of anti-VAW laws. Impunity can also be understood as “the impossibility, de jure or de facto, of bringing the perpetrators of human rights violations to account – whether in criminal, civil, administrative or disciplinary

⁴¹ OHCHR (August 2010) (n 3) paragraph 550.

⁴² See for instance: MONUSCO and OHCHR (n 3) paragraphs 27 – 32; Human Rights Watch (n 27) 2, 4 – 5, 6, 10, 18, 21; MONUSCO and OHCHR (n 27) paragraphs 5, 7, and 24; UNSC (20 April 2016) (n 14) paragraph 37; UNSC (15 April 2017) (n 14) paragraph 35; UNSC (23 March 2018) (n 14) paragraph 39.

⁴³ Commission on Human Rights, *Interim report on opposition to the impunity of perpetrators of human rights violations (economic, social and cultural rights)*, prepared by Mr. El Hadji Guisse, pursuant to, Sub commission resolution 1994/34, document no: E/CN.4/Sub.2/1995/19 (27 June 1995) paragraph 16.

proceedings – since they are not subject to any inquiry that might lead to them being accused, arrested, tried and, if found guilty, convicted”.⁴⁴ Within the Congolese context, this relates to impunity resulting from the fact that some forms of VAW, such as domestic violence or marital rape, are not criminalised. The next two sub-sections elaborate on the multiple dimensions of these two forms of impunity in the Congolese context.

3.1. The multiple dimensions of impunity resulting from the poor enforcement of anti-VAW laws

In its authoritative interpretation of article 2(c) of the CEDAW Convention, the CEDAW Committee has determined that “(...) where discrimination against women also constitutes an abuse of other human rights, such as (...) in, for example, cases of domestic and other forms of violence, States Parties are obliged to initiate criminal proceedings, bring the perpetrator(s) to trial and impose appropriate penal sanctions”.⁴⁵ Similarly, in its interpretation of article 2(e) of the CEDAW Convention, the CEDAW Committee has also determined that the obligation arising from the provision “(...) frequently referred to as an obligation of due diligence, underpins the convention as a whole and accordingly States Parties will be held responsible should they fail to take all appropriate measures to prevent, as well as to investigate, prosecute, punish and provide reparations for, acts or omissions by non-state actors that result in gender-based violence against women (...).⁴⁶ However, as explained in the next sub-sections, there are still wide gaps in the implementation of this obligation by the DRC as illustrated by the poor enforcement of anti-VAW laws.

In the DRC the first aspect of impunity can be exemplified by the three problems analysed in the next three sub-sections, namely the fact that “out-of-court settlements” and “amicable arrangements” are favoured instead of enforcing the law

⁴⁴ Commission on Human Rights, *Report of the Special Rapporteur on the question of the impunity of perpetrators of violations of human rights (civil and political rights)*, document no: E/CN.4/Sub.2/1996/18 (20 June 1996) section 2 (a).

⁴⁵ CEDAW Committee (n 7) paragraph 34.

⁴⁶ CEDAW Committee (n 12) paragraph 24(b).

punishing rape; the non-provision of reparations and/or compensations for VAW; and more generally the discrepancy between the number of case of VAW recorded and/or reported and the number of cases prosecuted and/or punished.

3.1.1. “Out-of-court settlements” and “amicable arrangements” favoured instead of enforcing the law punishing VAW

“Out-of-court settlements” and “amicable arrangements” fall under what the CEDAW Committee refers to as “alternative dispute resolution processes”.⁴⁷ The Committee acknowledges that “such processes may provide greater flexibility and reduce costs and delays for women seeking justice”.⁴⁸ However, the body also cautions about the fact that “they may also lead to further violations of their rights and impunity for perpetrators because they often operate on the basis of patriarchal values, thereby having a negative impact on women’s access to judicial review and remedies”.⁴⁹ The Committee therefore recommends, “States parties ensure that cases of VAW, including domestic violence, are under no circumstances referred to any alternative dispute resolution procedure”.⁵⁰

Despite, the above-mentioned CEDAW Committee’s authoritative interpretation of legally-binding obligations, in the DRC, in some cases of VAW, particularly rape, State’s agents (such as police officers, judicial authorities and local administrative officials) or State’s representatives (such as customary/traditional chiefs) opt for “out-of-court settlements” or “amicable arrangements” instead of enforcing the law.⁵¹ Speaking about this problem, the UN Secretary-General noted

⁴⁷ See: CEDAW Committee, *General recommendation No. 33 on women’s access to justice*, document no: CEDAW/C/GC/33 (3 August 2015) paragraph 57.

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ Ibid, paragraph 58 (c).

⁵¹ See for instance: MONUSCO and OHCHR (n 3) paragraph 51; Gaëlle Breton-Le Goff, ‘Ending Sexual Violence in the DRC’ (2010) 34(1) *Fletcher Forum of World Affairs* 13 - 40, 19; Patrick Kayembe and others, *Connaissances, perceptions, attitudes et pratiques des membres de la Police Nationale Congolaise en matière de violences sexuelles dans trois provinces de la République*

in one of his report on the DRC, “Despite reinforcement of the laws punishing sexual violence, military commanders, police investigating officers and magistrates continue to encourage families of rape victims to engage in out-of-court settlements, perpetuating the pervasive culture of impunity”.⁵²

These “out-of-court settlements” or “amicable arrangements” are usually negotiated by the (male-dominated) families of the victim and the perpetrator of rape and more often than not, the victim’s rights, views and/or interests are not taken into account in the negotiations.⁵³ These “out-of-court settlements” or “amicable arrangements” can take various forms. In some cases, they involve the payment of a “compensation” by the family of the perpetrator to the family of the victim, generally in cash or in kind contribution.⁵⁴ This is what happened, for instance, in the case below narrated in a United Nations’ report:

In 2013, a United Nations Joint Human Rights Office (UNJHRO) legal clinic partner in South Kivu (Eastern DRC) received a case involving a girl who was raped by a civilian. After an interview with the family of the victim, the victim’s lawyer filed a complaint. However, the day the victim was supposed to give her testimony to the police, her father informed the lawyer that she wished to withdraw her complaint because the perpetrator had agreed to give her a cow (...) The legal clinic wanted to advocate for the continuation of the case, but learned that the settlement was facilitated by the police investigator of the prosecutor’s office (...).⁵⁵

Démocratique du Congo (2010) 19 – 20; 24 – 25 <<https://reliefweb.int/report/democratic-republic-congo/connaissances-perceptions-attitudes-et-pratiques-des-membres-de-la>> accessed 04 April 2019.

⁵² UNSC, *Twenty-eighth report of the Secretary-General on the United Nations Organisation Mission in the DRC*, document no: S/2009/335 (30 June 2009) paragraph 42.

⁵³ Amnesty International, *The time for justice is now: New strategy needed in the Democratic Republic of the Congo* (August 2011) 27 <<http://www.iccnw.org/documents/afr620062011en.pdf>> accessed 03 April 2017; MONUSCO and OHCHR (n 3) paragraph 51.

⁵⁴ MONUSCO and OHCHR (n 3) paragraph 51.

⁵⁵ MONUSCO and OHCHR (n 3) paragraph 51.

In other cases, “out-of-court settlements” or “amicable arrangements” involve the forced marriage of the victim to her assailant (with or without the payment of the above-described “compensation”).⁵⁶ These practices constitute forced marriage and sometimes child marriage and violate both UN human rights standards⁵⁷ and Congolese laws.⁵⁸

One of the contributing factors to this is the fact that in some communities in the DRC, victims of rape are stigmatized as “tainted” or “unmarriageable”.⁵⁹

⁵⁶ Harvard Humanitarian Initiative and Oxfam America, *“Now, the world is without me”: an investigation of sexual violence in Eastern Democratic Republic of Congo* (April 2010) 55 < <https://www.oxfam.org/sites/www.oxfam.org/files/DRC-sexual-violence-2010-04.pdf> > accessed 07 July 2016; Johns Hopkins Bloomberg School of Public Health Center for Communication Programs, *Community perspectives on sexual and gender-based violence in Eastern DRC. Report prepared by for International Medical Corps* (September 2011) 16 – 18; 21 - 22 <<http://ccp.jhu.edu/documents/Community%20Perspectives%20on%20SGV%20in%20Eastern%20DRC.pdf>>accessed 03 April 2017; Columbia University's School of International and Public Affairs (SIPA) and Physicians for Human Rights (PHR), *Barriers to Justice: Implementing Reparations for Sexual Violence in the DRC* (May 2013) 5 – 6; 19 - 20 < https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=18&ved=2ahUKEwjbnCDzguHhAhVNdJoKHYPRAzQ4ChAWMA6BAGIEAI&url=https%3A%2F%2Fsipa.columbia.edu%2Ffile%2F3193%2Fdownload%3Ftoken%3DxnYW6A24&usg=AOvVaw0d9kQ3x_zcaGN4oxS5hXQ- > accessed 21 April 2019.

⁵⁷ See: article 16 (1) (b) and 16(2) of the CEDAW Convention.

⁵⁸ See: article 174(f) of the Congolese Sexual Violence Act of 2006 and articles 48 as well as 189 of the Congolese Child Protection Act of 10 January 2009.

⁵⁹ Réseau des Femmes pour un Développement Associatif, Réseau des Femmes pour la Défense des Droits et la Paix and International Alert, *Women's Bodies as a Battleground: Sexual Violence Against Women and Girls During the War in the Democratic Republic of Congo South Kivu (1996-2003)* (2005) 43 <<http://www.international-alert.org/sites/default/files/publications/women%27s-bodies-as-a-english.pdf> >accessed 23 June 2015; Harvard Humanitarian Initiative and the Open Society Institute, *Characterizing Sexual Violence in the Democratic Republic of the Congo: Profiles of Violence, Community Responses, and Implications for the Protection of Women* (2009) 23; 25 <http://hhi.harvard.edu/sites/default/files/publications/publications_-_women_-_characterizing_sexual_violence.pdf > accessed 03 February 2017; Harvard Humanitarian Initiative and Oxfam America (n 56) 28; MONUSCO and OHCHR (n 3) paragraph 51.

Illustrating this belief, a study conducted in the country revealed that “men characterized women who had been raped as having “lost their value,” because of the importance placed on virginity at marriage and a belief that women who have been raped bring misfortune into the household”.⁶⁰ The study also found that “women participants similarly determined that rape lowered the ‘worth’ of women as daughters, wives, or prospective wives (...)”.⁶¹ In summary, being perceived as “unmarriageable” can have serious implications in communities where the status or value of women and girls depends on their being married. This is illustrated by the testimony of a woman quoted below:

If you are a girl [who has been raped], your parents will start mistreating you, they can't understand that you have been forced and that it was not your fault. You will never get married. They will drive you out of the house because you are not worth anything; you lose all your value because nobody will marry you.⁶²

Reflecting the above-described beliefs, State's agents and other duty-bearers who opt, encourage or take part in “out-of-court” or “amicable” settlements invoke several reasons to justify their conduct. For instance, Police officers claim that they act in such a way, to “protect the honour of married women who are victims of rape or young girls who are victims of sexual assault”;⁶³ to “preserve harmony in the community and the honour of the family”;⁶⁴ to “reduce the stigma felt by parents or husbands and promote harmony within the community”.⁶⁵

It is also worth noting that there have been cases where States agents have even been involved in the intimidation and/or punishment of victims who refused

⁶⁰ Harvard Humanitarian Initiative and the Open Society Institute (n 59) 29.

⁶¹ Ibid.

⁶² Ibid, 23.

⁶³ Kayembe and others (n 51) 19.

⁶⁴ Ibid.

⁶⁵ Ibid, 20.

“out-of-court settlements”.⁶⁶ In this respect, the then Independent Expert on the situation of human rights in the DRC narrates:

On 4 September 2007, a young female rape victim was detained for three days at the police station in the village of Kalima (Maniema Province) for refusing to accept such an arrangement. Fearing that she would press charges, the rape suspect, a local trader, used his influence with the police to have the young girl arrested and charged with defamation. The victim was released only after giving US\$ 20 to the police officers.⁶⁷

In addition to “out-of-court settlements” and “amicable arrangements” favoured instead of enforcing anti-VAW laws, the second illustration of impunity resulting from the poor enforcement of anti-VAW laws in the DRC is the well-documented non-provision and/or payment of reparations and/or compensations for VAW.⁶⁸

3.1.2. The non-provision and/or payment of reparations and/or compensations to victims of VAW

The CEDAW Committee has authoritatively determined that article 2(b) of the CEDAW Convention “(...) requires that States Parties provide reparation to women whose rights under the convention have been violated”⁶⁹ and that “without reparation the obligation to provide an appropriate remedy is not discharged (...)”.⁷⁰ The CEDAW Committee has reaffirmed this duty in several of its General

⁶⁶ Human Rights Council (n 18) paragraph 41.

⁶⁷ Ibid.

⁶⁸ See for instance: OHCHR (March 2011) (n 3); International Federation for Human Rights (FIDH) and others (July 2013) (n 27) 9 – 11; Fédération Internationale des Ligues des droits de l'Homme (FIDH) and others, (October 2013) (n 27); MONUSCO and OHCHR (n 3) paragraphs 5 and 57; CNDH (n 27) paragraphs 2.5. and 3.2.

⁶⁹ CEDAW Committee (n 7) paragraph 32.

⁷⁰ Ibid.

Recommendations.⁷¹ The duty of States to provide effective remedies, including reparation, to victims of human rights violations is also reflected in reiterated in other UN Human Rights instruments.⁷²

However, in the DRC, there is still a wide gap in the implementation of the above-mentioned obligation. As regretted by many, even when a few perpetrators are tried and sentenced, compensation is not paid to victims despite being awarded by court decisions.⁷³ In this respect, in August 2010, a high-level panel on the DRC convened by the UN High Commissioner for Human Rights noted:

For those victims of sexual violence who are able to overcome the many challenges of bringing a case to court and getting a judgment that condemns the perpetrators and awards them reparations in the form of damages and interest, there is great frustration. The perpetrators escape and do not serve their sentences, and the indemnity awards are not paid, even in those cases where the State has been held liable *in solidum* (...).⁷⁴

In its most recent Concluding Observations on the DRC, the CEDAW Committee also expressed similar concerns and made several recommendations for corrective measures.⁷⁵ In addition to “out-of-court settlements” and “amicable arrangements” favoured instead of enforcing anti-VAW laws, the third illustration of impunity resulting from the poor enforcement of anti-VAW laws in the DRC

⁷¹ See: CEDAW Committee (1992) (n 22) paragraph 24(t)(i); CEDAW Committee (n 47) paragraph 51 (a); CEDAW Committee (n 12) paragraphs 23, 24(b), 26(a), 26 (b), 31 (d), 33 (a), 33 (b), 34 (b) and 34 (f).

⁷² See for instance : UNGA (n 22) article 4(d); UNGA, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, Resolution 60/147 (16 December 2005)

⁷³ Fédération Internationale des Ligues des droits de l'Homme (FIDH) and others, (October 2013) (n 27) 25; International Federation for Human Rights (FIDH) and others (July 2013) (n 27) 60 – 61; OHCHR (March 2011) (n 3) 49.

⁷⁴ OHCHR (March 2011) (n 3) paragraph 6.

⁷⁵ See: CEDAW Committee (n 39) paragraphs 9 (e), 10 (g), 21 (b), 22 (b), and 22 (c).

transpires from the discrepancy between the number of case of VAW recorded and/or reported and the number of cases prosecuted and/or punished.

3.1.3. The discrepancy between the number of case of VAW recorded and/or reported and the number of cases prosecuted and/or punished

Many have pointed out the low rate of criminal prosecution of acts of VAW in the DRC.⁷⁶ A UN report summarises the situation by noting that “despite increased efforts by Congolese authorities to arrest and try alleged perpetrators of crimes of sexual violence, many such cases never reach a court of law (...)”.⁷⁷ Several factors can contribute to the discrepancy between the number of case of VAW recorded and/or reported and the number of cases prosecuted and/or punished. Echoing a key point made in this thesis, the SRVAW stressed that impunity enjoyed by perpetrators of VAW in the DRC results from the fact that law enforcement and justice authorities have been unable and, in many instances, apparently also unwilling, to implement the law.⁷⁸ One of the factors that can contribute to the inability to enforce the law is the fact that the Congolese justice system is undermined by a widespread lack of resources and capacity.⁷⁹ Factors that can

⁷⁶ Human Rights Watch, *Soldiers Who Rape, Commanders Who Condone: Sexual Violence and Military Reform in the DRC* (July 2009) 6, 47, 50, 53 < <https://www.hrw.org/sites/default/files/reports/drc0709web.pdf> > accessed 25 September 2017; Harvard Humanitarian Initiative and Oxfam America (n 56) 55; International Federation for Human Rights (FIDH) and others (July 2013) (n 27) 7; United States Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2017: Democratic Republic of the Congo* (20 April 2018) 40< <https://www.state.gov/wp-content/uploads/2019/01/Democratic-Republic-of-the-Congo.pdf> > accessed 17 September 2019.

⁷⁷ MONUSCO and OHCHR (n 3) paragraph 33.

⁷⁸ Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk. Addendum. Mission to the Democratic Republic of the Congo*, document no: A/HRC/7/6/Add.4 (28 February 2008) paragraph 66.

⁷⁹ OHCHR (August 2010) (n 3) paragraphs 900 - 928; OHCHR (March 2011) (n 3) paragraphs 17, 59, 105, 144; Human Rights Council, *Report of the Special Rapporteur on the independence of*

contribute to or illustrate the DRC's unwillingness to enforce anti-VAW laws include: corruption of judicial personnel,⁸⁰ which is caused amongst other things by the fact that judges and other judicial personnel are poorly and irregularly paid),⁸¹ lack of independence,⁸² illustrated, *inter alia*, by interference in the judicial process, including by political and military authorities⁸³ and by threats and harassment against judges.⁸⁴

Impunity for VAW can also be exacerbated because victims of VAW are unable or unwilling to seek justice. For instance, following a visit to the DRC from 15 to 21 April 2007, the UN Special Rapporteur on the Independence of Judges and Lawyers noted that during the period 2000-2007, only 287 cases of sexual violence were reported to the judicial authorities (186 to the civilian authorities and 101 to the military authorities).⁸⁵ The Special Rapporteur pointed out that statistics from hospitals and other health facilities indicated that some 14,200 cases of rape were registered for 2005 alone, which means that less than 1 per cent of rape victims reported the crime to the courts and tribunals.⁸⁶

In some instance, the discrepancy above can be the result of multiple factors that limit victims of VAW's access justice. These include the fact that legal

judges and lawyers, Leandro Despouy - Addendum: Mission to the DRC, document no: A/HRC/8/4/Add.2 (11 April 2008) paragraphs 27 – 36; 69; Human Rights Council (n 78) paragraphs 67 – 72.

⁸⁰ OHCHR (August 2010) (n 3) paragraph 930; Human Rights Council (n 79) paragraphs 35; 47; 53; 61 - 62; Human Rights Council (n 78) paragraphs 73 – 74.

⁸¹ OHCHR (August 2010) (n 3) paragraphs 939 – 941.

⁸² Ibid, paragraphs 939 - 945; Human Rights Council (n 79) paragraphs 15; 39 – 40; 47; 71.

⁸³ OHCHR (August 2010) (n 3) paragraphs 869 – 870; 888; 946; 956 – 958; 961; 977; Human Rights Council (n 78) paragraphs 75 – 79.

⁸⁴ Human Rights Council (n 79) paragraph 38.

⁸⁵ Ibid, paragraph 65.

⁸⁶ Ibid.

proceedings are long, complex and costly;⁸⁷ the limited access to adequate legal representation;⁸⁸ legal illiteracy;⁸⁹ and language barriers given that court proceedings in DRC are conducted in French and court rulings and other court documents are also written in French, a language in which some victims are not fluent.⁹⁰ However, in some instances, part of the gap between the number of cases that are recorded and the number of cases which are prosecuted and/or punished can be attributed to the fact due that some victims of VAW, particularly sexual violence, refrain from seeking justice. Reasons behind the reluctance from victims of VAW to seek justice include the well documented stigmatization and social rejection of women and girls who are victims of rape and other forms of sexual violence (including by their husbands, partners and other family members).⁹¹ Acknowledging this does not mean that the DRC does not have an obligation to address acts of VAW that go unpunished because of beliefs that stigmatise victims

⁸⁷ Human Rights Council (n 78) paragraph 69; CEDAW Committee (n 39) paragraph 11(b); International Federation for Human Rights (FIDH) and others (July 2013) (n 27) 8; Fédération Internationale des Ligues des droits de l'Homme (FIDH) and others (October 2013) (n 27) 47 – 48; 51 – 55; 58 – 60; Marion Pratt and Leah Werchick, *Sexual Terrorism: Rape as a Weapon of War in Eastern DRC: An assessment of programmatic responses to sexual violence in North Kivu, South Kivu, Maniema, and Orientale Provinces, January 9-16, 2004* (USAID/DCHA assessment report, 18 March 2004) 17 <http://pdf.usaid.gov/pdf_docs/Pnadm346.pdf> accessed 04 January 2017.

⁸⁸ International Federation for Human Rights (FIDH) and others (July 2013) (n 27) 55.

⁸⁹ CEDAW Committee (n 39) paragraph 11(b).

⁹⁰ Fédération Internationale des Ligues des droits de l'Homme (FIDH) and others (October 2013) (n 27) 53.

⁹¹ See for instance: Harvard Humanitarian Initiative (HHI) and “Learning on Gender and Conflict in Africa” (LOGiCA) Program of the World Bank, *A Patient Heart Stigma, Acceptance and Rejection around Conflict-Related Sexual Violence in the DRC* (April 2011) 10 – 24, 26 – 27 <<https://hhi.harvard.edu/publications/patient-heart-stigma-acceptance-and-rejection-around-conflict-related-sexual-violence>> accessed 04 April 2019; Helen Liebling, Henny Slegh and Benoit Ruratotoye, ‘Women and girls bearing children through rape in Goma, Eastern Congo: stigma, health and justice responses’ (2012) IV Itupale Online Journal of African Studies 18 – 44, 22 – 23, 25 – 27; Jean Claude Omba Kalonda, Kittel France and Piette Danielle, ‘Stigma of victims of sexual violence’s in armed conflicts: another factor in the spread of the HIV epidemic?’ (2013) (3) (2) Epidemiology 1.

of VAW. Quite the contrary. The CEDAW Convention requires the DRC to challenge those beliefs.⁹² And most importantly, as explained earlier, the obligation to “protect” requires the DRC to take steps to prevent, prohibit and punish VAW by third parties, including in the home and in the community, and to provide reparation to the victims of VAW. This means that the DRC must proactively identify and address the multiple factors that can discourage victims of VAW from seeking justice.

After the current section, which discussed the first major form of impunity documented in the DRC namely the one resulting from the poor enforcement of anti-VAW laws, the next one examines a second aspect of impunity documented in the DRC. This is illustrated by the fact that some acts, which fall within the International Law definition of VAW, are not criminalised in the domestic legislation.

3.2. Impunity resulting from the fact that some forms of VAW are not criminalised: the case of domestic violence and marital rape

Article 2(b) of the CEDAW Convention requires States Parties to adopt appropriate legislative (...) measures, including sanctions where appropriate, prohibiting all discrimination against women”. This means that as a State Party to the CEDAW Convention, the DRC has the obligation to adopt legislation prohibiting and punishing all forms of VAW. Speaking specifically about VAW, the CEDAW Committee recommends that States Parties, inter alia, “ensure that all forms of gender-based violence against women in all spheres (...) are criminalized and introduce, without delay, or strengthen, legal sanctions commensurate with the gravity of the offence, as well as civil remedies”.⁹³ Yet, domestic violence and marital rape are still not criminalised in the DRC.

The failure to criminalise domestic violence or marital rape (or any other form of VAW for that matter) can contribute to situations of “full impunity” or “partial impunity”. “Full impunity” refers to situations where alleged perpetrators of domestic

⁹² See articles 2(f), 5(a) and 10(c) of the CEDAW Convention. See also: CEDAW Committee (1992) (n 22) paragraphs 11, 24(e) and 24(f); CEDAW Committee (n 12) paragraphs 26, 35.

⁹³ CEDAW Committee (n 12) paragraph 29 (a).

violence or marital rape are neither prosecuted nor punished because of the absence of laws criminalising those acts. “Partial impunity” refers to situations where alleged perpetrators of domestic violence or marital rape are prosecuted or punished by resorting to generic laws which are unsuitable because they were not designed to address these types of VAW.

3.2.1. “Full impunity” resulting from a legal vacuum in the area of domestic violence and marital rape

In some cases, law enforcement and/or judicial officers can choose not to investigate, prosecute and/or punish domestic violence or marital rape because they consider these acts as private matters that do not fall within the purview of the law. Illustrating this problem a report on the DRC mentions, “The law does not provide any specific penalty for domestic violence despite its prevalence. Although the law considers assault a crime, police rarely intervened in perceived domestic disputes. There were no reports of judicial authorities taking action in cases of domestic or spousal abuse”.⁹⁴ Another report expresses similar concerns by noting that “(...) in most cases perpetrators (of domestic violence) remain unpunished (...)”.⁹⁵

The absence of laws criminalising domestic violence and marital rape can have a double negative effect. First, it can help reinforce the beliefs according to which these acts belong to the private or family sphere and are not violations of women's rights and/or crimes to which the State should respond. Illustrating this concern, the SRVAW mentioned the following after a visit to Somalia:

Domestic violence remains the most pervasive manifestation of violence against women and girls in the country. During her visit, the Special Rapporteur found that violence in the family was widespread and remained largely invisible due to the absence of reporting mechanisms

⁹⁴ United States Department of State, Bureau of Democracy, Human Rights and Labor (n 76) 40.

⁹⁵ World Organisation against Torture (OMCT) and Synergie des Femmes pour les Victimes des Violences Sexuelles (SFVS), *Report on violence against women in North and South Kivu, in the DRC: Alternative report for the Committee on the elimination of all forms of discrimination against women* (55th session July 8 – 26, 2013) (2013) 7.

and statistics and a lack of policies and programmes addressing this issue. Unless it resulted in serious injury or death, domestic violence was not perceived as a problem necessitating legal intervention or other assistance.⁹⁶

Echoing the SRVAW, one report stresses, “(...) the (Congolese) Penal Code does not prohibit marital rape. In a context such as this, it is worrying that many people think that marital rape is not a crime”.⁹⁷

In addition to the problems discussed above, legal reform can be difficult in a context marked by the persistence among the population and/or duty-bearers of beliefs according to which some acts of VAW belong to the private or family sphere and are not violations of women's rights and/or crimes to which the state should respond. In this respect, a 2015 report by the UN Working Group on the issue of discrimination against women in law and in practice stresses that “in some countries, legislative provisions strengthen patriarchal family structures, as well as the concomitant discrimination and violence against women”.⁹⁸ The report explains that “This is particularly true of provisions allowing rapists to marry their victims in order to escape legal proceedings and laws that exclude marital rape from the prohibition of rape under criminal law (...)”.⁹⁹

In a report published three years later, the Working Group stresses that it “has observed how concepts such as (...) “protection of the family” have been used to undermine women’s rights by challenging universal human rights to equality and non-discrimination”.¹⁰⁰ The Working Group adds, “Such concepts are also employed to justify State and non-State violations of these rights, and non-

⁹⁶ Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences, on her mission to Somalia (9-16 December 2011)*, document no: A/HRC/20/16/Add.3 (14 May 2012) paragraph 17.

⁹⁷ OMCT and SFVS (n 95) 7.

⁹⁸ Human Rights Council, *Report of the Working Group on the issue of discrimination against women in law and in practice*, document no: A/HRC/29/40 (2 April 2015) paragraph 36.

⁹⁹ Ibid.

¹⁰⁰ Human Rights Council, *Report of the Working Group on the issue of discrimination against women in law and in practice*, document no: A/HRC/38/46 (14 May 2018) paragraph 13.

compliance with State obligations to eliminate discriminatory practices based on stereotyped roles for men or women”.¹⁰¹

The points discussed above illustrate the importance of addressing impunity resulting from legal vacuum. That said, it is crucial to underline that although Congolese law does not specifically criminalise domestic violence or marital rape, law enforcement or judicial officers can still investigate, prosecute or punish alleged perpetrators by resorting to generic laws. However, while generic laws can constitute an alternative means of prosecuting domestic violence, this approach comes with challenges discussed in the next subsection.

3.2.2. “Partial impunity” or “full impunity” resulting from addressing domestic violence or marital rape through unsuitable generic laws

One of the problems that may result from addressing domestic violence or marital rape through generic laws is that it can lead to situations where these acts end up being punished with penalties that are not commensurate with the severity of the harm caused to women or end up not being punished at all. For instance, as Congolese legislation stands at present (31 December 2018), domestic violence can only be prosecuted under general criminal laws provisions aimed at punishing assault and battery (articles 46 to 48 of the Penal Code). Pursuant to article 46, assault and battery carries a penalty of eight days to six months imprisonment and/or a fine. If premeditated, it carries a penalty of one month to two years imprisonment and a fine. If the assault causes illness or incapacity to work, or if it results in the full loss of function of an organ or a serious mutilation, the punishment will be two to five years’ imprisonment and a fine (article 47 of the Congolese Penal Code). When an assault committed intentionally but without intent to cause death nonetheless causes death, the perpetrator shall be sentenced to between five and 20 years’ imprisonment and a fine (article 48 of the DRC’s Penal Code). In comparison, while the minimum penalty for assault and battery is eight days, sexual harassment carries

¹⁰¹ Ibid.

a prison term of one to twelve years and a fine (article 174 (d) the Sexual Violence Act of 2006).

The comparison made above should not be misconstrued as an attempt to trivialize the harms caused to women by sexual harassment. The aim of this comparison is simply to stress that punishing domestic violence by using generic laws criminalising assault and battery may not be commensurate with the magnitude of the problem and/or the severity of the harm caused to victims of domestic violence. In this respect, it is important to recall that data from the World Health Organisation indicates, for instance, that across 65 countries studied from 1982 to 2011 shows that 38% of all murdered women (in contrast to 6% of all murdered men) were killed by an intimate partner.¹⁰² In summary, domestic violence is a violation of women's human rights that should be addressed through specific legal provisions rather than generic ones.

Like domestic violence, (in theory), marital rape can be prosecuted under general criminal laws provisions aimed at punishing rape (article 170 and 171 bis of the Sexual Violence Act of 20 July 2006). Rape carries a penalty of five years imprisonment and a fine to life imprisonment if the act causes death (articles 170 (d) and 171 of the Sexual Violence Act). In theory, these generic provisions should suffice to prosecute and punish perpetrators of domestic violence or marital rape. However, an additional problem that can result from prosecuting domestic violence or marital rape through generic provisions is that the latter are gender-blind. These provisions are not fit for the purpose of addressing gendered problems such as domestic violence or marital rape, which many in the Congolese society consider as justifiable acts when inflicted on women.

¹⁰² World Health Organisation (WHO), *Global and regional estimates of violence against women: prevalence and health effects of intimate partner violence and non-partner sexual violence* (World Health Organisation 2013) 26
<http://apps.who.int/iris/bitstream/handle/10665/85239/9789241564625_eng.pdf;jsessionid=8BCB9CDBFA6045A04D85894CBFD2B1B2?sequence=1> accessed 9 November 2018.

These generic provisions do not take into account the fact that in a patriarchal society such as the DRC, domestic violence or marital rape are normalized. In this respect, existing data also shows that there is a high level of tolerance for domestic violence and for marital rape in the country. In this respect, the 2014 DHS found that 59.5% of men and 75% of women believed that there were reasons for which a husband was justified in beating his wife.¹⁰³ More specifically, men believed a husband was justified in beating his wife if she argued with him (41.2%); neglected the children (38.9%); went out without telling him (32.0%); refused to have sex with him (22.9%); or burnt food (14.6%).¹⁰⁴ In a similar vein but in different proportions, women believed that a husband was justified in beating his wife if she argued with him (57.7%); neglected the children (51.4%); went out without telling her husband (49.1%); refused to have sex with her husband (43.5%); burnt food (24.4%).¹⁰⁵ A study conducted in January 2014 in three provinces of the DRC¹⁰⁶ found that 56% of men and 51% of women agreed with the statement “I think that a woman cannot refuse to have sex with her husband”.¹⁰⁷

In a context where domestic violence is not specifically criminalised, a man who beats his wife may end up enjoying impunity because society (including law enforcement officers) may simply see him as a husband exercising his right to

¹⁰³ Ministère du Plan et Suivi de la Mise en œuvre de la Révolution de la Modernité (MPSMRM), Ministère de la Santé Publique (MSP) and ICF International, *Enquête Démographique et de Santé en République Démocratique du Congo 2013-2014* (MPSMRM, MSP and ICF International 2014) 300 and 301.

¹⁰⁴ Ibid, 301.

¹⁰⁵ Ibid, 299.

¹⁰⁶ See: Tearfund, *Masculinities, faith and ending sexual and gender-based violence: DRC summary report* (May 2014) <https://learn.tearfund.org/~media/files/tilz/hiv/drc_report_final.pdf?la=en> accessed 02 May 2019.

¹⁰⁷ Tearfund, *Men, faith and masculinities: DRC. A baseline assessment on the social attitudes, relations, and practices of men in relation to gender, and sexual and gender-based violence in the Democratic Republic of Congo (DRC)* 34 <<https://wewillspeakout.org/wp-content/uploads/2014/06/Men-faith-and-masculinities-DRC-FINAL.pdf>> accessed 05 January 2017.

“discipline” his wife not as a perpetrator of assault and battery within the meaning of the Congolese Penal Code. Illustrating this, one report on the DRC explains that “it is difficult for a woman who was beaten by her husband/partner to complain without fear of reprisal, since this form of violence is not perceived as such by society”.¹⁰⁸ Similarly, a man who rapes his wife may end up enjoying impunity because society (including those who are supposed to enforce laws) may not consider his acts as falling within the definition of rape provided by the Sexual Violence Act of 20 July 2006. In this respect, one report explains that Congolese judicial officials interpret laws prohibiting and punishing rape as excluding marital rape because those laws do not specifically mention this crime.¹⁰⁹ This an additional reason why it is important to specifically criminalise those all forms of VAW.

Moreover, while the criminalisation of domestic violence or marital rape does not guarantee the prosecution or punishment of alleged perpetrators, at least it sends a clear message that despite being accepted by some segments of the society, these acts constitute criminal offences. It also sends a clear message to law enforcement officials that if they fail to enforce laws criminalising domestic violence or marital rape because of their discriminatory beliefs, they would be breaking the law. This an important step in the process towards the elimination of VAW in the DRC. Indeed, even if they are oftentimes imperfectly enforced, laws play an

¹⁰⁸ Women’s International League for Peace and Freedom (WILPF), *Shadow report by the Women’s International League for Peace and Freedom – Democratic Republic of the Congo section (WILPF DRC) - Committee on the Elimination of Discrimination against Women - 73rd Pre-Sessional Working Group for the adoption of the list of issues* (12-16 November 2018) (4 October 2018) 5 <https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/COD/INT_CEDAW_ICO_CO_D_32668_E.pdf> accessed 25 January 2020.

¹⁰⁹ MADRE and others, *Gender-based violence and discrimination against women and girls in the Democratic Republic of the Congo: A report for the UN Committee on the Elimination of All Forms of Discrimination Against Women for the formulation of the list of issues and questions for the review of the Democratic Republic of the Congo’s compliance with the Convention on the Elimination of All Forms of Discrimination Against Women* (October 2018) 11 <https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/COD/INT_CEDAW_ICO_CO_D_32830_E.pdf> accessed 25 January 2019.

important symbolic role. As rightly stressed by Johnson, Ollus and Nevala, even though laws alone are not sufficient, particularly if they are not consistently enforced, laws and legal frameworks are essential to send a clear societal message that VAW will not be tolerated.¹¹⁰ The law not only provides a compulsory effect, but also expresses the state's opinion on certain issues".¹¹¹

An additional problem stemming from addressing domestic violence or marital rape through generic and gender-blind provisions is that the latter do not take into account the fact that violence can affect men and women depending on many factors. As stressed by the CEDAW Committee, discrimination against women is compounded by intersecting factors that affect some women to degrees or in ways that differ from those affecting men or other women.¹¹² Grounds for intersecting or compounded discrimination may include socioeconomic status, marital and/or maternal status, or property ownership.¹¹³ These intersecting factors make it more difficult for women affected to gain access to justice.¹¹⁴

In summary, generic provisions criminalizing assault and battery are not aimed at punishing violence inflicted on women or girls within the context of a relationship characterized by power imbalance. These generic provisions may end up treating intimate partner violence in the same manner as violence resulting from a bar fight between strangers. Unlike strangers involved in a brawl, more often than not, victims of domestic violence or marital rape live with their abusers. Illustrating this problem, one report mentions:

¹¹⁰ Holly Johnson, Natalia Ollus and Sami Nevala, *Violence Against Women: An International Perspective* (Springer Science & Business Media, LLC 2008) 179.

¹¹¹ Yun Hsien Diana Lin, 'In the name of the father? The law and social norms of children's surnames in Taiwan' in Siumi Maria Tam and others (eds), *Gender and Family in East Asia* (Routledge 2014) 90.

¹¹² CEDAW Committee (n 47) paragraph 8.

¹¹³ Ibid.

¹¹⁴ Ibid.

“(...) there is, at present, no measure of state protection for women victims of domestic violence. Moreover, there are no centres where women can seek refuge and escape the matrimonial home. Nor does existing legislation establish the possibility of removing the alleged perpetrator to prevent such acts from happening again (...)”¹¹⁵

Besides, in the DRC, there is a high probability that to a certain degree, like a significant proportion of the female population, victims of domestic violence or marital rape are likely to economically depend on their abusive husbands or partners. Indeed, according to existing data, it is only in 29% of cases that married women or women in marriage-like situations decide alone on how to use their income.¹¹⁶ In 41 % of cases, women’s income is jointly managed by both spouses/partners and in 30 % by the husband/partner alone. ¹¹⁷ Chapter one also mentioned several provisions in the Congolese Family Code that limit married women’s economic independence. Such provisions can make them (more) vulnerable to domestic violence.

In addition to the above, generic provisions criminalizing assault and battery do not take into account other challenges that can prevent victims of domestic violence or marital rape from seeking help, including from the justice system. This is crucial because according to the DHS conducted in the DRC in 2014, among women aged 15-49 who had experienced physical or sexual violence, only 35% sought help. ¹¹⁸ When it comes to factors that may deter victims of domestic violence from seeking help, in most recent Concluding Observations on the DRC, the CEDAW Committee stated that it was “deeply concerned about (...) the lack of legal provisions prohibiting domestic violence, including marital rape, and the absence of shelters, counselling and rehabilitation services for victims of such violence”. ¹¹⁹

In summary, all these challenges faced by victims of domestic violence or marital rape can also contribute to impunity for such violence. A piece of legislation

¹¹⁵ OMCT and SFVS (n 95) 7.

¹¹⁶ MPSMRM, MSP and ICF International (n 103) 288.

¹¹⁷ Ibid.

¹¹⁸ Ibid, 324.

¹¹⁹ CEDAW Committee (n 39) paragraph 21 (c).

specifically criminalizing domestic violence or marital rape can include provisions guaranteeing victims access to shelter or free legal aid and thereby help overcome some of the challenges mentioned above. Echoing this, the CEDAW Committee recommends, for instance, that States Parties remove economic barriers to justice by providing legal aid and ensure that fees for issuing and filing documents, as well as court costs, are reduced for women with low incomes and waived for women living in poverty.¹²⁰ The body also recommends that States Parties remove linguistic barriers by providing independent and professional translation and interpretation services, when needed, and provide individualized assistance for illiterate women in order to guarantee their full understanding of judicial and quasi-judicial processes.¹²¹

The preceding paragraphs discussed the multiple forms of impunity enjoyed by perpetrators of VAW. The scale of the problem have led some such as the UN Secretary General to go as far as describing the DRC as a country in which reigns “a pervasive culture of impunity.”¹²² According to Condé, “Culture of impunity” describes “an attitude or perception held by most persons that someone can commit human rights violations, even on a massive and systematic scale, and suffer no legal or other negative consequence for their acts”.¹²³ “It also refers to the attitude of those persons committing such violations, who believe that they will never be caught and held accountable either in their own country or in an international forum for committing such acts, and who then believe it is all right to do them”.¹²⁴ More generally, Tyner explains that “culture of impunity” describes a situation where impunity is institutionalized and widespread and where human rights violations are overtly or tacitly condoned and unpunished as a result of amnesties, pardons, indifferences, or simply “looking the other way”.¹²⁵

¹²⁰ CEDAW Committee (n 47) paragraph 17 (a)

¹²¹ Ibid, paragraph 17 (b).

¹²² UNSC (n 52) paragraph 42.

¹²³ H. Victor Condé, *A Handbook of International Human Rights Terminology* (Second Edition, University of Nebraska Press 2004) 56.

¹²⁴ Ibid.

¹²⁵ Tyner (n 30) 40.

Ending this “culture of impunity” for VAW requires addressing all the factors that contribute to the problem. When it comes to those factors, Condé argues that when a culture of impunity prevails, perpetrators of human rights violations believe that either since they are part of the government that the government will shield them from personal responsibility, or they believe that there is no political will or ability of the state or the legal system or of the international community to come after them to hold them accountable.¹²⁶ This means that my “Integrated and Multi-stakeholder model of human rights change” has the potential to contribute to addressing this “culture of impunity” given that it deals with implementation gaps resulting from both unwillingness and lack of capacity. However, shifting from a “culture of impunity” to a “culture of accountability” is likely to take time. Indeed, as pointed out by Engle, seeing impunity as cultural suggests deeply entrenched attitudes that can only be changed over time.¹²⁷

The current and previous sections discussed violations by the DRC of its obligation to “respect” and “protect” women’s right to be free from violence. The next Section discusses the last component of the tripartite typology of States’ human rights obligations.

4. Violations of the obligation to “fulfil” women’s rights to be free from violence

The obligation to “fulfil” requires States to, *inter alia*, take a wide variety of steps and adopt the necessary and appropriate measures, including appropriate legislative, judicial, administrative, budgetary, economic, promotional and other measures to the maximum extent of their available resources to ensure the full realization of human rights.¹²⁸ This obligation requires States to ensure that women

¹²⁶ Condé (n 123) 56.

¹²⁷ Karen Engle, ‘A genealogy of the criminal turn in Human Rights’ in Karen Engle, Zinaida Miller and D.M. Davis (eds), *Anti-Impunity and the Human Rights Agenda* (Cambridge University Press 2016) 20.

¹²⁸ See for instance: CESCR Committee (n 8) paragraph 48.

and men enjoy equal rights *de jure* and *de facto*, including, where appropriate, through the adoption of temporary special measures.¹²⁹ Put simply, like the “obligation to protect”, the obligation to “fulfil” requires States to “take action”, in this case, to ensure the full realization of human rights by everyone and close the gap between the *de jure* and *de facto* enjoyment of human rights.

Violations of the obligation to “fulfil” include, the insufficient expenditure or misallocation of public resources which results in the non-enjoyment of human rights;¹³⁰ the failure to adopt or implement relevant national policies aimed at ensuring the realization of human rights by everyone;¹³¹ the failure to provide administrative, judicial or other appropriate remedies enabling rights holders to seek and obtain redress in case their rights have been infringed.¹³² By way of illustration, the next paragraphs elaborate on the poor implementation of anti-VAW policies, national action plans or strategies.

As mentioned earlier, in 2009, the DRC adopted a “National strategy against Sexual and Gender-based Violence” (SGBV)¹³³ as well as an action plan for its implementation.¹³⁴ The overall objective of the Congolese National strategy against

¹²⁹ See for instance: CESCR Committee (n 11) paragraph 21; CEDAW Committee (n 7) paragraph 9 and 37.

¹³⁰ See for instance: CESCR Committee, *The right to work. General comment No. 18: Article 6 of the International Covenant on Economic, Social and Cultural Rights*, document no: E/C.12/GC/18 (6 February 2006) paragraph 36.

¹³¹ CESCR Committee, *The right to work. General comment No. 18: Article 6 of the International Covenant on Economic, Social and Cultural Rights*, document no: E/C.12/GC/18 (6 February 2006) paragraph 36.

¹³² See for instance: CESCR Committee, *General Comment No. 17 (2005): The right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author (article 15, paragraph 1 (c), of the Covenant)*, document no: E/C.12/GC/17 (12 January 2006) paragraph 46.

¹³³ CEDAW Committee (n 27) paragraph 21 (b).

¹³⁴ See: Ministère du Genre, de la Famille et de l'enfant, *Plan d'action de la stratégie nationale de lutte contre les violences basées sur le genre* (November 2009) 1 – 66

SGBV is to contribute to the prevention and reduction of SGBV; to improve the holistic care of victims and survivors as well as the re-education of perpetrators of SGBV.¹³⁵ Based on the overall objective listed above and the specific ones listed in the strategy,¹³⁶ it is safe to argue that if properly implemented the National Strategy against SGBV can substantially contribute to closing the gap between the DRC's formal commitment to end VAW and the country's actual behaviour. However, in its most recent Concluding Observations to the DRC, the CEDAW Committee stated that it was "deeply concerned about (...) the ineffective implementation of the 2009 National Strategy against gender-based violence".¹³⁷ A report evaluating the implementation of the strategy covering the period 2009-2011¹³⁸ as well as other more recent ones reached similar conclusions.¹³⁹ In summary, like the Sexual Violence Act of July 2006, the National Strategy against GBV appears to have been poorly implemented.

<https://monusco.unmissions.org/sites/default/files/old_dnn/Plan%20of%20Action%2026-11-09.pdf> accessed 06 July 2016.

¹³⁵ République Démocratique du Congo, Ministère du Genre, de la Famille et de l'enfant, *Stratégie nationale de lutte contre les violences basées sur le genre (SNVBG)* (November 2009) 24 <<http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/95106/111851/F-1047853986/COD-95106.pdf>> accessed 06 July 2016.

¹³⁶ Ibid, 24 – 25.

¹³⁷ CEDAW Committee (n 39) paragraph 21 (b).

¹³⁸ See : Adrien Didier Amougou A. and others, *Evaluation finale et externe des deux ans de mise en œuvre de la stratégie nationale de lutte contre les violences basées sur le genre en RDC* (Juin 2013) 46 - 47

<<https://www.google.ch/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&ved=0ahUKEwjn07yKorzaAhVL66QKHQRRaolQFghHMAI&url=http%3A%2F%2Fmptf.undp.org%2Fdocument%2Fdownload%2F12211&usq=AOvVaw1TOOI0HM0cY7F1VDhH-jL7>> accessed 15 March 2018.

¹³⁹ See : CNDH (n 27) paragraph 2.3. ; Marcy Hersh, *Congolese women: What Happened to the Promise to Protect?* 28, 31 < https://www.refugeesinternational.org/s/ri_drc_field_report-web.pdf > accessed 02 December 2017.

5. Conclusion

The aim of this chapter was to better understand, from a human rights law perspective, the nature of the gap between the DRC's international obligation to end VAW and the country's actual practice or how that gap manifests itself. To this end, the chapter showed how the DRC poorly implemented its obligations to "respect", "protect", and "fulfil" women's right to be free from VAW.

Specifically, chapter two explained how one of the most telling examples of the violation of the obligation to "respect" women's right to be free from violence consisted of acts of rape and sexual violence in situations of armed conflict, including against children, perpetrated by State's agents such as members of the Congolese national army, Police and/or Security Services. As far as the obligation to "protect" is concerned, the chapter elaborated on two dimensions of impunity identified in the DRC, namely impunity resulting from the poor enforcement of anti-VAW laws and impunity resulting from the fact that some forms of VAW are not criminalised, particularly in the case of domestic violence and marital rape. Lastly, to illustrate the poor implementation by the DRC of its obligation to fulfil, the Chapter elaborated on the country's poor implementation of its anti-VAW policies. In summary, Chapter two shed more light on issues that actors using my "Integrated and Multi-stakeholder Model of Human Rights Change" need to analyse when assessing the gap between the DRC's formal commitment to eliminate VAW and the country's actual practices.

By seeking to gain a better understanding of what the above-mentioned gap consists of and how it manifests itself, Chapter Two paves way for Chapters Three and Four. These two Chapters respectively build on insights from the Spiral and the Managerial Models to analyse in a more in-depth manner how unwillingness and limitations of capacity can contribute to the gap examined in Chapter Two. The reason behind this undertaking is to ensure that this thesis is grounded on a clear understanding of the meaning and distinct effects of unwillingness and limitations of capacity and of the relevance of addressing both problems through an "Integrated" Model of Human Rights Change". The end goal is to ensure that my "Integrated and Multi-stakeholder Model of Human Rights Change" is comprehensive enough and is not built on an incomplete understanding of the problem it intends to deal with.

Before proceeding with the discussions, a clarification is in order. Chapter Three and Four do not claim or establish causation between, on the one hand, the DRC's unwillingness and limitations of capacity to implement its international obligation to end VAW and, on the other hand, the poor implementation of that obligation by the country. In other words, the aim of Chapter Three and Four is not to demonstrate that unwillingness and limitations of capacity have contributed to the poor implementation by the DRC of its international obligation to end VAW.

As explained in the introductory Chapter, several UN Human Rights bodies,¹⁴⁰ including the SRVAW,¹⁴¹ and also several other sources,¹⁴² have concluded that unwillingness and limitations of capacity to implement and/or comply *have* contributed to the poor implementation by the DRC of its international obligation to end VAW. Chapter Three and Four use their findings and conclusions as a starting point for a more in-depth analysis of how unwillingness and limitations of capacity *can* contribute to the gap introduced in Chapter One and elaborated upon in Chapter Two.

¹⁴⁰ See for instance: Human Rights Council (n 18) paragraphs 23 – 24, 27, 40 – 44; Human Rights Council, *Combined report of seven thematic special procedures on technical assistance to the Government of the DRC and urgent examination of the situation in the east of the country*, document no: A/HRC/10/59 (5 March 2009) paragraphs 14 – 15, 28, 57 and 60 – 62; and Human Rights Council, *Second joint report of seven United Nations experts on the situation in the DRC*, document no: A/HRC/13/63 (8 March 2010) paragraphs 34, 49 – 51, 53 – 54, 58 and 101.

¹⁴¹ See: Human Rights Council (n 78) paragraphs 66 – 69; 74 – 78; 83.

¹⁴² See for instance: International Trade Union Confederation (ITUC), *Violence against women in Eastern DRC: Whose responsibility? Whose complicity?* (November 2011) 6 and 28 <https://www.ituc-csi.org/IMG/pdf/ituc_violence_rdc_eng_lr.pdf.pdf > accessed 03 February 2017; Fédération Internationale des Ligues des droits de l'Homme (FIDH) and others (October 2013) (n 27) 15.

CHAPTER THREE

“VOLUNTARY NON-COMPLIANCE” WITH UN HUMAN RIGHTS STANDARDS AS POTENTIAL BARRIER TO ENDING VAW IN THE DRC

1. Introduction

The aim of this Chapter is to better understand from a theoretical and a practical perspectives what is meant by unwillingness to implement human rights obligations and how the latter can contribute to the gap in the implementation of the obligation to end VAW in the DRC.

To this end, this Chapter builds on the Spiral Model’s explanation of noncompliance with human rights norms and standards as a starting point for a more in-depth analysis. Indeed, the Spiral Model describes what can be seen as manifestations of unwillingness to implement human rights obligations. This Chapter goes beyond that by showing how those manifestations of unwillingness can contribute to the gaps in the implementation of the obligations to “respect”, “protect” and/or “fulfil” women’s right to be free from violence in the DRC.

2. The Spiral Model’s argument

The Spiral Model is predicated on the assumption that states are primarily unwilling, rather than unable, to or incapable of, implementing and/or complying with their human rights obligations.¹ Therefore, the Spiral Model argues that in order for States to implement and/or comply with their obligations they need to be put under “pressure from below” (domestic pressure) and “pressure from above” (or international pressure).²

¹ Thomas Risse and Kathryn Sikkink, ‘The socialization of international human rights norms into domestic practices: introduction’ in Thomas Risse, Stephen C. Ropp and Kathryn Sikkink, *The Power of Human Rights: International Norms and Domestic Change* (Cambridge University Press, 1999) 22 – 24; Thomas Risse and Stephen C. Ropp, ‘Introduction and Overview’ in Thomas Risse, Stephen C. Ropp, Kathryn Sikkink (eds), *The Persistent Power of Human Rights: From Commitment to Compliance* (Cambridge University Press 2013) 15, 17.

² Risse and Sikkink (n 1) 18.

This pressure is exerted by what the proponents of the Spiral Model refer to as “transnational advocacy networks”. These are international and domestic actors who “share collective understandings and a collective identity with regard to human rights norms”.³ They include: international and domestic NGOs, foundations, and some governmental and inter-governmental officials, international and domestic nongovernmental research and advocacy organisations; local social movements, the media, churches, trade unions, consumer organisations, and intellectuals, parts of regional and international intergovernmental organisations, parts of the executive and/or parliamentary branches of governments.⁴ The Spiral Model describes how, when put under pressure by transnational advocacy networks, States evolve from a lower to a higher level of compliance with human rights standards through a process consisting of five stages, namely “Repression and activation of network”, “Denial”, “Tactical concessions”, “Prescriptive status” and “Rule-consistent behaviour”.⁵ The Spiral Model distinguishes five strategies that can be used to put pressure on human rights violating actors, namely “moral consciousness-raising”, naming and shaming, argumentation, dialogue, and persuasion.⁶ However, the proponents of the Spiral Model do not provide a definition of unwillingness to implement and/or comply with human rights obligations. That is the reason why before going any further in the analysis, it is important to clarify what is meant by “unwillingness” to implement human rights obligations.

3. The meaning of “unwillingness” to implement human rights obligations

The Oxford Dictionary of English defines “unwillingness” as “the quality or state of being unwilling to do something” or “reluctance”.⁷ Simply put, the DRC’s unwillingness to implement its obligation to end VAW refers to the country’s

³ Risse and Sikkink (n 1) 21.

⁴ See: Margaret E. Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Cornell University Press 1998) 9; Risse and Sikkink (n 1) 21.

⁵ Risse and Sikkink (n 1) 22 – 35.

⁶ Ibid, 5 and 11.

⁷ See: <<https://en.oxforddictionaries.com/definition/unwillingness>> accessed 04 January 2017.

reluctance, disinclination or lack of enthusiasm to take measures that are required to translate its formal commitment to eliminate VAW into actual practice. Building on the Spiral Model, this Chapter examines the possible links between, on the one hand, two indicators of unwillingness, namely repression of actors who denounce human rights violations and denial of human rights violations⁸ and, on the other hand, the poor implementation by the DRC of its obligation to eliminate VAW. The reason behind this focus on the first two phases is because in the Spiral Model they correspond to the “pre-commitment” period.⁹ These two first phases are therefore the ones with which the DRC’s unwillingness to implement its obligation to end VAW is more likely to be associated.

4. The potential link between “repression” and the gap in the implementation of the obligation to end VAW in the DRC

The next two subsections clarify the meaning of repression then elaborate on the possible link between repression and the gap in the implementation by the DRC of its obligation to end VAW.

4.1. The meaning of “repression”

The proponents of the Spiral Model do not define “repression”. Instead, they describe manifestations of repression. To fill this gap, I build on the work of Davenport, who provides a definition of repression that encompasses behaviours that are observed in the DRC. Indeed, Davenport defines (political) repression as behaviour that is applied by governments in an effort to bring about political quiescence and facilitate the continuity of the regime through some form of restriction or violation of political civil liberties.¹⁰ Davenport adds that repression

⁸ For a complete description of the five stages of the Spiral Model see: Risse and Sikink (n 1) 22 – 35.

⁹ Risse and Ropp (n 1) 10.

¹⁰ Christian Davenport, ‘Introduction’ in Christian Davenport (ed), *Paths to State Repression: Human Rights Violations and Contentious Politics* (Rowman & Littlefield Publishers 2000) 6.

encompasses behaviour that is violent (for instance, executions and torture) and nonviolent (for instance, mass arrests, detention, and intimidation), legal (sanctioned by law) and illegal, as well as behaviour that is specifically and diffusely targeted.¹¹ Within the context of this thesis, repression refers to the use of behaviours such as the ones described by Davenport, to, *inter alia*, control, silence or subdue actors who denounce (or attempt to denounce) acts of VAW, or criticize, publicize information showing discrepancies between the DRC's undertaking to end VAW and the country's actual performance.

In the Spiral Model, this phase of repression is characterized by a situation where States engage in human rights violations in a context where “the domestic societal opposition is too weak and/or too oppressed to present a significant challenge to the government”.¹² However, over time, these violations can lead to the activation of “transnational advocacy networks” of actors who would start collecting information about those human rights violations. And, as explained by Risse and Sikkink, when “transnational advocacy networks” succeed in gathering sufficient information on the repression in the “target state”, it can put the norm-violating State on the international agenda.¹³ According to Risse and Sikkink, the initial reaction of the norm-violating State put on the international agenda is almost always one of denial.¹⁴

In the DRC, this phase of repression has followed a slightly different trajectory. Like in the Spiral Model, violations of women's human rights through acts of VAW have led to the activation of “transnational advocacy networks” of actors who started denouncing the problem. However, as explained in the next two subsections, in the DRC, the initial reaction of the State has been a combination of repression of those actors denouncing VAW and denial of those acts of VAW.

¹¹ Davenport (n 10) 6.

¹² Risse and Sikkink (n 1) 22.

¹³ Ibid.

¹⁴ Ibid, 23.

4.1.1. Activation of transnational advocacy networks of actors denouncing VAW committed in the DRC

Risse and Sikkink explain that the initial activation of transnational advocacy networks often results from a particularly shocking violation of human rights and leads to the mobilization of the international human rights community.¹⁵ This stage is characterized first by the production and dissemination of information about human rights practices in the target state.¹⁶ Such information is often compiled with the cooperation of human rights organisations in the target state.¹⁷ The transnational network then starts lobbying international human rights organisations as well as Western States (or any other concerned State for that matter) – from public opinion to policy makers and national governments.¹⁸ The two scholars add that this “lobbying” usually involves some discursive practice activities in terms of moral persuasion and shaming which might lead to some initial pressure on the target State to improve its human rights conditions.¹⁹ The DRC followed the pattern described above.

In the Congolese context, the initial activation of this network appears to have been triggered by reports of sexual violence perpetrated by belligerents, including members of the Congolese national army, during armed conflicts that broke out in the country in 1996 (See Chapter One). These acts of VAW led to the release of numerous reports by international and domestic actors.²⁰

¹⁵ Ibid, 22.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid, 22 – 23.

¹⁹ Ibid, 23.

²⁰ See for instance: Human Rights Watch, *The war within the war: sexual violence against women and girls in Eastern Congo* (June 2002) <<https://www.hrw.org/reports/2002/drc/Congo0602.pdf>> accessed 18 November 2017; Human Rights Watch, *D.R. Congo: War Crimes in Bukavu: Human Rights Watch Briefing Paper* (June 2004) <https://www.hrw.org/sites/default/files/reports/2004_DRCongo_WarCrimesinBukavu.pdf> accessed 14 March 2018; Amnesty International, *DRC. Mass rape: Time for remedies* (October 2004) <<https://www.amnesty.org/download/Documents/92000/afr620182004en.pdf>> accessed 04 April

When their poor human rights record is publicly exposed, States may respond by increasing repression against their critics. Indeed, as noted by several scholars, during the repression stage, repressive states seek to prevent any news or publicity on human rights violations from leaking out, often by gagging the press or disbanding groups that are critical of the regime's human rights record.²¹ As predicted by the above-mentioned scholars, more often than not, instead of taking measures to address acts of VAW denounced in those reports, the initial response of Congolese authorities has been to repress actors who denounce VAW attributed to State agents.

4.1.2. Repression of actors denouncing VAW committed in the DRC

The DRC has generally shown limited receptiveness to denunciations of VAW attributed to State's agents or other forms of criticisms of the country's human rights practices. Acts of repression against human rights defenders and other actors working on or denouncing VAW, which have been attributed to State agents, have

2019; Amnesty International, *DRC. Surviving rape: Voices from the East* (October 2004) < <https://www.amnesty.org/download/Documents/92000/afr620192004en.pdf> > accessed 21 March 2018; Human Rights Watch, *Seeking Justice: The Prosecution of Sexual Violence in the Congo War* (March 2005) < <https://www.hrw.org/sites/default/files/reports/drc0305.pdf> > accessed 14 March 2018; Réseau des Femmes pour un Développement Associatif, Réseau des Femmes pour la Défense des Droits et la Paix and International Alert, *Women's Bodies as a Battleground: Sexual Violence Against Women and Girls During the War in the Democratic Republic of Congo South Kivu (1996-2003)* (2005) < <http://www.international-alert.org/sites/default/files/publications/women%27s-bodies-as-a-english.pdf> > accessed 23 June 2015; Human Rights Watch, *Soldiers Who Rape, Commanders Who Condone: Sexual Violence and Military Reform in the DRC* (July 2009) < <https://www.hrw.org/sites/default/files/reports/drc0709web.pdf> > accessed 25 September 2017.

²¹ Noemi Kakucs and Robert Sata, 'Violence against Women in European Societies: East and West' in Sabine Fischer, Heiko Pleines, Hans H. Schröder (eds), *Movements, Migrants, Marginalisation: Challenges of Societal and Political Participation in Eastern Europe and the Enlarged EU* (ibidem-Verlag Haunschild Schoen GbR, 2007) 61; Sue Farran, *Human Rights in the South Pacific: Challenges and Changes* (Routledge 2009) 277; Michael Freeman, *Human Rights: An Interdisciplinary Approach* (Second Edition Fully Revised and Updated, Polity Press 2011) 160.

included threats (including death threats);²² harassment, arbitrary arrest and detention;²³ armed attacks including by members of armed forces;²⁴ as well as killings.²⁵

More recently, in September 2015, Congolese authorities banned the screening of a movie on sexual violence attributed to members of the DRC national army. The Congolese communications Minister was quoted as justifying the ban by saying that the documentary contained “unjustified attacks” on soldiers who had fought and died for their country.²⁶ The movie entitled “*L’Homme Qui Répare les*

²² Human Rights Council, *Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya – Addendum: Summary of cases transmitted to Governments and replies received*, document no: A/HRC/13/22/Add.1 (24 February 2010) paragraphs 710 to 714; Human Rights Council, *Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya: Addendum - Mission to the DRC (21 May – 3 June 2009)*, document no: A/HRC/13/22/Add.2 (25 February 2010) paragraph 77; Human Rights Watch, *World Report 2010* (2010) 102 and 104 < <http://www.hrw.org/sites/default/files/reports/wr2010.pdf> > accessed 07 February 2014; Human Rights Watch (July 2009) (n 18)107.

²³ Human Rights Council, *Report of the Special Rapporteur, Amebyi Ligabo – Addendum: Summary of cases transmitted to Governments and replies received*, document no: A/HRC/4/27/Add.1 (26 March 2007) paragraph 187.

²⁴ Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk. Addendum: Communications to and from Governments*, document no: A/HRC/7/6/Add.1 (27 February 2008) paragraphs 437 to 439.

²⁵ Human Rights Council (25 February 2010) (n 22) paragraphs 76 – 78. See also: Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston – Addendum: Mission to the DRC*, document no: A/HRC/14/24/Add.3 (14 June 2010) paragraphs 92 – 93; Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns. Addendum: Follow-up to country recommendations: DRC*, document no: A/HRC/20/22/Add.1 (16 April 2012) paragraphs 49 – 51.

²⁶ Kim Willsher, *Congo 'shutting down debate on rape', says director of banned film* (3 September 2015) < <http://www.theguardian.com/world/2015/sep/03/congo-shutting-down-debate-on-says-director-of-banned-film> > accessed 27 February 2016. See also: Ludovica Laccino, *DR Congo bans documentary of surgeon Denis Mukwege who treated 40,000 women raped in conflict* (03 September 2015) < <https://www.ibtimes.co.uk/dr-congo-bans-documentary-surgeon-denis-mukwege-who-treated-40000-women-raped-conflict-1518315> > accessed 04 October 2016.

Femmes” (The Man Who Mends Women) highlighted the work of Dr. Denis Mukwege, a Congolese surgeon and gynaecologist, described as the man who had been mending the thousands of women raped during the 20 years of conflicts in the East of the DRC.²⁷ In 2018, Dr. Mukwege won the Nobel Peace Prize, together with Ms. Nadia Murad, “for their efforts to end the use of sexual violence as a weapon of war and armed conflict”.²⁸

It is worth stressing that Congolese authorities have largely failed to investigate, prosecute, and/or punish acts of repression against Human Rights Defenders.²⁹ In some instances Congolese authorities have even denied the fact that human rights defenders were being repressed.³⁰ In the DRC, repression of actors denouncing the poor implementation by the country of its obligation to eliminate VAW is not an isolated phenomenon. It takes place in a context where human rights defenders are generally repressed by the State.³¹ Put simply, being a Human Rights defender in the DRC is a risky undertaking. Besides, it is worth stressing that during the most recent Universal Periodic Review of the DRC by the UN Human Rights Council, the country rejected recommendations urging it to “ensure the speedy adoption of the law on protection of human rights defenders by

²⁷ See: <<http://mukwege-themovie.com/lefilm.html>> accessed 09 February 2019.

²⁸ See: <<https://www.nobelprize.org/prizes/peace/2018/mukwege/facts/>> accessed 09 February 2019.

²⁹ Human Rights Council (24 February 2010) (n 22) paragraph 80; United States Department of State, *Country Reports on Human Rights Practices for 2010: DRC* (2011) 68 <<https://www.state.gov/documents/organisation/160453.pdf>> accessed 14 May 2017; Human Rights Watch, *World Report 2012: Events of 2011* (2012)108 <<https://www.hrw.org/sites/default/files/reports/wr2012.pdf>> accessed 16 May 2017.

³⁰ Commission des droits de l’homme, *Compte-rendu analytique de la 55e séance tenue au Palais des Nations, à Genève, le mardi 19 avril 2005, à 9 heures*, document no: E/CN.4/2005/SR.55 (27 April 2005) paragraph 28; Commission on Human Rights, *Report of the Special Representative of the Secretary-General, Hina Jilani – Addendum: Summary of cases transmitted to Governments and replies received*, document no: E/CN.4/2006/95/Add.1 (22 March 2006) paragraph 170.

³¹ See for instance: Human Rights Council (25 February 2010) (n 22).

the Parliament and its immediate and effective implementation”³² and to “combat violations and violence against human rights defenders, particularly by adopting a law protecting them”.³³

In some instances, Congolese authorities have reacted to criticism of the country’s poor human rights record by launching verbal attacks on their critics. For instance, the DRC Communication Minister is quoted as having labelled the NGO Human Rights Watch and other international organisations as “humanitarian terrorists” who “repeat lies”, intent on “destabilizing” the country, “demoralizing” the government army and “balkanizing” the DRC and as having claimed that Human Rights Watch reports on human rights abuses were done for “political and financial” motives. This was during a press conference held in Kinshasa on 28 July 2009.³⁴ In other instances, Congolese authorities and other States’ agents have expressed their disapproval by using more violent means.³⁵ As explained in the next subsection, all these acts of repression can contribute to the gap between the DRC’s formal commitment to end VAW and the country’s actual practices.

4.2. “Repression” of actors who denounce VAW as a contributing factor to the gap in the implementation of the obligation to end VAW in the DRC

Repression of civil society actors, including human rights defenders, can have a chilling effect on their willingness or ability to take action. This phenomenon is well-

³² Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Democratic Republic of the Congo*, document no: A/HRC/27/5 (7 July 2014) paragraph 136.22.

³³ Ibid, paragraph 136.24.

³⁴ See: Human Rights Watch, *Letter to the Prime Minister of DR Congo Regarding Public Attacks on Human Rights Organisations* (31 July 2009) <<https://www.hrw.org/news/2009/07/31/letter-prime-minister-dr-congo-regarding-public-attacks-human-rights-organisations>> accessed 04 January 2017.

³⁵ See for instance: Human Rights Council (25 February 2010) (n 22) paragraphs 57 – 86. See also: Human Rights Council (n 23) paragraphs 186, 226 - 227.

documented in the extant literature.³⁶ This means that when targeting actors who denounce VAW (or intend to do so), repression can deter them from (re)acting and ultimately contribute to impunity for VAW. This impunity can, in turn, contribute to the gap in the implementation of the obligation to end VAW in the DRC. Repression of actors who denounce VAW (or intend to do so) can contribute to impunity either directly or indirectly.

Indeed, in some cases, this repression may be deliberately intended to silence victims or witnesses of human rights violations or other actors who may denounce such violations. Alluding to this first type, Gargarella and Ugarte mention how in Ecuador, hundreds of criminal prosecutions against aboriginal communities, civil society organisations, and communitarian groups are brought only to be suspended.³⁷ In their view, “the goal of these prosecutions does not seem to be to gain a conviction, but simply to produce a chilling effect on expressions that question, among other things, the extractivist policies regarding natural resources that have been expanding in Latin America in the last years”.³⁸ In other cases, this

³⁶ See for instance: Yaman Akdeniz and Kerem Altıparmak, ‘The silencing effect on dissent and freedom of expression in Turkey’ in Council of Europe, *Journalism at risk: Threats, challenges and perspectives* (Council of Europe 2015) 145 – 172; Sunaina Marr Maira, *The 9/11 Generation: Youth, Rights, and Solidarity in the War on Terror* (New York University Press 2016) 157; Nadine Wahab, ‘Online ideas to offline action: The role of civil society in the Egyptian uprising’ in Abdulwahab Alkebsi, Nathan J Brown, and Charlotta Sparre (eds), *Reconstructing the Middle East: Political and Economic Policy* (Routledge 2017) 126; Olena Nikolayenko, *Youth Movements and Elections in Eastern Europe* (Cambridge University Press 2017) 207; Saskia Brechenmacher, *Civil society under assault: Repression and Responses in Russia, Egypt, and Ethiopia* (Carnegie Endowment for International Peace 2017) 41 – 42; 70 – 71 <https://carnegieendowment.org/files/Civil_Society_Under_Assault_Final.pdf> accessed 22 December 2019.

³⁷ Roberto Gargarella and Ramiro Alvarez Ugarte, ‘Freedom of expression and social protest’ in Juan F. Gonzalez-Bertomeu and Roberto Gargarella (ed), *The Latin American Casebook: Courts, Constitutions, and Rights* (Routledge 2016) 106.

³⁸ Roberto Gargarella and Ramiro Alvarez Ugarte, ‘Freedom of expression and social protest’ in Juan F. Gonzalez-Bertomeu and Roberto Gargarella (ed), *The Latin American Casebook: Courts, Constitutions, and Rights* (Routledge 2016) 106.

repression may result in silencing victims or witnesses of human rights violations or other actors who may denounce such violations even without (officially or deliberately) pursuing such a goal. This could happen, for instance, in cases where human rights defenders and other stakeholders practice self-censorship due to fear of repression. Referring to this aspect of the problem in the context of Cameroon, the UN Special Rapporteur on the Situation of Human Rights Defenders expressed concerns regarding journalists, who faced clear reprisals in relation to their work; and who increasingly practiced self-censorship in response to the ambiguity of the law and the pervasive climate of fear.³⁹

In both cases, repression can contribute to impunity for human rights violations, including VAW because the voices of those who could have contributed to the prosecution and punishment of alleged perpetrators, for instance, victims, witnesses or human rights defenders, are directly or indirectly silenced. This impunity can, in turn, contribute to gaps in the implementation of human obligations as has been documented in the DRC⁴⁰ and elsewhere.⁴¹

³⁹ United Nations Special Rapporteur on the Situation of Human Rights Defenders, *World report on the situation of human rights defenders* (December 2018) 16 <<https://www.business-humanrights.org/sites/default/files/documents/UNSR%20HRDs-%20World%20report%202018.pdf>> accessed 03 January 2020.

⁴⁰ See for instance: Human Rights Council, *Report of the independent expert on the situation of human rights in the DRC, Mr. Titinga Frédéric Pacéré*, document no: A/HRC/7/25 (29 February 2008) paragraph 41; Human Rights Council, *Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy. Addendum: Mission to the Democratic Republic of the Congo*, document no: A/HRC/8/4/Add.2 (11 April 2008) paragraph 63; Human Rights Council (25 February 2010) (n 22) paragraphs 53, 57, 67 – 68, 76 – 78; Human Rights Council (n 25) paragraphs 64, 92 – 93.

⁴¹ See for instance: Commission on Human Rights, *Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy. Addendum: Mission to Indonesia and East Timor on the issue of violence against women* (20 November – 4 December 1998), document no: E/CN.4/1999/68/Add.3 (21 January 1999) paragraph 46 – 48, 57, 73 – 74, 124; Commission on Human Rights, *Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk. Addendum: Mission to the Russian Federation*, document no: E/CN.4/2006/61/Add.2 (26 January 2006) paragraphs 76 – 77; Human Rights Council, *Report of*

For instance, following a visit to the DRC in 2007, the UN Special Rapporteur on the independence of judges and lawyers reported:

The victims of serious human rights violations are often in areas under the military control of the perpetrators of those very violations, who continue to enjoy impunity. (...) Nearly all of those who commit serious human rights violations are armed men: members of the armed forces of the DRC (FARDC), policemen, armed bands of Rwandan Hutus or Congolese armed groups such as the Mai-Mai which hold violent sway in many rural areas. After looting houses and raping women and girls, they often threaten to return. These threats and fear prevent victims from seeking redress before the competent courts, which are often far away. Even if a victim manages to bring a case before the court, the judiciary cannot guarantee their protection. Judges themselves have admitted to the Special Rapporteur that they are afraid to go to the eastern parts of the country, much less remote areas of the provinces. Judges report having been threatened and even violently assaulted on account of their investigations. Lastly, there is no witness protection programme. Witnesses often refuse to appear before the judicial authorities as they are subjected to the same threats, which makes investigation difficult. The situation of insecurity is a major obstacle to victims' access to justice and, in general, to combating impunity, as it affects the main participants in the judicial procedure: victims, witnesses and judges.⁴²

In a similar vein, following a visit to the DRC in 2009, the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary executions reported:

(...) Those working to assist rape victims have also been attacked and threatened and, in some instances, also raped.⁴³ Journalists and human rights defenders have been routinely

the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo. Addendum: Mission to Azerbaijan, document no: A/HRC/26/38/Add.3 (18 June 2014) paragraphs 33, 59, 80; Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo. Addendum: Mission to Honduras, document no: A/HRC/29/27/Add.1 (31 March 2015) paragraph 37, 38, 82; Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences on her mission to the Sudan, document no: A/HRC/32/42/Add.1 (18 April 2016) paragraphs 6 – 8, 18, 32, 81, and 95.

⁴² Human Rights Council (11 April 2008) (n 40) paragraph 63.

⁴³ Human Rights Council (n 25) paragraph 64.

harassed and intimidated because of their work on human rights violations and impunity. Those working in the eastern part of the DRC appear to be particularly vulnerable to attack, as are those supporting the work of the International Criminal Court (...).⁴⁴ The intimidation aims to silence individual activists, prevent investigations and instil widespread fear among civil society (...).⁴⁵

In summary, attacks such as the ones described in the paragraphs above can create a climate of fear among victims, witnesses and other actors who would have otherwise denounced human rights violations. Moreover, previous acts of repression can have a chilling effect on other potential victims, witnesses and human rights defenders who, in the future, may end up self-censoring owing to fear of retaliation. All this can contribute to impunity for human rights violations. This phenomenon has been documented by the SRVAW in several countries.⁴⁶

The current section discussed the potential link between, on the one hand, repression of victims, witnesses and other actors who denounce VAW (or intend to do so) and impunity for such violations. The next one analyses the possible link between “denial” of VAW by the DRC and the country’s unwillingness to implement its obligation to end VAW.

⁴⁴ Ibid, paragraph 92.

⁴⁵ Ibid, paragraph 93.

⁴⁶ See for instance: Commission on Human Rights, *Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, submitted in accordance with Commission on Human Rights resolution 2001/49. Addendum: Mission to Colombia* (1-7 November 2001), document no: E/CN.4/2002/83/Add.3 (11 March 2002) paragraphs 15 and 16; Commission on Human Rights (26 January 2006) (n 56) paragraph 80, Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo. Addendum: Mission to India*, document no: A/HRC/26/38/Add.1 (1 April 2014) paragraphs 36 and 63.

5. The possible link between “denial” of VAW and the gap in the implementation of the obligation to end VAW in the DRC

5.1. The multiple meanings and forms of “denial”

Risse and Sikkink explain that “Denial” means that the norm violating government refuses to accept the validity of international human rights norms themselves and that it opposes the suggestion that its national practices in this area are subject to international jurisdiction.⁴⁷ They add, “thus, denial goes further than simply objecting to particular accusations. The norm-violating government charges that the criticism constitutes an illegitimate intervention in the internal affairs of the country”.⁴⁸

The definition provided by Risse and Sikkink is unable to properly explain the link between denial and the gap in the implementation of the obligation to end VAW in the DRC. The sociologist and criminologist Stanley Cohen provides us with a more useful framework for understanding the meaning of denial from which one can better grasp the possible link between denial of VAW by the DRC and the poor implementation by the country of its obligations to “respect”, “protect” and/or “fulfil” women’s right to be free from violence.

In his seminal book entitled *States of Denial: Knowing about Atrocities and Suffering*, Cohen explains that there are three possibilities as regards “what” exactly is being “denied”. The first form is “literal denial” which can be summarized in the idea that “nothing happened or is happening”.⁴⁹ The second form is “interpretive denial” which can be summarized in the idea that “what happened or is happening is really something else”.⁵⁰ The last form is “implicatory denial” which translates the idea that “what happened or is happening is justified”.⁵¹ The next three subsections discuss the potential link between these three types of denial and the gap in the implementation of the obligation to end VAW in the DRC.

⁴⁷ Risse and Sikkink (n 1) 23.

⁴⁸ Ibid.

⁴⁹ Stanley Cohen, *States of Denial: Knowing about atrocities and suffering* (Polity 2001) 7; 104 – 105.

⁵⁰ Ibid, 7, 105 – 109.

⁵¹ Stanley Cohen, *States of Denial: Knowing about atrocities and suffering* (Polity 2001) 8.

5.2. The potential link between “literal denial” and the gap in the implementation by the DRC of the obligation to end VAW

5.2.1. The meaning of “literal denial”: “nothing happened or is happening”

Cohen explains that this is the type of denial that fits the dictionary definition: the assertion that something did not happen or is not true.⁵² He notes that in “literal”, “factual” or “blatant” denial, the fact or knowledge of the fact is denied.⁵³ He adds that these assertions refuse to acknowledge the facts – for whatever reason, in good or bad faith, and whether these claims are true (genuine ignorance), blatant untrue (deliberate lies) or unconscious defence mechanisms”.⁵⁴ Cohen adds that literal denial is usually implied by attacking the reliability, objectivity and credibility of the observer.⁵⁵

“Literal denial” is common in the DRC where an “approach” taken by the country has been to label its critics as being liars or having fabricated false stories to tarnish the country’s reputation.⁵⁶ As explained in the next Section, this can negatively affect the implementation of the obligation to eliminate VAW.

⁵² Ibid, 7.

⁵³ Ibid, 7.

⁵⁴ Ibid, 7.

⁵⁵ Ibid, 105.

⁵⁶ See: Commission on Human Rights, *Note verbale from the Ministry of Foreign Affairs of the DRC addressed to the United Nations Secretariat*, document no: E/CN.4/1998/142 (20 March 1998) 2, 3 and 9; United Nations, *Note verbale dated 10 March 1998 from the Permanent Mission of the DRC to the United Nations Office at Geneva addressed to the secretariat of the Commission on Human Rights*, document no: E/CN.4/1998/149 (2 April 1998) 2, 3 and 9; Commission des droits de l'homme (n 30) paragraph 29 ; RFI, *UN criticises DR Congo over mass rapes* (17 September 2010) <<http://www.english.rfi.fr/africa/20100917-un-criticises-dr-congo-over-mass-rapes>> 07 February 2014; Jeune Afrique, *Viols collectifs: le gouvernement proteste contre la représentante de l'ONU* (29 October 2010) <<http://www.jeuneafrique.com/Article/ARTJAJA2598p016.xml1/>> accessed 07 February 2014 ; Agoa Info, *Congo slams US AGOA decision* (24 December 2010) <<https://agoa.info/news/article/4681-congo-slams-us-agoa-decision.html>> accessed 07 February

5.2.2. “Literal denial” as a contributing factor to the poor implementation of obligation to end VAW

“Literal denial” can be accompanied with inaction on the part of duty-bearers and the State as a whole. This can in turn contribute to gaps in the implementation of human rights obligations, including the obligation to end VAW. In this respect, one can argue that “literal denial” might be a contributing factor to the impunity enjoyed by members of the Congolese army and other security forces who perpetrate VAW. The testimony below of a female victim of rape narrated by the NGO Human Rights Watch perfectly illustrates the potential link between “literal denial” of VAW and the inaction on the part of State authorities:

I was just coming back from the river to fetch water (...) Two soldiers came up to me and told me that if I refuse to sleep with them, they will kill me. They beat me and ripped my clothes. One of the soldiers raped me (...) My parents spoke to a commander and he said that his

2014; MONUSCO and OHCHR, *Report on the investigation missions of the United Nations joint human rights office into the mass rapes and other human rights violations committed in the villages of Bushani and Kalambahiro, in Masisi territory, North Kivu, on 31 December 2010 and 1 January 2011* (July 2011) paragraph 39 <http://www.ohchr.org/Documents/Countries/ZR/UNJHROReportMassRapesBushani_en.pdf> accessed 07 February 2014; The Independent, *UN report: Congo government troops blamed for mass rape* (22 July 2011) <<http://www.independent.co.uk/news/world/africa/un-report-congo-government-troops-blamed-for-mass-rape-2318808.html>> accessed 07 February 2014; Radio Okapi, *Masisi: « les FARDC n’auraient pas violé des femmes », selon Lambert Mende* (28 July 2011) <<http://www.radiookapi.net/actualite/2011/07/28/masisi-%25c2%25ab-les-fardc-n%25e2%2580%2599auraient-pas-viole-des-femmes-%25c2%25bb-selon-lambert-mende>> accessed 01 October 2016; Ludi Cardoso, *Lambert Mende : «Les viols allégués contre les FARDC ne sont ni avérés, ni corroborés »* (30 July 2011) < <https://www.lecongolais.cd/lambert-mende-%C2%ABles-viols-allegues-contre-les-fardc-ne-sont-ni-averes-ni-corrobores-%C2%BB/>> accessed 11 July 2016.

soldiers do not rape, and that I am lying. I recognized the two soldiers, and I know that one of them is called Edouard.⁵⁷

If repeated by duty-bearers, the types of inaction described in the testimony above can lead to gaps in the implementation of the obligation to end VAW in the DRC. Indeed, the potential link between literal denial and States' inaction has been documented in the DRC and elsewhere.⁵⁸ For instance, in its most recent Concluding Observations on the DRC, the CEDAW Committee stated it was "extremely concerned about (...) the shocking levels and the nature of the violence and sexual atrocities committed against women, the failure of the authorities to prioritize the protection of civilians and the denial by key State officials of the extent of the violence committed against women in conflict-affected areas".⁵⁹ Without

⁵⁷ 15-year-old girl, Minova, South Kivu, March 2009 cited in Human Rights Watch (July 2009) (n 20) 4.

⁵⁸ See for instance: Commission on Human Rights (21 January 1999) (n 41) paragraph 49; Commission on Human Rights, *Violence against women in the family: Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, submitted in accordance with Commission on Human Rights resolution 1995/85*, document no: E/CN.4/1999/68 (10 March 1999) paragraph 52; CEDAW Committee, *Concluding observations on the fifth periodic report of Jordan*, document no: CEDAW/C/JOR/CO/5 (9 March 2012) paragraphs 45 and paragraph 46; UN Women, OHCHR and UNDP Moldova, *Study on the situation of Romani women and girls in the republic of Moldova* (2014) 62 <http://md.one.un.org/content/dam/unct/moldova/docs/pub/Study_on_the_Situation_of_Romani_women_and_girls_in_the_Republic_of_Moldova.eng.pdf> accessed 25 October 2018; Human Rights Council (18 April 2016) (n 41) paragraphs 17, 81, 92 – 95; CEDAW Committee, *Concluding observations on the sixth periodic report of Jordan*, document no: CEDAW/C/JOR/CO/6 (9 March 2017) paragraphs 53 and 54; Committee on the Rights of Persons with Disabilities (CRPD), *Concluding observations on the initial report of Jordan*, document no: CRPD/C/JOR/CO/1 (15 May 2017) paragraphs 35 and 36; Human Rights Council, Report of the Special Rapporteur on the situation of human rights in Myanmar, document no: A/HRC/34/67(1 March 2017) paragraph 56; Human Rights Council, *Report of the Special Rapporteur on the situation of human rights in Eritrea, Sheila B. Keetharuth*, document no: A/HRC/35/39 (7 June 2017) paragraphs 76 and 77.

⁵⁹ CEDAW Committee, *Concluding observations on the combined sixth and seventh periodic reports of the DRC*, document no: CEDAW/C/COD/CO/6-7 (30 July 2013) paragraph 9 (b).

specifically mentioning it, the CEDAW Committee seemed to see a link between “the denial by key State officials of the extent of the violence committed against women in conflict-affected areas” and “the shocking levels and the nature of the violence and sexual atrocities committed against women, the failure of the authorities to prioritize the protection of civilians”.

In a similar vein, the SRVAW reported the following after a visit to Indonesia and East Timor in 1998:

(...) there is a certain denial culture that prevents effective enforcement of the law. With regard to the May (1998) events, for example, officials of the criminal justice system argued that cases were not reported and therefore rape must not have taken place. The Special Rapporteur met with victims of the riots and she is convinced that rape did take place. Lack of reporting stems from the distrust of the criminal justice system which has prevented women from coming forward (...).⁶⁰

In all the examples above, there seem to be some concomitance between denial of human rights problems and the lack of willingness to respond to them. To be sure, acknowledging the existence of human rights problems does not guarantee that the State will address them. However, blatant denial of human rights concerns can worsen the problem. Blatant denial of human rights problems is one of the best ways to ensure that those problems are not addressed. Acknowledging the existence of human rights problems is a key step towards attempting to find an appropriate solution to address them. As articulated in the next Section, like “literal denial”, the second category identified by Cohen namely “interpretive denial” can contribute to the poor implementation of the obligation to end VAW in the DRC.

⁶⁰ Commission on Human Rights (21 January 1999) (n 41) paragraph 49.

5.3. The potential link between “interpretive denial” and the gap in the implementation of the obligation to end VAW in the DRC

5.3.1. The meaning of “interpretive denial”: “what happened or is happening is really something else”

When it comes to “interpretive denial”, Cohen explains:

At times, the raw facts (something happened) are not being denied”.⁶¹ Rather, they are given a different meaning from what seems apparent to others.⁶² Officials do not claim that “nothing happened”, but what happened is not what you think it is, not what it looks like, not what you call it.⁶³ The harm is cognitively reframed and then reallocated to a different, less pejorative class of event.⁶⁴ Harm may be acknowledged, but its legal or common-sense meanings are denied, contested or minimised (...)⁶⁵

In summary, as stressed by Welch, under “interpretive denial”, the facts are not denied but are given a different spin, thus altering the meaning.⁶⁶ Cohen lists multiple strategies that can be used for the purpose of “interpretive denial”.⁶⁷ To understand the potential link between “interpretive denial” and the gap in the implementation of the obligation to end VAW in the DRC, one can simply analyse the negative effects of one of those strategies, namely “interpretive denial by isolation”.⁶⁸

⁶¹ Cohen (n 49) 7.

⁶² Ibid.

⁶³ Ibid.

⁶⁴ Ibid, 106.

⁶⁵ Ibid.

⁶⁶ Michael Welch, ‘Moral panic, denial, and human rights: scanning the spectrum from overreaction to underreaction’ in David Downes and others (eds), *Crime, Social Control and Human Rights: From Moral Panics to States of Denial, Essays in Honour of Stanley Cohen* (Routledge 2011) 97.

⁶⁷ Cohen (n 49) 107 – 109.

⁶⁸ Ibid, 109.

5.3.2. “Interpretive denial” as a contributing factor to the poor implementation of the obligation to end VAW

In his explanation of what is meant by “interpretive denial by isolation”, Cohen notes that here, the government concedes what happened and accepts responsibility, but denies the systematic, routine or repeated quality attributed to the act.⁶⁹ Cohen adds that the government claims that what happen was an ‘isolated incident’ and tells its critics “you cannot even put us in the same category as governments which systematically do this”.⁷⁰ Echoing Cohen’s explanation, in some instances, Congolese officials have challenged rape statistics by arguing that they were exaggerated and/or misleading.⁷¹ For instance, in July 2013, during a CEDAW Committee meeting, a DRC delegate “expressed concern about the veracity of some statistics regarding sexual violence, in particular the figure of more than 1 million cases of sexual violence reported in 2009”.⁷² She stated that that there was a tendency for certain international organisations to inflate statistics, for their own purposes, thereby thwarting the authorities’ efforts to tackle the real issues.⁷³ In response to the criticism, a CEDAW Committee member who immediately spoke

⁶⁹ Ibid, 109.

⁷⁰ Ibid.

⁷¹ See for instance: Patrice Citera, *Congo Government: Mass Rapes Can't Be Stopped Without More International Aid* (26 August 2010) <http://www.huffingtonpost.com/2010/08/26/congo-mass-rapes-international-aid_n_696329.html> (accessed 07 February 2014); J. Man Mas, *Terreur au Kivu/Plus de 200 femmes violées: Lambert Mende: la RD Congo n'est pas la capitale mondiale du viol* (26 August 2010) <<http://leclimat.cd/News/Details/Politique/terreur-au-kivuplus-200-femmes-violees-lambert-mende-rd-congo-nest-pas-capitale-mondiale-du-viol>> accessed 07 February 2014; BBC, *DR Congo: 48 rapes every hour, US study finds* (12 May 2011) <<http://www.bbc.co.uk/news/world-africa-13367277>> accessed 07 February 2014.

⁷² CEDAW Committee, *Summary record of the 1134th meeting Held at the Palais des Nations, Geneva, on Thursday, 11 July 2013, at 10 a.m.*, document no: CEDAW/C/SR.1134 (31 July 2013) paragraph 37.

⁷³ Ibid.

after the DRC delegate,⁷⁴ pointed out that the figures disputed by the latter came from the country's own periodic report to the CEDAW Committee.⁷⁵

“Interpretive denial by isolation” can contribute to the gap between the DRC’s formal commitment to end VAW and the country’s actual practices for several reasons. This because arguing that a human rights problem is an isolated one when in reality that problem is widespread can obviously lead to States’ failure to take appropriate measures to address the problem. In the best case, a State that downplays the seriousness of human rights problems may end up taking measures that are not commensurate with the magnitude of the problem considered as isolated. In the worst case, the DRC may end up not taking any measure at all given that the human rights problem regarded as “isolated” is not considered as a priority requiring urgent action. The link between “interpretive denial by isolation” and States’ failure to take appropriate measures to address human rights problems is illustrated in the findings made by some UN Human Rights bodies.⁷⁶

For instance, following a visit to Indonesia and East Timor in 1998, the SRVAW mentioned that her discussions at the office of the Attorney General revealed the prevalence of a “denial culture” exemplified by a refusal to acknowledge the magnitude of the events that had taken place.⁷⁷ She added:

⁷⁴ CEDAW Committee (n 72) paragraph 39.

⁷⁵ The DRC periodic report to the CEDAW from which the figures denied by the Congolese delegate are drawn reads, “(...) Although research on such gender-based violence began very recently in the country, the statistics so far available are alarming. In the more than one million cases of sexual violence recorded in 2009, including as a consequence of armed conflicts, approximately 99.2 per cent of the victims are female and 0.8 per cent male”. See: CEDAW Committee, *Combined sixth and seventh periodic report of States parties: DRC*, document no: CEDAW/C/COD/6-7 (21 December 2011) 21 – 22.

⁷⁶ See for instance: Commission on Human Rights (21 January 1999) (n 41) paragraphs 45 and 51; Human Rights Council, *Report of the Special Rapporteur on extreme poverty and human rights on his mission to Romania*, document no: A/HRC/32/31/Add.2 (8 April 2016) paragraphs 5, 13, 24 – 25, 25 – 28.

⁷⁷ Commission on Human Rights (21 January 1999) (n 41) paragraph 51.

Again, reference was made to the fact that cases had not been reported. The prosecutors were not aware of any of the numerous cases of rape in Aceh, Irian Jaya and East Timor. Given the enormous challenge to law and order during the previous six months, there had been no prosecutorial initiative or any special attempt to bring perpetrators to trial. The Special Rapporteur was concerned at the reticent approach to the rule of law. A more dynamic approach by the Attorney General's department is necessary, given the nature of the crisis facing Indonesian society.⁷⁸

Building on the findings above, it is possible to see, for instance, a potential link between “interpretive denial by isolation” and the DRC’s poor response to trafficking in women. Indeed, in several reports to UN Human Bodies, the country has claimed that “trafficking in women is not a widespread phenomenon in the DRC”.⁷⁹ The DRC’s claims are contradicted by existing information and data.⁸⁰ One can therefore argue that it is not surprising that several entities, including the CEDAW Committee have pointed out the fact that the DRC has so far failed to take adequate measures to address trafficking in women.⁸¹

In summary, the common denominator between all these cases mentioned in the previous paragraphs is the coexistence between, on the one hand, denial of the magnitude of human rights problems, and, on the other hand, States’ inaction or

⁷⁸ Commission on Human Rights (21 January 1999) (n 41) paragraph 51.

⁷⁹ CEDAW Committee, *Combined fourth and fifth periodic reports of States parties: Democratic Republic of the Congo*, document no: CEDAW/C/COD/4-5 (30 November 2004) 29; CEDAW Committee (n 75) 11.

⁸⁰ See for instance: Free The Slaves, *The Congo Report: Slavery in ‘Conflict Minerals’* (June 2011) 17 - 19 <<https://www.freetheslaves.net/wp-content/uploads/2015/03/The-Congo-Report-English.pdf>> accessed 04 January 2017; Free the Slaves, *Congo’s Mining Slaves: Enslavement at South Kivu Mining Sites. Investigative Field Report* (June 2013) 18 <<https://www.freetheslaves.net/wp-content/uploads/2015/03/Congos-Mining-Slaves-web-130622.pdf>> accessed 03 February 2017; Jocelyn Kelly and others, *Assessment of human trafficking in artisanal mining towns in Eastern DRC* (2014) 17 - 20 <http://pdf.usaid.gov/pdf_docs/PA00K5R1.pdf> accessed 03 February 2017; United States Department of State, *2018 Trafficking in Persons Report* (2018) 145 – 148 <<https://www.state.gov/documents/organisation/282798.pdf>> accessed 21 February 2019.

⁸¹ See for instance: Free The Slaves (June 2011) (n 80) 25 - 27; CEDAW Committee (n 59) paragraphs 23 and 24; United States Department of State (n 80) 145 - 147.

failure to address those problems. In summary, these cases constitute textbook illustrations of how “interpretive denial” (by isolation) of a problem by a State can contribute to the latter’s failure to properly address the problem. Recognizing the magnitude or the extent of human rights problems is a key step in the journey toward taking appropriate measures to end those problems. The next Section analyses the negative effects of the third and last form of denial identified by Cohen.

5.4. The potential link between “implicatory denial” and the gap in the implementation of the obligation to end VAW in the DRC

5.4.1. The meaning of “implicatory denial”: “what happened or is happening is justified”

Cohen explains that at yet other times, there is no attempt to deny either the facts or their conventional interpretation.⁸² He notes that what are denied or minimised are the psychological, political or moral implications that conventionally follow.⁸³ He adds that such denials are often called “rationalisations” and explains that rationalisation is not a refusal to acknowledge reality, but a denial of its significance or implications.⁸⁴ In summary, as explained by Welch, by diminishing the significance of the harm of human rights violations and other atrocities, officials evade their responsibility to intervene.⁸⁵ Consequently, “implicatory denial” can also lead to inaction by duty-bearers.

“Implicatory denial” can contribute to the gap between the DRC’s formal commitment to end VAW and the country’s actual practices for several reasons. Indeed, arguing that what happened or is happening is justified, and *ipso facto*, contending that what happened or is happening is not a human rights concern, can lead to States’ failure to take appropriate measures to address the problem. In the best case, “implicatory denial” can contribute to delaying States’ response to human

⁸² Cohen (n 49) 8.

⁸³ Ibid.

⁸⁴ Ibid.

⁸⁵ Welch (n 66) 98.

rights violations as long as these acts are considered as justified. In the worst case, “implicatory denial” can contribute to the absence of response to human rights violations because these acts are considered justified. In both cases, “implicatory denial” can contribute to impunity for human rights violations and ultimately to the gap between the DRC’s formal commitment to end VAW and the country’s actual performance. The above-mentioned link can be better understood by analysing one of the strategies that States resort to when it comes to “implicatory denial”,⁸⁶ namely the “denial of the victim”.⁸⁷

5.4.2. “Implicatory denial” as a contributing factor to the poor implementation of obligation to end VAW

When it comes to “denial of the victim”, Cohen explains that in this case, the primeval sentiments of “they started it”, or “they got what they deserved” displace blame onto those who are harmed and provide official justifications as well as personal exoneration.⁸⁸ The link between “implicatory denial” through “denial of the victim” and States’ inaction has been documented elsewhere, including by the SRVAW.⁸⁹ For instance, following a visit to Somalia, the SRVAW explained:

⁸⁶ For a description of those strategies, please see: Cohen (n 49) 110 – 112.

⁸⁷ Ibid, 110 – 111.

⁸⁸ Ibid, 110.

⁸⁹ Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences, on her mission to Somalia (9-16 December 2011)*, document no: A/HRC/20/16/Add.3 (14 May 2012) paragraph 18; Commission on Human Rights (26 January 2006) (n 41) paragraphs 27 – 28; Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk. Addendum: Mission to Tajikistan*, document no: A/HRC/11/6/Add.2 (29 April 2009) paragraphs 23 and 68; Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk. Addendum. Mission to the Republic of Moldova*, document no: A/HRC/11/6/Add.4 (8 May 2009) paragraph 21; Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo. Addendum: Mission to Algeria*, document no: A/HRC/17/26/Add.3 (19 May 2011) paragraphs 63, 66; Human Rights Council, *Report of the*

(...) The Police Commissioner of Garowe expressed the view that it was an acceptable practice for a man to beat his wife and children if they did not obey him or behave appropriately. According to this interlocutor, if a man used only his hand to beat his family, this was not a matter of concern to the police, as it occurred inside the privacy of the home. The attitude of denial of domestic violence, coupled with the absence of reporting, accountability and protection mechanisms further exacerbates this pervasive form of violence against women.⁹⁰

Drawing from the above findings, it is possible to see a potential link between “implicatory denial” and, for instance, the DRC’s poor response to domestic violence. Indeed, in the DRC, existing data suggests that authorities’ inaction on domestic violence can be partly explained by the fact that like a sizeable segment of the Congolese population, some of these authorities may consider domestic violence as justified in some instances. As mentioned earlier, the most recent Demographic and Health Survey (DHS) conducted in the DRC found that 59.5 percent of men and 75 percent of women believed that there were reasons for which a husband was justified in beating his wife.⁹¹ Some of the people holding these beliefs are probably law enforcement officers, police officers, prosecutors, or judges. It is therefore not a surprise that it has been reported that the Police appear to be reluctant when it comes to intervening in cases of domestic violence.⁹² In this respect, a Congolese

Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo. Addendum: Mission to Afghanistan, document no: A/HRC/29/27/Add.3 (12 May 2015) paragraph 13.

⁹⁰ Human Rights Council (n 89) paragraph 18.

⁹¹ Ministère du Plan et Suivi de la Mise en œuvre de la Révolution de la Modernité (MPSMRM), Ministère de la Santé Publique (MSP) and ICF International, *Enquête Démographique et de Santé en République Démocratique du Congo 2013-2014* (MPSMRM, MSP and ICF International 2014) 300 and 301.

⁹² United States Department of State, *Country Reports on Human Rights Practices for 2016: DRC* (2017) 30 < <https://www.state.gov/documents/organisation/265454.pdf> > accessed 13 May 2017.

women's right activist argues that the claim that women victims of domestic violence do not report them is false.⁹³ She then explains:

(...) The environment in which women live does not allow them to escape from this form of violence. In their family, they are advised to tolerate violence in order not to be repudiated and in their church they are advised to pray for their husbands so that God can transform them because divorce goes against religious teachings (...) Even at the level of the police and courts, everything is done to ensure that women accept these acts of violence provided that they keep their families together.⁹⁴

In summary, while some law enforcement officers, prosecutors, or judges can separate their discriminatory beliefs (according to which domestic violence is sometimes justified) with their work, others cannot. These beliefs are likely to impact how these state officials discharge their duties, how they interview victims of VAW, the extent to which they feel empathy or compassion for victims of VAW (or express hostility towards them), or how they investigate cases or try them. Police officers, judges, or prosecutors who believe that there are reasons for which a husband is justified in beating his wife may end up not considering domestic violence (or other types of VAW occurring in the family) as a human rights issue. For these actors, a woman who is beaten by her husband because she argues with him, “neglects” her children, goes out without telling her husband; refuses to have sex with her husband, or burns food⁹⁵ may not qualify as a “victim”. Therefore, failing to prevent and/or respond to violence experienced by women for the reasons mentioned above might be justifiable or excusable. Duty-bearers holding these beliefs can contribute to the weak enforcement of Congolese anti-VAW laws by the Justice system, to the

⁹³ John Basala, *Violence conjugale à l'égard des femmes : une violence passée sous silence à Kinshasa* (12 June 2014) <<http://speakjhr.com/2014/06/violence-conjugale-legard-des-femmes-une-violence-passee-sous-silence-kinshasa/>> accessed 07 October 2017.

⁹⁴ Ibid.

⁹⁵ As mentioned earlier, the DHS conducted in the DRC in 2014 found that 59.5 percent of men and 75 percent of women believed that these were reasons for which a husband was justified in beating his wife. See: MPSMRM, MSP and ICF International (n 91) 299 – 301.

perpetuation of the impunity enjoyed by perpetrators of VAW and ultimately to the poor implementation by the DRC of its obligation to “protect” women’s right to be free from violence.

The paragraphs above have explained how the multiple forms of denial of human rights violations, including VAW, can contribute to the gap between States’ formal commitments and their actual performance because it can lead to (partial or complete) inaction on the part of duty-bearers and the State as a whole. Before concluding this section on denial, it is also important to acknowledge that States can be wrongly accused of human rights violations. As stressed by Cohen, government’s denials can sometimes be justified because allegations may be exaggerated, reports unbalanced, details inaccurate, or because violations may happen without official knowledge.⁹⁶

The publication of exaggerated, unbalanced, and/or inaccurate reports of human rights violations can have far reaching consequences. It can de-legitimise those who publish those reports. In this respect, following a visit conducted to the DRC in 2009, the UN Special Rapporteur on the situation of human rights defenders “(...) acknowledge(d) the lack of professionalism of a number of human rights organisations and of some journalists, which impacts negatively on the work of credible organisations and media, and more broadly weakens civil society as a whole”.⁹⁷

Releasing exaggerated, unbalanced, and/or inaccurate reports of human rights violations can also give credence to States’ denials of human rights violations and can also legitimise State repression against those who publish such reports. Speaking about this risk, the UN Special Rapporteur on the situation of Human Rights Defenders has stressed, “in an attempt to delegitimize their work and activities, defenders are often branded enemies of the State or terrorists. This stigmatization makes defenders even more vulnerable to attacks, especially by non-

⁹⁶ Cohen (n 49) 102.

⁹⁷ Human Rights Council (25 February 2010) (n 22) paragraph 52.

State actors".⁹⁸ The Special Rapporteur's warning is particularly relevant today, at a time when accusations of spreading "fake news" may lead to prosecution in some countries or to attacks questioning the credibility or the legitimacy of human rights defenders in others. Many have expressed concerns about how the so-called "fake news laws" that States are more and more adopting can infringe freedom of expression.⁹⁹

Ultimately, by giving credence to States' denials, the publication of exaggerated, unbalanced, inaccurate reports can delay progress towards the positive human rights change marking the final stages of the Spiral Model (prescriptive status¹⁰⁰ and rule consistent behaviour).¹⁰¹ Indeed, if human rights violators succeed in de-legitimising their critics domestically, this can reduce the "pressure from below". As stressed by Risse and Sikkink, when the Human Rights-violating State charges that the criticism of its national practices constitutes an illegitimate intervention in the internal affairs of the country, the government may even succeed in mobilizing some nationalist sentiment against foreign intervention and criticism.¹⁰² It is therefore important to ensure that pressure to elicit human rights change is built on accurate information.

⁹⁸ Human Rights Council, *Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya*, document no: A/HRC/25/55 (23 December 2013) paragraph 86. See also: Amnesty International, *Human rights defenders under threat– a shrinking space for civil society* (2017) 14 - 15 <<https://www.amnesty.at/media/2457/human-rights-defenders-under-threat.pdf> > accessed 05 November 2018.

⁹⁹ See for instance: The United Nations Special Rapporteur on Freedom of Opinion and Expression and others, *Joint declaration on freedom of expression and "fake news", disinformation and propaganda* (3 March 2017) <<https://www.ohchr.org/Documents/Issues/Expression/JointDeclaration3March2017.doc>> accessed 05 November 2018; Human Rights Council, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, document no: A/HRC/38/35 (6 April 2018) paragraphs 13, 15, 23, 31.

¹⁰⁰ Risse and Sikkink (n 1) 29 - 31

¹⁰¹ *Ibid*, 31 - 33

¹⁰² *Ibid*, 23.

6. Conclusion

It was explained earlier in this thesis that according to several UN Human Rights bodies (and also several other sources), the gaps in the implementation of UN standards prohibiting VAW at the national level in the DRC can be partly attributed to the combined effects of the country's unwillingness and limitations of capacity to implement and/or comply with relevant UN human rights standards. The purpose of the present Chapter was to further explain how unwillingness to implement and/or comply with can contribute to this gap. To this end this Chapter built on the Spiral Model and explained the potential links between, on the one hand, two indicators of unwillingness identified by the Model, namely repression of actors who denounce human rights violations and denial of human rights violations and, on the other hand, the gap between the DRC's formal commitment to end VAW and the country's actual practices. More specifically, when it comes to the adverse effects of "repression" of actors who denounce VAW, overall, Chapter Three showed that by silencing victims, witnesses of VAW and/or other actors who denounce VAW (or have the intention to do so), repression can contribute to impunity for VAW and ultimately contribute to the gap between the DRC's formal commitment to end VAW and their actual performance. As regards denial, Chapter Three examined three forms namely "literal denial" ("nothing happened or is happening");¹⁰³ "interpretive denial" ("what happened or is happening is really something else");¹⁰⁴ and "implicatory denial" ("what happened or is happening is justified").¹⁰⁵ Chapter Three showed how these three forms of denial could lead to inaction on the part of duty-bearers and the State as a whole. This inaction could ultimately contribute to the gap between the DRC's formal commitment to eliminate VAW and the country's actual practices. However, given that according to existing data, unwillingness cannot fully account for the gap, the next Chapter draws on the Managerial Model to show how limitations of capacity can also contribute to the gap described above.

¹⁰³ Cohen (n 49) 7; 104 – 105.

¹⁰⁴ Ibid, 7; 105 – 109.

¹⁰⁵ Ibid, 8.

CHAPTER FOUR

“INVOLUNTARY NON-COMPLIANCE” WITH UN HUMAN RIGHTS STANDARDS AS POSSIBLE OBSTACLE TO ENDING VAW IN THE DRC

1. Introduction

Mirroring the previous chapter, the aim of chapter four is also to better understand, from both a theoretical and a practical perspectives how limitations of capacity to implement human rights obligations can contribute to the gap between the DRC's formal commitment to eliminate VAW and the country's actual behaviour. It was explained in the introductory Chapter that some authors do not seem to fully appreciate the distinct and debilitating effects of limitations of capacity as a source of noncompliance. They include the proponents of the Spiral Model (at least in its original version) who based their model on the assumption that states are primarily unwilling, rather than unable to implement and/or comply with their human rights obligations.¹ In order to better understand the distinct and debilitating effects of limitations of capacity, this Chapter builds on the Managerial Model's explanation of noncompliance as a starting point for a more in-depth analysis of the problem.

2. The Managerial Model's argument

The Managerial Model is founded on the assumption that in general states show a propensity to implement and/or comply with their international obligations.² Therefore, according to this model, States often unwillingly fail to implement and/or

¹ Thomas Risse and Kathryn Sikkink, 'The socialization of international human rights norms into domestic practices: introduction' in Thomas Risse, Stephen C. Ropp and Kathryn Sikkink, *The Power of Human Rights: International Norms and Domestic Change* (Cambridge University Press, 1999) 22 – 24; Thomas Risse and Stephen C. Ropp, 'Introduction and Overview' in Thomas Risse, Stephen C. Ropp, Kathryn Sikkink (eds), *The Persistent Power of Human Rights: From Commitment to Compliance* (Cambridge University Press 2013) 15, 17.

² Abram Chayes and Antonia Handler Chayes, *The New Sovereignty: Compliance with International Regulatory Agreements* (Harvard University Press 1995) 3 – 8.

comply with international law for three main reasons, one of which is limitations of capacity to implement and/or comply with international law.³

It is worth stressing that the Chayeses leave the concept of “limitations of capacity”⁴ undertheorized. The next Sections fill that gap by clarifying the meaning and the effects of “limitations of capacity”.

3. The meaning and debilitating effects of “limitations of capacity” to implement and/or comply with the obligation to eliminate VAW

Chapter one mentioned that “capacity” is defined as “the ability of individuals, institutions, and societies to perform functions, solve problems, and set and achieve objectives in a sustainable manner”.⁵ Limitations of capacity therefore refer to deficits or weaknesses found at the individual, organisational and societal (enabling environment) levels. It is important to keep these three levels in mind when thinking about limitations of capacity because as stressed earlier these three levels are mutually interdependent and interactive.⁶ This symbiotic relationship that exists between the three levels of capacity implies that limitations of capacity at one level will have an impact on the other two ones. In their explanation of how limitations of capacity can contribute to noncompliance with International Law, the proponents of the Managerial Model do not take a three-level approach. Instead, they explain that the ultimate impact of contemporary regulatory treaties on private behaviour depends on a complex series of further steps.⁷ They add that this will normally

³ Chayes and Chayes (n 2) 13 – 15.

⁴ Ibid.

⁵ United Nations Development Programme (UNDP), *Measuring capacity* (June 2010) 32 <http://content-ext.undp.org/aplaws_publications/2679640/UNDP_Measuring_Capacity_July_2010.pdf> accessed 19 November 2017.

⁶ United Nations Development Programme (UNDP), *Capacity Development Practice Note* (2008) 6 < http://www.unpcdc.org/media/8651/pn_capacity_development.pdf > accessed 29 January 2017; UNDP (n 5) 11.

⁷ Chayes and Chayes (n 2) 14.

require detailed administrative regulations and vigorous enforcement efforts.⁸ They then explain that, in essence, the state will have to establish and enforce a full-blown domestic regime.⁹ The Chayeses stress that quite apart from political will, the construction of such a regulatory apparatus is not a simple or mechanical task and that it entails choices and requires scientific and technical judgment, bureaucratic capacity, and fiscal resources.¹⁰ The Chayeses acknowledge that not the least of these limited resources are places on crowded government agendas and priority lists and that even developed Western states have not been able to construct such systems with the confidence that they will achieve the desired objective.¹¹ They then conclude by conceding that in developing countries, the characteristic situation is a severe dearth of the requisite scientific, technical, bureaucratic, and financial wherewithal to build effective domestic enforcement systems.¹² In short, the Chayeses explain that for International Law to have an impact on the domestic plane, States need to take additional measures whose implementation requires financial, material, human resources that many States, especially those in developing countries (such as the DRC) do not always have in sufficient supply.

Although limitation of capacity transcends the lack of resources such as the ones identified by the Chayeses and particularly financial ones, it is important to acknowledge that this can have a debilitating effect on States' ability to implement their international human rights obligations because of at least, two related factors. First, as acknowledged by several scholars, all human rights have a cost.¹³ Related

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

¹³ See for instance: Stephen Holmes and Cass R. Sunstein, *The Cost of Rights: Why Liberty Depends on Taxes* (W. W. Norton & Company 1999) 43 – 47; M. Magdalena Sepúlveda, *The Nature of the Obligations Under the International Covenant on Economic, Social and Cultural Rights* (Intersentia 2003) 126 – 128; Denis Galligan and Deborah Sandler, 'Implementing Human Rights', in Simon Halliday and Patrick Delbert Schmidt (eds), *Human Rights brought home: Socio-legal perspectives*

to that, States' limited capacity to afford the cost connected to a particular human rights can affect their ability to respect, protect or fulfil that right. Echoing the points made above, Holmes and Sunstein explain:

Rights are costly because remedies are costly. Enforcement is expensive, especially uniform and fair enforcement; and legal rights are hollow to the extent that they remain unenforced.¹⁴ (...) All rights are costly because all rights presuppose taxpayer funding of effective supervisory machinery for monitoring enforcement.¹⁵ (...) To the extent that rights enforcement depends upon judicial vigilance, rights cost, at a minimum, whatever it costs to recruit, train, supply, pay, and (in turn) monitor the judicial custodians of our basic rights.¹⁶ (...) This machinery is expensive to operate, and the taxpayer must defray the costs.¹⁷

It is worth noting that despite what is explained above, some authors appear to reject the idea that the implementation of all human rights obligations have costs and distinguish between civil and political rights (which they describe as negative, cost-free or inexpensive rights) and economic and social rights that they describe as positive, costly or expensive rights.¹⁸ However, other authors have convincingly

on Human Rights in the national context (Hart Publishing 2004) 34 – 35; Ida Elisabeth Koch, 'From invisibility to indivisibility: The International convention on the rights of persons with disabilities' in Oddný Mjöll Arnardóttir and Gerard Quinn (eds), *The UN Convention on the Rights of Persons With Disabilities: European and Scandinavian Perspectives* (Martinus Nijhoff Publishers 2009) 70 – 72; Aoife Nolan, *Children's socio-economic rights, democracy and the courts* (Hart Publishing 2011) 27 – 29; Sarah Joseph and Melissa Castan, *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary* (Third Edition, Oxford University Press, 2013) 39 and 40; Gilles Giacca, *Economic, social, and cultural rights in armed conflict* (Oxford University Press 2014) 36.

¹⁴ Holmes and Sunstein (n 13) 43

¹⁵ Ibid, 44

¹⁶ Ibid, 45

¹⁷ Ibid, 46

¹⁸ See for instance: Carmen Tiburcio, *The Human Rights of Aliens Under International and Comparative Law* (Martinus Nijhoff Publishers 2001) 146 and Asit K Biswas, 'Water as a Human Right in the MENA Region: Challenges and Opportunities' in Asit K Biswas, Eglal Rached and Cecilia Tortajada (eds), *Water as a Human Right for the Middle East and North Africa* (Routledge 2008) 11.

challenged the conclusions drawn from this distinction.¹⁹ Even the CEDAW Committee has recommended, in several of its Concluding Observations to the DRC, that the country seek assistance from the international community and/or from relevant United Nations agencies in order to implement its obligations deriving from the CEDAW convention.²⁰ Several UN human rights instruments and documents also highlight the importance of assisting States to implement their obligations.²¹

An analysis of recommendations addressed by the CEDAW Committee to the DRC also supports the points made above and shows that resources are necessary to implement human rights.²² For instance, in its Concluding Observations addressed to the DRC in 2013, the CEDAW Committee “urge(d) the State party (...) to provide compensation, as well as assistance and rehabilitation, to victims of violence through the setting up of a comprehensive care system for victims of gender-based violence that includes measures to provide such victims with free legal aid, medical and psychological support and access to shelters, counselling and rehabilitation services throughout the territory of the State party”.²³

¹⁹ See for instance: Nolan (n 13) 28; Holmes and Sunstein (n 13) 114; Koch (n 13) 70; Galligan and Sandler (n 13) 34 – 35; James W. Nickel, ‘A defense of welfare rights as human rights’, in Thomas Christiano and John Christman (eds), *Contemporary debates in political philosophy* (John Wiley-Blackwell 2009) 448; Joseph and Castan (n 13) 40; Giacca (n 13) 36; Sepúlveda (n 13) 127 – 128.

²⁰ See for instance: CEDAW Committee, *Concluding observations on the combined sixth and seventh periodic reports of the DRC*, document no: CEDAW/C/COD/CO/6-7 (30 July 2013) paragraphs 40 and 47.

²¹ See for instance: World Conference on Human Rights, *Vienna Declaration and Programme of Action* (25 June 1993) paragraphs 34, 67 and 69; United Nations, *Declaration on the Elimination of VAW*, Resolution A/RES/48/104 (20 December 1993) article 5(a); Fourth World Conference on Women, *Beijing Declaration and Platform for Action. Annex I: The Declaration* (15 September 1995) paragraph 36 and *Annex II: Platform for Action* (15 September 1995) paragraphs 5, 353, 354 – 361; Human Rights Council, *Technical assistance and capacity-building options for integrating human rights into national policies: Report of the Office of the United Nations High Commissioner for Human Rights*, document no: A/HRC/27/41 (24 July 2014) paragraphs 8 – 10, 14.

²² CEDAW Committee (n 20) paragraphs 11 and 12.

²³ *Ibid*, paragraph 22 (c).

Setting-up the comprehensive care system envisioned by the CEDAW Committee is not an inexpensive undertaking particularly if the DRC strives to meet what the UN describes as “minimum standards of availability of support services for complainants/survivors of VAW”.²⁴

Indeed, the UN recommends for instance, the establishment of at least one shelter/refuge place for every 10,000 inhabitants, providing safe emergency accommodation, qualified counselling and assistance in finding long-term accommodation.²⁵ This means that with its population estimated at 81,340,000 in 2017,²⁶ the DRC would need a minimum of 8,134 shelters to implement the above-mentioned CEDAW Committee’s recommendation.

The UN encourages the establishment of at least one women’s advocacy and counselling centre for every 50,000 women, which provides proactive support and crisis intervention for complainants/survivors, including legal advice and support, as well as long-term support for complainants/survivors, and specialized services for particular groups of women where appropriate.²⁷ This means that when using 50 percent as the proportion of women in the country, the DRC would need a minimum of 813.4 women’s advocacy and counselling centres to respond to the needs of the 40,670,000 women and girls of the DRC.

²⁴ Department of Economic and Social Affairs/Division for the Advancement of Women (DESA/DAW), *Handbook for Legislation on Violence against Women* (2010) 31 <<http://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf>> 31 accessed 01 December 2017.

²⁵ DESA/DAW (n 24) 31.

²⁶ United Nations Department of Economic and Social Affairs (UN DESA), *World Statistics Pocketbook 2017 edition* (Series V, No. 41, 2017) 91 <<https://unstats.un.org/unsd/publications/pocketbook/files/world-stats-pocketbook-2017.pdf>> accessed 29 December 2017.

²⁷ DESA/DAW (n 24) 31.

The UN advises the establishment of at least one rape crisis centre for every 200,000 women.²⁸ This means that the DRC would need 203.35 rape crisis centres to respond to the needs of the 40,670,000 women and girls of the DRC.

An analysis of recommendations addressed by the SRVAW to the DRC also shows that resources are necessary to implement the obligation to end VAW. For instance, following her visit to the DRC, the SRVAW recommended that the DRC “(...) increase the budget designated for the functioning of justice to at least 2 per cent of the national budget”.²⁹ She also recommended that the country “reform the penitentiary system;”³⁰ and the security sector.³¹ The proper implementation of these recommendations also requires capacity, including significant resources that a country such as the DRC might not have in sufficient supply.

A critic might argue as a “rich country”, the DRC should possess the required capacity to implement its human rights obligations, including the various recommendations discussed above. Before going further, it is worth stressing that this argument which focusses on the country’s “wealth” and therefore the expected availability of financial resources, overlooks the fact that the three levels of capacity (and limitations of capacity) discussed in Chapter One go beyond financial resources. Moreover, it is important to emphasise that when it comes to its economic situation, the DRC is characterized by a paradox between the country's enormous natural resources³² and the poverty that afflicts the country and its people. For

²⁸ Ibid.

²⁹ Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk. Addendum. Mission to the DRC*, document no: A/HRC/7/6/Add.4 (28 February 2008) paragraph 108 (b).

³⁰ Ibid.

³¹ Ibid, paragraph 108 (c).

³² For more on these natural resources, see for instance: The World Bank, *Democratic Republic of Congo: Growth with governance in the mining sector* (World Bank, Report No. 43402-ZR, May 2008) < <https://siteresources.worldbank.org/INTOGMC/Resources/336099-1156955107170/drcgrowthgovernanceenglish.pdf> > accessed 23 September 2019; Raymond Achu Samndong and Isilda Nhantumbo, *Natural resources governance in the Democratic Republic of*

instance, when it comes to the Human Development Index (HDI),³³ in 2018 the DRC ranked 176 out of 189 countries and territories.³⁴

Several explanations have been offered to make sense of the above-described paradox. Some authors have relied on the so-called “resource curse” theory.³⁵ The latter refers to the observation that countries with great natural resource wealth tend nevertheless to grow more slowly than resource-poor countries.³⁶ According to Sachs and Warner, one explanation of the resource curse is that since natural resource rents are concentrated and (in some cases) easily appropriable, government officials in such countries are tempted into rent-seeking and possible corruption rather than pro-growth activities.³⁷ They conclude that natural resource countries would thus experience lower innovation, lower entrepreneurial activity, poorer governments and lower growth.³⁸ In a study

Congo: Breaking sector walls for sustainable land use investments. Country Report (February 2015) 11 - 12 <<https://pubs.iied.org/pdfs/13578IIED.pdf>> accessed 12 October 2019.

³³ See: < <http://hdr.undp.org/en/content/human-development-index-hdi> > accessed 17 March 2018.

³⁴ See: United Nations Development Programme (UNDP), *Human Development Indices and Indicators: 2018 Statistical Update* (2018) 24 < http://hdr.undp.org/sites/default/files/2018_human_development_statistical_update.pdf > accessed 24 September 2019.

³⁵ See for instance: Raymond Gilpin and Richard Downie, *Conflict-Business Dynamics in the Democratic Republic of Congo* (United States Institute of Peace, Special Report 234, October 2009) 2 <https://www.voltairenet.org/IMG/pdf/Conflict-Business_Dynamics_in_RDC.pdf?_cf_chl_jschl_tk_=6c5a862e2bb0a155d5d08a2415f0def93bc8ea03-1577973024-0-AfNptEAK87tpPpdOih33WI7BN8pZPfW5yA6TptEmJ- js7t60oolMiBinNCYaLRFZZb_PIZdSuR7WgtmSIYhzOqV7mJhYnoZVz97Ipa5kdVQ2TMFVkvR02bd1oh6FNqYT-fUclQ2zEG7X3VZ6Z_1S9X4hSjlkAIQSS1ZNrXwSFa1UxvX7qkiglCe-lk5tAFbhSk77THtHtMyCvd8jb_b-yVEiBV2mtp6aFe55InxzWetAGikMoZS3LkoDQc4JkatRtEHKm1OnHw10S1yc1I5ulIM0tkO63R6COmDTZNn1cUFG5K41BI_GDViH_octMPP4xQ> accessed 02 January 2020.

³⁶ See: Jeffrey D. Sachs and Andrew M. Warner, ‘Natural Resources and Economic Development: The curse of natural resources’ (2001) 45 *European Economic Review* 827 – 838, 827.

³⁷ *Ibid*, 835.

³⁸ *Ibid*.

conducted in 2018 that looks beyond the “resource curse” theory, the World Bank argues that “political instability, weak state institutions, elite capture, and predation explain the persistent poverty among the Congolese people, despite the country’s enviable natural resource wealth”.³⁹ In summary, the paradox between the DRC’s wealth and its poverty is explained by multiple factors. One of the consequences of that paradox is the lack of sufficient resources to implement human rights obligations.

Going beyond the valid but rather broad explanation provided by the Chayeses, the remainder of this Chapter successively discusses in more detail how limitations of capacity at the individual, organisational and/or societal levels can negatively affect the DRC’s ability to implement and/or comply with the trichotomy of obligations to respect, protect and fulfil women’s right to be free from violence.

4. The potential link between limitations of capacity and the poor implementation of the obligation to “respect”: the case of the Congolese national army

To better understand how limitations of capacity can contribute to the poor implementation of the above-mentioned obligation, this thesis uses the Congolese national army as an example. Indeed, Chapter Two explained that one of the most telling examples of the violation of the obligation to “respect” in the Congolese context is the well-documented “rape and other forms of sexual violence in situations

³⁹ The World Bank, *Democratic Republic of Congo: Systematic Country Diagnostic Policy Priorities for Poverty Reduction and Shared Prosperity in a Post-Conflict Country and Fragile State* (March 2018) paragraph v <<http://documents.worldbank.org/curated/en/171101529346675751/pdf/DRC-SCD-FINAL-ENGLISH-06132018.pdf>> accessed 12 October 2019.

of armed conflict”⁴⁰ and “rape and other forms of sexual violence against children”⁴¹ perpetrated by State agents, including members of the Congolese National Army.

However, before proceeding with the discussion, a clarification is in order. Trying to understand how capacity deficits affecting the army can contribute to the gap between the DRC’s formal commitment to eliminate VAW and the country’s actual behaviour should not be mistaken for an attempt to justify women’s rights violations by the army. In this respect, article 7 of the “Draft articles on Responsibility of States for Internationally Wrongful Acts” clearly provides that the conduct of an organ of a State or of a person or entity empowered to exercise elements of the governmental authority shall be considered an act of the State under international law if the organ, person or entity acts in that capacity, even if it exceeds its authority or contravenes instructions.⁴² The commentary to this article stresses:

⁴⁰ See: UNGA and UNSC, *Conflict-related sexual violence: Report of the Secretary-General*, document no: A/66/657–S/2012/33 (13 January 2012) 32; UNGA and UNSC, *Sexual violence in conflict: Report of the Secretary-General*, document no: A/67/792–S/2013/149 (14 March 2013) 32; UNSC, *Conflict-related sexual violence: Report of the Secretary-General*, document no: S/2014/181 (13 March 2014) 32; UNSC, *Conflict-related sexual violence: Report of the Secretary-General*, document no: S/2015/203 (23 March 2015) 33; UNSC, *Report of the Secretary-General on conflict-related sexual violence*, document no: S/2016/361 (20 April 2016) 33.

⁴¹ UNGA and UNSC, *Children and armed conflict: Report of the Secretary-General*, document no: A/63/785–S/2009/158 (26 March 2009) 48; UNGA and UNSC, *Children and armed conflict: Report of the Secretary-General*, document no: A/64/742–S/2010/181 (13 April 2010) 46; UNGA and UNSC, *Children and armed conflict: Report of the Secretary-General*, document no: A/65/820–S/2011/250 (23 April 2011) 52; UNGA and UNSC, *Children and armed conflict: Report of the Secretary-General*, document no: A/66/782–S/2012/261 (26 April 2012) 49; UNGA and UNSC, *Children and armed conflict: Report of the Secretary-General*, document no: A/67/845*–S/2013/245* (15 May 2013) 49; UNGA and UNSC, *Children and armed conflict: Report of the Secretary-General*, document no: A/68/878–S/2014/339 (15 May 2014) 47; UNGA and UNSC, *Children and armed conflict: Report of the Secretary-General*, document no: A/69/926*–S/2015/409* (5 June 2015) 48; UNGA and UNSC, *Children and armed conflict: Report of the Secretary-General*, document no: A/70/836–S/2016/360 (20 April 2016) 37.

⁴² See: International Law Commission (ILC), *Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries* (2001) article 7

The State cannot take refuge behind the notion that, according to the provisions of its internal law or to instructions which may have been given to its organs or agents, their actions or omissions ought not to have occurred or ought to have taken a different form. This is so even where the organ or entity in question has overtly committed unlawful acts under the cover of its official status or has manifestly exceeded its competence. It is so even if other organs of the State have disowned the conduct in question.⁴³

In summary, as stressed by Shelton and Gould, the obligation to respect (abstention) imposes a strict standard of liability.⁴⁴ In light of the above, the aim of the discussion that follows is rather to provide a contextual explanation of how capacity deficits affecting the Congolese National Army can contribute to the country's inability to appropriately implement its obligation to "respect" women's rights to be free from violence. The aim is not to provide a legal justification for VAW perpetrated by the Congolese army. The next Sections explain how individual, organisational and/or societal capacity deficits can contribute to the poor implementation by the DRC of its obligation to "respect" women's right to be free from violence.

4.1. Individual capacity deficits as a contributing factor to the poor implementation of the obligation to "respect" women's rights to be free from violence

Individual capacity deficits affecting the Congolese army include, for instance, the fact that some members of the army have received poor military training while

<http://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf > accessed 30 January 2017.

⁴³ International Law Commission (ILC), *Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries* (2001) article 7
<http://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf > accessed 30 January 2017.

⁴⁴ Dinah Shelton and Ariel Gould, 'Positive and Negative Obligations' in Dinah Shelton (ed), *The Oxford Handbook of International Human Rights Law* (Oxford University Press 2013) 577.

others have not received any military training at all.⁴⁵ In this respect, it is worth noting that lack of training has been identified as one of the main causes of abuses by members of armed forces⁴⁶ and other States' agents⁴⁷ elsewhere in the world.

In the DRC, this problem is compounded by the fact, because of peace agreements between the Congolese government and warring parties (to end the multiple armed conflicts that have broken out in the country), former members of armed groups and militias have been integrated in the Congolese national army without proper vetting. Speaking about this, for instance, the United Nations Organisation Stabilization Mission in the DRC (MONUSCO) and Office of the United Nations High Commissioner for Human Rights (OHCHR) note:

The FARDC (Congolese National Army) (...) has a poor human rights record and its soldiers have for years been responsible for many gross human rights violations. Poor discipline of soldiers and officers alike stems in part from the repeated integration of former rebels into

⁴⁵ See: Stephanie Wolters and Henri Boshoff, *The impact of slow military reform on the transition process in the DRC* (Institute for Security Studies 2006) 8 <<https://www.files.ethz.ch/isn/136896/100706DRC.PDF>> accessed 30 November 2017; Maria Eriksson Baaz and Maria Stern, 'Making sense of violence: voices of soldiers in the Congo (DRC)' (2008) 46 (1), *Journal of Modern African Studies* 57 – 86, 64; Laura Davis, *Justice-Sensitive Security System Reform in the DRC* (2009) 18 <<https://www.ictj.org/sites/default/files/ICTJ-DRC-Justice-Security-2009-English.pdf>> accessed 27 May 2015; Human Rights Watch, *Soldiers Who Rape, Commanders Who Condone: Sexual Violence and Military Reform in the DRC* (July 2009) 20 <<https://www.hrw.org/sites/default/files/reports/drc0709web.pdf>> accessed 25 September 2017; Oxfam America, *No will, no way: US-funded security sector reform in the DRC* (Oxfam America 2010) 6 <<https://www.oxfamamerica.org/static/oa4/no-will-no-way.pdf>> accessed 09 April 2017.

⁴⁶ Jerry M. Laurienti, *The U.S. Military and Human Rights Promotion: Lessons from Latin America* (Greenwood Publishing Group 2007) 108.

⁴⁷ See for instance: Human Rights Watch, *Behind bars in Brazil* (December 1998) 121, 125 – 127 <https://www.hrw.org/sites/default/files/related_material/BRAZL98D.pdf> accessed 13 January 2019.

the national army without formal training, or vetting mechanisms to ensure accountability (...).⁴⁸

This poor or lack of training is linked to the context in which the Congolese National army was formed. Indeed, in its current form, the Congolese National Army was created following the “Inter-Congolese Dialogue” convened to end the armed conflict that lasted from 1998 to 2003 (see Chapter One). At the close of this dialogue, on 01 April 2003, participants who included the Government of the DRC and various armed groups, which were at war with the Government, signed a peace agreement commonly known as the “Sun City Agreement”, which provided for the formation of a restructured and integrated national army that would include the then Armed Forces of the Government of the DRC and several other warring parties.⁴⁹ The Congolese Army was then formally created by Act No. 04/00023 of 12 November 2004 on the General Organisation of Defence and the Armed Forces whose article 45 provided for the merging of the various belligerents mentioned above.⁵⁰ This article also provided that no one may become an officer or a non-commissioned officer unless the person had adequate military training. However, the Congolese army ended up including individuals who had never benefited from a

⁴⁸ MONUSCO and OHCHR, *Report of the United Nations Joint Human Rights Office on Human Rights violations perpetrated by soldiers of the Congolese armed forces and combatants of the M23 in Goma and Sake, North Kivu Province, and in and around Minova, South Kivu Province, from 15 November to 2 December 2012* (May 2013) paragraph 11.

⁴⁹ See: paragraphs VI (a) and (b) of the « Accord global et inclusif sur la transition en République Démocratique du Congo » signé à Pretoria (République d’Afrique du Sud) le 17 décembre 2002 et adopté à Sun City le 1er avril 2003 <http://www.justiceinfo.net/media/k2/attachments/RDC/Accord_global_transition_rdc_2003.pdf> accessed 29 October 2017.

⁵⁰ See: *Loi n° 04/00023 du 12 novembre 2004 portant organisation générale de la défense et des forces armées* (12 November 2004) <<http://www.leganet.cd/Legislation/Droit%20Public/Ministeres/defense/loi.04.023.12.11.2004.pdf>> accessed 20 October 2017.

“formal” military training before becoming part of the army.⁵¹ Besides, over the years, the DRC continued with the practice of integrating former members of armed groups in the national army, including untrained ones and without any vetting process, pursuant to the signature of peace agreements aimed at ending the multiple protracted localised armed conflicts.⁵² In sum as noted by Davis, the majority of the (Congolese) army is badly trained, if trained at all – a problem compounded by the integration of militiamen and their leaders who had spent the previous years in the bush.⁵³

The link between, on the one hand, the lack of adequate military training and proper vetting discussed above and violations of the obligation to “respect” women’s right to be free from violence is illustrated for instance in the situation below described by the NGO Human Rights Watch:

Abuses against civilians peaked when the brigade was cantoned with almost no provisions in Kabare, South Kivu (Eastern DRC) between January and August 2008. Officially, since March 2009 the 14th brigade has ceased to exist when it was amalgamated with combatants from other armed groups into two new brigades—a process that saw former armed opposition units assimilated into the FARDC without any vetting and only limited training (...) Sexual violence by them has continued to the present. Many of the soldiers from newly integrated armed opposition groups have also committed acts of sexual violence.⁵⁴

Illustrating another aspect of individual capacity deficits affecting the Congolese national army, the NGO Human Rights Watch indicates that during interviews with Congolese soldiers conducted in 2009, it found that soldiers

⁵¹ International Crisis Group (ICG), *Security sector reform in the Congo* (Africa Report N°104, 13 February 2006) 1 <<https://d2071andvip0wj.cloudfront.net/104-security-sector-reform-in-the-congo.pdf>> accessed 29 December 2017.

⁵² See for instance: United Nations Security Council (UNSC), *Twenty-eighth report of the Secretary-General on the United Nations Organisation Mission in the DRC*, document no: S/2009/335 (30 June 2009) paragraphs 8 and 9.

⁵³ Davis (n 45) 16.

⁵⁴ Human Rights Watch (n 45) 5.

displayed misapprehensions of the legal prohibition on sexual violence.⁵⁵ Some soldiers understood the current law as a mere prohibition on sex with minors and also understood payment as legitimizing sex, regardless of consent.⁵⁶ A 14th brigade soldier convicted of rape tried to justify his actions by saying that he paid the victim money.⁵⁷

Similarly, in a study published in 2009, Baaz and Stern found that some Congolese soldiers distinguished between what they called “Lust Rapes”/“Normal Rapes” (« *Viol Ya Posa* » in Lingala language) which “is a result of lust/sexual needs and desire”⁵⁸ and “Evil Rapes” (« *Viol Cruel* » in French or « *Viol Ya Mabe* » in Lingala) which “stems from a sense of moral disengagement that accompanies the climate of warring and violence in which soldiers have been living”.⁵⁹

In summary, the extant literature shows that as an institution, the Congolese national army includes individuals who lack the capacity (in terms of knowledge, skills, abilities, or experience) that is required to be part of a State entity (in this case the army) that is expected to contribute to the implementation by the DRC of the obligation to “respect” women’s right to be free from violence. Violations of this obligation perpetrated by individual soldiers can ultimately contribute to the gap between the DRC’s formal commitment to end VAW and country’s actual behaviour. In addition to individual capacity deficits, organisational capacity deficits affecting the Congolese National Army can also contribute to the poor implementation by the DRC of its obligation to “respect” women’s right to be free from violence.

⁵⁵ Ibid, 43.

⁵⁶ Ibid.

⁵⁷ Human Rights Watch/Arche d’Alliance interview with convicted soldier G of the 14th brigade, Bukavu prison, April 3, 2009 cited in Human Rights Watch (n 45) 43.

⁵⁸ Maria Eriksson Baaz and Maria Stern, ‘Why Do Soldiers Rape? Masculinity, Violence, and Sexuality in the Armed Forces in the Congo (DRC)’ (2009) 53, *International Studies Quarterly* 495–518, 508 – 510.

⁵⁹ Ibid, 510 – 512.

4.2. Organisational capacity deficits as a contributing factor to the poor implementation of the obligation to “respect” women’s rights to be free from violence

Capacity deficits affecting the Congolese army at the organisational level are illustrated, *inter alia*, by two interlinked factors, namely the fact that as an institution the Congolese army includes some members who are undisciplined⁶⁰ and the fact that the Congolese army suffers from a weak command and control by the military hierarchy over some members of the army.⁶¹ It is worth stressing that lack of discipline has also been identified as one of the main causes of abuses by members of armed forces elsewhere in the world.⁶²

As far as the DRC is concerned, the NGO Human Rights Watch has, for instance, pointed out that new integrations of members of armed groups within the DRC’s national army exacerbated longstanding problems, including the ones of discipline and contributed further to the wide scale abuses committed with impunity by Congolese army soldiers.⁶³ Echoing this point, Breton-Le Goff argues that the

⁶⁰ See: Henri Boshoff, *Summary overview of security sector reform processes in the DRC* (Institute for Security Studies Situation Report, 2005) 3 < <https://reliefweb.int/report/democratic-republic-congo/summary-overview-security-sector-reform-processes-drc> > accessed 04 April 2019; Human Rights Watch, *Seeking Justice: The Prosecution of Sexual Violence in the Congo War*, (March 2005) 48 <<https://www.hrw.org/sites/default/files/reports/drc0305.pdf> >accessed 09 April 2017; Gaëlle Breton-Le Goff, ‘Ending Sexual Violence in the DRC’ (2010) 34(1) Fletcher Forum of World Affairs 13 – 40, 19, 22; Maria Eriksson Baaz and Maria Stern, *The Complexity of Violence: A critical analysis of sexual violence in the DRC*, in Working Paper on Gender Based Violence (Swedish International Development Cooperation Agency (SIDA) May 2010) 20; MONUSCO and OHCHR (n 48) paragraphs 11 and 46.

⁶¹ Boshoff (n 60) 4; Baaz and Stern (n 60) 20; Evert Kets and Hugo de Vries, *Limits to supporting security sector interventions in the DRC* (Institute for Security Studies (ISS) Paper 257, July 2014) 2 and 3 <<http://www.issafrica.org/uploads/Paper257.pdf>> accessed 10 October 2014; Maria Eriksson Baaz and Judith Verweijen, ‘The volatility of a half-cooked bouillabaisse: rebel–military integration and conflict dynamics in eastern DRC’ (2013) 112/449 African Affairs 563–582, 575 – 576.

⁶² Laurienti (n 46) 108; Tor Kristian Birkeland, *Sanctioning of Individuals: The International Criminal Court, the United Nations Security Council, and the Case of Northern Uganda* (ProQuest 2008) 35.

⁶³ Human Rights Watch (n 45) 20.

recurrence of sexual violence and human rights violations can be explained, in part, by a lack of control and discipline in the Congolese army troops.⁶⁴

When it comes to weak command and control, Baaz and Stern stress that “integrated” units have often remained responsive to the former belligerents, and not to the integrated command structures, creating parallel chains of command.⁶⁵ Following these (poorly implemented) integrations, the Congolese army, has for a long time been subject to different command-and control structures and rivalries among the various commands.⁶⁶ Commanders have usually maintained control of only those units composed of soldiers with a similar military background to themselves and not of all the troops.⁶⁷ As a result, refusal to take orders from certain commanders has often occurred.⁶⁸ These divisions further undermined cohesion and promoted insubordination.⁶⁹ An additional consequence of these divisions is that the central government does not actually have enough influence over the army.⁷⁰ Besides, because the FARDC is organised around various competing political-military networks, the central government’s leeway is quite limited.⁷¹ Here as well, it is also worth noting that lack of leadership and supervision has been listed as one of the main causes of abuses by members of armed forces elsewhere in the world.⁷² In the Congolese context, the NGO Human Rights Watch has even suggested that one important step to ending crimes of sexual violence by armed forces would be to reform the army and enable the military hierarchy to better discipline soldiers.⁷³

⁶⁴ Breton-Le Goff (n 60) 22.

⁶⁵ Baaz and Stern (n 60) 20.

⁶⁶ Kets and de Vries (n 61) 2.

⁶⁷ Baaz and Stern (n 60) 20.

⁶⁸ Ibid.

⁶⁹ Baaz and Verweijen (n 61) 576.

⁷⁰ Kets and de Vries (n 61) 3.

⁷¹ Ibid.

⁷² Laurienti (n 46) 108.

⁷³ Human Rights Watch (n 60) 48.

In summary, the discussion above suggests that for a long time, the Congolese army has resembled what Borzel and Risse refer to as an “area of limited statehood”. The latter is defined as “those parts of a country in which central authorities (governments) lack the ability to implement and enforce rules and decisions or in which the legitimate monopoly over the means of violence is lacking, at least temporarily”.⁷⁴ In this respect, it has been noted that in the DRC “limited state authority and rule of law in areas affected by the conflict creates favourable conditions for the occurrence of sexual violence”.⁷⁵ In addition to the above, as discussed in the next Section, the Congolese National Army operates in a context that can exacerbate individual and organisational capacity deficits.

⁷⁴ Thomas Risse, ‘Governance in Areas of Limited Statehood: Introduction and Overview’ in Thomas Risse (ed), *Governance Without a State? : Policies and Politics in Areas of Limited Statehood* (Columbia University Press 2013) 4; Tanja A. Borzel and Thomas Risse, ‘Human rights in areas of limited statehood: the new agenda’ in Thomas Risse, Stephen C. Ropp, Kathryn Sikkink, *The Persistent Power of Human Rights: From Commitment to Compliance* (Cambridge University Press 2013) 66.

⁷⁵ UN Team of Experts on the rule of law and sexual violence in conflict, *Annual report 2014* (2014) 29 < <http://www.stoprapenow.org/uploads/advocacyresources/1443535808.pdf> > accessed 03 November 2018. See a similar point made in: UN Team of Experts on the rule of law and sexual violence in conflict, *Annual report 2013* (2013) 20 < <http://www.stoprapenow.org/uploads/advocacyresources/1399901202.pdf> > accessed 03 November 2018; UN Team of Experts on the rule of law and sexual violence in conflict, *Annual report 2015* (2015) 20 < <http://www.stoprapenow.org/uploads/advocacyresources/1471959992.pdf> > accessed 03 November 2018; UN Team of Experts on the rule of law and sexual violence in conflict, *Annual report 2016* (2016) 22 < <http://www.stoprapenow.org/uploads/advocacyresources/1493911578.pdf> > accessed 03 November 2018.

4.3. The absence of an enabling environment as a contributing factor to the poor implementation of the obligation to “respect” women’s rights to be free from violence

Within the context of this part of the thesis, the societal level or “enabling environment” refers to the “macro-level” context within VAW is perpetrated, perpetuated, tolerated, justified...and within which both the Congolese national army as an institution and individual soldiers operate. As stressed by UNDP, the enabling environment can facilitate or hamper their existence and performance of individuals and organisations.⁷⁶ It can either constrain or enable prospects for success.⁷⁷

Without claiming to be exhaustive, one of the key macro-level factors that can weaken or limit the capacity of the Congolese national army as an institution to implement the obligation to respect women’s right to be free from violence is the presence of protracted armed conflicts that have been affecting the DRC since 1996. Indeed, as explained in the next paragraphs, protracted armed conflicts can create an environment that is more conducive to sexual violence by belligerents and increasingly by civilians. They can also exacerbate pre-existing discriminations against women and gender inequalities and pave the way for a higher prevalence of VAW.

As far as the first point is concerned, armed conflicts create an environment that is conducive to lawlessness and human rights violations. In this respect, Cardenas argues that of all the factors known to increase the likelihood that human rights violations will occur, war is among the strongest”.⁷⁸ She backs her point by adding that statistical studies have shown that the incidence of war is highly correlated with the onset of human rights abuses and mentions the examples of El

⁷⁶ UNDP (n 6) 5; United Nations Development Programme (UNDP), *Capacity development: A UNDP Primer* (UNDP 2009) 54.

⁷⁷ Monica Blagescu and John Young, ‘Capacity Development for Policy Advocacy: Current thinking and approaches among agencies supporting Civil Society Organisations’ (2006) 260 Overseas Development Institute Working Paper 1 – 50, 5.

⁷⁸ Sonia Cardenas, *Human Rights in Latin America: A Politics of Terror and Hope* (University of Pennsylvania Press 2010) 55.

Salvador, Guatemala, Colombia, and Peru.⁷⁹ Speaking specifically about VAW, Copelon remarks that there have been few conflicts where rape and sexualized violence have been absent or effectively sanctioned.⁸⁰ Leatherman opines that sexual violence in armed conflicts has been part of the spoils of war from time immemorial.⁸¹ She provides a detailed account of armed conflicts which were characterized by instances of widespread use of sexual violence.⁸²

As far as the DRC is concerned, the United Nations High Commissioner for Human Rights noted:

The successive and concurrent wars in the DRC contributed to widespread sexual violence both during the fighting, during the withdrawal of combatants, after the fighting, in areas where troops were stationed, in occupied areas, during patrols, during reprisals against the civilian population and during raids conducted by isolated and sometimes unidentified armed groups. These acts of sexual violence can be mainly attributed to armed actors in the field, although civilians did sometimes also take part in the abuse”.⁸³

Echoing the point above, the SRVAW, following a visit to the DRC remarked that “Sexual violence has been a defining feature of the Congolese armed conflicts.”⁸⁴ In light of the points made by Copelon and Leatherman cited in the paragraphs above, one could argue that sexual violence has a “defining feature” of almost all

⁷⁹ Ibid, 55.

⁸⁰ Rhonda Copelon, ‘Toward Accountability for Violence Against Women in War: Progress and Challenges’ in Elizabeth D. Heineman (ed), *Sexual Violence in Conflict Zones: From the Ancient World to the Era of Human Rights* (University of Pennsylvania Press 2011) 232.

⁸¹ Janie L. Leatherman, *Sexual Violence and Armed Conflict* (Polity Press 2011) 1.

⁸² Ibid, 1 – 2.

⁸³ United Nations High Commissioner for Human Rights (OHCHR), *Report of the Mapping Exercise documenting the most serious violations of human rights and international humanitarian law committed within the territory of the DRC between March 1993 and June 2003* (August 2010) paragraph 531

<http://www.ohchr.org/Documents/Countries/CD/DRC_MAPPING_REPORT_FINAL_EN.pdf>

accessed 14 May 2017.

⁸⁴ Human Rights Council (n 29) paragraphs 12 and 102.

armed conflicts and not only the ones in the DRC. However, what makes the problem “unique” in the DRC is what several authors consider as the “unprecedented” scale of the problem⁸⁵ and the “unparalleled” level of brutality used by perpetrators.⁸⁶ Speaking about the scale of the problem, Meger, for instance, stresses that though sexual violence has accompanied war throughout history, the scale of sexual violence being perpetrated in the DRC is unparalleled in any previous or current conflict.⁸⁷ With respect to the level of brutality used by alleged perpetrators, one study found that “the rapes and sexual abuse were committed with unprecedented cruelty, the perpetrators having devised the most humiliating and degrading treatment they could inflict on their victims”.⁸⁸

⁸⁵ See for instance: Sara Meger, ‘Rape of the Congo: Understanding sexual violence in the conflict in the DRC’ (2010) 28 (2) *Journal of Contemporary African Studies* 119-135, 119; Susan A Bartels and others, ‘Patterns of sexual violence in Eastern Democratic Republic of Congo: reports from survivors presenting to Panzi Hospital in 2006’ (2010) 4 (9) *Conflict and Health* 1 – 10, 2; Jared Genser and Irwin Cotler, *The Responsibility to Protect: The promise of stopping mass atrocities in our time* (Oxford University Press, 2012) 330; Sara Meger, ‘Militarized masculinities and the political economy of wartime sexual violence in the Democratic Republic of Congo’ in Jane Freedman, *Engaging men in the fight against gender violence: Case studies from Africa* (Palgrave Macmillan 2012) 40.

⁸⁶ See for instance: Réseau des Femmes pour un Développement Associatif (RFDA), Réseau des Femmes pour la Défense des Droits et la Paix (RFDP) and International Alert, *Women’s Bodies as a Battleground: Sexual Violence Against Women and Girls During the War in the Democratic Republic of Congo South Kivu (1996-2003)* (2005) 33 <<http://www.international-alert.org/sites/default/files/publications/women%27s-bodies-as-a-english.pdf>> accessed 23 June 2015; Erika Carlsen, ‘Ra/pe and War in the Democratic Republic of the Congo’ (2009) 21 (4) *Peace Review*, 474-483, 475; Genser and Cotler (n 85) 330; Meger (2012) (n 85) 41; Sarah Mosely, Talita Cetinoglu and Marit Glad, ‘Protection from sexual violence in DRC’ in Marion Couldrey and Maurice Herson (eds.), *Democratic Republic of Congo Past. Present. Future?* (Foreign Migration Revue, Issue 36, November 2010) 14 <<http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/DRCongo.pdf>> accessed 15 January 2017.

⁸⁷ Meger (2010) (n 85) 119 and Meger (2012) (n 85) 40.

⁸⁸ RFDA, RFDP and International Alert (n 86) 33.

As regards the reasons behind the concomitance of armed conflicts and the increase of human rights violations, Cardenas argues that this is because both international and civil wars involve the use of force against enemies⁸⁹ and because the stakes are high in war, and exceptional times often lead both state and non-state actors who have taken up arms to act outside the strictures of international human rights law.⁹⁰ Cardenas' argument can explain situations such as the ones described by the SRVAW, who mentioned how in the DRC, State security forces had responded with armed and organized reprisals that indiscriminately targeted the civilian population, involving looting, torture, ill-treatment and rape, and carried out in public.⁹¹ In a similar vein, Human Rights Watch explained how during the second Congolese war (1998 – 2003), sexual violence was widespread and sometimes systematic, a weapon of war used by all sides to deliberately terrorize civilians, to exert control over them, or to punish them for perceived collaboration with the enemy.⁹² However, Cardenas' argument cannot fully explain why members of the Congolese army and armed groups have continued to perpetrate VAW against civilian women in general (outside the context of reprisals illustrated in the examples above).

An additional explanation of the concomitance of armed conflicts and the increase of human rights violations, including VAW, is provided by Copelon who remarks that in some situations women are the booty of war.⁹³ Exemplifying this point, a report on the DRC covering a ten-year period explains how women were frequently abducted by all belligerents, including the Congolese national army, viewed as the spoils of war, and forced into sexual slavery.⁹⁴

Copelon adds that in other situations, sexualized violence is a core tactic of war (...) designed to destroy women physically and mentally, undermining their role

⁸⁹ Cardenas (n 78) 56.

⁹⁰ Ibid.

⁹¹ Human Rights Council (n 29) paragraphs 38 – 46.

⁹² Human Rights Watch (n 45) 15.

⁹³ Copelon (n 80) 232.

⁹⁴ OHCHR (n 83) paragraphs 641 – 642.

in sustaining communities.⁹⁵ Illustrating this point, a study conducted in the DRC found that the majority of sexual assaults perpetrated by belligerents were described as gang rape.⁹⁶ The study also indicated that acts of sexual violence included the insertion by perpetrators of foreign objects into the vagina or the anus.⁹⁷

Copelon also explains that sexualized violence also functions to expel, stigmatize, and marginalize women as accepted members of their familial, social, and cultural circles.⁹⁸ She adds that sexualized violence can be opportunistic misogyny or an act committed to humiliate the male population.⁹⁹ In this respect, a study conducted in the DRC documented cases of rape in the presence of family members such as the husband, the children or the mother/father-in-law who were forced to watch the victims being raped.¹⁰⁰ The study also mentioned cases of forced rape between victims, often of incestuous nature, which included young men being forced to rape their mothers or sisters as well as fathers being forced to rape their daughters and in which refusal on the part of the male to commit such acts of sexual violence often led to his death.¹⁰¹

Secondly, in addition to creating an environment that is conducive to lawlessness and human rights violations, protracted armed conflicts can negatively affect the capacity of the Congolese army as an institution to implement the DRC's obligation to end VAW because armed conflicts exacerbate pre-existing discriminations against women and gender inequalities and pave the way for a higher prevalence of VAW. Indeed, as rightly put by Leatherman, sexual violence in

⁹⁵ Copelon (n 80) 232.

⁹⁶ Harvard Humanitarian Initiative and Oxfam America, *"Now, the world is without me": an investigation of sexual violence in Eastern Democratic Republic of Congo* (April 2010) 22 < <https://www.oxfam.org/sites/www.oxfam.org/files/DRC-sexual-violence-2010-04.pdf> > accessed 07 July 2016.

⁹⁷ Harvard Humanitarian Initiative and Oxfam America (n 96) 2, 16, 20.

⁹⁸ Copelon (n 80) 232 – 233.

⁹⁹ Ibid, 233.

¹⁰⁰ Harvard Humanitarian Initiative and Oxfam America (n 96) 23 – 24.

¹⁰¹ Ibid, 24.

conflict does not develop in isolation from the society's pre-existing socioeconomic and culturally shaped gender relationships.¹⁰² She notes that the roots of women and girls' loss of bodily integrity in war lie in the prevalence of pre-existing gender-based violence in society¹⁰³ and recalls that in the DRC, as in many other countries, women and girls have little standing before the law, or before their family in society.¹⁰⁴

Similarly, Meger remarks that to some extent, the prevalence of sexual violence in the DRC can be understood in terms of unequal gender relations in the DRC that predate the conflict.¹⁰⁵ In sum, as stressed by Meger, wartime sexual violence is not an isolated event but must be understood by its links to the society's pre-existing social relationships.¹⁰⁶ War simply amplifies social injustices, including gender inequality.¹⁰⁷

It is difficult to disagree with Leatherman and Meger, when one sees that in the DRC, soldiers interviewed in a research conducted by Baaz and Maria Stern explained that they understand the rape that they and their colleagues committed (both "lust" rapes and "evil" rapes) as "resulting"—although differently—from masculine heterosexuality and the attendant discourses according to which men have sexual "needs" that must be satisfied and where a man/soldier, if deprived, has the "right" to take women by force.¹⁰⁸ It is worth stressing that some police officers, who in the Congolese legal system, are responsible for conducting investigations into VAW, share similar views and find it quite at least acceptable or understandable that men can satisfy their sexual urges by raping women after a long "dry spell" resulting from their "isolation" (physical separation from their wives or

¹⁰² Leatherman (n 81) 3.

¹⁰³ Ibid, 145.

¹⁰⁴ Leatherman (n 81) 145.

¹⁰⁵ Sara Meger, *Rape Loot Pillage: The Political Economy of Sexual Violence in Armed Conflict* (Oxford University Press 2016) 153.

¹⁰⁶ Meger (n 105) 154.

¹⁰⁷ Ibid.

¹⁰⁸ Baaz and Stern (n 58) 514.

partners) while serving in armed forces and groups.¹⁰⁹ It is equally hard to disagree with Leatherman and Meger when in the DRC, some Police Officers who claim that that there are situations where the responsibility for rape is shared by the perpetrator and the victim due to the inappropriate behaviour of the later.¹¹⁰ It is difficult to disagree with the two scholars above when one sees for instance that, as reported by the Congolese Ministry of Gender, in the Lunda tribe, any new traditional chef receives an underage and virgin girl as a gift to ensure his longevity.¹¹¹

The views and practices above are based on the belief that (in some circumstances) men are entitled to sex from women and can take it forcefully if needed. These views are legally and morally indefensible. To put it simply, the members of the Congolese army and the police mentioned above believe that women owe them sex and that they have to right to get it when they need it. This is a reflection of pre-existing gender dynamics, which can certainly be exacerbated by armed conflicts. Men, who before the emergence of armed conflicts believed that women owed them sex, can act on those beliefs once they enjoy the power offered by carrying a gun and/or wearing a military uniform. Armed conflicts simply give these men an opportunity to act on their pre-existing beliefs, namely the notion that in some circumstances women's consent to sexual intercourse is not required. Such beliefs certainly predates recent armed conflicts in the DRC. Violence exerted against women based on such beliefs also predate recent armed conflicts. This is

¹⁰⁹ Patrick Kayembe and others, *Connaissances, perceptions, attitudes et pratiques des membres de la Police Nationale Congolaise en matière de violences sexuelles dans trois provinces de la République Démocratique du Congo* (International Centre for Migration Health and Development February 2010) 19 <<https://reliefweb.int/report/democratic-republic-congo/connaissances-perceptions-attitudes-et-pratiques-des-membres-de-la>> accessed 04 April 2019.

¹¹⁰ Ibid, 21.

¹¹¹ République Démocratique du Congo, Ministère du Genre, de la Famille et de l'Enfant, *Enquête qualitative sur les violences basées sur le genre dans les Zones hors conflits en RDC* (2012) 51< <http://docplayer.fr/33105644-Enquete-qualitative-sur-les-violences-basees-sur-le-genre-dans-les-zones-hors-conflits-en-rdc-1.html> > accessed 02 May 2019.

why this thesis shares the concern expressed by the UN SRVAW who, following her visit to the DRC warned:

Civilians are increasingly among the perpetrators of rape, which adds another layer of oppression for women. If the sexual violence associated with war is addressed in isolation, gender-based discrimination and violence endured by women in “peace” will be grossly neglected and the war on women reinforced.¹¹²

Before concluding this section, it is worth noting that empirical research conducted in the DRC shows that the motivations behind sexual violence by belligerents are much broader than the ones discussed above. For instance, in a study published in 2009 which focused on members of the Congolese National Army, Baaz and Stern explain that the soldiers interviewed in their research explained that they understand the rape that they and their colleagues committed (both “lust” rapes and “evil” rapes) as “resulting”—although differently—from masculine heterosexuality and the attendant discourses according to which men have sexual “needs” that must be satisfied and where a man/soldier, if deprived, has the “right” to take women by force.¹¹³ They also understood both “types” of rape to be different yet related expressions of a deep-seated frustration connected to poverty, neglect and lack of support and the general climate of warring, etc.¹¹⁴ In a study published in 2013 and focusing on armed groups, Elbert and others also find multiple reasons. The most common explanations offered by participants in their study to explain conflict-related sexual violence included the following: sexual violence as a reward; forced marriage, “combatants out of control”; “personal frustration and lack of a permanent partner”; “proving one’s manhood”; lack of punishment for SGBV at leadership level; explicit and implicit orders to rape women after combat as well as orders to abduct women; rape as an instrument of control;

¹¹² Human Rights Council (n 29) 2.

¹¹³ Baaz and Stern (n 58) 514.

¹¹⁴ Ibid.

revenge as well as ethnic or tribal affiliation of the potential victim.¹¹⁵ When asked about their motivation to commit the most brutal forms of rape, including gang rapes, the insertion of objects (such as sticks or guns) into a body opening (vagina/anus), burnings, mutilation, and, finally, murder, participants in the study offered the following reasons: use of drugs (particularly marijuana); frustration and self-hatred; lust for power (few participants described clearly that the most brutal forms of rape are born out of a feeling of strength); witchcraft (either the crime itself serves this purpose, or witchcraft is the motivation for mutilations); group dynamics (an explanation for gang rapes); victim's ethnic background; victim's resistance and revenge (on the victim for her/his resistance or on the group to which the victim belongs); as well as silencing the victim (the more brutal and outrageous the crimes are, the more shame and hesitation the victim will feel to tell others about it).¹¹⁶

The present Section discussed how limitations of capacity can undermine the DRC's ability to properly implement and/or comply with its obligation to "respect" women's rights to be free from violence. The next Section elaborates on the ways in which limitations of capacity can hinder the country's ability to implement and/or comply with the obligations to protect women's rights to be free from violence.

5. The potential link between limitations of capacity and the poor implementation of the obligation to "protect": the case of the Congolese justice system

Chapter Two explained that one of the most telling examples of the poor implementation by the DRC of its obligation to "protect" women's right to be free from violence was the well-documented impunity enjoyed by perpetrators of VAW. The next paragraphs elaborate on how a combination of limitations of capacity affecting the Congolese justice system can contribute to this problem and ultimately to the

¹¹⁵ Thomas Elbert and others, *Sexual and Gender-Based Violence in the Kivu Provinces of the Democratic Republic of Congo: Insights from Former Combatants* (The World Bank 2013) 45 – 51 <http://www.logica-wb.org/PDFs/LOGiCA_SGBV_DRC_Kivu.pdf> accessed 05 September 2015.

¹¹⁶ Elbert and others (n 115) 52 – 56.

gap between the DRC's commitment to end VAW and the country's actual performance.

5.1. Individual capacity deficits as a contributing factor to the poor implementation of the obligation to “protect” women’s rights to be free from violence

It has been pointed out that when public officials involved in the implementation of the law are not comprehensively trained regarding its content, there is a risk that the law will not be implemented effectively or uniformly.¹¹⁷ This underscores the need to address individual capacity deficits affecting duty-bearers. When it comes to these deficits, in the DRC, it has been noted, for instance, that medical doctors lack training on how to conduct medical examinations on rape victims and collect medical evidence of sexual violence¹¹⁸ and that there is a lack of knowledge among the judicial police of how to conduct a criminal investigation.¹¹⁹ In addition to individual capacity deficits facing the health professionals and the Police, it has also been noted that some judicial authorities lack knowledge of the 2006 laws on sexual violence and also lack training or specialized skills for the

¹¹⁷ DESA/DAW (n 24) 18.

¹¹⁸ MONUSCO and OHCHR, *Progress and obstacles in the fight against impunity for sexual violence in the DRC* (April 2014) paragraph 56 <<https://monusco.unmissions.org/sites/default/files/UNJHRO%20-%20Report%20on%20Fight%20against%20Impunity%20Sexual%20Violence%20-%20April%202014%20-%20ORIGINAL%20VERSION.pdf>> accessed 30 December 2016.

¹¹⁹ The International Bar Association and the International Legal Assistance Consortium, *Rebuilding courts and trust: An assessment of the needs of the justice system in the DRC* (August 2009) 22 <http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=16&cad=rja&uact=8&ved=2ahUKEwi_3-CTvMbfAhVGb1AKHVG_DJQ4ChAWMAV6BAgGEAI&url=http%3A%2F%2Fwww.ilacnet.org%2Fdownload%2Freports_documents%2Fmission-reports_documents%2FDRC_report-English_2009.pdf&usq=AOvVaw3rXkj-4c9jv8pijTHg9xgk> accessed 30 November 2018.

prosecution of sexual violence crimes.¹²⁰ Besides, it has also been noted that overall, in terms legal technique, magistrates (judges and prosecutors) are not well-equipped to carry out research and are not well-informed or trained in issues around International Humanitarian Law, despite some ad-hoc trainings.¹²¹ They do not receive ongoing training to update them on current law, particularly concerning serious crimes and mass violations of human rights.¹²² All the above individual capacity deficits combined can weaken the judicial system's ability to investigate, prosecute and punish perpetrators of VAW. As such, they can negatively affect the DRC's ability to implement its obligation to "protect" women's right to be free from violence. For instance, it has been reported that faulty investigations (conducted by police officers who are not equipped with adequate knowledge) will often lead to the acquittal of suspects who would otherwise have been convicted.¹²³ It has also been mentioned that because of a lack of adequate training and professional knowledge, judges often deliver judgements that are vague, poorly drafted and legally weak.¹²⁴

Secondly, as explained in the next section, in addition to individual capacity deficits, organisational capacity deficits affecting the Congolese Justice system can also contribute to the DRC's limited ability to "protect" women's right to be free from violence.

¹²⁰ MONUSCO and OHCHR (n 118) paragraph 49. See also: Harvard Humanitarian Initiative and Oxfam America (n 96) 55.

¹²¹ OHCHR (n 83) paragraph 913.

¹²² Ibid, paragraphs 913 and 915.

¹²³ The International Bar Association and the International Legal Assistance Consortium (n 119) 23.

¹²⁴ Human Rights Council, *Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy. Addendum: Mission to the DRC*, document no: A/HRC/8/4/Add.2 (11 April 2008) paragraph 23.

5.2. Organisational capacity deficits as a contributing factor to the poor implementation of the obligation to “protect” women’s rights to be free from violence

The importance of a functional justice system as part of the means to end VAW is underscored in the CEDAW Convention,¹²⁵ the CEDAW Committee’s General Recommendations no19 on VAW,¹²⁶ No. 35 on gender-based violence (GBV) against women,¹²⁷ as well as in specific recommendations addressed to the DRC, for instance, by the CEDAW Committee and the Special Rapporteur on VAW. All these provisions emphasise the need to address capacity deficits that can prevent the justice system as an institution from playing its role in the implementation of the obligation to end VAW.

Organisational capacity deficits affecting the Congolese justice system include the lack of infrastructure and resources (including financial and human). Indeed, the multiple and challenging tasks assigned to the Ministry of Justice have generally exceeded by far the meagre resources allocated to the ministry. This imbalance can affect the Ministry’s capacity to properly contribute to the enforcement of the various anti-VAW pieces of legislation adopted by the DRC. For instance, as of 31 December 2018, the Ministry of Justice’s myriad tasks are spelled out in article 1(4) of Ordinance n° 17/ 025 of 10 July 2017 setting out the responsibilities of ministries.¹²⁸ It is also worth pointing out that for several years, the Congolese Ministry of Justice was in charge of both the “Justice” and “Human Rights” portfolios. This was the case under the Ordinance n° 12/008 of June 2012

¹²⁵ Article 2(c).

¹²⁶ CEDAW Committee, *General Recommendation No. 19 on Violence against women* (1992) paragraph 24(t)(i).

¹²⁷ CEDAW Committee, *General recommendation No. 35 on gender-based violence against women*, document no: CEDAW/C/GC/35 (14 July 2017) paragraph 32.

¹²⁸ See: *Ordonnance n° 17/ 025 du 10 juillet 2017 fixant les attributions des ministères* (10 July 2017) <<http://acpcongo.com/acp/ordonnance-n-17-025-10-juillet-2017-fixant-attributions-ministeres/>> accessed 20 November 2017.

[article 1(B) (4)]¹²⁹ and under Ordinance n° 15/015 of 21 March 2015 [article 1 (B) 5]¹³⁰ setting out the responsibilities of ministries.

However, despite its multiple and challenging tasks, the Congolese Justice system is extremely underfunded as rightly noted by several international Human Rights bodies¹³¹ as well as other sources.¹³² For instance, between 2013 and 2016, the proportion of the national budget allocated to the Ministry of Justice never exceeded 0.60 percent.¹³³ To put things in perspective, the United Nations Special

¹²⁹ See : *Ordonnance n° 12/008 du 11 juin 2012 fixant les attributions des ministères* (11 June 2017) <<http://extwprlegs1.fao.org/docs/pdf/cng166316.pdf>> accessed 20 October 2017.

¹³⁰ See : *Ordonnance n° 15/015 du 21 mars 2015 fixant les attributions des ministères* (21 March 2015) <http://www.journalofficiel.cd/jordc/adm/uploads_jo/b4833ae3ca6fd06d6dcf2f9c9d01a596.pdf> accessed 20 December 2017.

¹³¹ See for instance: Human Rights Council (n 29) paragraph 71; Human Rights Council, *Report of the independent expert on the situation of human rights in the DRC, Mr. Titinga Frédéric Pacéré*, document no: A/HRC/7/25 (29 February 2008) paragraph 27; Human Rights Council (n 124) paragraphs 36, 44, 69, 76 (a); CEDAW Committee (n 20) paragraphs 11(a) and 12(a).

¹³² Marleen Bosmans, 'Challenges in Aid to Rape Victims: the Case of the DRC' (2007) 4(1) Essex Human Rights Review 1 – 12, 11; The International Bar Association and the International Legal Assistance Consortium (n 119) 19; International Federation for Human Rights (FIDH) and others, *Denial of justice for victims of crimes of sexual violence* (July 2013) 10; Fédération Internationale des ligues des Droits de l'Homme (FIDH) and others, *DRC. Victims of sexual violence rarely obtain justice and never receive reparation: Major changes needed to fight impunity* (October 2013) 61 and 67.

¹³³ See : République Démocratique du Congo, Ministère du Budget, *Budget 2013. Pouvoir Central : Synthèse des dépenses par administration* (07 November 2012) 2 <http://www.budget.gouv.cd/2012/budget2013/projet/budget_2013_synthese_par_administration.pdf> accessed 23 January 2017 ; République Démocratique du Congo, Ministère du Budget, *Budget du Pouvoir Central de l'Exercice 2014. Synthèse par administration* (11 February 2014) 2 <http://www.budget.gouv.cd/2012/budget2014/vote/depenses/synthese_administration.pdf> accessed 23 January 2017; République Démocratique du Congo, Ministère du Budget, *Budget du pouvoir central de l'exercice 2015: Synthèse par administration* (21 January 2015) 2 <http://www.budget.gouv.cd/2012/budget2015/vote/depenses/06_synthese_administration.pdf> accessed 23 January 2017 ; République Démocratique du Congo, Ministère du Budget, *Budget du pouvoir central de l'exercice 2016: Synthèse des dépenses par administration* (19 October 2015)

Rapporteur on the Independence of Judges and Lawyers recommends that the budget of the judicial system usually accounts for between 2 and 6 per cent of national budgets.¹³⁴ The fact that the justice system is underfunded can have a negative impact on its capacity to properly enforce the law. Indeed, as rightly stressed by the United Nations, “Without adequate funding, legislation cannot be implemented effectively”.¹³⁵

Linked to the fact that the justice system is underfunded, judicial actors perform their tasks in extremely poor working conditions with limited infrastructure and equipment.¹³⁶ For instance, in February 2013, the United Nations Joint Human Rights Office (UNJHRO) in the DRC conducted a survey to assess the resources available to military judicial authorities, especially on means of transport available to judicial investigators to conduct investigations and interview victims and witnesses. Out of the seven provinces covered in the survey, comprising a total of 46 military prosecutor offices, only one office had a motorcycle in functioning order, four offices had motorcycles in poor working order, while the other 41 military prosecutor offices had no dedicated means of transport or mobility.¹³⁷ To put things in perspective, it is worth recalling that these judicial actors are expected to operate with such limited means of transport or mobility in a country which is 9.66 times bigger than the United Kingdom. The UN has even acknowledged that in the DRC the lack of infrastructure and resources (within the military jurisdictions) presents a major obstacle to holding alleged perpetrators of sexual violence accountable.¹³⁸ In a report on a visit to the

2

<http://www.budget.gouv.cd/2012/budget2016/6_developpement_titre_des_credits_exercice2016.pdf> accessed 02 January 2016.

¹³⁴ Human Rights Council (n 124) paragraph 76.

¹³⁵ DESA/DAW (n 24) 18.

¹³⁶ See: Human Rights Council (n 124) paragraphs 32, 33; The International Bar Association and the International Legal Assistance Consortium (n 119) 24; MONUSCO and OHCHR (n 118) paragraph 48 and 49.

¹³⁷ MONUSCO and OHCHR (n 118) paragraph 49.

¹³⁸ Ibid, paragraph 48.

DRC, the Special Rapporteur on the independence of judges and lawyers mentioned that several judges had stated that when they were informed of people being killed or raped even 30 km from the city in which their court is located, they were unable to travel to the area for lack of a vehicle.¹³⁹ He concluded that this made it impossible to investigate and prosecute violations committed in rural areas, leaving citizens without any legal remedy.¹⁴⁰

The problems mentioned above are compounded by additional factors such as the fact that the number of courts is insufficient¹⁴¹ and the fact that the justice system is understaffed.¹⁴² All these organisational capacity deficits can limit the DRC's ability to implement its obligation to "protect" women's right to be free from violence. Illustrating this, following her visit to the DRC in 2008, the SRVAW explained that the justice system was in a deplorable state and lacked the capacity to handle even the relatively small number of rape cases that reach it.¹⁴³ She provided specific examples to support her point.¹⁴⁴ A report published in 2009 by several UN Special Rapporteurs perfectly summarises the situation by acknowledging, "(...) the impunity problem is also rooted in the capacity of the justice system. Deprived of an adequate budget, the justice system remains in a deplorable state and lacks the capacity to handle its caseload".¹⁴⁵

The current and previous Sections successively discussed how limitations of capacity can affect the DRC's ability to "respect" and "protect" women's right to be

¹³⁹ Human Rights Council (n 124) paragraph 31.

¹⁴⁰ Ibid.

¹⁴¹ Ibid, paragraph 30; Fédération Internationale des ligues des Droits de l'Homme (FIDH) and others (October 2013) (n 132) 47; MONUSCO and OHCHR (n 118) paragraph 48.

¹⁴² Human Rights Council (n 124) paragraphs 27 – 29; The International Bar Association and the International Legal Assistance Consortium (n 119) 20 – 21; MONUSCO and OHCHR (n 118) paragraph 48.

¹⁴³ Human Rights Council (n 29) paragraph 67.

¹⁴⁴ Ibid, paragraphs 67 and 68.

¹⁴⁵ Human Rights Council, *Combined report of seven thematic special procedures on technical assistance to the Government of the DRC and urgent examination of the situation in the east of the country*, document no: A/HRC/10/59 (5 March 2009) paragraph 62.

free from violence. The next Section examines how limitations of capacity can contribute to the poor implementation by the DRC of its obligation to fulfil women's right to be free from violence.

6. The potential link between limitations of capacity and poor implementation of the obligation to fulfil: the case of the Congolese Ministry of gender

Chapter Two discussed how in the Congolese context, violations of the obligation to “fulfil” women's right to be free from violence can be illustrated by the well -documented poor implementation of the “National strategy against Sexual and Gender-based Violence” adopted on 24 November 2009.¹⁴⁶ To better understand how limitations of capacity can contribute to the problem, I use the Congolese Minister of Gender as a case study. This is the governmental department responsible for the coordination of the implementation of anti-VAW policies and strategies adopted by the country.

Like with the Ministry of Justice, here as well, the multiple and challenging tasks assigned to the Congolese Ministry of Gender have generally exceeded by far the meagre resources allocated to the Ministry. As of 31 December 2018, the myriad “regular” or “ordinary” tasks assigned to the Ministry of Gender are set out in article 1, paragraph 32 of Ordinance n° 17/ 025 of 10 July 2017 setting out the responsibilities of ministries.¹⁴⁷ In addition to these tasks, the Ministry of Gender is responsible for the coordination of the implementation of the National Strategy

¹⁴⁶ CEDAW Committee (n 20) paragraph 21 (b).

¹⁴⁷ See : *Ordonnance n° 17/ 025 du 10 juillet 2017 fixant les attributions des ministères* (10 July 2017) <<http://acpcongo.com/acp/ordonnance-n-17-025-10-juillet-2017-fixant-attributions-ministeres/>> accessed 20 November 2017.

against SGBV¹⁴⁸ and for steering and coordinating the implementation of the National Gender Policy.¹⁴⁹

Achieving the ambitious goals and objectives spelled out in the DRC National Strategy against SGBV and the National Gender Policy requires significant resources. This is particularly true given the current low social and legal status of women in the DRC and the multiple obstacles, including socio-cultural ones, which need to be overcome in order to end discrimination against women and VAW in the country. As mentioned earlier, the overall objective of the National Strategy against Gender-Based Violence is to contribute to the prevention and reduction of sexual and Gender-based violence as well as to improve the holistic care of victims and survivors as well as the re-education of perpetrators of sexual and Gender-Based violence.¹⁵⁰ The overall purpose of the Congolese National Gender Policy is to contribute to the achievement of gender equity and equal access of men and women, boys and girls to the resources of the society.¹⁵¹ The National Gender Policy has two overall objectives. The first one is to create an institutional, socio-cultural, legal and economic environment conducive to the achievement of gender equity and equal access of men and women, boys and girls to the resources of society.¹⁵² The second one is to ensure the effective integration of gender as a variable in all stages of the process related to studies and research on the socio-economic conditions of the population, analysis, planning, implementation,

¹⁴⁸ République Démocratique du Congo, Ministère du Genre, de la Famille et de l'enfant, *Stratégie nationale de lutte contre les violences basées sur le genre (SNVBG)* (November 2009) 33 <<http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/95106/111851/F-1047853986/COD-95106.pdf>> accessed 06 July 2016.

¹⁴⁹ République Démocratique du Congo, Ministère du Genre, de la Famille et de l'Enfant, *Politique nationale genre* (July 2009) 34 <<http://www.ilo.org/dyn/natlex/docs/MONOGRAPH/95092/111828/F-1600593133/COD-95092.pdf>> accessed 06 July 2016.

¹⁵⁰ République Démocratique du Congo, Ministère du Genre, de la Famille et de l'enfant (n 148) 24.

¹⁵¹ République Démocratique du Congo, Ministère du Genre, de la Famille et de l'Enfant (n 149) 25.

¹⁵² Ibid, 26.

monitoring and 'evaluation of projects, policies and development programs.¹⁵³ To achieve the objectives described above, the DRC also adopted action plans for the implementation of both the National Strategy against SGBV¹⁵⁴ and the National Gender Policy.¹⁵⁵ Implementing the multiple activities listed in these two action plans may also require significant resources, particularly financial ones.

However, like the Congolese Justice System, despite these multiple and challenging tasks, the Congolese Ministry of Gender is extremely underfunded. For instance, between 2013 and 2016, the proportion of the national budget allocated to the Ministry of Gender was systematically below 0.30 percent,¹⁵⁶ except for 2015 where it reached 0.72 percent.¹⁵⁷

This underfunding can contribute to the poor implementation by the DRC of the various anti-VAW policies and strategies that the country has adopted. This, in turn, can contribute to the poor implementation by the country of its obligation to “fulfil” women’s right to be free from violence. Indeed, it has been noted that “plans and departments responsible for the fight against sexual crimes in the DRC are ineffective (including) due to lack of resources”.¹⁵⁸ For instance, on 10 October 2009, the DRC established a “National Agency for the Fight against Violence against

¹⁵³ Ibid.

¹⁵⁴ See: République Démocratique du Congo, Ministère du Genre, de la Famille et de l'enfant, *Plan d'action de la stratégie nationale de lutte contre les violences basées sur le genre* (November 2009) 1 – 66 <https://monusco.unmissions.org/sites/default/files/old_dnn/Plan%20of%20Action%2026-11-09.pdf> accessed 06 July 2016.

¹⁵⁵ République Démocratique du Congo, Ministère du Genre, de la Famille et de l'Enfant, *Plan d'Action National de la mise en œuvre de la politique nationale genre* (October 2010) <<https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/95095/111833/F1922363659/COD-95095.pdf>> accessed 21 January 2017.

¹⁵⁶ See : République Démocratique du Congo, Ministère du Budget (07 November 2012) (n 133) 3 ; République Démocratique du Congo, Ministère du Budget (11 February 2014) (n 133) 3.

¹⁵⁷ République Démocratique du Congo, Ministère du Budget (21 January 2015) (n 133) 3.

¹⁵⁸ Fédération internationale des ligues des droits de l'Homme (FIDH) and others (October 2013) (n 132) 16.

Women and Young Girl and the Girl Child” (AVIFEM)¹⁵⁹ and a “National Fund for the Advancement of Women and Child Protection” (FONAFEM).¹⁶⁰ Many have concluded that these two entities have been unable to discharge their mandates because of lack of adequate resources, including financial.¹⁶¹

The three sections above have elaborated on how limitations of capacity can contribute to hindering the DRC’s ability to implement its obligations to “respect”, “protect” and/or “fulfil” women’s right to be free from violence. However, despite what has been discussed above, one might still argue that the lack of resources affecting the Ministry of Justice and the Ministry of Gender is the result of a misallocation of the country’s existing resources. However, that would be only partially true. An analysis of the Congolese national budget shows a certain degree of misallocation or unbalanced allocation of resources. For instance, between 2013 and 2016, the Ministry of Justice (with its budget allocation ranging between 0.47 and 0.60 percent)

¹⁵⁹ See : *Décret n° 09/38 du 10 octobre 2009 portant création, organisation et fonctionnement de l'Agence nationale de lutte contre les violences faites à la Femme et à la Jeune et Petite Fille* (10 October 2009) < <http://www.leganet.cd/Legislation/Droit%20Public/DH/D.09.38.10.10.2009.htm> > accessed 29 April 2019.

¹⁶⁰ See : *Décret n° 09/37 du 10 octobre 2009 portant création, organisation et fonctionnement d'un Etablissement public dénommé « Fonds National pour la Promotion de la Femme et la Protection de l'Enfant »* (10 October 2009) <<http://www.leganet.cd/Legislation/Droit%20Public/DH/D.09.37.10.10.09.htm> > accessed 04 January 2014.

¹⁶¹ See for instance: The National coalition of non-governmental organisations for monitoring and reporting on the human rights situation, Human Rights House (CORRSDH – MDH) and Thematic group on women's rights and sexual violence (GTDFVS), *Additional shadow report to the 6th and 7th combined report of the DRC on the implementation of the CEDAW Convention* (2013) 7<http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/COD/INT_CEDAW_NGO_COD_13595_E.pdf> accessed 24 September 2017; Concertation des collectifs des associations féminines de la Région des Grands-Lacs (COCAFEM/GL), *Etat des lieux de la mise en oeuvre de la déclaration de Kampala sur les violences sexuelles et basées sur le genre et la résolution 1325 du conseil de sécurité des nations unies en République Démocratique du Congo* (February 2016) 23 <http://www.cocafemgl.org/IMG/pdf/rapport_mise_en_oeuvre_dk_r1325_rd_congo.pdf > accessed 26 June 2016.

and the Ministry of Gender (with its budget allocation ranging between 0.15 percent and 0.72 percent of the National budget) received less funds than the Office of the President (1.28 percent and 1.80 percent of the national budget), the National Assembly (2.08 percent and 2.55 percent) or the Senate (0.66 percent and 2.55 percent).¹⁶² This is a clear misallocation of resources. And, as stressed earlier, the misallocation of public resources which results in the non-enjoyment of human rights constitutes in itself a violation of the obligation to fulfil.¹⁶³

However, this does not tell the whole story. In reality, as pointed out by the World Bank, the DRC national budget is insignificant given the size, population, and natural resource wealth of the country.¹⁶⁴ This means that even in the unlikely event that the national budget was subdivided evenly among the various ministries, the country might still face difficulties to cover the financial component of its human rights obligations.

Indeed, the DRC still mobilise very little revenues compared to its existing resources as also noted by several international Human Rights bodies.¹⁶⁵ In short, the DRC's national budget in terms of revenues is still small in comparison with the needs to be satisfied. Alluding to this challenge, the World Bank stresses that the tax revenue base in the DRC is narrow and does not allow the government to mobilize the revenues needed to finance its own operations and deliver public services.¹⁶⁶ Pointing out that “only a small share of the in the DRC population pays

¹⁶² République Démocratique du Congo, Ministère du Budget (07 November 2012) (n 133) 1 ; République Démocratique du Congo, Ministère du Budget (11 February 2014) (n 133) 1 ; République Démocratique du Congo, Ministère du Budget (21 January 2015) (n 133) 1 ; République Démocratique du Congo, Ministère du Budget (19 October 2015) (n 133) 1.

¹⁶³ See for instance: CESCR Committee, *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)* (11 August 2000) paragraph 52.

¹⁶⁴ The World Bank (n 39) paragraph 99.

¹⁶⁵ Human Rights Council, *Second joint report of seven United Nations experts on the situation in the DRC*, document no: A/HRC/13/63 (8 March 2010) paragraphs 25 and 79.

¹⁶⁶ The World Bank (n 39) paragraph 98.

taxes”,¹⁶⁷ the World Bank explains that the narrow base is a consequence of several factors. These include the structure of the economy with strong reliance on natural resources and widespread informality; legal arrangements that grant investors tax holidays and privileges outside the general tax code; excessive discretionary use of tax exemptions across most tax sources, such as the personal income tax, the corporate income tax, VAT, and excise taxes; as well as weak tax administration and consequent tax evasion.¹⁶⁸ In summary, as long as the country continues to mobilise less resources than needed it may continue to face challenges when it comes to affording the cost of implementing and/or complying with its human rights obligations. Concerned by this gulf between existing resources and mobilised revenues, the Committee on the Rights of the Child recommended in 2017 that the State Party “Expedite the reform of its fiscal policy in order to ensure that it is adequate, progressive and socially equitable and improves tax collection so as to increase the resources available for implementing children’s rights”.¹⁶⁹

7. Conclusion

The aim of this Chapter was to better understand, from a theoretical and practical perspectives, what is meant by limitations of capacity to implement human rights obligations and how this can contribute to the gap between the DRC’s formal commitment to end VAW and the country’s actual behaviour. To this end, Chapter Four studied the DRC’s domestic practices through the lenses of the “Managerial Model”. Chapter Four successively explained how limitations of capacity affecting the DRC could contribute to the poor implementation by the DRC of its obligations to “respect”, “protect” and “fulfil” women’s right to be free from violence (discussed in detail in Chapter Two) and ultimately to the gap between the DRC’s formal commitment to end VAW and the country’s actual behaviour.

¹⁶⁷ Ibid.

¹⁶⁸ Ibid.

¹⁶⁹ CRC Committee, *Concluding observations on the combined third to fifth periodic reports of the DRC*, document no: CRC/C/COD/CO/3-5 (28 February 2017) paragraph 10 (g).

To better understand how limitations of capacity can contribute to the poor implementation of the obligation to “respect” women’s right to be free from violence, Chapter Four used the Congolese national army as an example. The Chapter showed the potential link between, on the one hand, implementation gaps, and, on the other hand, individual and organisational capacity deficits affecting the Congolese National Army as well as the absence of an enabling environment created, *inter alia*, by protracted armed conflicts.

To better grasp how limitations of capacity can lead to the poor implementation of the obligation to “protect” women’s right to be free from violence, Chapter four used the Congolese justice system as an illustration. More specifically, Chapter four showed how a combination of individual and organisational capacity deficits could prevent the Congolese justice system from properly enforcing the various anti-VAW laws adopted by the country. This could ultimately to the gap between the DRC’s commitment to end VAW and the country’s actual performance.

To better comprehend how limitations of capacity can contribute to the poor implementation of the obligation to “fulfil” women’s right to be free from violence, Chapter four used the Congolese Ministry of gender as a case study given that this is the governmental department responsible for implementing anti-VAW policies and strategies. Chapter four then showed how capacity deficits can limit this Ministry’s ability to implement anti-VAW policies and strategies which are aimed at ensuring the full realization of women’s right to be free from violence in the DRC and ultimately closing the gap between the *de jure* and *de facto* protection of women from violence. In short, the discussions from Chapter Four emphasised the importance of gaining a better understanding of the distinct and debilitating effects of limitations of capacity as a source of the gap between the DRC’s formal commitment to eliminate VAW and the country’s actual practices. Put differently, the discussions from Chapter Four suggested that arguments that ignore or downplay the debilitating effects of limitations of capacity should be more nuanced, particularly when it comes to the DRC’s capacity to implement its obligation to eliminate VAW.

The next Chapter examines how the two problems discussed in Chapters three and four (the combined effect of the DRC’s unwillingness and limitations of

capacity to adequately implement its international obligation to eliminate VAW) are also exacerbated by an additional challenge, namely the multiple weaknesses affecting UN Human Rights bodies.

CHAPTER FIVE

THE LIMITED POWER VESTED IN AND RESOURCES AVAILABLE TO UN HUMAN RIGHTS BODIES: A FACTOR EXACERBATING THE GAP

1. Introduction

Chapter five argues that the two problems discussed in Chapters three and four (the combined effect of the DRC's unwillingness and limitations of capacity to properly implement its obligation to eliminate VAW) are also exacerbated by an additional challenge resulting from the mismatch between what is expected from UN Human Rights bodies and what the latter can actually deliver. To be sure, the UN human rights system was not designed to replace States and shoulder the primary responsibility of human rights protection.

Indeed, as stressed by Neuman, since its creation in the 1940s, the international human rights system has placed primary reliance on States to ensure the protection of human rights.¹ International institutions facilitate that protection in a variety of ways but without replacing states as the primary guarantors.² In short, international action for human rights is normally subsidiary to national action.³ Echoing Newman, Smith explains that the international community only steps in when the State cannot or will not deal with human rights problems.⁴ Paradoxically, despite these expectations, the UN Human Rights system is poorly equipped to influence the practices of States that cannot or do not want to deal with human rights problems. UN Human rights bodies, including those that are established to promote and protect women's right to be free from violence suffer from several weaknesses that can limit their ability to positively influence the domestic behaviour and practices

¹ Gerald L. Neuman, 'Subsidiarity' in Dinah Shelton (ed), *The Oxford Handbook of International Human Rights Law* (Oxford University Press 2013) 363.

² Ibid, 363 – 364.

³ Ibid, 364.

⁴ Rhona K. M. Smith, *Textbook on International Human Rights* (Eight Edition, Oxford University Press 2018) 24.

of States which are unwilling and/or unable to implement their obligation to end VAW (such as the DRC). Chapter One mentioned weaknesses in four areas.

Indeed, first, although unwillingness constitutes one of the key sources of noncompliance with human rights law standards, UN human rights bodies are not legally empowered to compel States into compliance. This weakness results, *inter alia*, from the fact that the output of these bodies is generally considered as not being legally binding. And most importantly, these bodies operate in an international system where the principle of state sovereignty curtails their (already) limited enforcement powers. Second, although limitations of capacity constitute a major source of noncompliance with International Law standards, UN Human Rights bodies are neither mandated nor properly resourced to respond to capacity deficits such as the ones discussed in Chapter Four that can contribute to the gap between the DRC's formal commitment to end VAW and the country's actual practices. Third, UN Human Rights bodies have limited capacity to properly monitor States' domestic behaviour and practices and determine whether States are implementing or not their human rights obligations. Lastly, there is some distance between the UN system of human rights protection and the real lives of women and girls affected by violence at the domestic level which can also limit UN Human Rights bodies' ability to positively influence States' domestic practices. The next Sections discuss each of these points in more details.

2. The limited enforcement power vested in UN Human Rights bodies mandated with addressing VAW

Traditionally, the extant literature divides the UN Human Rights Protection system into two main categories, namely "charter-based bodies" and "treaty-based bodies".⁵ As explained by Smith, "charter-based bodies" refer to entities deriving

⁵ See for instance: Rhona K. M. Smith, 'The United Nations Human Rights System' in Mashood A. Baderin and Manisuli Ssenyonjo (eds), *International Human Rights Law: Six Decades After the UDHR and Beyond* (Ashgate Publishing, Ltd., 2010) 216, 217 – 225, 226 – 234; Sarah Joseph and Joanna Kyriakakis, 'The United Nations and Human Rights' in Sarah Joseph and Adam McBeth

their authority from the UN Charter and bodies founded thereunder, and “treaty-based bodies” relate to those bodies established by the core human rights treaties concluded under the auspice of the UN.⁶ The next two subsections discuss challenges to the enforcement of international human rights law in general before addressing the negative effects of the limited enforcement power vested in UN Human Rights treaty and charter Bodies mandated with addressing VAW and particularly the CEDAW and the SRVAW.

2.1. Challenges to the enforcement of international human rights law in general

Unlike within the domestic sphere, UN Human Rights bodies are misleadingly referred to as “Human Rights enforcement mechanisms” while to a large extent they are not legally empowered to actually “enforce” International Human Rights Law. Indeed, if enforcement is (*stricto sensu*) understood as an “action of a coercive character to bring about compliance by a State with an international decision (or norm) that imposes or recognizes and obligation on that State to follow a particular course of conduit”⁷ or “the act of compelling observance of or compliance with a law, rule, or obligation”,⁸ it becomes clear that the so-called “Human Rights enforcement mechanisms” are to a large extent, neither designed nor legally empowered to actually “enforce” International Human Rights Law. On the contrary, the power of UN Human Rights bodies resides in their ability to change minds and persuade States to implement their international human rights obligations whose violation does not always lead to retribution. To build on the political scientist Joseph S. Nye’s concepts, in the area of human rights, the power of UN Human Rights bodies oftentimes resides in their ability to effectively use “soft power” or “co-optive power”

(eds), *Research Handbook on International Human Rights Law* (Edward Elgar Publishing 2010) 5 – 26; Julie Mertus, *The United Nations and Human Rights: A Guide for a New Era* (Second Edition, Routledge 2009) 37 – 97.

⁶ Smith (n 5) 216.

⁷ Oscar Schachter, *International Law in Theory and Practice* (Martinus Nijhoff Publishers 1991) 227.

⁸ See :< <http://www.oxforddictionaries.com/definition/english/enforcement>> accessed 11 May 2016.

(the ability to shape what other wants)⁹ rather than “hard power”/“command power” [the ability to change what others do by using tools such as coercion (“sticks”) or inducement (“carrots”)].¹⁰

I deliberately opt for a strict definition of “enforcement” for two main reasons. From a theoretical perspective, a broad definition of “enforcement” can lead to the overestimation of the power of UN Human Rights bodies and to the underestimation of their limits. From a practical perspective, overestimating the power of those bodies while underestimating their limits can create false/unrealistic expectations about what they can or cannot achieve. As rightly emphasized by Shaw, “International law cannot be a source of instant solutions to problems (...) because of its own inherent weaknesses in structure and content. To fail to recognise this encourages a utopian approach which, when faced with reality, will fail”.¹¹

Indeed, one of the peculiarities of international law is that its legal rules are not enforced through a comprehensive system of judicial enforcement.¹² International law is relatively rarely enforced through collective penalties or other coercive measures.¹³ This “weakness” results from the very structure of the international system. As pointed out by various scholars, there are many contrasts between municipal law and international law¹⁴ and this has profound repercussions as regards the means for enforcing international law.¹⁵ International law is a horizontal legal system, lacking a supreme authority, the centralization of the use of

⁹ Joseph S. Nye, Jr., *Soft Power: The Means to Success in World Politics* (Public Affairs 2004) 7.

¹⁰ Ibid, 5 and 7.

¹¹ Malcolm N. Shaw, *International Law* (Sixth Edition, Cambridge University Press 2008) 12 – 13.

¹² Dieter Fleck, *The Handbook of Humanitarian Law in Armed Conflicts* (Oxford University Press 1995) 517.

¹³ Jutta Brunée, ‘Enforcement Mechanisms in International Law and International Environmental Law’ in Ulrich Beyerlin, Peter-Tobias Stoll and Rüdiger Wolfrum (eds), *Ensuring Compliance With Multilateral Environmental Agreements: A Dialogue Between Practitioners and Academia* (Koninklijke Brill NV. 2006) 6.

¹⁴ Shaw (n 11)1; Peter Malanczuk, *Akehurst’s modern introduction to International Law* (Seventh revised edition, Routledge 1997) 3.

¹⁵ Shaw (n 11) 6.

force, and a differentiation of the three basic functions of law-making, law determination, and law enforcement typically entrusted to central organs.¹⁶

Donnelly perfectly summarizes the points made above when he stresses that the international system is “a system of sovereign states” that “is, literally, anarchic – without “*arkhe*” (rule) or an “*arkhos*” (ruler) – a political arena without formal hierarchical relations of authority and subordination”.¹⁷ Although “anarchy”, the absence of hierarchical political rule, does not necessarily imply chaos, the absence of order”,¹⁸ it is important to acknowledge that international mechanisms such as UN Human Rights bodies have limited authority to enforce International Law in comparison to domestic mechanisms. As rightly emphasized by Higgins, consent and sovereignty are constraining factors against which the prescribing, invoking, and applying of international law norms must operate.¹⁹ In other words, as remarked by DeLaet that State sovereignty can trump universal human rights and serve as an obstacle to the promotion of universal human rights, because, by definition, universal human rights represent an attempt to create a set of rights that transcend state borders.²⁰ Indeed, in some instances, States can invoke their sovereignty to respond to criticism or to attempts by external actors to scrutinize their poor human rights records. The DRC has also done that on several occasions.²¹

¹⁶ Malanczuk (n 14) 3.

¹⁷ Jack Donnelly, *International Human Rights* (Fourth Edition, Westview Press 2013) 26.

¹⁸ Ibid, 26.

¹⁹ Rosalyn Higgins, *Problems and Process: International Law and How We Use It* (Clarendon Press 1996) 1.

²⁰ Debra L. DeLaet, *The Global Struggle for Human Rights: Universal principles in world politics* (Second Edition, Cengage Learning, 2014) 3.

²¹ See for instance: See for instance: Radio Okapi, *RDC: les poursuites judiciaires contre les militaires accusés de viols à Minova sont en cours, affirme Lambert Mende* (28 March 2013) <<http://www.radiookapi.net/actualite/2013/03/28/rdc-les-poursuites-judiciaires-contre-les-militaires-accuses-de-viols-minova-sont-en-cours-affirme-lambert-mende>> accessed 31 December 2016; Radio Okapi, *L’Onu lance un ultimatum à la RDC pour sanctionner des soldats accusés de viols à Minova* (28 March 2013) <<http://www.radiookapi.net/actualite/2013/03/28/lonu-lance-ultimatum-la-rdc-pour-sanctionner-des-soldats-accuses-de-viols-minova>> accessed 31 December 2016 ; James

In summary, as summarized by Donnelly, the future of international human rights activity can be seen as a struggle over balancing the competing claims of sovereignty and international human rights and the competing conceptions of legitimacy that they imply.²² In light of all that has been mentioned above, it is important to bear in mind the inherent limits of International (Human Rights) Law when thinking about what UN Human Rights bodies can achieve with respect to the poor implementation by the DRC of its international obligation to eliminate VAW. To quote again Shaw, “it is the medium road, recognising the strength and weakness of international law and pointing out what it can achieve and what it cannot, which offers the best hope”.²³

However, acknowledging that international (Human Rights) law is rarely enforced through coercive measures does not mean that it is never obeyed. Indeed, as underlined by several scholars, there are multiple reasons why States obey International Law.²⁴ The “fear” of punishment or coercive measures is simply one among those reasons. It is not the *only* reason. To quote Hathaway:

Butty, *DRC Spokesman Defends Expulsion of UN Human Rights Official* (21 October 2014) <<http://www.voanews.com/a/drc-spokesman-defends-expulsion-of-un-human-rights-official/2490573.html>> accessed 18 May 2017; Saleh Mwanamilongo, *Congo president slams U.N. withdrawal from anti-rebel mission* (15 February 2015) <<http://www.washingtontimes.com/news/2015/feb/15/congo-president-slams-un-withdrawal-from-anti-rebe/>> accessed 19 May 2017; Radio Okapi, « *RDC: Lambert Mende dénonce «l’ingérence» extérieure* (07 July 2016) ; <[http://www.radiookapi.net/2016/07/07/actualite/politique/rdc-lambert-mende-denonce-lingerence-exterieure?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+radiookapi%2Factu+\(Radiookapi.net\)](http://www.radiookapi.net/2016/07/07/actualite/politique/rdc-lambert-mende-denonce-lingerence-exterieure?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+radiookapi%2Factu+(Radiookapi.net))> accessed 19 May 2017.

²² Donnelly (n 17) 27.

²³ Shaw (n 11)13.

²⁴ For a discussion on those reasons see for instance: Jack L. Goldsmith and Eric A. Posner, *The Limits of International Law* (Oxford University Press 2005) 23 – 35; 83 – 134; Schachter (n 7) 5 – 15; 117 – 119; 185 – 186; 227 – 246; 342 – 345; 391 – 392; Higgins (n 19) 13 – 16.

(...) if enforcement were the only reason people followed the law, the world would be a much messier place. Individuals abide by the law for a complex mix of reasons, including, among others, fear of enforcement by private parties or of retribution by the wronged party, internalization of the legal rule, and concerns about the impact on their reputation if others learn of their wrongdoing. Hence, even if there is no chance that individuals will be punished for a legal transgression, there are still many reasons why they might abide by the law. As advocates of international law are quick to point out, the same is true of states.²⁵

After this introductory Section, the next subsection discusses more specifically how the limited enforcement power vested in UN Human Rights Treaty and Charter Bodies mandated with promoting and protecting women's right to be free from violence can affect their ability to influence the domestic practices of States which are unwilling to implement their human rights obligations.

2.2. The limited enforcement power vested in UN Treaty and Charter Bodies mandated with addressing VAW

As stressed by Coomans and others, the international system for the promotion and protection of human rights, elaborated by the United Nations, is based on the premise that States as Members of the United Nations and as Parties to international human rights treaties have undertaken to respect, to ensure and fulfil the norms set out in international instruments.²⁶ Speaking about the legal basis of the above-mentioned premise, Tomuschat explains that the proposition that states are to respect and to ensure the individual rights which they have accepted by virtue of an international treaty is no more than a reflection of the basic rule of *pacta sunt servanda*.²⁷ Coomans and others add that it may be expected that States comply with their human rights obligations in good faith and that they be held responsible in

²⁵ Oona A. Hathaway, 'The Promise and Limits of the International Law of Torture' in Sanford Levinson (ed), *Torture: A Collection* (Oxford University Press 2004) 205 – 206.

²⁶ Fons Coomans and others, *Human Rights from Exclusion to Inclusion; Principles and Practice: An Anthology from the Work of Theo Van Boven* (Kluwer Law International 2000) 287 - 288.

²⁷ Christian Tomuschat, *Human Rights: Between Idealism and Realism* (Second Edition, Oxford University Press 2008) 124.

case of failure to comply.²⁸ In reality though, as analysed in the next two subsections, because of multiple structural weaknesses affecting UM Human Rights bodies, dealing with States that fail to comply with their human rights obligations, particularly those that wilfully violate their obligations, is one of the key challenges facing the UN human rights system.

2.2.1. The limited enforcement power vested in Treaty Bodies: The case of the CEDAW Committee

As recalled by Sitaraman, treaty monitoring bodies do not have the power to enforce treaty law on the participating states.²⁹ Treaty bodies make recommendations, offer consultation and expect states to follow them in good faith.³⁰ The CEDAW Committee operates with the same limited enforcement powers and constraints discussed above. Indeed, the body is legally mandated to perform four main tasks namely first to consider progress made in the implementation of the CEDAW Convention then issue Concluding Comments or Observations after consideration of the report of a State party;³¹ second to receive communications (complaints) from individuals or groups of individuals submitting claims of violations of rights protected under the CEDAW Convention then issue “Views”;³² third to initiate inquiries into situations of grave or systematic violations of women’s rights then issue “findings, comments or suggestions”;³³ and fourth to formulate general

²⁸ Coomans and others (n 26) 288.

²⁹ Srini Sitaraman, *State Participation in International Treaty Regimes* (Ashgate Publishing, Ltd., 2009) 136 - 137.

³⁰ Ibid, 137.

³¹ UNGA, *CEDAW Convention*, resolution 34/180 (18 December 1979) article 17 (1) and United Nations, ‘Rules of procedure of the Committee on the Elimination of discrimination against women’ [UN doc no: A/56/38 (SUPP), as amended by A/62/38 (SUPP) Chapter V] in United Nations, *International human rights instruments compilation of rules of procedure adopted by human rights treaty bodies*, document no: HRI/GEN/3/Rev.3 (28 May 2008) rules 48 to 54.

³² UNGA, *CEDAW Protocol*, resolution A/54/4 (6 October 1999) article 1 to 7 and United Nations (n 31) rules 56 to 75.

³³ UNGA (n 32) articles 8 to 10 and United Nations (n 31) rules 76 to 91.

recommendations and suggestions directed to States Parties based on the examination of reports and information received from the States Parties.³⁴ According to several authors, Treaty Bodies' Concluding Observations³⁵ and "Views"³⁶ are not legally binding. Elaborating on this point, Ulfstein stresses that states, including national courts, are legally free to come to the conclusion, if they have good reasons, that they will not respect the findings of treaty bodies.³⁷ It is true that some domestic courts may rule that the findings of international bodies are binding. However, this does not confer a legally-binding character to those findings under international law. Indeed, as rightly argued by van Alebeek and Nollkaemper, the question of the status of treaty body decisions in national law (their *domestic* legal status) should be distinguished from the question of the binding nature of these decisions under international law (their *international* legal status).³⁸

In summary, the limited enforcement power vested in Treaty Bodies constitutes a real challenge. This means that, when acting on its own, the CEDAW

³⁴ UNGA (n 31) article 21(1) and United Nations (n 31) rule 52.

³⁵ Manfred Nowak, 'The International Covenant on Civil and Political Rights', in Felipe Gómez Isa and Koen de Feyter (eds), *International Human Rights Law in a Global Context* (University of Deusto 2009) 301; Nigel S. Rodley, 'The Role and Impact of Treaty Bodies', in Dinah Shelton (ed), *The Oxford Handbook of International Human Rights Law* (Oxford University Press 2013) 639; Nigel Rodley, 'The International Court of Justice and Human Rights Treaty Bodies', in James A. Green and Christopher P.M. Waters (eds), *Adjudicating International Human Rights: Essays in Honour of Sandy Ghandhi* (BRILL 2015) 14.

³⁶ Rachael Lorna Johnstone, 'When Private and Public Meet: Three CEDAW Committee Views on Intra-Familial Violence' in Adriana Di Stefano (ed), *Gender Issues and International Legal Standards: Contemporary Perspectives* (ed.it 2010) 63; Geir Ulfstein, 'Individual complaints' in Helen Keller and Geir Ulfstein, *UN Human Rights Treaty Bodies: Law and Legitimacy* (Cambridge University Press 2012) 113; Rodley (2013) (n 35) 639; Christin Chinkin, 'Sources' in Daniel Moeckli and others, *International Human Rights Law* (Second Edition, Oxford University Press 2014) 89; Rodley (2015) (n 35)14.

³⁷ Ulfstein (n 36) 113.

³⁸ Rosanne van Alebeek and Andre Nollkaemper, 'The legal status of decisions by human rights in treaty bodies in national law' in Helen Keller and Geir Ulfstein (eds), *UN Human Rights Treaty Bodies: Law and Legitimacy* (Cambridge University Press 2012) 357 – 358.

Committee has limited power to meaningfully contribute to narrowing implementation gaps resulting from the DRC's unwillingness to implement its international obligation to end VAW. The next subsection explains how like treaty bodies, UN human rights charter-bodies have limited enforcement powers despite high expectations that can be placed on them in terms of influencing recalcitrant states. Alluding to that discrepancy, Winkler and de Albuquerque (a former UN Special Rapporteur on the Human Rights to Water and Sanitation) argue that the significant legitimacy that special procedures have in the eyes of the public (...) creates expectations that cannot always be met.³⁹

2.2.2. The limited enforcement power vested in UN human rights Charter-based bodies: the case of the special rapporteur on VAW

A former UN Special Rapporteur on Minority Issues argues that the lack of real enforcement or incentive measures is an obstacle that confronts the entire system of UN Special Procedures.⁴⁰ Speaking about his own experience, a former UN Special Rapporteur on the situation of human rights in Cambodia writes:

(...) While the people of Cambodia had high expectations of me, I realised that in reality I had no real powers to protect people from the human rights violations they faced. For instance, I would regularly receive individual petitions from those whose rights were violated or were facing the threat of violation, but I had neither the powers nor the resources to entertain such petitions. Of course, I would use all means at my disposal, such as writing directly to the people in the government bringing the matter to their attention in the forms of urgent appeals or allegation letters, and sometimes the violation would stop or the threat of eviction from their land would not be carried out. However, if the government ignored the communication and the eviction proceeded, resulting often in the burning down of the

³⁹ Inga T. Winkler and Catarina de Albuquerque, 'Doing it All and Doing it Well? A Mandate's Challenge in terms of Cooperation, Fundraising and Maintaining Independence' in Aoife Nolan, Rosa Freedman, and Thérèse Murphy (eds.), *The United Nations Special Procedures System* (BRILL 2017) 208.

⁴⁰ Gay McDougall, *The First United Nations Mandate on Minority Issues* (Brill Nijhoff 2016) 31.

dwelling of the villagers and forcible eviction of families, there was little that the UN system of human rights could do about it (...)⁴¹

In summary, what transpires from the points made by the authors cited above is that UN Special Procedures have limited power to compel States into compliance. This transpires from an analysis of both the resolutions establishing the mandate⁴² and the ones renewing it.⁴³ The mandate of the SRVAW is to, *inter alia*, seek and receive information on VAW, its causes and its consequences, from Governments, treaty bodies, specialized agencies, other special rapporteurs responsible for various human rights questions, and intergovernmental and nongovernmental organisations, including women's organisations, and to respond effectively to such information and to recommend measures, ways and means at the local, national, regional and international levels to eliminate all forms of VAW and its causes, and to remedy its consequences.⁴⁴

The output of the SRVAW is equally not legally binding, like the CEDAW Committee's one. The Special Rapporteur is simply mandated to "Recommend" measures, ways and means (...) to eliminate all forms of VAW and its causes, and to remedy its consequences.⁴⁵ In summary, the power of the SRVAW resides in his/her ability to change minds and persuade States to implement human rights obligations whose violation does not always lead to a punishment. This means that, when acting on his/her own, the SRVAW has limited power to meaningfully

⁴¹ Surya P. Subedi, *The Effectiveness of the UN Human Rights System: Reform and the Judicialisation of Human Rights* (Routledge 2017) xiv - xv.

⁴² Commission on Human Rights, *Resolution 1994/45. Question of integrating the rights of women into the human rights mechanisms of the United Nations and the elimination of VAW* (4 March 1994) operative paragraph 7.

⁴³ See for instance: Human Rights Council, *Resolution 16/7 of 21 March 2011: Mandate of the SRVAW, its causes and consequences*, document no: A/HRC/RES/16/7 (8 April 2011) operative paragraph 3.

⁴⁴ Ibid.

⁴⁵ Human Rights Council (n 43) operative paragraph 3 (b).

contribute to narrowing implementation gaps resulting from the DRC's unwillingness to implement its international obligation to end VAW.

However, despite its limited enforcement powers, both the CEDAW Committee and the SRVAW have on several occasions attempted to positively influence the domestic practices of the DRC by expressing concerns about VAW occurring in the country and by making recommendations on how to address those concerns. The CEDAW Committee has done that in its Concluding Observations.⁴⁶ The SRVAW did the same in a report she issued following a visit to the DRC from 16 to 27 July 2007. She made several recommendations to address VAW. She focused on five specific areas, namely, ending impunity, in particular with regard to members of the security forces, enhancing the independence and capacity of the justice system; reforming the security sector; compensating, supporting and protecting women survivors of violence; and ending discrimination and all forms of VAW.⁴⁷ In addition to the CEDAW Committee and the SRVAW other treaty bodies,⁴⁸

⁴⁶ See: CEDAW Committee, 'Concluding Comments on the Initial report and second and third periodic reports: DRC' in CEDAW Committee, *Report of the Committee on the Elimination of Discrimination against Women*, document no: A/55/38 (2000) paragraphs 209, 215, 216, 217, 218, 219, 220; CEDAW Committee, *Concluding comments of the Committee on the elimination of discrimination against women on the combined fourth and fifth periodic report of the DRC*, document no: CEDAW/C/COD/CO/5 (25 August 2006) paragraphs 13, 14, 21, 27, 28; CEDAW Committee, *Concluding observations on the combined sixth and seventh periodic reports of the DRC*, document no: CEDAW/C/COD/CO/6-7 (30 July 2013) paragraphs 4, 9 – 10, 11 – 12, 15 – 16, 19 – 20, 21 – 22, 23 – 24, 27(f), 28(f), 39 – 40.

⁴⁷ Human Rights Council, *Report of the SRVAW, its causes and consequences*, Yakin Ertürk. *Addendum. Mission to the DRC*, document no: A/HRC/7/6/Add.4 (28 February 2008) paragraph 108.

⁴⁸ See for instance: Human Rights Committee, *Concluding observations of the Human Rights Committee on the third periodic report of the DRC*, document no: CCPR/C/COD/CO/3 (26 April 2006) paragraphs 12 – 13, 18, 24; Committee on the Elimination of Racial Discrimination (CERD Committee), *Concluding observations on the eleventh, twelfth, thirteenth, fourteenth and fifteenth periodic reports of the DRC*, document no: A/62/18 (2007) paragraph 329; Committee on Economic, Social and Cultural Rights (CESCR Committee), *Concluding observations of the Committee on Economic, Social and Cultural Rights on the combined second to fourth periodic reports of the DRC*, document no: E/C.12/COD/CO/4 (16 December 2009) paragraphs 12, 20, 25, 26, 28; CRC

Special Procedures⁴⁹ and also the UN Human Rights Council⁵⁰ have also expressed concerns about VAW in the DRC and formulated recommendations for corrective actions. One of the key challenges is how to translate those recommendations into real change in the lives of women and girls affected by VAW in a context where these bodies do not have the power to compel the DRC to take any action

Committee, *Concluding observations on the combined third to fifth periodic reports of the DRC*, document no: CRC/C/COD/CO/3-5 (28 February 2017) paragraphs 6, 25 – 28, 39(b), 43, 46 and CRC Committee, *Concluding observations on the report submitted by the DRC under article 12 (1) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*, document no: CRC/C/OPSC/COD/CO/1 (28 February 2017) paragraphs 10, 11(a), 14, 15(c), 20, 24 – 25, 26(b) and (c), 27(d), 27(e), 36(a), 36(c), 38, 39, 40.

⁴⁹ See for instance: Commission on Human Rights, *Extrajudicial, summary or arbitrary executions. Report of the Special Rapporteur, Ms. Asma Jahangir, submitted pursuant to Commission on Human Rights resolution 2002/36. Addendum: Mission to the DRC*, document no: E/CN.4/2003/3/Add.3 (4 November 2002) paragraphs 10, 25; Human Rights Council, *Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy. Addendum: Mission to the DRC*, document no: A/HRC/8/4/Add.2 (11 April 2008) paragraphs 31, 39, 61, 63, 65, 70, 80, 81, 83; Human Rights Council, *Report submitted by the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin. Addendum: Mission to the DRC*, document no: A/HRC/8/6/Add.3 (16 May 2008) paragraphs 16, 18, 48, 60, 68, 69; United Nations, *Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya. Addendum: Mission to the DRC (21 May – 3 June 2009)*, document no: A/HRC/13/22/Add.2 (25 February 2010) paragraph 29, 63, 68, 74, 76, 77, 100; Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston. Addendum: Mission to the DRC*, document no: A/HRC/14/24/Add.3 (14 June 2010) paragraphs 25, 47, 60, 63 – 68, 103, 111.

⁵⁰ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: DRC*, document no: A/HRC/13/8 (4 January 2010) paragraphs 94.9, 94.37, 94.38, 94.39, 94.40, 94.41, 94.42, 94.43, 94.44, 94.45, 94.46, 94.47, 94.48, 94.49, 94.50, 94.51, 94.52, 94.55, 94.72, 94.74, 94.79, 94.80, 94.81, 94.82, 94.84, 94.84, 94.86, 94.88, 94.89, 94.90, 94.91, 94.93, and 94.94 and Human Rights Council, *Report of the Working Group on the Universal Periodic Review: DRC*, document no: A/HRC/27/5 (7 July 2014) paragraph 133.9, 133.11, 133.17, 133.18, 134.16, 134.18, 134.31, 134.34, 134.46, 134.57, 134.59, 134.60, 134.61, 134.62, 134.63, 134.64, 134.65, 134.66, 134.67, 134.68, 134.69, 134.70, 134.72, 134.73, 134.74, 134.75, 134.76, 134.77, 134.78, 134.79, 134.80, 134.81, 134.82, 134.83, 134.84, 134.85, 134.86, 134.87, 134.88, 134.93, 134.113, 134.116, 134.119, 134.125, 134.126, 134.127 and 134.128.

whatsoever. My “Integrated and Multi-stakeholder Model of Human Rights Change” is an attempt to overcome this challenge. The next Section analyses how, in addition to the limited enforcement powers, the limited ability to deal with capacity deficits can also affect UN Human Rights bodies’ ability to positively influence the domestic practices of a State such as the DRC, which also suffers from limitations of capacity to implement its obligation to end VAW.

3. UN Human Rights bodies’ limited ability to deal with capacity deficits faced by States

As mentioned earlier, although limitations of capacity constitute a major source of noncompliance with International Law standards, relevant UN Human Rights bodies are neither mandated nor adequately resourced to respond to capacity deficits such as the one that can contribute to the gap between the DRC’s formal commitment to end VAW and the country’s actual practices (discussed in Chapter Four). It is true that the United Nations Office of the High Commissioner for Human Rights (OHCHR), which provides secretarial support to treaty-based and charter-based human rights bodies, runs a “Programme of Advisory Services and Technical Cooperation in the Field of Human Rights”.⁵¹ However, OHCHR stresses that this programme it is not, in the first instance, a funding source for projects developed outside OHCHR.⁵² Many of the capacity deficits discussed in chapter four cannot be addressed through the above-described programme. Besides, it is also important to remain realistic about what the “Advisory Services and Technical Cooperation in the Field of Human Rights” can achieve given its limited resources. As acknowledged by many, the UN human rights system is under resourced.⁵³ In

⁵¹ See: OHCHR, *Advisory Services and Technical Cooperation in the Field of Human Rights: Fact Sheet No.3 (Rev.1)* (1996) <<http://www.ohchr.org/Documents/Publications/FactSheet3Rev.1en.pdf>> accessed 08 June 2017.

⁵² OHCHR (n 51).

⁵³ Michael Ignatieff, ‘Rights inflation and role conflict in the Office of the High Commissioner for Human Rights’ in Felice D. Gaer and Christen L. Broecker (eds), *The United Nations High Commissioner for Human Rights: Conscience for the World* (Martinus Nijhoff Publishers, 2014) 39;

this respect, in a global review of the OHCHR technical cooperation programme, Flinterman and Zwamborn note that “the challenge for OHCHR (...) is (...) how to effectively respond to growing expectations inside and outside the organisation, while OHCHR resources will remain limited in relation to the growing ambitions and expectations”.⁵⁴

The points made above mean that unless other international and/or domestic actors step in and take action to address capacity deficits affecting duty-bearers and rights-holders in the DRC, implementation gaps resulting from the country’s limitations of capacity to implement its obligation to end VAW are likely to persist despite the multiple and relevant recommendations formulated by UN Human Rights bodies. In this respect, even the CEDAW Committee has on several occasions recommended that the DRC seek assistance from third parties such as “the international community” and/or from relevant United Nations agencies in order to implement its obligations deriving from the CEDAW convention.⁵⁵

In addition to the challenges discussed above, when acting on their own, UN Human Rights bodies can have difficulties detecting problems which occur at the domestic level, including instances or situations where States’ show unwillingness and/or lack of capacity to implement their human rights obligations or recommendations formulated by those bodies. This, because as discussed in the next Section, UN Human Rights bodies have limited capacity to properly monitor States’ domestic practices and follow-up the implementation of their own recommendations. This means that unless other actors step in and take action to

Ilias Bantekas and Lutz Oette, *International Human Rights Law and Practice* (Second Edition, Cambridge University Press 2016) 173; Winkler and de Albuquerque (n 35) 210; Jane Connors, ‘Special Procedures: Independence and Impartiality’ in Aoife Nolan, Rosa Freedman, and Thérèse Murphy (eds), *The United Nations Special Procedures System* (BRILL, 2017) 56.

⁵⁴ Cees Flinterman and Marcel Zwamborn, *From development of human rights to managing human rights development: global review of the OHCHR technical cooperation programme: synthesis report* (Netherlands Institute of Human Rights (SIM) in partnership with MEDE European Consultancy, September 2003) 86 <<https://www.ohchr.org/Documents/Countries/global-reviewsynthesis.pdf> > accessed 04 December 2018.

⁵⁵ See for instance: CEDAW Committee (30 July 2013) (n 46) paragraphs 40 and 47.

monitor States' domestic behaviour and practices and follow-up the implementation of their recommendations, UN Human Rights bodies can end up being blindsided. This can contribute to a lack of "pressure from above" which could have otherwise helped close the gap between the DRC's formal commitment to end VAW and the country's actual behaviour and practices.

4. UN Human Rights bodies' limited capacity to properly monitor the DRC's domestic practices and follow up on the implementation of their own recommendations

4.1. UN Human Rights bodies' limited capacity to properly monitor the DRC's domestic practices

In her landmark study of the UN Human Rights Treaty System, Bayefsky argues, "(...) International institutions should play a secondary role in the protection of international human rights standards. They have neither the resources nor the depth of knowledge of local circumstances to be able to monitor systematically (...)".⁵⁶ As explained in the next subsections, several factors can contribute to UN Human Rights bodies' limited ability to properly monitor States' domestic practices. First, the assessment of States' implementation by treaty bodies is occasional (approximately every four years). Second, the assessment of States' behaviour by Charter-based bodies (such as the SRVAW) relies on a system whereby these bodies are expected to seek information from States (and other actors) without having any means to ensure that States will provide that information. Lastly, while treaty bodies' inquiries and Special Procedures' country visits could strengthen the ability of these bodies to monitor States' behaviour, States' consent is needed to set them into motion.

⁵⁶ Anne F. Bayefsky, *The UN Human Rights Treaty System: Universality at the Crossroads* (Kluwer Law International 2001) 86.

4.1.1. The limits of monitoring the DRC's behaviour through periodic reports to Treaty Bodies

The main tool through which UN Human Rights treaty bodies can monitor States' domestic practices is the periodic report that States are obligated to submit. In this respect, article 18 of the CEDAW Convention requires that States submit these reports "within one year after the entry into force for the State concerned and thereafter at least every four years and further whenever the Committee so requests". This means that in the best of cases, it is only every four years that the CEDAW Committee can examine the DRC's implementation of the obligations deriving from the CEDAW Convention. Besides, many states, including the DRC, barely respect the obligation to submit reports every four years. This creates the problem of overdue reports decried by many scholars.⁵⁷

For instance, the DRC acceded to the CEDAW Convention on 17 October 1986. In theory, pursuant to article 18 of the CEDAW Convention, the DRC was supposed to submit its initial report by 16 November 1987 and then every four years. However, the country submitted its initial report on 01 March 1994 (with almost a seven-year delay);⁵⁸ then its second periodic report on 24 Oct 1996 (whereas it was due on 16 November 1991);⁵⁹ then its third periodic report on 18 June 1999 (whereas it was due on 16 November 1995);⁶⁰ then its combined fourth and fifth

⁵⁷ Bayefsky (n 56) 9 – 12; Wouter Vandenhoe, *The Procedures Before the UN Human Rights Treaty Bodies: Divergence Or Convergence?* (Intersentia nv, 2004) 83 – 84; Sitaraman (n 29) 138 – 139; Walter Kalin, 'Examination of state reports' in Helen Keller and Geir Ulfstein, *UN Human Rights Treaty Bodies: Law and Legitimacy* (Cambridge University Press, 2012) 43; United Nations General Assembly (UNGA), *Status of the human rights treaty body system: Report of the Secretary-General*, document no: A/71/118 (18 July 2016) paragraphs 29 – 31; Frans Viljoen, *International Human Rights Law in Africa* (Second Edition, Oxford University Press 2012) 38.

⁵⁸ See: OHCHR, "Reporting status for DRC" <https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/countries.aspx?CountryCode=COD&Lang=EN> accessed 17 January 2019.

⁵⁹ Ibid.

⁶⁰ Ibid.

periodic report on 11 August 2004 (while it was due on 16 November 2003);⁶¹ then its combined sixth and seventh periodic report on 23 June 2011 (whereas it was due on 16 November 2011)⁶² and finally its eight periodic report on 12 January 2018 (while it was due on 01 Jul 2017).⁶³

Besides, even in cases where reports are submitted every four years, the CEDAW Committee, like other treaty bodies, does not always have the capacity to review them immediately. This creates the problem of the backlog of reports awaiting examination which has been criticised by many.⁶⁴ One of the contributing factors to this problem is the fact that treaty bodies are understaffed (in terms of secretariat personnel)⁶⁵ and underfunded,⁶⁶ a problem which has led to the cancellation of sessions during which State reports are supposed to be examined.⁶⁷ Another contributing factor is time constraints resulting from the limited meeting time and number of sessions.⁶⁸ The problem of the backlog of reports is also witnessed in the Congolese context. As mentioned earlier, the DRC submitted its initial report to the

⁶¹ Ibid.

⁶² Ibid.

⁶³ Ibid.

⁶⁴ Kalin (n 57) 42 – 45; UNGA (n 57) paragraph 35.

⁶⁵ See: James Crawford, 'The UN human rights treaty system: A system in crisis?' in Philip Alston and James Crawford (eds), *The Future of UN Human Rights Treaty Monitoring* (Cambridge University Press, 2000) 7; Elizabeth Evatt, 'Ensuring effective supervisory procedures: the need for resources' in Philip Alston and James Crawford (eds), *The Future of UN Human Rights Treaty Monitoring* (Cambridge University Press, 2000) 470; Helen Keller and Geir Ulfstein, 'Introduction' in Helen Keller and Geir Ulfstein, *UN Human Rights Treaty Bodies: Law and Legitimacy* (Cambridge University Press 2012) 6.

⁶⁶ Helen Keller and Geir Ulfstein, 'Conclusions' in Helen Keller and Geir Ulfstein (eds), *UN Human Rights Treaty Bodies: Law and Legitimacy* (Cambridge University Press 2012) 425.

⁶⁷ See: Crawford (n 65) 7; Markus Schmidt, 'Servicing and financing human rights supervisory bodies' in Philip Alston and James Crawford (eds), *The Future of UN Human Rights Treaty Monitoring* (Cambridge University Press, 2000) 483.

⁶⁸ Mara R. Bustelo, 'The committee on the elimination of discrimination against women at the crossroads' in Philip Alston and James Crawford (eds), *The Future of UN Human Rights Treaty Monitoring* (Cambridge University Press, 2000) 96; 110.

CEDAW Committee on 01 March 1994,⁶⁹ then its second periodic report on 24 Oct 1996,⁷⁰ and then its third periodic report on 18 June 1999.⁷¹ However, it is only in January 2000 that the CEDAW Committee examined these three reports and issued its Concluding Observations on them.⁷² In other words, by the time the CEDAW Committee examined these three reports and issued its Concluding Observations, six years had elapsed since the DRC submitted its initial report.

The other problem that can limit the monitoring of States' behaviour through periodic reports to treaty bodies is the one of inadequate reports studied by several scholars.⁷³ In this respect, Sitaraman regrets that states tend to embellish facts or fail to acknowledge certain systemic problems.⁷⁴ In a similar vein, Bayefsky laments that State reports in recent years have often taken the forms of mere recitation of the provisions of the constitution or other legislation; three or four page reports; and/or the inclusion of (vague) claims".⁷⁵ The CEDAW Committee⁷⁶ and other treaty bodies⁷⁷ have also expressed concerns about inadequate reports submitted by the DRC.

The discussion above shows that monitoring States' behaviour through periodic reporting is clearly an occasional assessment, which is sometimes based on overdue or inadequate reports by States. In addition, these reports are not always examined in a timely manner by treaty bodies. In summary, this can make it difficult for the CEDAW Committee (or any other treaty body for that matter) to detect on

⁶⁹ OHCHR (n 58).

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² CEDAW Committee (2000) (n 46) paragraph 194.

⁷³ Bayefsky (n 56) 22 – 23; Viljoen (n 57) 38.

⁷⁴ Sitaraman (n 29) 138.

⁷⁵ Bayefsky (n 56) 22.

⁷⁶ CEDAW Committee (2000) (n 46) paragraph 2.

⁷⁷ Human Rights Committee (n 45) paragraph 3; Committee on the elimination of racial discrimination (CERD Committee), *Concluding observations of the Committee on the third to ninth and tenth periodic reports: Zaire*, document no: CERD/C/304/Add.18 (27 September 1996) paragraph 2.

time and respond accordingly, if a State lacks the political will or the capacity to implement its human rights commitments. Echoing this, Leckie argues, “A treaty body (...) can only be expected to have a limited impact upon the actual enjoyment of human rights in countries over which it has occasional supervisory jurisdiction. This is true no matter how far the committee may improve its methods of work or how intensively it may strive to address serious human rights infractions”.⁷⁸ This highlights the importance of supporting NGOs, particularly those operating domestically, to monitor the DRC’s domestic practices in a more sustained manner and submit alternative reports to treaty bodies, including the CEDAW Committee. As explained in the next paragraphs bodies such as the SRVAW face similar challenges to properly monitor States’ behaviour.

4.1.2. The limits of monitoring States’ behaviour through responses to letters of allegations and urgent appeals sent by Special Rapporteurs

One of the tools through which Special Procedures can monitor States’ behaviour is through information received from third parties, including victims of human rights violations.⁷⁹ Based on this information, Special Procedures can send “urgent appeals” or “letters of allegations” to the State concerned. Urgent appeals are used to communicate information in cases where the alleged violations are time-sensitive in terms of involving loss of life, life-threatening situations or either imminent or ongoing damage of a very grave nature to victims that cannot be addressed in a timely manner by the procedure under letters of allegation.⁸⁰ The

⁷⁸ Scott Leckie, ‘The Committee on Economic, Social and Cultural Rights: Catalyst for change in a system needing reform’ in Philip Alston and James Crawford (eds), *The Future of UN Human Rights Treaty Monitoring* (Cambridge University Press 2000) 130.

⁷⁹ OHCHR, *Manual of Operations of the Special Procedures of the Human Rights Council* (August 2008) paragraph 4 < https://www.ohchr.org/Documents/HRBodies/SP/Manual_Operations2008.pdf > accessed 11 June 2016.

⁸⁰ Ibid, paragraph 43.

intention is to ensure that the appropriate State authorities are informed as quickly as possible of the circumstances so that they can intervene to end or prevent a human rights violation.⁸¹ Urgent appeals generally follow a standard format consisting of four parts, one of which is a request to the Government to provide information on the substance of the allegations and to take urgent measures to prevent or stop the alleged violations.⁸² Governments are generally requested to provide a substantive response to urgent appeals within thirty days.⁸³ Letters of allegation are used to communicate information about violations that are alleged to have already occurred and in situations where urgent appeals do not apply.⁸⁴ Letters of allegation generally follow a standard format consisting of four parts, one of which is a request to the Government to provide information on the substance of the allegations; measures taken to investigate and punish alleged perpetrators; compensation, protection, or assistance provided to the alleged victims; legislative, administrative and other steps taken to avoid the recurrence of such violations in the future; and other relevant information.⁸⁵ Governments are usually requested to provide a substantive response to letters of allegations within two months.⁸⁶ In summary, if States respond to Urgent Appeals and Letters of Allegations they can enable Special Procedures to monitor their domestic behaviour. However, Special Rapporteurs do not have any means to guarantee that States will respond and provide the information requested. For instance, the SRVAW is simply mandated to “seek and receive information on VAW (...) from Governments (...)”.⁸⁷ There is no provision that creates a corresponding obligation for States to provide information to the SRVAW. The Human Rights Council simply “(...) calls upon Governments to continue to cooperate with and assist the Special Rapporteur in the discharge of

⁸¹ Ibid.

⁸² Ibid, paragraph 45.

⁸³ Ibid.

⁸⁴ Ibid, paragraph 46.

⁸⁵ Ibid, paragraph 47.

⁸⁶ OHCHR (n 79) paragraph 48.

⁸⁷ Human Rights Council (n 43) operative paragraph 3 (a).

his/her mandate, including by supplying requested information and responding to communications without undue delay (...).⁸⁸ However, as stressed by Limon, there is no legal obligation for States to cooperate with, and assist, the Special Procedures in the performance of their tasks and no legal sanction available when they do not”.⁸⁹ Governments can ignore the Special Rapporteur’s requests for information. The DRC has done that on several occasions, as regretted by several UN Human Rights bodies, including the SRVAW.⁹⁰ De Frouville perfectly captures the situation described above when he points out that “(...) Special Procedures are cooperative

⁸⁸ Human Rights Council (n 43) operative paragraph 4.

⁸⁹ Marc Limon, ‘Strengthening cooperation: The key to unlocking the potential of the Special Procedures’ in Aoife Nolan, Rosa Freedman, and Thérèse Murphy (eds.), *The United Nations Special Procedures System* (BRILL 2017) 147.

⁹⁰ See for instance: See for instance, Commission on Human Rights, *Report of the SRVAW, its causes and consequences, Yakin Ertürk. Addendum: Communications to and from Governments*, document no: E/CN.4/2005/72/Add.1 (18 March 2005) paragraph 136 and *Report of the SRVAW, its causes and consequences, Yakin Ertürk. Addendum: Communications to and from Governments*, document no: E/CN.4/2006/61/Add.1 (27 March 2006) paragraph 48. See also: Human Rights Council, *Report of the SRVAW, its causes and consequences, Yakin Ertürk. Addendum: Communications to and from Governments*, document no: A/HRC/4/34/Add.1 (19 March 2007) paragraph 577; *Report of the SRVAW, its causes and consequences, Yakin Ertürk. Addendum: Communications to and from Governments*, document no: A/HRC/7/6/Add.1 (27 February 2008) paragraph 445; *Report of the SRVAW, its causes and consequences, Yakin Ertürk. Addendum: Communications to and from governments*, document no: A/HRC/11/6/Add.1 (26 May 2009) paragraphs 603 and 604; *Report of the SRVAW, its causes and consequences, Rashida Manjoo. Addendum: Communications to and from Governments*, document no: A/HRC/14/22/Add.1 (2 June 2010) paragraph 109; *Third joint report of seven United Nations experts on the situation in the DRC*, document no: A/HRC/16/68 (9 March 2011) paragraph 14; *Report of the SRVAW, its causes and consequences, Rashida Manjoo. Addendum: Communications to and from Governments*, document no: A/HRC/17/26/Add.1 (18 May 2011) paragraph 199.

procedures”⁹¹ in the sense that “(...) they cannot operate efficiently without the cooperation of States”.⁹²

Besides, as explained in the next paragraph, like periodic reports, urgent appeals and letters of allegations are a tool that have been used rather occasionally in the Congolese context. This means that they are not tools that could be relied upon to properly monitor the DRC’s domestic behaviour and practices. Indeed, a review of publicly available sources shows that despite the magnitude of VAW in the DRC, the SRVAW has issued very few communications on the country. Indeed, between 01 December 2010 and 31 December 2018, the SRVAW sent a total of 379 communications to States around the world.⁹³ This makes an average of 47.3 communications sent by the SRVAW per year. Out of the 379 communications sent by the SRVAW, only two were sent to the DRC, namely in 2011 and in 2016.⁹⁴ In other words, out of the millions of cases of VAW that occurred in the DRC, only two resulted into a communication. Such a low number of communications shows the limit of using urgent appeals or allegation letters by Special Procedures as a monitoring tools.

It is difficult to tell exactly why the SRVAW has sent so few communications to the DRC. However, some constraining factors may have contributed to that. First and foremost, as regretted by many, UN Special Procedures are understaffed and this limits their ability to discharge their mandate.⁹⁵ In many instances, Special

⁹¹ Olivier de Frouville, ‘Working Out a Working Group: A view from a Former Working Group Member’ in Aoife Nolan, Rosa Freedman, and Thérèse Murphy (eds.), *The United Nations Special Procedures System* (BRILL 2017) 252.

⁹² Ibid.

⁹³ See: OHCHR, “Communication report and search” < <https://spcommreports.ohchr.org/Tmsearch/TMDocuments> > accessed 31 December 2018.

⁹⁴ OHCHR, *JUA COD 2/2011* (15 April 2011) < <https://spcommreports.ohchr.org/Tmsearch/TMDocuments> > accessed 23 April 2018; OHCHR, *JUA COD 6/2016* (22 Jul 2016) < <https://spcommreports.ohchr.org/Tmsearch/TMDocuments> > accessed 23 April 2018.

⁹⁵ McDougall (n 40) 20 and 26; Susanne Nossel and Christen L. Broecker, ‘The High Commissioner for Human Rights and UN Human Rights Council’ in Felice D. Gaer and Christen L. Broecker (eds),

Rapporteurs are assigned one staff member to assist them in performing the multiple tasks required by their respective mandates.⁹⁶ In summary, as pointed out by Nossel and Broecker, neither collectively nor individually are Special Procedures appropriately staffed to perform their multiple tasks.⁹⁷ The two authors conclude that the thin infrastructure supporting the special procedures limits their visibility and impact.⁹⁸

The problem of limited staffing is exacerbated by at least four additional factors. The first one is the Special Procedures' broad territorial jurisdiction. Indeed, unlike treaty bodies whose territorial jurisdiction depends on treaty ratification, thematic special rapporteurs, such as the SRVAW can deal with complaints received from anyone in any State in the world.⁹⁹ Secondly, the problem of limited staffing affecting Special Procedures is also exacerbated by the flexible admissibility criteria they apply. Unlike with treaty bodies, alleged victims who send individual complaints to Special Procedures are not required to exhaust domestic remedies.¹⁰⁰ This means that Special Rapporteurs can receive an overwhelming number of individual complaints that they are unable to process because of their limited staffing. Thirdly, special procedures are unpaid and work part-time on their respective mandates.¹⁰¹ As acknowledged by Winkler and de Albuquerque, "for many mandate holders this severely limits the time they are able to spend on the mandate because they have a regular job".¹⁰² They argue that if the mandates were fully-funded positions,

The United Nations High Commissioner for Human Rights: Conscience for the World (Martinus Nijhoff Publishers 2014) 240.

⁹⁶ McDougall (n 40) 26; Nossel and Broecker (n 95) 240.

⁹⁷ McDougall (n 40) 20 and 26; Nossel and Broecker (n 95) 240.

⁹⁸ Nossel and Broecker (n 95) 240.

⁹⁹ See: OHCHR, "Communications" <<https://www.ohchr.org/EN/HRBodies/SP/Pages/Communications.aspx>> accessed 31 December 2018.

¹⁰⁰ Ibid.

¹⁰¹ OHCHR (n 79) paragraph 10; Winkler and de Albuquerque (n 35) 213; Nossel and Broecker (n 95) 240.

¹⁰² Winkler and de Albuquerque (n 39) 214.

Special Procedures would be able to fully devote their time and energy to the tasks of their mandate.¹⁰³ Lastly, and more generally, UN special procedures are underfunded.¹⁰⁴ As regretted by Winkler and de Albuquerque, mandate holders are expected to make it work, which either means they end up working with very limited resources or they engage in additional fundraising.¹⁰⁵ However, even if Special Rapporteurs are successful in fundraising, there are limits as to the tasks on which they can allocate external funding.¹⁰⁶ As explained by Winkler and Albuquerque, tasks such as those related to letters of allegations, urgent appeals, country missions and communications with governments must be handled through OHCHR funding because they rely on official communications and are often politically sensitive.¹⁰⁷ The Code of Conduct for Special Procedures is equally strict and provides, “Mandate-holders are independent United Nations experts. While discharging their mandate, they shall (...) not accept any honour, decoration, favour, gift or remuneration from any governmental or non-governmental source for activities carried out in pursuit of his/her mandate”.¹⁰⁸ In summary, all the challenges described above, can contribute to the low number of urgent appeals and letters of allegations being processed and sent to countries, including the DRC.

In addition to States’ periodic reports to treaty bodies and States’ response to letters of allegations and urgent appeals sent by Special Rapporteurs, other tools that UN Human Rights bodies can use to monitor the DRC’s domestic practices include the confidential inquiry procedure provided for by article 8 of the CEDAW Protocol (if the DRC joins the CEDAW Protocol) and country visits by Special

¹⁰³ Ibid, 215.

¹⁰⁴ Nossel and Broecker (n 95) 240; Winkler and de Albuquerque (n 39) 210.

¹⁰⁵ Winkler and de Albuquerque (n 39) 210.

¹⁰⁶ Ibid, 213.

¹⁰⁷ Ibid.

¹⁰⁸ Human Rights Council, *Resolution 5/2: Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council* (18 June 2007) article 3(j) <<https://www.ohchr.org/Documents/HRBodies/SP/CodeOfConduct.pdf>> accessed 31 December 2018.

Procedures. However, these tools require States' consent to be used. This means that the extent to which these tools can be used to properly monitor the domestic practices of the DRC is also limited. Indeed, even if the DRC becomes a party to the Protocol, article 10(1) of the CEDAW Protocol provides that inquiries may only be conducted with respect to States parties that have recognized the competence of the relevant Committee in this regard.¹⁰⁹ And if a country visit is warranted as part of the inquiry procedure, this visit can only be undertaken "with the consent of the State Party".¹¹⁰ As summarized by Limon, "Mandate holders (...) cannot force States to let them into their territories".¹¹¹ One former Special Rapporteur argues that this requirement to seek States' consent in practice operates to deny mandate-holders entry to the majority of countries they seek to visit and make it particular difficult to visit countries in which the most serious problems existed of relevance to their mandates.¹¹² Besides, and most importantly, country visits depend in part on budgetary considerations.¹¹³ This means they cannot be undertaken in a regular and systematic manner. In addition to the above, as explained in the next Section, UN Human Rights bodies have limited capacity to properly follow-up the implementation of their own recommendations.

4.2. UN Human Rights bodies' limited capacity to properly follow up on the implementation of their own recommendations

Several scholars have presented the the poor or lack of follow-up by international Human Rights bodies as one of the "major weakness" or "key missing component" in the international human rights implementation regime.¹¹⁴ In their view, the problem results from multiple factors including time constraints as well as

¹⁰⁹ UNGA (n 32) article 10(1).

¹¹⁰ Ibid, article 8(2).

¹¹¹ Limon (n 89) 143.

¹¹² McDougall (n 40) 21.

¹¹³ OHCHR (n 79) paragraph 101.

¹¹⁴ Bayefsky (n 56) 8 and 59; Rodley (2013) (n 35) 615; Winkler and de Albuquerque (n 39) 208.

limited capacity and particularly funding and staffing available to these human rights bodies.¹¹⁵ This problem affects both treaty bodies and charter bodies.

4.2.1. Treaty Bodies' limited capacity to follow up on implementation of recommendations

All treaty bodies request States parties to provide information on implementation of the recommendations contained in previous concluding observations/comments in their subsequent reports or during the constructive dialogue.¹¹⁶ Several treaty bodies also have formal procedures to monitor more closely implementation of specific concluding observations.¹¹⁷ The follow-up procedure established within the CEDAW regime relies on a Special Rapporteur on follow-up vested with limited powers to actually conduct a proper follow-up, particularly in cases where States do not cooperate.

The follow-up process starts with the selection by the CEDAW Committee of two recommendations from the Concluding Observations requiring follow-up information within one or two years.¹¹⁸ For instance, in its most recent concluding observations in the DRC in 2013, the CEDAW Committee, “requests the State party to provide, within two years, written information on the steps taken to implement the recommendations contained in paragraphs 10 and 38 (a) of the report.”¹¹⁹ However, the Special Rapporteur on follow-up has not means to guarantee that States will provide follow-up reports. As of 31 December 2018, the DRC has yet to submit that

¹¹⁵ Bayefsky (n 56) 8; McDougall (n 40) 30 and 33; Winkler and de Albuquerque (n 39).

¹¹⁶ United Nations, *Report on the working methods of the human rights treaty bodies relating to the state party reporting process*, document no: HRI/MC/2008/4 (5 June 2008) paragraph 76.

¹¹⁷ Ibid.

¹¹⁸ See: OHCHR, “Information on the follow-up procedure” (26 February 2013) 1 <http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_FGD_7103_E.pdf> accessed 10 October 2016.

¹¹⁹ See: CEDAW Committee (30 July 2013) (n 46) paragraph 46.

follow-up report.¹²⁰ This, despite the fact that the CEDAW Committee Rapporteur on follow-up sent to the Permanent Representative of the DRC to the UN, two reminders on the matter namely on 14 December 2015¹²¹ and on 10 August 2016.¹²² Special Procedures face similar challenges when it comes to follow-up.

4.2.2. Special Procedures' limited capacity to follow up on implementation of recommendations

It has been argued by a former UN Special Rapporteur that one of the factors that limited her mandate's ability to realise fully its potential was there are no systematic way to follow-up on the recommendations.¹²³ Follow-up to communications such "urgent appeals" and "allegation letters" is undertaken in several way, including by sending reminders to Governments in relation to unanswered correspondence.¹²⁴ Similarly, where it would enhance the quality of the dialogue and understanding of the situation, mandate-holders can follow-up on replies provided by Governments in order to request further clarification or information.¹²⁵ However, as mentioned earlier, governments can ignore the Special Rapporteurs' requests for information and the Congolese Government has done on several occasions. In addition to requests for information, Special Procedures may

¹²⁰ See: OHCHR, "Treaty Body Database" <https://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=En&CountryID=48> accessed 31 December 2018.

¹²¹ See: OHCHR, "REFERENCE: YH/follow-up/DRC/62" (14 December 2015) <http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/COD/INT_CEDAW_FUL_COD_22530_E.pdf> accessed 29 December 2016.

¹²² See: OHCHR, "REFERENCE: YH/follow-up/Democratic Republic of the Congo/64" (10 August 2016) <http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/COD/INT_CEDAW_FUL_COD_24841_E.pdf> accessed 29 December 2016.

¹²³ McDougall (n 40) 21.

¹²⁴ OHCHR (n 79) paragraph 94.

¹²⁵ Ibid.

consider follow-up visits to countries.¹²⁶ However, as mentioned earlier, country visits can occur only at the invitation of a State.¹²⁷ And most importantly, country visits depend in part on budgetary considerations.¹²⁸ This is a serious constraints because as pointed out by many, Special Procedures function with limited financial resources.¹²⁹ Because of the multiple challenges discussed in the paragraphs above, one can only agree with two former UN Special Rapporteurs who suggest that follow-up may be the area where cooperation with other organisations may be the most beneficial.¹³⁰ In other words, proper follow-up on the implementation of human rights obligations by States requires looking beyond UN human rights bodies and seeking the participation of actors operating domestically, including NGOs. Summed up briefly, what transpires from the discussions above is that UN Human Rights bodies have limited ability to properly monitor States' domestic behaviour or follow up on the implementation of their own recommendations. Put differently, because of this, those bodies can end up being blindsided and fail to detect in a timely manner whether and/or to what extent States are failing to implement their human rights obligations because of lack of willingness or lack of capacity.

In addition to problems related to the UN Human Rights bodies' limited capacity to properly monitor the DRC's domestic practices and follow up on the implementation of their own recommendations, another problem faced by UN Human Rights bodies is the distance between them and the real lives of victims of human rights violations, including women and girls affected by violence at the domestic level in the DRC. This distance can also limit those bodies' ability to positively influence the domestic practices of States that lack the willingness and or the capacity to implement their international human rights obligations, such as the DRC when it comes to the obligation to end VAW.

¹²⁶ Ibid, paragraph 101.

¹²⁷ Ibid, paragraph 53.

¹²⁸ Ibid, paragraph 101.

¹²⁹ Winkler and de Albuquerque (n 39) 210; Connors (n 53) 56; Bantekas and Oette (n 53) 173.

¹³⁰ Winkler and de Albuquerque (n 39) 208.

5. The distance between UN Human Rights bodies and the real lives of women and girls affected by violence at the domestic level

In a study whose findings were published in 2002, Heyns and Viljoen stress that there is “a wide agreement among participants in their study– especially those who find themselves at some distance from Geneva and New York” on “the need to “bring the treaty system to the people”.¹³¹ Heyns and Viljoen point out that the “the treaty system (is) seen as distant”.¹³² Similarly, when discussing some of the challenges that the system of Special Procedures currently face, Nolan, Freedman and Murphy point out that “(...) relatively little is understood about Special Procedures outside the system, with even new mandate holders frequently having no knowledge of or exposure to the system prior to appointment”.¹³³

This distance between the UN system of human rights protection and the real lives of women and girls affected by violence at the domestic level can limit UN Human Rights bodies’ ability to positively influence States’ domestic practices. For instance, Heyns and Viljoen argue that the widespread ignorance of the treaty system in government circles, among lawyers and in civil societies around the world, effectively blocks any impact which the treaties may otherwise have had.¹³⁴ Put simply, this means that the output of UN Human Rights bodies, which could have otherwise contributed to closing implementation gaps can fail to achieve that goal, including because it is poorly known or understood and/or is underused at the domestic level. In March 2006, the United Nations High-Commissioner for Human Rights reiterated this point by acknowledging:

Despite its achievements, the (treaty body) system is little known outside academic circles, Government departments and officials directly interacting with the system, and specialized

¹³¹ Christof H. Heyns and Frans Viljoen, *The Impact of the United Nations Human Rights Treaties on the Domestic Level* (Kluwer Law International 2002) 39.

¹³² Heyns and Viljoen (n 131) 43.

¹³³ Aoife Nolan, Rosa Freedman and Therese Murphy, ‘Introduction’, in Aoife Nolan, Rosa Freedman, and Thérèse Murphy (eds), *The United Nations Special Procedures System* (BRILL 2017) 5.

¹³⁴ Heyns and Viljoen (n 131) 31.

lawyers and NGOs. The treaty body system is rarely perceived as an accessible and effective mechanism to bring about change. Victims of human rights violations and civil society actors are unfamiliar with the system's complex procedures or are unaware of its potential. Media coverage is poor and the use of treaty body jurisprudence by lawyers and national judicial systems is limited (...).¹³⁵

Similar concerns were raised in subsequent reports.¹³⁶ This is the reason why, as discussed in the next Section, it is important to bridge “international” and “domestic” institutions and efforts and make increased efforts at the domestic level to identify and address the DRC's unwillingness and lack of capacity to implement its obligation to end VAW in a more proactive, consistent, systematic and sustainable manner.

5.1. The need for creating a bridge between “international” and “domestic” efforts

Narrowing the persisting gap in the implementation of UN standards prohibiting VAW in the DRC requires creating (or strengthening) a bridge between international-level efforts undertaken by UN Human Rights bodies to promote and protect women's rights to be free from violence and the efforts made by actors operating domestically. This bridge is crucial to translate recommendations formulated by UN human rights bodies into action and address the reasons why recommendations are not being implemented.

Indeed, through their recommendations, UN Human Rights bodies provide the normative framework that is needed to guide the domestic response to VAW.

¹³⁵ United Nations, *Concept paper on the High Commissioner's proposal for a unified standing treaty body: Report by the Secretariat*, document no: HRI/MC/2006/2 (22 March 2006) paragraph 21.

¹³⁶ See for instance: Human Rights Committee, *A strategic approach to public relations, including relations with the media*, document no: CCPR/C/94/CRP.2/Rev.1 (23 October 2008) paragraph 5; OHCHR, *Strengthening the United Nations human rights treaty body system: A report by the United Nations High Commissioner for Human Rights Navanethem Pillay* (June 2012) 88 <<http://www2.ohchr.org/english/bodies/HRTD/docs/HCReportTBStrengthening.pdf>> accessed 09 April 2018.

However, it is through the efforts of actors operating domestically that this normative framework can be translated into concrete legislative, policy and other appropriate measures that are needed to ensure that women and girls of the DRC actually enjoy their right to be free from violence. Without the efforts of actors operating domestically, the DRC's formal commitment to eliminate VAW may remain a mere aspiration rather than a reality. In other words, without the efforts of actors operating domestically, it can be difficult for UN human rights law to play a meaningful role in ending VAW in the DRC.

Without claiming to be exhaustive, key stakeholders operating domestically include the various institutions (and individuals) that are mandated or expected to play a role in the implementation of UN standards prohibiting VAW as well as in the enforcement and/or implementation of the various anti-VAW laws, policies, strategies, action plans, "joint communiqués" adopted and/or signed by the DRC which were discussed throughout this thesis. Key domestic stakeholders also include rights-holders who are expected to benefit from these documents.

Other key institutions operating domestically that could help create a bridge between efforts by "international" and "domestic" efforts include National Human Rights Institutions (NHRIs), and in the case of the DRC, the Congolese National Human Rights Commission. Speaking about the role of NHRIs, Murray argues that they can give an alternative voice to government before the international and regional monitoring bodies and are, therefore, another way of ensuring government accountability.¹³⁷ She adds that NHRI can be seen as the national mechanism through which it can be ensured that decisions and recommendations of international bodies are implemented.¹³⁸ Illustrating the points made by Murray, the Congolese National Human Rights Commission acknowledges in a shadow report submitted to the CEDAW Committee efforts mentioned by the DRC in its periodic report, particularly the adoption pieces of legislation (or repealing of discriminatory

¹³⁷ Rachel Murray, *The Role of National Human Rights Institutions at the International and Regional Levels: The Experience of Africa* (Hart Publishing 2007) 9.

¹³⁸ Ibid, 12.

provisions in existing laws), as well of policies, plans, programmes and strategies to promote and protect women's rights.¹³⁹ However, the Congolese National Human Rights Commission also informs the CEDAW Committee that "actions taken so far by the Government to implement these pieces of legislation, policies, plans, programmes and strategies, are still weak to fight durably against contemporary forms of violations of women's human rights such as sexual and gender-based violence, domestic violence, stereotypes against women, unequal treatment between men and women in the political, economic and social spheres."¹⁴⁰ The Congolese National Human Rights Commission then elaborates on the reasons behind its concerns.¹⁴¹ In summary, in its shadow report to the CEDAW Committee, the Congolese Commission provided an alternative voice to the rather embellished report submitted by the DRC. In summary, as emphasised by Goodman and Pegram, NHRIs are becoming instrumental in the transmission of human rights norms into domestic systems and ensuring national compliance with global standards.¹⁴² Echoing the points made by the authors above, Gallagher underlines that independent human rights institutions are, in a very real sense, the logical national collaborators of the treaty bodies.¹⁴³

¹³⁹ Commission nationale des droits de l'homme (CNDH), *Rapport parallèle de la Commission Nationale des Droits de l'Homme présenté au titre du Huitième rapport périodique de la République Démocratique du Congo relatif à la mise en œuvre de la Convention sur l'élimination de toutes les formes de discrimination* (28 September 2018) paragraph 2.2 <https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/COD/INT_CEDAW_IFL_CO_D_32605_F.pdf> accessed 25 January 2019.

¹⁴⁰ CNDH (n 139) paragraph 2.3.

¹⁴¹ Ibid, paragraphs 2.4. – 3.3.

¹⁴² Ryan Goodman and Thomas Pegram, 'Introduction: National Human Rights Institutions, States Conformity, and Social Change' in Ryan Goodman and Thomas Pegram (eds), *Human Rights, State Compliance, and Social Change: Assessing National Human Rights Institutions* (Cambridge University Press 2012) 2

¹⁴³ Anne Gallagher, 'Making human rights treaty obligations a reality: working with new actors and partners' in Philip Alston and James Crawford (eds), *The Future of UN Human Rights Treaty Monitoring* (Cambridge University Press, 2000) 215.

When it comes to creating a bridge between UN Human Rights bodies' efforts to promote and protect women's rights to be free from violence and the efforts made by actors operating domestically, the Congolese National Human Rights Commission can play a key role in at least four key areas.

Firstly, the Congolese NHRI can contribute assessing the extent to which rights holders, in this case women and girls of the DRC, enjoy the rights enshrined in the various instruments prohibiting VAW. Indeed, its broad mandate includes investigating into all cases of human rights violations; ensuring respect for women's rights; providing advice to complainants and victims of human rights violations and assisting them in bringing to justice all documented cases of human rights violations.¹⁴⁴

Secondly, the Congolese NHRI can contribute to the domestic implementation of UN Human Rights standards prohibiting VAW by duty-bearers. Indeed, it is entrusted with the responsibility to ensure the implementation of national legal standards and regional and international legal instruments duly ratified by the DRC as well as to promote and ensure the harmonization of national legislation, regulations and practices with international human rights instruments duly ratified by the DRC.¹⁴⁵

Thirdly, the Congolese NHRI can contribute to informing UN Human Rights bodies about the extent to which the DRC is implementing its obligation to end VAW and the various recommendations formulated by those bodies. This can contribute to overcoming the limited capacity faced by those bodies to monitor domestic practices of the DRC. Indeed, the Congolese NHRI is tasked with the responsibility of reporting on the status of implementation of national standards and international human rights legal instruments as well as contributing to the preparation of the

¹⁴⁴ See : *Loi organique n° 13/011 du 21 mars 2013 portant institution, organisation et fonctionnement de la Commission Nationale des Droits de l'Homme* (21 March 2013) articles 6(1), 6(2) and 6(4) <<http://www.leganet.cd/Legislation/Droit%20Public/DH/L.13.011.21.03.2013.htm>> accessed 06 June 2017.

¹⁴⁵ *Loi organique n° 13/011 du 21 mars 2013* (n 144) articles 6(10) and 6(13).

reports submitted by the DRC to international organisations in accordance with its treaty obligations in the field of human rights.¹⁴⁶

Lastly, the Congolese National Human Rights Commission can play a critical role in making UN human rights institutions, processes and outputs better known (and hopefully used) domestically and thereby reduce the distance between the international and the domestic sphere. In this respect, Gallagher recalls that all national human rights institutions are entrusted with a promotional and educational role.¹⁴⁷ Therefore, as rightly stressed by Murray, NHRI can ensure education and awareness-raising of international standards at the domestic level.¹⁴⁸ On this, the Congolese National Human Rights Commission is also entrusted with a promotional and educational role.¹⁴⁹

Human Rights NGOs, particularly those dealing with VAW, also have a key role to play in creating a bridge between “international” and “domestic” efforts. As argued by Clapham while from the NGO perspective, the treaty bodies remain splendidly isolated and disconnected from the mainstream discussion and activity relating to human rights around the world, NGOs can provide the bridge to that larger world (...).¹⁵⁰ Congolese NGOs have been interacting with UN bodies, including through the submission of shadow reports on VAW to the CEDAW Committee.¹⁵¹

¹⁴⁶ Ibid, articles 6(14) and 6(15).

¹⁴⁷ Gallagher (n 143) 213.

¹⁴⁸ Murray (n 137) 9.

¹⁴⁹ *Loi organique n° 13/011 du 21 mars 2013* (n 144) articles 6(7) and 6(8).

¹⁵⁰ Andrew Clapham, ‘UN Human Rights Reporting Procedures: An NGO Perspective’ in Philip Alston and James Crawford (ed), *The Future of UN Human Rights Treaty Monitoring* (Cambridge University Press, 2000) 195.

¹⁵¹ See for instance: MADRE and others, *Gender-based violence and discrimination against women and girls in the Democratic Republic of the Congo: A report for the UN Committee on the Elimination of All Forms of Discrimination Against Women for the formulation of the list of issues and questions for the review of the Democratic Republic of the Congo’s compliance with the Convention on the Elimination of All Forms of Discrimination Against Women* (October 2018) <https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/COD/INT_CEDAW_ICO_CO_D_32830_E.pdf> accessed 25 January 2019; Women’s International League for Peace and Freedom

In addition to these NHRI and Human Rights NGOs, other key stakeholders which have a have a key role to play in creating a bridge between efforts by “international/UN” and “domestic” efforts include the organs and specialized agencies of the UN system operating in the DRC. Indeed, these organs and specialized agencies of the UN system they are “international” in their nature but operate “domestically”. As rightly stressed by Bayefsky:

The UN agencies, bodies and programmes are key partners in the effective functioning of the human rights treaty system. Neither OHCHR, nor the treaty bodies, has the capacity to engage as broad a constituency in the treaty system as these agencies/organs. The culture of the UN should promote the genuine integration of human rights into the functions and operations of existing mechanisms...¹⁵² The human rights treaties should be a reference point for the UN agencies/organs, and the standards should be integrated into their operations. ¹⁵³

It is worth noting that several texts and documents stress the role of organs and specialized agencies of the United Nations system when it comes to contributing to the implementation of human rights standards.¹⁵⁴ The role of UN Agencies is also

(WILPF), *Shadow report by the Women’s International League for Peace and Freedom – Democratic Republic of the Congo section (WILPF DRC) - Committee on the Elimination of Discrimination against Women - 73rd Pre-Sessional Working Group for the adoption of the list of issues* (12-16 November 2018) (4 October 2018); <https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/COD/INT_CEDAW_ICO_CO_D_32668_E.pdf> accessed 25 January 2020; Groupe d’Action pour les Droits de la femme (GADF) and International Service for Human Rights (ISHR), *Liste de questions relatives au huitième rapport périodique de la République Démocratique du Congo au Comité pour l’élimination de la discrimination envers les femmes (CEDEF)* (1 October 2018) <https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/COD/INT_CEDAW_ICO_COD_32594_F.pdf> accessed 25 January 2020.

¹⁵² Bayefsky (n 56) 55.

¹⁵³ Ibid, 156.

¹⁵⁴ See for instance: World Conference on Human Rights, *Vienna Declaration and Programme of Action* (25 June 1993) paragraphs I(4), II(1), II(3), II(19), II(37),II(51), II(49), II(72), II (77), II (99), II (100) <<http://www.ohchr.org/Documents/ProfessionalInterest/vienna.pdf>> accessed 02 January

underlined in Concluding Observations addressed by Treaty Bodies to the DRC, including the CEDAW Committee¹⁵⁵ as well as in recommendations addressed by Charter Bodies to the DRC, including the SRVAW.¹⁵⁶ As discussed in the next Section, this need to create a bridge between “international” and “domestic” institutions and efforts calls in turn for increased efforts at the domestic level to proactively, consistently, systematically and sustainably identify and address the DRC’s unwillingness and lack of capacity to implement its international obligation to end VAW.

5.2. The need for increased efforts at the domestic level

Although this might sound obvious, it is important to recall as put by Mertus that the international human rights system addresses behaviour that occurs at the national level.¹⁵⁷ In a similar vein, Gallagher stresses that “(...) implementation of and compliance with international human rights treaties are ultimately national issues – a reality which is often lost on those of us working at the international level”.

¹⁵⁸ One organisation summarises this idea in these words:

Some people speak of “international human rights” as though it were a single word, as though the rights cannot be talked about separately from the international framework. But rights do not begin at the international level. They begin with local problems and local lives (...) ¹⁵⁹

2017; United Nations, *Declaration on the Elimination of VAW*, Resolution A/RES/48/104 (20 December 1993) article 5; and Fourth World Conference on Women, *Beijing Declaration and Platform for Action. Annex II: Platform for Action* (15 September 1995) paragraphs 306 – 344; 353 – 361 <<http://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf> > accessed 05 March 2017.

¹⁵⁵ CEDAW Committee (30 July 2013) (n 46) paragraphs 40 and 47.

¹⁵⁶ Human Rights Council (n 47) paragraph 110.

¹⁵⁷ Mertus (n 5) 4.

¹⁵⁸ Gallagher (n 143) 201.

¹⁵⁹ OutRight Action International formerly known as the International Gay and Lesbian Human Rights Commission (IGLHRC), *Making the mountain move: An Activist's Guide to How International Human*

Put simply, the purpose of “international”, including UN, human rights standards is to address “domestic” human rights problems. That is why narrowing or closing the gaps in implementation of UN standards prohibiting VAW at the national level in the DRC requires increased efforts at the domestic level to address problems that contribute to those gaps in the first place. Several scholars have stressed the importance of these efforts at the domestic level. For instance, Mertus emphasises that “Not only are violations experience locally, but durable solutions to long-term human rights abuses can only be found at the local level as well”.¹⁶⁰ In a similar vein Gallagher stresses, “International and even regional human rights mechanisms are simply inaccessible to the vast majority of the world’s population. At the end of the day, individual rights and freedoms will be protected or violated because of what exists or what is lacking within a given state or society (...)”.¹⁶¹ Illustrating the importance of domestic-level efforts, Doyle II, Gorman, and Mihalkanin stress, “the vast majority of human rights declarations, treaties, and agreements are only effective insofar as governments give them legislative effect within their own domestic legal systems. Indeed, many human rights instruments remain only expressions of legal aspiration to the extent that governments do not incorporate them or enforce them through their domestic legal orders”.¹⁶² In a similar vein, in their study on the impact of the UN human rights treaties at the domestic level, Heyns and Viljoen find that the international system had had its greatest impact where treaty norms have been made part of domestic law more or less spontaneously (for example as part of constitutional or legislative reform) and not as a result of norm enforcement (through reporting, individual complaints or confidential

Rights Mechanisms Can Work for You (18 December 2000); <<https://www.outrightinternational.org/sites/default/files/179-1.pdf>> accessed 24 April 2017.

¹⁶⁰ Mertus (n 5) 4.

¹⁶¹ Gallagher (n 143) 201.

¹⁶² Thomas E. Doyle II, Robert F. Gorman and Edward S. Mihalkanin, *Historical Dictionary of Human Rights and Humanitarian Organisations* (Third Edition, Rowman & Littlefield, 2017) 171 – 172.

inquiry procedures).¹⁶³ They add that the impact of the treaties has been much more pronounced through the recognition of treaty norms on the domestic level, than as a result of international supervision, although the two processes are obviously interwoven.¹⁶⁴

In summary, acts of VAW discussed throughout this thesis happen at the domestic level. The gap between the DRC's obligation to end VAW and the country's actual practices has been attributed to problems whose sources are domestic. Those who bear the brunt of the discrepancy between the rights promised and the rights actually delivered by UN instruments prohibiting VAW are women and girls of the DRC. This is why my "Integrated and Multi-stakeholder Model of Human Rights Change" requires the consistent interaction at the domestic level with both duty-bearers and rights-holders to narrow and hopefully close the gaps in implementation of UN standards prohibiting VAW at the national level in the DRC.

It is important for UN human rights bodies and institutions to continue to speak up against, denounce, condemn VAW in the DRC, scrutinize the DRC's behaviour and adopt Concluding Observations or Recommendations. However, without bridging UN and domestic efforts and without increasing efforts to elicit human rights change at the domestic level, it is highly unlikely that these concluding observations or recommendations will be properly implemented. This is why it is equally important for all stakeholders to make the necessary efforts to systematically and consistently identify and address the domestic and local factors behind the poor implementation by the DRC of its obligation to eliminate VAW. This is an essential component of efforts that are needed to narrow and hopefully close the wide gap in the domestic implementation by the DRC of UN standards prohibiting VAW. This might even require a shift in focus from the international to the domestic level. To quote Slaughter and Burke-White:

Today, ...the challenges facing states and the international community alike demand very different responses from and thus new roles for the international legal system...To offer an

¹⁶³ Heyns and Viljoen (n 131) 5.

¹⁶⁴ Ibid, 15.

effective response to these new challenges, the international legal system must be able to influence the domestic policies of states and harness national institutions in pursuit of global objectives. ...To create desirable conditions in the international system, from peace, to health to prosperity, international law must address the capacity and the will of domestic governments to respond to these issues at their sources...In turn, the primary terrain of international law must shift—and is already shifting in many instances—from independent regulation above the national state to direct engagement with domestic institutions (...)¹⁶⁵

In conclusion, as stressed by the UN Secretary-General, “(...)Building strong human rights institutions at the country level is what in the long run will ensure that human rights are protected and advanced in a sustained manner (...)”.¹⁶⁶ Put differently, ensuring that women’s right to be free from violence is respected, protected and fulfilled in the DRC requires building strong human rights institutions. This is a process that is likely to take time given the challenges identified throughout this thesis. My “Integrated and Multi-stakeholder Model of Human Rights Change”, combining persuasion and capacity building, is also aimed at ensuring that women’s right to be free from violence is protected in a sustained manner. Indeed, as mentioned earlier in this my model seeks to contribute to durable human rights change.

6. Conclusion

The current Chapter discussed how the two problems analysed in Chapters Three and Four (the combined effect of the DRC’s unwillingness and limitations of capacity to adequately implement its international obligation to eliminate VAW) are also exacerbated by an additional challenge. This is the fact that UN Human Rights bodies mandated with promoting and protecting women’s right to be free from violence suffer from several weaknesses that can limit their ability to positively influence the domestic behaviour and practices of States which are unwilling and/or

¹⁶⁵ Anne-Marie Slaughter and William Burke-White, ‘The Future of International Law Is Domestic (or, The European Way of Law)’ (2006) 47(2) *Harvard International Law Journal* 327 - 352, 327 – 328.

¹⁶⁶ United Nations General Assembly, *Strengthening of the United Nations: an agenda for further change: Report of the Secretary-General*, document no: A/57/387 (9 September 2002) paragraph 50.

unable to implement their obligation to end VAW such as the DRC. The next Chapter discusses how my “Integrated and Multi-Stakeholder Model of Human Rights Change” can contribute to overcoming those weaknesses and ultimately to closing the gap between the DRC’s formal commitment to end VAW and the country’s actual behaviour.

CHAPTER SIX

BRIDGING THE IMPLEMENTATION GAP: THE “INTEGRATED AND MULTI-STAKEHOLDER MODEL OF HUMAN RIGHTS CHANGE” AT WORK

1. Introduction

As explained in Chapter One, my “Integrated and Multi-stakeholder Model” can be subdivided into five major steps which constitute the next five sections of this Chapter. Firstly, the Chapter explores how a broad array of domestic and/or international stakeholders can use “moral consciousness-raising” to put VAW occurring in the DRC on the international agenda to generate some initial “pressure from above” on the DRC. Secondly, the Chapter examines how these stakeholders can use naming and shaming to consistently expose violations of the obligation to end VAW in the DRC and generate additional and sustained pressure and thereby supplement “moral consciousness-raising”. Thirdly, the Chapter analyses how once the DRC starts showing signs indicating some level of commitment to better implement its obligation to end VAW, these stakeholders can use dialogue to agree with the country on time-bound and preferably signed action plans outlining appropriate measures that the DRC needs to take to translate into action its commitment to better implement its obligation to end VAW. Fourthly, the Chapter studies how when these appropriate measures are agreed upon, relevant stakeholders can use capacity building to address individual, organisational and societal capacity deficits that could prevent the country from translating the commitment to eliminate VAW into action. Lastly, the Chapter shows how throughout the process these stakeholders can use argumentation to persuade the DRC to refrain from actions and/or omissions that can hinder the implementation of its commitments.

2. The persuasive power of “moral consciousness-raising”

Within the academic literature, one of the documented cases where “moral consciousness-raising” contributed to positive change is the Anti-Apartheid campaign.¹ In this respect, Thörn explains:

(...) The anti-apartheid organisations (...) viewed the boycott as an important tool for mobilisation and “consciousness raising” of large numbers of people. Through the launching of boycott campaigns, the organisations offered people an opportunity for “everyday” participation in solidarity action. It was argued that in the long run such active participation would generally raise public consciousness about the issue, and eventually increase the pressure on national governments and international organisations (...) to impose sanctions (...)²

In a similar vein, Black adds, “(...) the manner in which the struggle against apartheid was prosecuted does much to support to validity and relevance of the “Spiral Model” of Human Rights socialization and change proposed by Risse and Sikkink. From a very early stage, the struggle against apartheid was internationalised (...)”³

“Moral consciousness-raising” has also been used in the Congolese context where the issue of VAW started to be internationalised between the mid-1990s and early 2000s. During that period, a transnational network of actors published several reports on conflict-related sexual violence.⁴ In addition to these reports, other actors

¹ See in this respect: David Black, ‘The long and winding road: International norms and domestic political change in South Africa’, in Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink (eds), *The Power of Human Rights: International Norms and Domestic Change* (Cambridge University Press 1999) 78 – 108; Håkan Thörn, *Anti-Apartheid and the Emergence of a Global Civil Society* (Palgrave Macmillan 2006).

² Thörn (n 1) 61.

³ Black (n 1) 78.

⁴ See for instance: United Nations, *Situation of Human Rights in Zaire: Report by the Secretary-General*, document no: E/CN.4/1994/49 (23 December 1993) paragraphs 24, 28 – 29; Commission on Human Rights, *Written statement submitted by the International Federation of Human Rights, a non-governmental organisation in consultative status (category II)*, document no:

continued to put the plight of women and girls of the DRC on the international agenda, including for instance, by testifying before institutions such as the U.S.

E/CN.4/1994/NGO/13 (4 February 1994) paragraph 1; Human Rights Watch, *World Report 1994*, under the section on “Human Rights Developments” <https://www.hrw.org/reports/1994/WR94/Africa-10.htm#P457_208487> accessed 07 December 2012; Human Rights Watch, *World Report 1995: Zaire* <http://www.hrw.org/reports/1995/WR95/AFRICA-11.htm#P581_209577> accessed 07 December 2012; Human Rights Watch, *The war within the war: sexual violence against women and girls in Eastern Congo* (June 2002) <<https://www.hrw.org/reports/2002/drc/Congo0602.pdf>> accessed 18 November 2017; Amnesty International, *DRC. Mass rape: Time for remedies* (October 2004) <<https://www.amnesty.org/download/Documents/92000/afr620182004en.pdf>> accessed 04 April 2019; Amnesty International, *DRC. Surviving rape: Voices from the East* (October 2004) <<https://www.amnesty.org/download/Documents/92000/afr620192004en.pdf>> accessed 21 March 2018.

Senate Committee on the Judiciary's Subcommittee on Human Rights and the Law⁵ or the US Senate Foreign Relations Committee.⁶

More specifically, the persuasive power of “moral consciousness-raising” can be illustrated by analysing, for instance, how some States or institutions adopted legislations following campaigns denouncing how the illegal exploitation and exportation of minerals from the DRC contributed to conflict-related sexual violence.

⁵ See: *Testimony of Dr. Denis Mukwege Director, Panzi General Referral Hospital Bukavu, South Kivu, DRC before the U.S. Senate Committee on the Judiciary's Subcommittee on Human Rights and the Law* (01 April 2008) <https://www.judiciary.senate.gov/imo/media/doc/mukwege_testimony_04_01_08.pdf> accessed 09 July 2017; *Testimony of Dr. Kelly Dawn Askin, Senior Legal Officer Open Society Justice Initiative before the U.S. Senate Committee on the Judiciary's Subcommittee on Human Rights and the Law* (01 April 2008) < https://www.judiciary.senate.gov/imo/media/doc/askin_testimony_04_01_08.pdf > accessed 09 July 2017; *Testimony of Karin Wachter, Gender-Based Violence Technical Advisor, International Rescue Committee before the U.S. Senate Committee on the Judiciary's Subcommittee on Human Rights and the Law* (1 April 2008) <https://www.judiciary.senate.gov/imo/media/doc/wachter_testimony_04_01_08.pdf> accessed 09 July 2017; *Testimony of Lisa F. Jackson, Documentary Maker and Director of "The Greatest Silence: Rape in the Congo" before the U.S. Senate Committee on the Judiciary's Subcommittee on Human Rights and the Law* (1 April 2008) <https://www.judiciary.senate.gov/imo/media/doc/jackson_testimony_04_01_08.pdf> accessed 09 July 2017. See also: *Opening Statement of Senator Dick Durbin, Chairman, Subcommittee on Human Rights and the Law, Hearing on "Rape as a Weapon of War: Accountability for Sexual Violence in Conflict* (1 April 2008) <https://www.judiciary.senate.gov/imo/media/doc/durbin_statement_04_01_08.pdf > accessed 09 July 2017; *Statement by Senator Russ Feingold at the Hearing before the Senate Judiciary Committee Subcommittee on Human Rights and the Law on "Rape as a Weapon of War: Accountability for Sexual Violence in Conflict* (01 April 2008) < https://www.judiciary.senate.gov/imo/media/doc/feingold_statement_04_01_08.pdf> accessed 07 February 2014.

⁶ See: Committee of Foreign Relations, United States Senate, *Confronting Rape and Other Forms of Violence against women in Conflict Zones; Spotlight: The DRC and Sudan* (13 May 2009) <<http://www.gpo.gov/fdsys/pkg/CHRG-111shrg53635/html/CHRG-111shrg53635.htm>> accessed 02 February 2014.

Indeed, over the years, several stakeholders showed that minerals illegally extracted and sold by armed forces and armed groups or militias who perpetrated VAW in the country had ended up being exported to countries where they were used in the manufacturing of day-to-day products such as electronics.⁷ By making the link between, on the one hand, the illegal exploitation of minerals and the perpetration and/or perpetuation of VAW in the DRC, and on the other hand, the production of day-to-day items used elsewhere, including in the West, these stakeholders literally took the issue of VAW from Congolese villages and towns to households in the West. In so doing, those stakeholders, attempted to remind consumers that they could either stand idle and continue to passively contribute to the perpetration and the perpetuation of VAW in the DRC or take action, either directly or indirectly through their representatives in the Executive or Legislative branches of the Government, to reverse the trend. As explained by Mertus, Human Rights actors use such an approach with the expectation that as documented in the literature, consumers' consciousness and awareness may lead to call for corrective measures on the part of decision-makers.⁸ Put simply, activists used the fact that Congolese minerals exploited by armed forces and armed groups perpetrating VAW had ended up being exported to Western countries as a tool to put some pressure on Western decision-makers to "do something". And in what has been described as a response to that

⁷ See for instance: John Prendergast, *Can You Hear Congo Now? Cell Phones, Conflict Minerals, and the Worst Sexual Violence in the World* (April 2009) <<http://www.enoughproject.org/files/Can%20Your%20Hear%20Congo%20Now.pdf>> accessed 09 July 2016; Global Witness, *"The Hill Belongs to Them": The need for international action on Congo's conflict minerals trade* (December 2010) 9 – 10; 16 – 17 <https://site-media.globalwitness.org/archive/files/library/the%20hill%20belongs%20to%20them141210_0.pdf> accessed 23 January 2017; Ewan Sutherland, *Coltan, the Congo and your cell phone: The connection between your mobile phone and Human Rights abuses in Africa* (11 April 2011) <<http://web.mit.edu/12.000/www/m2016/pdf/coltan.pdf>> accessed 23 January 2017.

⁸ Julie Mertus, *The United Nations and Human Rights: A Guide for a New Era* (Second Edition, Routledge 2009) 142.

pressure,⁹ the United States Congress adopted in January 2010 the “Dodd-Frank Wall Street Reform and Consumer Protection Act” (hereinafter the “Dodd Frank Act”).¹⁰ Section 1502 of the latter deals with Conflict Minerals and reads:

It is the sense of Congress that the exploitation and trade of conflict minerals originating in the DRC is helping to finance conflict characterized by extreme levels of violence in the eastern DRC, particularly sexual- and gender-based violence (...), warranting the provisions of section 13(p) of the Securities Exchange Act of 1934, as added by subsection (b).

Section 1502 of the “Dodd Frank Act” requires persons to disclose annually whether any conflict minerals that are necessary to the functionality or production of a product (...) originated in the DRC or an adjoining country.¹¹ If this is the case, Section 1502 requires these persons to provide a report describing, among other matters, the measures taken to exercise due diligence on the source and chain of custody of those minerals, which must include an independent private sector audit of the report that is certified by the person filing the report.¹²

The adoption of the Dodd Frank Act put pressure (from above) on the DRC to also act. On 10 September 2010, the then Congolese President Joseph Kabila banned the production and trade of minerals in the conflict-affected provinces of Kivus and Maniema. Cuvelier and others argue that this ban was a “direct consequence of the (Dodd Frank) act”.¹³ In a similar vein, Matthysen and Montejano

⁹ See for instance: Nik Stoop, Marijke Verpoorten and Peter van der Windt, ‘More legislation, more violence? The impact of Dodd-Frank in the DRC’ (2018) 13(8) PLoS ONE 1 – 19, 1 <<https://journals.plos.org/plosone/article/file?id=10.1371/journal.pone.0201783&type=printable>> accessed 20 December 2018.

¹⁰ See: the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (05 January 2010); <<https://www.sec.gov/about/laws/wallstreetreform-cpa.pdf>> accessed 23 January 2017.

¹¹ See: <<https://www.sec.gov/spotlight/dodd-frank/speccorpdisclosure.shtml>> accessed 23 January 2017.

¹² Ibid.

¹³ Jeroen Cuvelier and others, *Analyzing the Impact of the Dodd-Frank Act on Congolese Livelihoods* (SSRC Conflict Prevention and Peace Forum 2014) 2 <<https://s3.amazonaws.com/ssrc->

explain that the measure taken by President Kabila was generally understood to be a response to growing international pressure to tackle the link between natural resources and conflict.¹⁴ Other stakeholders adopted measures similar to the Dodd Frank Act. For instance, on 17 May 2017, the European Parliament and Council adopted “Regulation (EU) 2017/821 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas, including the DRC.”¹⁵

In summary, the discussion above has shown how by putting sexual violence occurring in the DRC on the international agenda, various stakeholders generated “pressure from above” on the country and how this appears to have contributed to some decisions being taken by Congolese authorities. However, this is simply a first step in a long process. In addition to putting an issue on the international agenda, it is important to keep that issue there. This requires keeping decision makers, policymakers lawmakers and public opinions informed about human rights concerns on which their actions is needed. To that end, Transnational Advocacy Networks need to denounce and expose VAW occurring in the DRC in a sustained manner. This takes me to “naming and shaming”.

cdn1/crmuploads/new_publication_3/%7B57858126-EF65-E411-9403-005056AB4B80%7D.pdf>
accessed 20 December 2018.

¹⁴ Ken Matthysen and Andrés Zaragoza Montejano, *‘Conflict Minerals’ initiatives in DR Congo: Perceptions of local mining communities* (November 2013) 8<
<http://ipisresearch.be/publication/conflict-minerals-initiatives-dr-congo-perceptions-local-mining-communities/>> accessed 04 April 2019.

¹⁵ See: *Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas* in Official Journal of the European Union (L130, Volume 60, 19 May 2017) preambular paragraphs 5(3) and 5(5) <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2017:130:FULL&from=EN>> accessed 04 November 2018.

3. The persuasive power of naming and shaming

Chapter one explained how naming and shaming can bring about human rights change by using States' reputational concerns as a leverage. Indeed, as stressed by Kelley, States care about their reputation not simply in terms of the credibility of their promises and threats, but more broadly in terms of how others perceive their performance.¹⁶ "States want social recognition and care about their reputation vis-à-vis their citizens and the global community because this directly affects their standing and legitimacy to govern".¹⁷ "This desire means that others can seek to influence states by influencing their reputation."¹⁸ As explained by Risse and Sikkink, while some repressive governments might not care about being named or shamed, others, however, feel deeply offended, because they want to belong to the "civilized community" of states.¹⁹ Put differently, naming and shaming implies a process of persuading human rights violators that their practices are inconsistent with an identity to which they aspire, in this case being considered as part of the "civilized community" of States.²⁰

This appears to be the case of the DRC. Indeed, naming and shaming has the potential to persuade the DRC to implement its international obligation to end VAW because the country seems to care about not being seen or perceived as a State that perpetrates or condones VAW. The country's concern about preserving its reputation is illustrated, for instance, by how it reacted after, while briefing the UN Security Council on 27 April 2010 following her mission to the DRC, the then UN Secretary-General's Special Representative on sexual violence in conflict, Ms.

¹⁶ Judith G. Kelley, *Scorecard Diplomacy: Grading States to influence their reputation and behaviour* (Cambridge University Press 2017) 31.

¹⁷ Ibid, 31 – 32.

¹⁸ Ibid, 32.

¹⁹ Thomas Risse and Kathryn Sikkink, 'The Socialization of international human rights norms into domestic practices: introduction' in Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink (eds), *The Power of Human Rights: International Human Rights and Domestic Change* (Cambridge University Press 1999)15.

²⁰ Ibid.

Margot Wallström was reported as having described the country as “the rape capital of the world”.²¹ After her, many others used this label.²² Congolese officials protested against the use of this label on several occasions²³ and showed that they were concerned about how such an embarrassing label could damage the country’s reputation.²⁴

²¹ See: United Nations, *Tackling sexual violence must include prevention, ending impunity – UN official* (27 April 2010) < <http://www.un.org/apps/news/story.asp?NewsID=34502#.V7kaNqKuly0>> accessed 20 August 2016.

²² See for instance: Fiona Lloyd-Davies, *Why eastern DR Congo is 'rape capital of the world'* (25 November 2011) <<http://www.cnn.com/2011/11/24/world/africa/democratic-congo-rape/>> accessed on 27 February 2016; Felicia Wairagu, *The Forgotten Rape Capital of the World* (08 March 2012) <<https://reliefweb.int/report/democratic-republic-congo/forgotten-rape-capital-world>> accessed 29 March 2018; Siobhán O'Grady, *Documentary About Rape Banned in 'Rape Capital of the World'* (03 September 2015); <<http://foreignpolicy.com/2015/09/03/documentary-about-rape-banned-in-rape-capital-of-the-world/>> accessed 29 March 2018; The Global Enquirer, *Congo: Rape Capital of the World* (15 May 2016) <<https://theglobalenquirer.news/2016/05/15/congo-rape-capital-of-the-world/>> accessed 29 March 2018; Colleen Curry, *In 'Rape Capital of the World,' 12 Soldiers Convicted of Raping Children* (14 December 2017) <<https://www.globalcitizen.org/en/content/in-rape-capital-of-the-world-12-soldiers-convicted/>> accessed 29 March 2018.

²³ See for instance : Trésor Kibangula, *Jeannine Mabunda : « Assez de la caricature 'RDC, capitale mondiale du viol' »* (02 November 2015) <<http://www.jeuneafrique.com/275624/societe/jeannine-mabunda-assez-de-caricature-rdc-capitale-mondiale-viol/>> accessed 29 March 2018 ; Habibou Bangré, *RD Congo : « capitale mondiale du viol », vraiment ?* (08 March 2016) <<http://www.jeuneafrique.com/308280/societe/rd-congo-capitale-mondiale-du-viol-vraiment/>> accessed 29 March 2018.

²⁴ See for instance: Susannah Sirkin, *Changing the Narrative on Sexual Violence in the DRC* (26 November 2014) <<http://physiciansforhumanrights.org/blog/changing-the-narrative-on-sexual-violence-in-the-drc.html?print=t>> accessed 29 March 2018; Clár Ní Chonghaile, *Top Congo official hopes to shed country's 'rape capital of the world' tag* (04 March 2015) <<https://www.theguardian.com/global-development/2015/mar/04/congo-presidential-adviser-hopes-shed-rape-capital-tag>> accessed 29 March 2018; Chagmion Antoine, *The woman charged with stopping rape in Congo: A Q&A with Jeanine Mabunda* (14 May 2015) <<http://www.womensmediacenter.com/women-under-siege/the-woman-charged-with-stopping-rape-in-congo-a-qa-with-jeanine-mabunda>> accessed 29 March 2018; AllAfrica Global Media, *Congo-Kinshasa: 'New Dawn' in Land of Rape and Child Soldiers* (13 July 2015)

Empirical data also supports the idea that naming and shaming can bring about Human Rights change.²⁵ In the DRC, the persuasive power of naming and shaming can be illustrated by analysing, for instance, measures that the country took after its national army was included in the “list of parties that commit rape and other forms of sexual violence against children in situations of armed conflict”²⁶ annexed to the first report dated 13 April 2010 that the UN Secretary-General submitted to the UN Security Council pursuant to its resolution 1882 (2009).²⁷ Baaz and Stern argue that these “lists of shame” (in which the Congolese national army was included) constitute a “powerful incentive for behavioural change”.²⁸ In a similar vein, Johnson, the then Co-Chair of UN action against sexual violence in conflict explained that being ‘de-listed’ had proven a powerful incentive for behavioural change.²⁹ In this respect, statements and comments made by some Congolese officials indicated that they wanted the country to be removed from those “lists of shame” as soon as possible.³⁰

<<http://allafrica.com/stories/201507131888.html>> accessed 15 August 2015; AllAfrica Global Media, *Congo-Kinshasa: Remarks by Jeanine Mabunda Lioko Mudiayi* (14 July 2015) <<http://allafrica.com/stories/201507171677.html>> accessed 14 September 2017; Magdalena Mis, *Congo steps up drive to curb sexual violence, shake off 'rape capital' tag* (10 March 2016); <<https://www.reuters.com/article/us-congodemocratic-rape-government-idUSKCN0WC2KM>> accessed 29 March 2018.

²⁵ See for instance: Emilie M. Hafner-Burton, ‘Sticks and Stones: Naming and Shaming the Human Rights Enforcement Problem’ (2008) 62(04) *International Organisation* 689–716, 690 – 691; Kelley (n 16) 31.

²⁶ UNGA and UNSC, *Children and armed conflict: Report of the Secretary-General*, document no: A/64/742–S/2010/181 (13 April 2010) 48.

²⁷ UNSC, *Resolution 1882 (2009)*, document no: S/RES/1882 (2009) (4 August 2009) operative paragraph 3.

²⁸ Maria Eriksson Baaz and Maria Stern, *Sexual violence as a weapon of war? Perceptions, prescriptions, problems in the Congo and beyond* (Zed Books 2013) 61.

²⁹ Hilde F. Johnson, *War’s Ultimate Secret Weapon. Stop Rape Now* (29 September) cited in Baaz and Stern (n 28) 61.

³⁰ See for instance : Radio Okapi, *La RDC en voie de sortir de la liste noire des pays indexés par les violences sexuelles* (06 October 2017) <<https://www.radiookapi.net/2017/10/06/actualite/en-bref/la->

As predicted by Baaz and Stern³¹ and by Johnson,³² following the mentioning of the Congolese National Army in the above-mentioned “list of shame”, the State took some action. Indeed, on 04 October 2012, the Congolese government jointly signed with the United Nations an “Action plan to combat the recruitment and use of children and other serious violations of children’s rights by the armed forces and security services of the DRC” which included specific commitments to address sexual violence.³³

Similarly, the UN Secretary-General included the Congolese national army in the “List of parties that are credibly suspected of committing or being responsible for patterns of rape and other forms of sexual violence in situations of armed conflict”³⁴ annexed to the first two reports he submitted on 13 January 2012 and 14 March 2013 pursuant to UN Security Council resolution 1960 (2010) of 16 December

[rdc-en-voie-de-sortir-de-la-liste-noire-des-pays-indexes-par-les](#)> accessed 09 October 2017; Radio Okapi, *Kasai-Oriental : les militaires sensibilisés sur les violences sexuelles et les droits humains* (18 October 2017) <<https://www.radiookapi.net/2017/10/18/actualite/securite/kasai-oriental-les-militaires-sensibilises-sur-les-violences-sexuelles>> accessed 07 September 2018.

³¹ Baaz and Stern (n 28) 61.

³² Johnson (n 29) 61.

³³ See : Gouvernement de la République Démocratique du Congo et l'Equipe Spéciale des Nations Unies sur les enfants et les conflits armés, *Plan d'action pour la lutte contre le recrutement et l'utilisation d'enfant ainsi que les autres violations graves des droits de l'enfant par les forces armées et services de sécurité de la République Démocratique du Congo entre la Gouvernement de la République Démocratique du Congo et l'Equipe Spéciale des Nations Unies sur les enfants et les conflits armés* (04 October 2012) articles 2(3) , 2(5) and 2(8) <<https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/101406/122160/F474283417/INT-101406.pdf>> accessed 06 July 2016.

³⁴ See: UNGA and UNSC, *Conflict-related sexual violence: Report of the Secretary-General*, document no: A/66/657–S/2012/33 (13 January 2012) 32; UNGA and UNSC, *Sexual violence in conflict: Report of the Secretary-General*, document no: A/67/792–S/2013/149 (14 March 2013) 32.

2010.³⁵ Here as well, as predicted by Baaz and Stern³⁶ and by Johnson,³⁷ following the mentioning of the Congolese National Army in the above-mentioned “list of shame”, the State reacted. Indeed, on 30 March 2013, the DRC and the UN signed a “Joint communiqué” on combating conflict-related sexual violence which also comprised specific commitments by the DRC to address sexual violence.³⁸

One might rightfully argue that signing an action plan or a joint communiqué to end sexual violence does not mean that commitments made by the DRC will be implemented. Such an assertion would ignore the fact that the signature of an action plan or a joint communiqué is simply a step in a much longer process. Mentioning systematically the Congolese national army in the list of perpetrators of conflict-related sexual violence, including against children and publicly exposing the poor implementation by the country of the 2012 action plan and the 2013 joint communiqué can contribute to ending conflict-related sexual violence by the Congolese national army. This because, a party will be de-listed on condition that there is United Nations-verified information that it has ceased commission of the patterns of sexual violence for which the party is listed by the Secretary-General for a period of at least one reporting cycle.³⁹ In other words, on the long run, the signature of an action plan or a joint communiqué can trigger or contribute to some positive changes on the part of duty-bearers in the DRC. In this respect, for instance, the 2018 Report of the UN Secretary-General on conflict-related sexual violence

³⁵ UNSC, *Resolution 1960 (2010)*, document no: S/RES/1960 (2010) (16 December 2010) operative paragraph 3.

³⁶ Baaz and Stern (n 28) 61.

³⁷ Ibid.

³⁸ Government of the DRC and the United Nations, *Joint communiqué between the government of the DRC and the United Nations on the fight against sexual violence in conflict* (Kinshasa, 30 March 2013) 2.

³⁹ Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict, *Provisional guidance note: Implementation of Security Council Resolution 1960 (2010) on Women, Peace and Security (conflict-related sexual violence)* (June 2011) 17 <<http://www.refworld.org/pdfid/4e23ed5d2.pdf.provisional> > accessed 12 October 2018. See also UNGA and UNSC (n 26) paragraph 178.

contains statistical data documenting positive change that the report attributes to the implementation of joint communiqués and action plans to curb conflict-related sexual violence, notably in the DRC.⁴⁰

Besides, a time-bound action plan can also help address a problem identified in Chapter Five namely, the distance between UN Human Rights bodies and the real lives of women and girls affected by violence at the domestic level and the ensuing need for creating a bridge between “international” and “domestic” institutions and efforts. One of the ways in which this could be achieved is by translating the CEDAW Committee’s Concluding Observations and or the SRVAW’ recommendations into a time-bound action plan that would be signed by institutions operating both internationally (for instance, the CEDAW Committee and/or the SRVAW) and domestically (for instance, Congolese authorities and UN entities operating in the DRC). Such a time-bound action could have several advantages. It would clearly spell out the specific measures that the DRC commits to take to implement each of the recommendations addressed to the country and the timeframe within which the country intends to take those measures. This would be different from the current system where the assumption is that States will implement recommendations from Treaty or Charter Bodies even though States do not (at least formally) state that they agree with the recommendations,⁴¹ specify what measures they intend to take to implement those recommendations or when they intend to take those measures. A time-bound action plan outlining concrete measures to be taken by the DRC can allow a more consistent follow-up. Such an action plan could help mitigate the risk of finding out years later that the DRC has not taken measures recommended by UN Human Rights bodies, which as explained in Chapter Five monitor the States’ practices only occasionally, for instance, through periodic report (normally submitted every four years).

⁴⁰ UNSC, *Report of the Secretary-General on conflict-related sexual violence*, document no: S/2018/250 (23 March 2018) paragraphs 21, 38 – 40.

⁴¹ Except for instance, in the Universal Periodic Review Process instituted by paragraph 5(e) of Human Rights Council Resolution 60/251 of 15 March 2006, States have the latitude to accept or reject recommendations.

Linked to the above, as far as my “Integrated and Multi-stakeholder Model” is concerned, a time-bound action plan is an additional tool that a broad array of international and/or domestic stakeholders could use in their attempt to positively influence the domestic practices of the DRC. For instance, in one of his 2014 annual report on Conflict-related sexual violence, the UN Secretary-General “(...) urge(d) national authorities to implement, as a matter of priority, the measures outlined in the joint communiqué of 30 March 2013 and the subsequent implementation plan (...)”.⁴² Concerned international and/or domestic stakeholders could also naming and shaming to continue to expose the DRC’s unwillingness to implement measures it has committed to take reflected in the time-bound action plan.

In addition to the points made above, as explained in my “Integrated and Multi-stakeholder Model of Human Rights Change”, stakeholders attempting to change States’ domestic Human Rights practices cannot only rely on embarrassing their targets. Eventually, those stakeholders need to directly engage with Human Rights violators to identify solutions. This takes me to the next strategy aimed at persuading the DRC to implement its international obligation to end VAW, namely dialogue.

4. The persuasive power of dialogue

As explained in Chapter One, dialogue seeks to elicit Human Rights change by providing Human Rights violators and relevant stakeholders, including their critics, with an opportunity to exchange views on human rights problems and agree on appropriate ways and means to address those problems. Dialogue is one of the key strategies through which most UN Human Rights bodies are expected to elicit

⁴² UNSC, *Report of the Secretary-General on Conflict-related sexual violence*, document no: S/2014/181 (13 March 2014) paragraph 32.

change. That is the case for bodies such as Treaty Bodies,⁴³ Special Rapporteurs,⁴⁴ the Human Rights Council⁴⁵ as well as institutions such as the United Nations High Commissioner for Human Rights.⁴⁶ However, some within the academic literature seem to question the effectiveness of dialogue and/or treat it with suspicion.⁴⁷ Others appear to share the view that cooperative tools such as dialogue and confrontational ones (such as naming and shaming) are mutually exclusive.⁴⁸ On the contrary, I share Deng's view that both cooperative and confrontational/adversarial approaches are needed to bring about Human Rights compliance.⁴⁹ My Model builds on a combination of both. Deng (the first Special Rapporteur on the Human Rights of Internally Displaced Persons) writes:

⁴³ See for instance: United Nations General Assembly, *Report of the Chairs of the Human Rights treaty bodies on their twenty-sixth meeting. Annex I: Guidance note for States parties on the constructive dialogue with the Human Rights treaty bodies*, document no: A/69/285 (11 August 2014) 23.

⁴⁴ See for instance: Human Rights Council, *Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council*, Resolution 5/2 (18 June 2007) preambular paragraph 3(e), 3(f), 3(g), article 3(b), 11(e) and 13(b).

⁴⁵ UNGA, *Resolution 60/251 adopted on 15 March 2006: Human Rights Council*, document no: A/RES/60/251 (3 April 2006) preambular paragraphs 7 and 10 as well as operative paragraph 4, 5(b), 5(e), 5(f) and 12.

⁴⁶ UNGA, *Resolution 48/141 adopted on 20 December 1993: High Commissioner for the promotion and protection of all Human Rights*, document no: A/RES/48/141 (7 January 1994) preambular paragraph 9 and operative paragraphs 4 (g).

⁴⁷ See for instance: Michael O'Flaherty and others, 'Introduction. Human Rights Diplomacy: Contemporary Perspectives' in Michael O'Flaherty and others (eds), *Human Rights Diplomacy: Contemporary Perspectives* (Martinus Nijhoff Publishers 2011) 7; Surya Deva, *Regulating Corporate Human Rights Violations: Humanizing Business* (Routledge 2012) 116.

⁴⁸ See for instance: Bertrand G. Ramcharan, *Contemporary Human Rights Ideas* (Routledge 2008) 28; Jakob Th. Moller, 'Foreword', in Bertrand G. Ramcharan, *The Fundamentals of International Human Rights Treaty Law* (Martinus Nijhoff Publishers 2011) xiv.

⁴⁹ Francis Deng, 'The International Challenge of State Failure and Internal Displacement' in Adekeye Adebajo and Helen Scanlon, *A Dialogue of the Deaf: Essays on Africa and the United Nations* (Jacana Media (Pty) 2006) 116.

(...) In my experience, it does not help IDPs to confront governments through an adversarial promotion of Human Rights. This is not to say that there is no room for an adversarial role on Human Rights issues; instead, while making use of the information available from various monitoring sources, including NGOs and Human Rights advocates, a constructive and cooperative dialogue with the authorities often promises better results. (...) In my own opinion, this approach has proved to be most effective in dialogue with governments. Of the 30 missions I have undertaken around the world, no government authority has ever argued, “I don’t care how irresponsible or irresponsive we are, this is an internal matter and none of your business.”⁵⁰

Echoing Deng, Holtmaat recommends that “in order to achieve a higher level of cultural acceptance of the norm of women’s equality, it is important to stimulate a dialogue between the State and international stakeholders (for instance the CEDAW Committee), but also to promote and enhance a dialogue between the State and the main internal stakeholders, that is, religious leaders, community leaders and (women’s) NGOs”.⁵¹

In the Congolese context, dialogue appears to have yielded some positive results when it comes to implementing the obligation to end VAW. In the previous section, I explained how naming and shaming contributed to the signing of the above-mentioned October 2012 Action Plan and March 2013 Joint Communiqué. A review of the extant literature shows that the signing of those two documents was also a result of a process of dialogue between the DRC and the UN.⁵² Indeed, “as part of the de-listing process, a party to the conflict (...), is required to enter into dialogue with the United Nations to prepare and implement a concrete, time-bound

⁵⁰ Ibid.

⁵¹ Rikki Holtmaat, ‘The CEDAW: A holistic approach to women’s equality and freedom’ in Anne Hellum and Henriette Sindig Aasen (eds), *Women’s Human Rights: CEDAW in International, Regional and National Law* (Cambridge University Press 2013) 120.

⁵² See for instance: UNGA and UNSC, *Children and armed conflict: Report of the Secretary-General*, document no: A/66/782–S/2012/261 (26 April 2012) paragraph 191; 200; 201; 204; 205; 211; 215; UNSC (n 42) paragraphs 31 and 89.

action plan to cease and prevent grave violations (...) for which the party has been listed (...).⁵³ Dialogue also offered the DRC and the United Nations an opportunity to discuss and agree on respective commitments, roles and responsibilities in the implementation of the two documents mentioned above. And, as presented in my “Integrated and Multi-stakeholder Model of Human Rights Change” and discussed in the next Section, the signature of action plan or a joint communiqué created an opportunity for the DRC and its partners to identify and address some of the capacity deficits faced by the country.

5. The transformative power of capacity building

OHCHR stresses that capacity building is “a vehicle to support States’ compliance with their Human Rights obligations and their follow-up to recommendations made by Human Rights mechanisms in that regard”.⁵⁴ In the next three subsections, I discuss how capacity building at the individual, organisational and societal levels can contribute to addressing deficits that can prevent the DRC from properly implementing its obligation to end VAW.

5.1. Strengthening individual capacity of duty-bearers and rights holders

As discussed in the next sub-sections, enhancing the capacity of duty-bearers to contribute to the implementation of implement its obligation to eliminate VAW and of rights-holders to claim their right to be free from violence can contribute to closing the gap between law on the book and law in action in the DRC. This in turn can contribute to bridging the correlating discrepancy between the rights promised to women under international law instruments prohibiting VAW and the rights actually enjoyed by women in the DRC.

⁵³ UNGA and UNSC (n 26) paragraph 179.

⁵⁴ Human Rights Council, *Technical assistance and capacity-building options for integrating Human Rights into national policies: Report of the Office of the United Nations High Commissioner for Human Rights*, document no: A/HRC/27/41 (24 July 2014) paragraph 14.

5.1.1. Strengthening the capacity of “duty-bearers” to contribute to the implementation of the obligation to end VAW

“Duty-bearers” refer here to individuals who, for instance, by virtue of their work or functions, are expected or mandated to play a role in the implementation of the obligations to “respect”, “protect” and/or “fulfil” women’s right to be free from violence. Within the Congolese context, relevant duty-bearers include individuals working within (both governmental and non-governmental) organisations that are mandated or expected to play a role in enforcement and/or implementation of the various anti-VAW laws, policies, strategies, action plans, joint communiqués discussed throughout this thesis. I discussed capacity faced by these duty-bearers in Chapter Four. In its General Recommendations, the CEDAW Committee requires States to address these capacity deficits.⁵⁵ The body has reiterated the same in its Concluding Observations addressed to the DRC.⁵⁶

Enhancing the capacity of individuals (such as members of the army, the police, judges, prosecutors and other court personnel, health and social workers involved in managing cases of VAW) can contribute to narrowing the gap in the implementation of the obligation to end VAW in the DRC. Indeed, it is through the actions and/or inactions of these individuals that the DRC can properly implement and/or fail to properly implement the above-mentioned obligation. Existing data shows the impact of capacity building of these types of duty-bearers. For instance, Sanchez explains how in Colombia, after being trained on VAW, community workers also organised workshops to reach other community members.⁵⁷ As a result of

⁵⁵ See for instance: CEDAW Committee, *General Recommendation No. 19 on VAW* (1992) paragraph 24(b).

⁵⁶ See for instance: CEDAW Committee, *Concluding observations on the combined sixth and seventh periodic reports of the DRC*, document no: CEDAW/C/COD/CO/6-7 (30 July 2013) paragraphs 10(a), 10(f), 12(b)(v).

⁵⁷ Gonzalez Sanchez, P., ‘Violence and Gender in Colombia: Community Based Options for its Eradication’ (paper presented at Oxfam International workshop on VAW, Sarajevo, November 1998) cited in Francine Pickup, Suzanne Williams and Caroline Sweetman, *Ending Violence Against Women: A Challenge for Development and Humanitarian Work* (Oxfam GB 2001) 255.

those workshops, many women came forward seeking protection from long-term domestic and sexual violence.⁵⁸ In the DRC, for instance, according to its 2012 annual report, “(...) the UN Team of Experts on the rule of law and sexual violence in conflict (...) trained seventy-six officers from the Congolese national army as sensitizers on conflict-related sexual violence. These officers were able to provide guidance to other officers on how to report cases of sexual violence to the office of the military prosecutor in at least four localities (Nyamarhege, Kasika, Mwenga and Kamituga in South Kivu). With skills and tools received through the trainings, investigators from the senior prosecutor’s office of South Kivu conducted a number of investigations, including in the Bunyakiri 2006 mass rapes, where 91 cases were documented”.⁵⁹ According to the following year’s report, “in February 2013 the UN Team of Experts on the rule of law and sexual violence in conflict deployed an investigations expert to provide support to (...) military justice authorities. The expert provided advice to the military justice throughout the year (...) and assisted investigations in a number of major incidents (...) As a result, 12 commanders of operational military units were suspended from their duties, 18 soldiers from various units were arrested and detained in Goma central prison, and trials of 39 elements, including seven senior officers, (were) ongoing”.⁶⁰ However, addressing capacity deficits affecting duty-bearers alone can only partially contribute to closing the gap between the DRC’s undertaking to end VAW and the country’s actual behaviour. Indeed, as explained in the next subsection, capacity deficits affecting rights-holders also need to be addressed because inability to claim their rights can also contribute to the above-mentioned implementation gap.

⁵⁸ Ibid, 256.

⁵⁹ UN Team of Experts on the rule of law and sexual violence in conflict, *Annual report 2012* (2012) 29 < <https://www.un.org/ruleoflaw/files/2012%20Report%20of%20the%20Team%20of%20Experts-RoL-SVC.pdf> > accessed 03 November 2018.

⁶⁰ UN Team of Experts on the rule of law and sexual violence in conflict, *Annual report 2013* (2013) 23 < <http://www.stoprapenow.org/uploads/advocacyresources/1399901202.pdf> > accessed 03 November 2018.

5.1.2. Strengthening the capacity of “rights-holders” to claim their right to be free from violence

States’ ability to address VAW also largely depends on right-holders’ ability, power (and also willingness) to claim their rights or seek for State’s intervention. In this respect, in its 2013 Concluding Observations to the DRC, the CEDAW Committee stated it was “deeply concerned about “(...) the fact that women do not have effective access to justice owing to multiple factors, such as the high costs of legal proceedings and the prevalence of corruption, legal illiteracy, the insufficient number of courts and tribunals, the tendency to opt for mediation in cases of sexual violence and the limited training of judges, prosecutors and lawyers on women’s rights”.⁶¹ These are clearly factors that disempower women who attempt to seek justice. In its General Recommendations, the CEDAW Committee requires States to address those constraining factors.⁶² The body has reiterated the same in its Concluding Observations addressed to the DRC.⁶³

Empirical data shows the positive impact on survivors of VAW of initiatives aimed at strengthening the capacity of rights-holders to claim their rights, including the provision of shelter (for instance, in South Africa⁶⁴ and Lebanon);⁶⁵ the provision of counselling, shelter, and legal support (for instance in Zimbabwe and Zambia);⁶⁶ the installation of para-legal workers by NGOs in local police stations to deal specifically with cases of VAW (for instance in Brazil);⁶⁷ supporting survivors of VAW

⁶¹ CEDAW Committee (n 56) paragraph 11 (b).

⁶² See for instance: CEDAW Committee (n 55) paragraphs 24(b), 24(k), 24(o), 24(r) (iii), 24(t) (iii).

⁶³ CEDAW Committee (n 56) paragraphs 10(d), 10(f), 12(b) (i), 12(b) (iii).

⁶⁴ See: People Opposing Women Abuse (POWA) ‘Annual Report 1997-8’ (1998) cited in Pickup, Williams and Sweetman (n 57) 162.

⁶⁵ See: Lina Abou-Habib, ‘The use and abuse of female domestic workers from Sri Lanka in Lebanon’ (1998) 6(1) *Gender and Development* 52 – 56, cited Pickup, Williams and Sweetman (n 57) 163.

⁶⁶ Pickup, Williams and Sweetman (n 57) 175 – 176.

⁶⁷ See: Sena, E., ‘Experiences of How Organised Women’s Movements have Confronted Violence Against Women in the State of Pará, Northern Brazil’ (paper presented at Oxfam international workshop on violence against women, Sarajevo, November 1998) cited in Pickup, Williams and Sweetman (n 57) 177.

to fight for and win financial compensation against their abusers (for instance, in India).⁶⁸ In the DRC, the potential of individual capacity building of rights-holders is illustrated, for instance, by results achieved through “legal clinics”.⁶⁹ Available statistical data shows that legal clinics have enabled hundreds of survivors of VAW to claim their rights. For instance, a 2015 report by OHCHR, mentions:

Over the past year alone, the UN Joint Human Rights Office in the DRC had supported 15 legal clinics, which (...) provided direct legal assistance to close to 750 victims of sexual violence that resulted in more than 230 convictions for perpetrators. Seven mobile courts were organized to try sexual violence cases in which the legal clinics provided protection measures to help the victims testify in court.⁷⁰

In summary, legal clinics appear to have contributed to addressing some of the factors that limit victims of VAW’s capacity to seek or access justice discussed in Chapter Two of this thesis. In so doing, legal clinics seem to have contributed to ending impunity enjoyed by alleged perpetrators of VAW in the DRC. Ultimately, those legal clinics have enhanced the DRC’s capacity to implement its obligation to “protect” women’s right to be free from violence and to closing the gap in the implementation to end VAW in the DRC. However, even if women are supported by legal clinics, they can still face challenges to claim their right to be free from violence if they have to rely on a dysfunctional justice system. That is why the next section discusses organisational capacity building.

⁶⁸ See: ‘Oxfam internal document 1996’ cited in Pickup, Williams and Sweetman (n 57) 179.

⁶⁹ See for instance: OHCHR, *Legal clinics bring justice and rehabilitation to victims of sexual violence in DR Congo* (25 November 2015) <<https://www.ohchr.org/EN/NewsEvents/Pages/AccessJusticeInDRC.aspx>> accessed 11 October 2018; UNDP, *DR Congo: Legal clinics help victims of sexual violence* <<http://www.undp.org/content/undp/en/home/ourwork/ourstories/RDC-lutte-contre-violences-sexuelles.html>> accessed 11 October 2018; UNDP, *Fighting Sexual Violence in the DRC* <<http://www.undp.org/content/undp/en/home/ourwork/ourstories/fighting-sexual-violence-in-the-democratic-republic-of-congo.html>> accessed 11 October 2018.

⁷⁰ Ibid.

5.2. Strengthening organisational capacities of duty-bearers to implement the obligation to end VAW

Organisational capacity building constitutes an opportunity for the DRC to identify capacity assets available to and capacity deficits affecting state and non-State institutions which are expected or mandated to play a role in the implementation of the DRC's obligation to end VAW. Within the Congolese context, such institutions include those mandated to play a role in enforcement and/or implementation of the various anti-VAW laws, policies, action plans, joint communiqué, or strategies discussed earlier. Addressing capacity deficits affecting the above-mentioned institutions can contribute to narrowing the gap between the DRC's international obligation to end VAW and the country's actual behaviour. Indeed, it is through the actions and/or inactions of these institutions that the DRC can properly implement and/or fail to properly implement its obligations to respect, protect and/or fulfil women's right to be free from violence.

Empirical data shows the effectiveness of organisational capacity building on States' response to VAW. For instance, Chiarotti found that the setting up of the *delegacia da mulher* (women's police station) in Brazil led to an increase in the numbers of women reporting violence.⁷¹ In the DRC, one can understand how organisational capacity building can contribute to closing the gap between the DRC's formal commitment to end VAW and the country's actual practice by looking at the results achieved by the Congolese justice system as a result of the support provided through interventions such as "Mobile Courts". This is an umbrella term used to describe situations where courts personnel, prosecutors, attorneys travel and hold court hearings in localities other than their ordinary seats. The possibility of

⁷¹ Susana Chiarotti, 'Violence against Women in the Private Sphere in the Latin American and Caribbean Region' (paper presented at Oxfam international workshop on VAW, Sarajevo, November 1998) cited in Pickup, Williams and Sweetman (n 57) 272 – 273.

organizing “Mobile Courts” is provided for in article 45 of the DRC’s Act n° 13/011-B of 11 April 2013 on the organisation, functioning and jurisdiction of the courts.⁷²

It is worth recalling that, as explained earlier in this thesis, several organisations named and shamed the DRC because of impunity enjoyed by perpetrators of conflict-related sexual violence in the DRC.⁷³ According to several sources, impunity enjoyed by perpetrators could be partly attributed to organisational capacity deficits affecting the Congolese justice sector.⁷⁴ In light of this, various organisations have assisted the DRC to deliver justice to victims of VAW by supporting “mobile courts”, including financially and logistically.⁷⁵ In so doing, these organisations have contributed partially or at least temporarily to addressing some of the capacity deficits affecting the justice system and to closing the gap between

⁷² See: *Loi organique n° 13/011-B du 11 avril 2013 portant organisation, fonctionnement et compétences des juridictions de l'ordre judiciaire* <<https://leganet.cd/Legislation/Droit%20Judiciaire/LOI.13.011.11.04.2013.htm>> accessed 11 October 2018.

⁷³ See for instance: OHCHR, *Report of the Mapping Exercise documenting the most serious violations of Human Rights and international humanitarian law committed within the territory of the DRC between March 1993 and June 2003* (August 2010) paragraph 36; 455, 457, 532, 537, 550, 551, 553, 555, 569, 576, 611, 629, 651, 652, 653, 654; International Federation for Human Rights (FIDH) and others, *Denial of justice for victims of crimes of sexual violence* (July 2013) 7 and 10; Fédération Internationale des Ligues des Droits de l'Homme (FIDH) and others, *DRC. Victims of sexual violence rarely obtain justice and never receive reparation: Major changes needed to fight impunity* (October 2013) 15 <https://www.fidh.org/IMG/pdf/rapport_rdc_.pdf> accessed 29 January 2017; Human Rights Watch, *DRC: Ending Impunity for Sexual Violence. New Judicial Mechanism Needed to Bring Perpetrators to Justice* (10 June 2014) 2, 8, 20, 21, 22, 23, 24.

⁷⁴ See for instance: Human Rights Council, *Report of the SRVAW, its causes and consequences, Yakin Ertürk. Addendum. Mission to the DRC*, document no: A/HRC/7/6/Add.4 (28 February 2008) paragraphs 66 – 67, 69.

⁷⁵ Aaron Hall and Annette LaRocco, *Time Works Against Justice: Ending Impunity in Eastern Congo* (The Enough Project 2012) 9; Galya Ruffer, ‘Testimony of Sexual Violence in the DRC and the Injustice of Rape: Moral Outrage, Epistemic Injustice, and the Failures of Bearing Witness’ (2013) 15 (225) *Oregon Review of International Law* 225 – 270, 263; Monica Rispo and others, *Evaluation of UNDP’s support to mobile courts in Sierra Leone, DRC, and Somalia* (UNDP, May 2014) 10.

the DRC's obligation to "protect" women's right to be free from violence and the country's actual practices. Illustrating this, the UN Team of Experts on rule of law and sexual violence in conflict has noted that "mobile courts sessions, organized in remote areas, led to an increase in the number of prosecutions for sexual violence crimes".⁷⁶ In a similar vein, the "American Bar Association Rule of Law Initiative" (ABA ROLI) reported having helped facilitate nearly 900 rape trials in both mobile and "bricks and mortar" courts during the period 2008-2012.⁷⁷ In addition, according to the NGO Open Society Foundations, "in its first 36 months of operation (from October 2009 through October 2012), a "mobile gender court" operating in South Kivu (Eastern DRC) made important progress toward meeting the urgent need to bring justice closer to citizens by holding 20 court sessions in remote areas of the province. It heard 382 cases, with 204 convictions for rape (...) Sentences for rape ranged from 1 to 20 years, with significant financial penalties added in some cases".⁷⁸ In other words, without the assistance provided through these "Mobile courts", some of the hundreds of victims of VAW mentioned above would have never been able to seek or obtain justice.

What transpires from the discussion above is that individual and organisational capacity building can contribute to closing the gap in the implementation of the obligation to end VAW in the DRC. Previous Chapters mentioned that capacity building is a process that deals with deficits at three levels: namely, individual, organisational and societal. The next Section addresses this last level.

⁷⁶ UN Team of Experts on the rule of law and sexual violence in conflict (n 60) 22.

⁷⁷ Michael Maya, 'Mobile Courts in the DRC: Complementarity in Action?', in Juan Carlos Botero and others (eds), *Innovations in Rule of Law: A Compilation of Concise Essays* (Published in support of the High-level Meeting of the UN General Assembly on the Rule of Law, 24 September 2012) 34.

⁷⁸ Open Society Foundations, *Justice in DRC: Mobile courts combat rape and impunity in eastern Congo* <<https://www.opensocietyfoundations.org/sites/default/files/justice-drc-20130114.pdf>> accessed 29 September 2018.

5.3. Creating a more enabling environment for the enjoyment of women's right to be free from violence

Within the context of my thesis, strengthening the enabling environment means identifying and addressing constraining factors, which at the macro-level, can contribute to the country's unwillingness or lack of capacity to implement its obligation to end VAW and to the gap between the country's undertaking to end VAW and its actual performance. As explained earlier, these constraining factors can be legal or extra-legal.

Legal factors may include normative gaps, for instance, the fact that domestic violence or marital rape are not criminalized in the DRC. The CEDAW Convention requires States to address those legal factors.⁷⁹ The CEDAW Committee has reaffirmed the same in its General Recommendations⁸⁰ and in its Concluding Observations addressed to the DRC.⁸¹ Strengthening the legislative framework is one of the ways in which the enabling environment can be strengthened.

Empirical data shows that strengthening the legal framework can have a positive effect on States' ability to implement their obligation to end VAW. For instance, Sanchez explains how in Colombia, legislative advances in line with the Inter-American Convention on the Prevention, Punishment, and Eradication of VAW and the revision of legislation to ensure that punishments for those who have committed sexual abuse against a spouse were as severe as penalties for those who assault strangers led to increased numbers of cases being reported and brought to court by women.⁸² In a similar vein, Villanueva explains that prior to the adoption of the Law against Domestic Violence on 25 March 1996 in Costa Rica, attempts by women to seek protection from an abusive partner were unsatisfying. Often, the police were reluctant to intervene because family conflicts were

⁷⁹ See for instance: Articles 2(a), 2(b), 2(f), 2(g), 3, 6, 16(2) of the CEDAW Convention.

⁸⁰ See for instance: CEDAW Committee (n 55) paragraphs 5, 24(b), 24(m), 24(t), and 24(v).

⁸¹ CEDAW Committee (n 56) paragraphs 20(b), 22(a), 22 (e), 24(b), 24(c), 30(c), 38(a), 38(b).

⁸² Gonzalez Sanchez, P., 'Violence and Gender in Colombia: Community Based Options for its Eradication' (paper presented at Oxfam International workshop on VAW, Sarajevo, November 1998) cited in Pickup, Williams and Sweetman (n 57) 275.

traditionally considered to be private affairs to be settled without outside intervention.

⁸³ However, during the first year that the Law against Domestic Violence was in effect, 7,219 legal actions involving domestic violence were reported. ⁸⁴ Similarly, Counts, Brown and Campbell found that among 16 societies studied (both developed and developing) the lowest rates of VAW occurred in societies that consistently imposed sanctions (including legal sanctions) on perpetrators.⁸⁵

Extra-legal factors that can contribute to the country's unwillingness or lack of capacity to implement its obligation to end VAW include, for instance, discriminatory traditions, attitudes or practices illustrated by the high level of tolerance for VAW mentioned earlier or the existence or persistence of armed conflicts. The CEDAW Convention requires States to address those extra-legal factors.⁸⁶ Here as well, the CEDAW Committee has reiterated the same in its General Recommendations⁸⁷ and in its Concluding Observations addressed to the DRC.⁸⁸

The contribution of capacity building interventions to strengthening the enabling environment is illustrated, for instance, by results achieved through Human Rights education and training. The latter is defined as "all educational, training, information, awareness-raising and learning activities aimed at promoting universal respect for and observance of all human rights and fundamental freedoms and thus

⁸³ Zarela Villanueva, 'Legislative and Judicial Reforms Regarding Domestic Violence: Costa Rica' in Andrew R. Morrison and Maria Loreto Biehl (eds), *Too close to home: Domestic Violence in the Americas* (the Inter-American Development Bank Distributed by The Johns Hopkins University Press 1999) 153 – 154.

⁸⁴ Ibid, 155.

⁸⁵ Dorothy Ayers Counts, Judith K. Brown, Jacquelyn Campbell, *Sanctions and sanctuary: cultural perspectives on the beating of wives* (Westview Press 1992) cited in Sarah Bott, Andrew Morrison and Mary Ellsberg, 'Preventing and responding to gender-based violence in middle and low income countries: a global review and analysis' (2005) 3618 World Bank Policy Research Working Paper 1 - 61, 17.

⁸⁶ See for instance: Articles 2(f), 5(a) and 10(c).

⁸⁷ See for instance: CEDAW Committee (n 55) paragraphs 11, 20, 21, 23, 24(e), 24(f), and 24(t) (2).

⁸⁸ CEDAW Committee (n 56) 12(b) (iv), 20(a), 22(f), 38(c).

contributing, *inter alia*, to the prevention of human rights violations and abuses by providing persons with knowledge, skills and understanding and developing their attitudes and behaviours, to empower them to contribute to the building and promotion of a universal culture of human rights”.⁸⁹ Available data suggests that Human Rights education and training can change community members’ attitude on VAW. For instance, a study of the impact of Human Rights Education work undertaken in India found that 36 percent of students and 47 percent of teachers took some action to stop diverse situations related to discrimination, domestic violence, among others⁹⁰ while another 36 percent of students and teachers reported incidents of abuse to authorities.⁹¹

In the current section, I elaborated on how, in addition to “moral consciousness-raising”, naming and shaming and dialogue, capacity building could be used to address capacity deficits that can prevent the DRC from implementing its formal commitment to end VAW and how this could progressively contribute to a steady progress towards a better implementation of the obligation to end VAW. However, shifting from “occasional or grudging compliance” with the obligation to end VAW to “habitual and internalized compliance” or “obedience” is not a straight line. In this respect, Risse and Sikkink stress that the Spiral Model does not assume evolutionary progress and emphasise that Governments might return to repressive practices.⁹² The risk of setbacks and backward steps exist. Preventing such setbacks is therefore crucial. That is why in the next Section, I discuss how argumentation could be used to persuade the DRC to refrain from actions and/or omissions that can hinder the implementation of its commitment to implement its obligation to end VAW.

⁸⁹ UNGA, *United Nations Declaration on Human Rights Education and Training*, Resolution 66/137, A/RES/66/137 (19 December 2011) article 2(1).

⁹⁰ People’s Watch and Institute for Human Rights Education, *Schooling for Justice and Human Rights* (2008) cited in Monisha Bajaj, ‘Human Rights Education: Ideology, Location, and Approaches’ (2011) 33 *Human Rights Quarterly* 481 - 508, 504.

⁹¹ *Ibid.*

⁹² Risse and Sikkink (n 19) 18.

6. The persuasive power of argumentation

Chapter one explained how argumentation attempts to stimulate Human Rights change by putting violators in a situation where they cannot publicly denounce or renounce previously made commitments without contradicting themselves and/or losing credibility. Argumentation relies on the use of reason and logic to elicit behavioural change. In the DRC, the potential of argumentation can be illustrated by looking, for instance, at how critics of the DRC have used in their advocacy the so-called “Zero Tolerance Policy” for Human Rights violations, including sexual violence announced by the President of the DRC on 5 July 2009.

Congolese authorities have oftentimes presented the adoption of the “Zero Tolerance Policy” as a sign of their commitment to end VAW.⁹³ Various actors, including UN Human Rights bodies⁹⁴ and NGOs⁹⁵ have taken Congolese authorities at their word and have highlighted contradictions between the wishes expressed through the “Zero tolerance policy” and the actual behaviour displayed by Congolese authorities.⁹⁶ As predicted by Risse and Sikkink in their explanation of the power of

⁹³ Government of the DRC and the United Nations (n 48) 2 ; République Démocratique du Congo, Ministère du Genre, de la Famille et de l'Enfant, *Rapport national sur la revue et évaluation du plan d'action de Beijing+20* (June 2014) 17 <http://www.uneca.org/sites/default/files/uploaded-documents/Beijing20/NationalReviews/drc_beijing_review_report.pdf > accessed 05 January 2017.

⁹⁴ See for instance: Human Rights Council, *Second joint report of seven United Nations experts on the situation in the DRC*, document no: A/HRC/13/63 (8 March 2010) paragraphs 52 – 54, 63; 108; CEDAW Committee, *List of issues and questions with regard to the consideration of periodic reports: DRC*, document no: CEDAW/C/COD/Q/6-7 (2 November 2012) paragraph 9; CEDAW Committee, *Summary record of the 1134th meeting Held at the Palais des Nations, Geneva, on Thursday, 11 July 2013, at 10 a.m.*, document no: CEDAW/C/SR.1134 (31 July 2013) paragraph 11.

⁹⁵ See for instance: Human Rights Watch, *DR Congo: Hold Army Commanders Responsible for Rapes. Government Should Enforce Its 'Zero-Tolerance' Policy on Sexual Violence* (16 July 2009) <<https://www.hrw.org/news/2009/07/16/dr-congo-hold-army-commanders-responsible-rapes>> accessed 14 August 2016.

⁹⁶ Ibid.

argumentation,⁹⁷ when criticised for failing to implement the Zero Tolerance Policy, the DRC continued to reiterate its commitment to better implement the “Zero Tolerance” Policy.⁹⁸ In so doing the DRC paved the way for more pressure (for instance through naming and shaming) in case the country continued to fail to uphold their previous commitments.

The DRC’s continued reference to its commitment to implement the “Zero Tolerance Policy” illustrates a point made by Johnstone. He argues that once States accept a norm rhetorically and begin to argue over its interpretation and application to the particular case at hand, rather than the validity of the law itself, they create a “discursive opening” for their critics (“if you say you accept Human Rights, then why do you systematically violate them?”) which eventually induces governments to match deeds with words”.⁹⁹ In other words, they are “trapped” (sic!).¹⁰⁰ In sum, the power of argumentation derives from what several authors call “argumentative self-entrapment”¹⁰¹ The force of “argumentative self-entrapment” is that it works to

⁹⁷ Risse and Sikkink (n 19) 27 and 28.

⁹⁸ See for instance : Radio France Internationale (RFI), *RDC: nouveaux cas de violences faites aux femmes au Sud-Kivu* (20 November 2015) <<http://www.rfi.fr/afrique/20151120-rdc-femmes-violees-kalehe-sud-kivu-onu>> accessed 06 September 2018 ; DR Congo Avenir, *Jeanine Mabunda : Fin de l’impunité pour les violences sexuelles faites à la femmes en RDC* (8 July 2017) ; <<http://drcongoavenir.com/20170708-6496/>> accessed 06 August 2018 ; Nkurunziza Amedee, *La COCAFEM/GL relance son plaidoyer pour le lancement de la Campagne Tolérance Zéro envers les crimes de Violences Sexuelles et Basées sur Genre/VSBG et l’impunité en RDC* (22 September 2016) <<http://cocafemgl.org/2016/09/22/la-cocafemgl-relance-son-plaidoyer-pour-le-lancement-de-la-campagne-tolerance-zero-envers-les-crimes-de-violences-sexuelles-et-basees-sur-genrevsbg-et-limpunite-en-rdc/>> accessed 06 September 2018.

⁹⁹ Ian Johnstone, *The Power of Deliberation: International Law, Politics and Organisations* (Oxford University Press 2011) 27.

¹⁰⁰ Gerrit Kurtz, ‘Securitization of Climate Change in the United Nations 2007 – 2010’ in Jürgen Scheffran and others (eds), *Climate Change, Human Security and Violent Conflict: Challenges for Societal Stability* (Springer 2012) 671.

¹⁰¹ Frank Schimmelfennig, *The EU, NATO and the Integration of Europe: Rules and Rhetoric* (Cambridge University Press 2003) 222. See also: Kurtz (n 100) 671. See also: Risse and Sikkink (n 1) 27 and Thomas Risse and Stephen C. Ropp, ‘International Human Rights norms and domestic

induce states to match words with deeds.¹⁰² Schimmelfennig maintains that argumentation works because what appears to be a cost-free rhetorical commitment or a shrewd argumentative move, in one context can turn into a costly constraint in another.¹⁰³ Put differently, as stressed by Sharman, even if they were never intended to be taken at face value, public commitments can be used to bind actors and hold them accountable to principles which they may have introduced to debate solely on pragmatic or instrumental grounds.¹⁰⁴

The Congolese President may have announced the “Zero Tolerance Policy” as part of “cheap talk” to pacify international criticism or in order “to be left alone”. However, by continuing to point out the discrepancy between the adoption of the “Zero Tolerance Policy” by the DRC and the poor implementation of the Policy, critics of the DRC have continued to put additional pressure on the country. Ultimately, if that pressure is sustained it can gradually lead to change.

However, despite what has been explained above, it is also important to acknowledge that in some instances, States can decide that it is advantageous for them to preach one thing and practice another by reneging upon their previous commitments. History is replete with such cases.¹⁰⁵ This is the reason why it was

change: conclusions’ in Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink (eds), *The Power of Human Rights: International Human Rights and Domestic Change* (Cambridge University Press 1999) 254.

¹⁰² Naomi Head, *Justifying violence: Communicative ethics and the use of force in Kosovo* (Manchester University Press 2012) 83.

¹⁰³ Schimmelfennig (n 101) 222.

¹⁰⁴ J. C. Sharman, ‘The agency of peripheral actors: small states tax havens and international regimes as weapons of the weak’, in John M. Hobson and Leonard Seabrooke (eds), *Everyday Politics of the World Economy* (Cambridge University Press 2007) 54.

¹⁰⁵ See for instance: Human Rights Watch, *Getting Away with Torture? Command Responsibility for the U.S. Abuse of Detainees* (April 2005) <<https://www.hrw.org/reports/2005/us0405/us0405.pdf>> accessed 24 January 2017; Raphaëlle Branche, ‘Torture of terrorists? Use of torture in a “war against terrorism”: justifications, methods and effects: the case of France in Algeria, 1954–1962’ (2007) 89 (867) *International Review of the Red Cross* 543 - 560; Human Rights Watch, *Pakistan: Reinstate Death Penalty Moratorium* (17 December 2014)

stressed earlier that depending on the circumstances, “moral consciousness-raising”, naming and shaming, dialogue and/or capacity building could also be used simultaneously with argumentation.

The discussions in the sections above suggest that the “Integrated and Multi-stakeholder model of Human Rights change” combining persuasion (through moral consciousness-raising, naming and shaming, dialogue and argumentation) and capacity building can contribute to closing the gap in the implementation by the DRC of its obligation to end VAW. However, three challenges discussed in the next subsection need to be kept in mind. First, persuasion (through moral consciousness-raising, naming and shaming, dialogue and argumentation) and capacity building can take time to bring about Human Rights change. Second and linked to the above, as rightly emphasised by Lagon and Kaminski, capacity-building, especially for Human Rights is often expensive and daunting.¹⁰⁶ Third, while the success of my Model depends on the mobilisation of a broad array of international and/or domestic actors, rallying those actors around “normalised” forms of VAW may be a challenging task.

<<https://www.hrw.org/news/2014/12/17/pakistan-reinstate-death-penalty-moratorium>> accessed 23 January 2017; BBC, *Chad reintroduces death penalty for acts of terror* (31 July 2015) <<http://www.bbc.com/news/world-africa-33732176>> accessed 23 January 2017; OHCHR, *Chad: UN Human Rights expert alarmed by the executions of 10 people following a swift trial* (7 September 2015) <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16388&LangID=E>> accessed 23 January 2017.

¹⁰⁶ Mark P. Lagon and Ryan Kaminski, ‘The Global Human Rights Regime: Assessing and Renovating the Architecture’ in Mark P. Lagon and Anthony Clark Arend (eds), *Human Dignity and the Future of Global Institutions* (Georgetown University Press 2014) 130.

7. Challenges to eliciting Human Rights change through the “Integrated and Multi-stakeholder model of Human Rights change”

7.1. Eliciting Human Rights change through my Model: A long term and expensive undertaking

Using persuasion (through moral consciousness-raising, naming and shaming, argumentation, and dialogue) can take time to bring about Human Rights change, including because as noted by Schokman and Lynch, Human Rights change is often a long-term and incremental process.¹⁰⁷ In this respect, the proponent of the Managerial Model argue that States often unwillingly fail to implement and/or comply with international law for three main reasons. One of those reasons is the fact that the social, economic, and political changes contemplated by international law norms and standards take time.¹⁰⁸ This is particularly relevant in the area of VAW because ending the latter requires also challenging the deeply-rooted and entrenched discriminatory beliefs, attitudes, practices or customs that are used to justify or perpetuate VAW.¹⁰⁹ In this respect, Chapter One provided statistical data showing a high level of tolerance for VAW in the DRC. In sum, as rightly stressed by Barrett, tackling gender-based violence necessitates social

¹⁰⁷ Ben Schokman and Phil Lynch, ‘Effective NGO engagement with the Universal Periodic Review’ in Hilary Charlesworth and Emma Larking (eds), *Human Rights and the Universal Periodic Review* (Cambridge University Press 2014) 144.

¹⁰⁸ Abram Chayes and Antonia Handler Chayes, *The New Sovereignty: Compliance with International Regulatory Agreements* (Harvard University Press 1995) 15 – 17.

¹⁰⁹ See: Ministère du Plan et Suivi de la Mise en œuvre de la Révolution de la Modernité (MPSMRM), Ministère de la Santé Publique (MSP) and ICF International, *Enquête Démographique et de Santé en République Démocratique du Congo 2013-2014* (2014) 300 and 301 <<https://dhsprogram.com/pubs/pdf/FR300/FR300.pdf> > accessed 03 February 2017; Tearfund, *Men, faith and masculinities: DRC. A baseline assessment on the social attitudes, relations, and practices of men in relation to gender, and sexual and gender-based violence in the DRC* 35 <<https://wewillspeakout.org/wp-content/uploads/2014/06/Men-faith-and-masculinities-DRC-FINAL.pdf> > accessed 05 January 2017.

change.¹¹⁰ And, because social change takes time,¹¹¹ closing the gap between the DRC's commitment to end VAW and the country's actual behaviour can also end up being a long-term process.

Like persuasion (through moral consciousness-raising, naming and shaming, and dialogue and argumentation), capacity building is also a continuous, long-term and complex process.¹¹² It can therefore also take time to bring about Human Rights change. Indeed, as stressed by several authors, capacity building is not amenable to delivery pressures, quick fixes and short-term results seeking.¹¹³ Echoing this point, Howen remarks that complex capacity building projects usually need a long

¹¹⁰ Lena Barrett, 'Physical integrity and Human Rights' in Anja Mihr and Mark Gibney (eds), *The SAGE Handbook of Human Rights* (Volume 1, SAGE, 2014) 159 – 160.

¹¹¹ Desiree Bernard, 'The Work of the Committee on the Elimination of discrimination against women: its focus on nationality, custom, culture and the rights of the girl-child' in Andrew Byrnes, Jane Frances Connors, and Lum Bik (eds), *Advancing the Human Rights of Women: Using International Human Rights Standards in Domestic Litigation* (Commonwealth Secretariat 1997) 76; Pradip Ninan Thomas and Elske van de Fliert, *Interrogating the Theory and Practice of Communication for Social Change: The Basis For a Renewal* (Palgrave Macmillan 2014) 132.

¹¹² See for instance: Carlos Lopes and Thomas Theisohn, *Ownership, leadership and transformation: can we do better for capacity development?* (Earthscan Publications Ltd 2003) 1 and 3 <http://www.undp.org/content/dam/aplaws/publication/en/publications/capacity-development/drivers-of-change/leadership/ownership-leadership-and-transformation-executive-summary/Ownership-Leadership-Transformation-Can-We-Do-Better_executive%20summary_.pdf > accessed 07 July 2017; Lynda Cheshire, *Governing Rural Development: Discourses and Practices of Self-help in Australian Rural Policy* (Ashgate Publishing, Ltd., 2006) 46; Organisation for Economic Co-operation and Development (OECD), *Contracting out government functions and services in post-conflict and fragile situations* (2010) 19 <<http://www.gpoba.org/sites/gpoba/files/Handbook.pdf>> accessed 30 December 2019; OECD, *Greening Development: Enhancing Capacity for Environmental Management and Governance* (OECD Publishing 2012) 94 <<https://www.oecd-ilibrary.org/docserver/9789264167896-en.pdf?expires=1583674057&id=id&accname=ocid195767&checksum=8DF5576CC8D1E08C44DA937896DD6B04> > accessed 11 October 2018.

¹¹³ OECD, *The Challenge of Capacity Development: working towards good practice* (2006) 44 <http://www.fao.org/fileadmin/templates/capacitybuilding/pdf/DAC_paper_final.pdf > accessed 10 October 2018.

time before their effects are felt.¹¹⁴In the DRC, capacity building is also likely to take a long time to yield results because as mentioned in the introductory Chapter, the country has exhibited some of the indicators of a failed State. As seen throughout this thesis, those indicators of state failure have negative effects on the implementation of the obligation to end VAW in the DRC.

The fact that persuasion (through moral consciousness-raising, naming and shaming, and dialogue and argumentation) and capacity building can take time to bring about Human Rights change means that in order for my Model to play a meaningful role in closing the gap between the DRC's formal commitment to end VAW and the country's actual behaviour, its operationalisation needs to be part of a long-term endeavour. Such a long-term undertaking requires the involvement of multiple, committed and properly-equipped and resourced stakeholders. In this respect, it has been stressed for instance that progress in the area of capacity building requires predictable and sustained commitments on the part of all stakeholders.¹¹⁵

Unfortunately, as pointed out by the Organisation for Economic Co-operation and Development (OECD), "donor support in a fragile environment often has fairly short time horizons which are inconsistent with the long-term requirements of a sustainable programme of capacity development".¹¹⁶ This appears to be the case in the DRC where the UN High Commissioner for Human Rights has regretted that "the majority of technical assistance interventions were carried out in emergency situations and were short term" and that "sustainability and ownership of the interventions proved to be a major challenge, both to those exercising their rights

¹¹⁴ Nicholas Howen, 'The Fundamental Protection Function of the Human Rights Field Operation' in Michael O'Flaherty, *The Human Rights Field Operation: Law, Theory and Practice* (Ashgate Publishing Limited 2007) 37.

¹¹⁵ Norwegian Agency for Development Cooperation (NORAD), *Guidance Note: Reconstruction and long-term capacity development in Haiti* (2010) 7 < <https://norad.no/globalassets/import-2162015-80434-am/www.norad.no-ny/filarkiv/vedlegg-til-publikasjoner/guidance-note-reconstruction-and-long-term-capacity-development-in-haiti.pdf> > accessed 11 October 2018; OECD (2010) (n 112) 78.

¹¹⁶ OECD (2010) (n 112) 78.

and to those whose role it was to protect them”.¹¹⁷ Speaking specifically about VAW, Douma and Hilhorst point out a “humanitarian approach to sexual violence” characterized by the fact that sexual violence is strongly associated with the war and is dealt with as part of the humanitarian crisis.¹¹⁸ They point out that one of the problems associated with the humanitarian approach is the short time-span of funding, usually six months to one year, the lack of follow-up and quality monitoring, and weak learning capacity across the sector.¹¹⁹ They add that programmes display a ‘humanitarian style’ with short durations and an emphasis on assisting individual victims.¹²⁰ They emphasise that this approach is seen to hinder more preventive, socio-cultural and community-based interventions.¹²¹

According to OECD, in addition to donors and the international community’s commitment, another challenge related to capacity building is that “government commitment for a long-term process can sometimes be tenuous, depending on the shifting dynamics within government”.¹²² This is particularly relevant to a country such as the DRC characterized by political instability.

In addition to what has been said above, long-term undertakings such as persuasion (through moral consciousness-raising, naming and shaming, and dialogue and argumentation) and capacity building require sustained interactions with duty-bearers and rights-holders as well as sustained interventions at the domestic level. Yet, Chapter Five showed that the interaction between UN Human Rights bodies mandated with VAW and the domestic sphere was rather occasional.

¹¹⁷ United Nations, *Study on the impact of technical assistance and capacity-building on the human rights situation in the Democratic Republic of the Congo (2008-2014): Report of the United Nations*, document no: A/HRC/30/33 (24 August 2015) paragraph 67.

¹¹⁸ Nynke Douma and Dorothea Hilhorst, ‘Fond de commerce? Sexual violence assistance in the Democratic Republic of Congo’ (2012) 02 Disaster Studies, Occasional paper 1- 78, 44.

¹¹⁹ Ibid.

¹²⁰ Ibid, 63.

¹²¹ Ibid.

¹²² OECD (2010) (n 112) 78.

Besides, it is worth recalling that members of treaty bodies as well as Special Rapporteurs carry out their tasks on a part-time basis.

Second and linked to the above, as rightly emphasised by Lagon and Kaminski, capacity-building, especially for Human Rights is often expensive and daunting.¹²³ In other words, because it is a costly undertaking, capacity building requires the active participation of well-resourced stakeholders. Yet, as recalled in Chapter Five, many have pointed out that the UN Human Rights system is under resourced.¹²⁴ In summary, given the multiple challenges facing UN Human Rights bodies analysed in detail in the previous Chapter, it is safe to argue that the magnitude of long-term and expensive undertakings such as persuasion (through moral consciousness-raising, naming and shaming, and dialogue and argumentation) and capacity building may oftentimes exceed the mandate of, capacity of and/or resources available to UN Human Rights bodies mandated with dealing with VAW. This is why, using my Model to close the wide gap between the DRC's formal commitment to eliminate VAW and the country's actual practices requires looking beyond traditional UN Human Rights bodies. It requires the active participation of stakeholders who can operate at the domestic level and address the DRC's unwillingness and lack of capacity to implement its obligation to eliminate VAW in a sustained manner. Some of those stakeholders were mentioned in

¹²³ Lagon and Kaminski (n 106) 130.

¹²⁴ Michael Ignatieff, 'Rights inflation and role conflict in the Office of the High Commissioner for Human Rights' in Felice D. Gaer and Christen L. Broecker (eds), *The United Nations High Commissioner for Human Rights: Conscience for the World* (Martinus Nijhoff Publishers, 2014) 39; Ilias Bantekas and Lutz Oette, *International Human Rights Law and Practice* (Second Edition, Cambridge University Press 2016) 173; Inga T. Winkler and Catarina de Albuquerque, 'Doing It All and Doing It Well? A Mandate's Challenge in Terms of Cooperation, Fundraising and Maintaining Independence' in Aoife Nolan, Rosa Freedman, and Thérèse Murphy (eds), *The United Nations Special Procedures System* (BRILL 2017) 210; Jane Connors, 'Special Procedures: Independence and Impartiality' in Aoife Nolan, Rosa Freedman, and Thérèse Murphy (eds), *The United Nations Special Procedures System* (BRILL 2017) 56.

Chapter Five (the section dealing with the need for creating a bridge between “international” and “domestic” institutions and efforts).

7.2. Mobilising stakeholders around “normalised” forms of VAW (perpetrated in the private sphere): A challenging but not impossible task

Closing the gap in the implementation of the obligation to end VAW in the DRC will require addressing all the three categories of VAW identified in the definition of VAW, namely physical, sexual and psychological violence occurring in the family, within the general community and perpetrated or condoned by the State.¹²⁵ One of the challenges that may arise from this is that some acts of VAW that are not perpetrated by the State, particularly those occurring in the family are normalised. Mobilising a broad array of international and domestic actors around “normalised” forms of VAW is therefore likely to be a challenging task. Indeed, as rightly stressed by Montoya:

(...) although human rights are now a part of the global vernacular, it is usually the most egregious violations that seem to spark public outrage and intervention. Such has been the case with violence against women. Despite the framing of women’s rights as human rights and the expansion of what is understood as violence, only the most sensationalized cases of mass violence are likely to garner international response. The public/private divide that feminists fought in the second wave still exists, including on a global level. Normalised forms of violence remain in private and domestic spheres or are put on the back burner of more pressing issues (...) ¹²⁶

Although mobilising a broad array of international and domestic actors around “normalised” forms of VAW in the DRC is likely to be a challenge, some steps might make it possible. Firstly, from a theoretical perspective, this requires challenging the

¹²⁵ See: UNGA, *Declaration on the Elimination of VAW*, Resolution A/RES/48/104 (20 December 1993) article 2.

¹²⁶ Celeste Montoya, *From Global to Grassroots: The European Union, Transnational Advocacy, and Combating Violence Against Women* (Oxford University Press 2013) 24.

public/private divide which in the Congolese context is illustrated by the almost exclusive focus on conflict-related sexual violence attributable to State actors and those who challenge state authority such as armed groups. Many have pointed out the negative effects of this approach including the fact that it has contributed to overshadowing other equally appalling and widespread forms of VAW occurring in the country.¹²⁷ From a practical perspective, mobilising around “normalised” forms of VAW will require shedding more light on those forms of VAW by collecting and disseminating more data on them.

7.2.1. The need to constantly challenge the public/private divide

Speaking about how the public/private divide negatively affects women’s rights, Benninger-Budel argues that traditionally, human rights law has focused strongly on the protection of the individual from abuse within the ‘public’ sphere and their relationship with the government.¹²⁸ She concludes that the resulting construction of the public/private dichotomy has served to marginalise women’s experiences in international human rights law.¹²⁹ Echoing Benninger-Budel Freedman explains how the public/private division undermines the law by creating

¹²⁷ Marleen Bosmans, ‘Challenges in Aid to Rape Victims: the Case of the Democratic Republic of the Congo’ (2007) 4(1) Essex Human Rights Review 1 – 12, 9; Maria Eriksson Baaz and Maria Stern, *The Complexity of Violence: A critical analysis of sexual violence in the DRC*, in Working Paper on Gender Based Violence (Swedish International Development Cooperation Agency (SIDA) May 2010) 12 - 16 <<http://nai.diva-portal.org/smash/get/diva2:319527/FULLTEXT02.pdf>> accessed 23 April 2015; Rosan Smits and Serena Cruz, ‘Increasing Security in DR Congo: Gender-Responsive Strategies for Combating Sexual Violence’ (2011) 17 Clingendael Conflict Research Unit (CRU) Policy Brief 1 – 9, 2 <https://www.clingendael.org/sites/default/files/pdfs/20110531_cru_policybrief_rsmits.pdf> accessed 07 February 2014; Charlotte Mertens and Maree Pardy, ‘Sexurity’ and its effects in eastern Democratic Republic of Congo (2016) Third World Quarterly 1 - 24, 6 and 11.

¹²⁸ Carin Benninger-Budel, ‘Introduction’ in Carin Benninger-Budel (ed), *Due Diligence and its application to protect women from violence* (Martinus Nijhoff Publishers 2008) 1.

¹²⁹ Ibid, 2.

situations within which some acts of VAW may be considered that they do not come under the scope of the law because they are seen as acts of a “private” nature as they take place within the sphere of the family or home or regarded as acts related to women’s private behaviour.¹³⁰ Put simply, the public/private divide contributes to denying women the protection afforded by international law instruments that prohibit VAW.

The public/private divide is not limited to international human rights law. It is also found in domestic legal systems. An illustration of that is the so-called “spousal exemption” which in many legal systems has placed marital rape (occurring in the private sphere) outside the reach of the law,¹³¹ whereas rape outside the private sphere is (in most cases) punishable. As stressed by Kennedy, the devaluation of women as property combined with the understanding that marriage implies and irrevocable consent to sex has led to the sexual exemption and has made the problem of rape in marriage challenging to eradicate legally.¹³² Similar view exist also in the DRC, where marital rape is equally not criminalised despite being pervasive.¹³³ Indeed, a study conducted in the towns of Bunia, Goma and Bukavu in Eastern DRC and published in 2014 found that 56 percent of men and 51 percent of women agreed with the statement “I think that a woman cannot refuse to have sex with her husband”.¹³⁴ When asked why they had agreed that a woman cannot refuse sex to her husband, men had views such as “Because it is the right of the

¹³⁰ Jane Freedman, ‘Taking gender seriously in asylum and refugee policies’ in Kavita R. Khory (ed), *Global Migration: Challenges in the Twenty-First Century* (Palgrave Macmillan 2012) 50 – 51.

¹³¹ In this respect, see for instance: David Finkelhor and Kersti Yllö, *License to Rape: Sexual Abuse of Wives* (The Free Press 1985) 139 – 162.

¹³² Raquel Kennedy Bergen, ‘An overview of marital rape research in the United States: Limitations and implications for cross-cultural research’ in Kersti Yllö and Gabriela Torres (eds), *Marital Rape: Consent, Marriage, and Social Change in Global Context* (Oxford University Press 2016) 21.

¹³³ See statistics on marital rape in: MPSMRM, MSP and ICF International (n 107) 312 - 313 <<https://dhsprogram.com/pubs/pdf/FR300/FR300.pdf>>accessed 03 February 2017.

¹³⁴ Tearfund (n 109) 34.

husband, the woman doesn't have the right over her body.”¹³⁵ Nationally, the 2014 Demographic and Health Survey (DHS) found that 22.9 percent of men and 43.5 percent of women believed that a husband was justified in beating his wife if she refused to have sex with her husband.¹³⁶ In a similar vein, illustrating the effects of the public/private dichotomy, a recent report on the DRC explains, “(...) although the law considers assault a crime, police rarely intervened in perceived domestic disputes. There were no reports of judicial authorities taking action in cases of domestic or spousal abuse”.¹³⁷ It was also mentioned earlier that Police officers, who opt, encourage or take part in “out-of-court” or “amicable” settlements of cases of VAW claim that they act in such a way, to “protect the honour of married women who are victims of rape or young girls who are victims of sexual assault;¹³⁸ to preserve harmony in the community and the honour of the family;¹³⁹ to reduce the stigma felt by parents or husbands and promote harmony within the community.¹⁴⁰ All these are illustrations of how violence in the private sphere normalised. In summary, the public/private divide contributes to the normalisation, marginalisation and the trivialisation of VAW in occurring in the private sphere and therefore needs to be constantly challenged. Dismantling the public/private dichotomy requires, *inter alia*, emphasising States' legal obligation to address violence in the private sphere

¹³⁵ Ibid, 45.

¹³⁶ MPSMRM, MSP and ICF International (n 109) 299 and 301.

¹³⁷United States Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2017: Democratic Republic of the Congo* (20 April 2018) 40 < <https://www.state.gov/wp-content/uploads/2019/01/Democratic-Republic-of-the-Congo.pdf> > accessed 17 September 2019.

¹³⁸ Patrick Kayembe and others, *Connaissances, perceptions, attitudes et pratiques des membres de la Police Nationale Congolaise en matière de violences sexuelles dans trois provinces de la République Démocratique du Congo* (2010) 19 <<https://reliefweb.int/report/democratic-republic-congo/connaissances-perceptions-attitudes-et-pratiques-des-membres-de-la>> accessed 04 April 2019.

¹³⁹ Ibid.

¹⁴⁰ Ibid, 20.

as reflected in several human rights instruments.¹⁴¹ This is the essence of the obligation to “protect” women’s right to be free from violence extensively discussed in Chapter Two.

In addition to emphasising States’ obligation to address VAW in the private sphere, mobilising domestic and international actors around “normalised” forms of VAW will require shedding more light on “normalised” forms of VAW.

7.2.2. The need to shed more light on “normalised” forms of VAW

Mobilising domestic and international actors around “normalised” forms of VAW will first and foremost necessitate to collect and disseminate data, including on the magnitude, impact of those acts of “normalised” forms of VAW as well as on measures that the DRC has taken (or failed to take) to implement its obligation to respect, protect and fulfil women’s right to be free from “normalised” forms of violence. Indeed, as stressed by the CEDAW Committee, “statistical information is absolutely necessary in order to understand the real situation of women in each of the States parties to the Convention”.¹⁴² However, in a context where some acts of VAW are normalised, collecting and disseminating the above-mentioned data might not be enough to mobilise the array of domestic and international actors that are needed to operationalise my model. Overcoming this challenge might require showing the impact of VAW beyond individual victims. This is where, for instance, concerned actors could, for instance, show how VAW can undermine the achievement of SDGs. The SDGs can constitute a powerful advocacy tool because

¹⁴¹ See: UNGA, *CEDAW Convention*, resolution 34/180 (18 December 1979) article 2(e); CEDAW Committee (n 55) paragraphs 9 and 24(a); UNGA (n 125) article 4(c).

¹⁴² CEDAW Committee, *General recommendation No. 9: Statistical data concerning the situation of women* (1989) preambular paragraph 1
<https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/A_44_38_3724_E.pdf> accessed 21 January 2018.

as pointed by many, the SDGs are a consensus framework.¹⁴³ Kanbur, Patel and E. Stiglitz rightly argue that the SDGs command (close to) universal agreement, including because in a formal sense, the SDGs have been signed off on by political leaders of almost all of the countries in the world, and are encapsulated in a resolution of the United Nations General Assembly.¹⁴⁴ In a similar vein, Monkelbaan stresses that the SDGs represent such a set of goals that is widely shared among UN member states and thereby gains legitimacy and provide for a shared vision.¹⁴⁵ Using the SDG as an advocacy tool can therefore help mobilising actors in the fight against normalised forms of VAW when the negative effects of VAW on the achievement of the SDGs is clearly articulated.

It is worth stressing that VAW is specifically mentioned in the SDGs and particularly under Goal 5 (Achieve gender equality and empower all women and girls), particularly in targets 5.2 (Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation) and 5.3 (Eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation). Violence against girls is also implied under Goal 16 (Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels), and particularly target 6.2 (End abuse, exploitation, trafficking and all forms of violence against and torture of children).

¹⁴³ See: Nicholas A. Robinson, 'The UN SDGs and Environmental Law: Cooperative Remedies for Natural Disaster Risks' in Jacqueline Peel and David Fisher (eds), *The Role of International Environmental Law in Disaster Risk Reduction* (Brill Nijhoff 2016) 305, 308, 312 and Joachim Monkelbaan, *Governance for the Sustainable Development Goals: Exploring an integrative framework of theories, tools, and competencies* (Springer 2019) 4.

¹⁴⁴ Ravi Kanbur, Ebrahim Patel and Joseph E. Stiglitz, 'Sustainable Development Goals and the measurement of economic and social progress' in OECD, *For Good Measure Advancing Research on Well-being Metrics Beyond GDP* (OECD Publishing, 2018) 36 <<http://policydialogue.org/files/publications/papers/FINAL-For-Good-Measure-Advancing-Research-on-Well-being-Metrics-Beyond-GDP.pdf>> accessed 06 November 2019.

¹⁴⁵ Monkelbaan (n 143) 200.

Some organisations, such as the Danish Institute for Human Rights, have developed tools that can help identify the links between VAW and other SDGs. Those tools include “the SDG – Human Rights Data Explorer”¹⁴⁶ and “The Human Rights Guide to the Sustainable Development Goals”.¹⁴⁷

8. Conclusion

This chapter explained how the “Integrated and Multi-stakeholder Model of Human Rights Change” presented in Chapter One can contribute to closing the gap between the DRC’s formal commitment to end VAW and the country’s actual practices. Overall, Chapter Six showed that it was possible for a broad array of international and domestic stakeholders to influence the DRC’s domestic practices and thereby contribute to the challenging goal of narrowing the gap between the DRC’s formal commitment to end VAW and its actual behaviour. This outcome was possible when these stakeholders used consciousness-raising, naming and shaming, argumentation, dialogue, persuasion and capacity building in an integrated manner as advocated for by my “Integrated and Multi-stakeholder Model of Human Rights Change”.

¹⁴⁶ The Danish Institute for Human Rights, *The SDG – Human Rights Data Explorer* <<https://www.humanrights.dk/tools/sdg-human-rights-data-explorer>> accessed 31 December 2019.

¹⁴⁷ The Danish Institute for Human Rights, *The Human Rights Guide to the Sustainable Development Goals* <<https://www.humanrights.dk/tools/human-rights-guide-sustainable-development-goals>> accessed 31 December 2019.

CHAPTER SEVEN

CONCLUSION

The aim of this study has been to investigate how and under what circumstances United Nations (UN) human rights law standards prohibiting violence against women (VAW) can play a more meaningful role in eliminating VAW in the Democratic Republic of the Congo (DRC). This, in a context where UN human rights bodies, which are tasked with the responsibility to promote and protect women's right to be free from violence have limited power and resources to properly influence the domestic practices of States, such as the DRC, which are unwilling and/or unable to implement their obligation to eliminate VAW.

The DRC is a party to several instruments that, either explicitly or implicitly prohibit VAW. These instruments include UN and regional human rights treaties,¹ International Humanitarian Law,² as well as International Criminal Law treaties.³ According to article 215 of its Constitution, the DRC is a monist country, meaning a country in which International Law has a dominant role over municipal law.⁴

¹ See: UNGA, *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW Convention)*, resolution 34/180 (18 December 1979) article 1 read in conjunction with CEDAW Committee, *General Recommendation No. 19 on VAW* (1992) paragraph 6; article 24 (3) of the Convention on the Rights of the Child to which the DRC is a party since 28 September 1990; article 18 (3) of the African Charter on Human and Peoples' Rights adopted on the 27 June 1981 to which the DRC is a party since the 20 July 1987; and articles 3 (4), 4 (2), 5, 22 and 23 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa or "the Maputo Protocol" adopted on the 11th of July 2003 to which the DRC is a since the 09 June 2008.

² See: article 27 of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War adopted on 12 August 1949 to which the DRC is a party since 24 February 1961; articles 75 (2) (b) and 76 (1) of the Additional Protocol I to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts to which the DRC is a party since 3 June 1982; and article 4 (2) (e) of the Additional Protocol to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of Non-International Armed Conflicts of 8 June 1977 to which the DRC is a party since 12 of December 2002.

³ See article 7 (1) (g), 8 (2) (b) (xxii) and 8 (2) (e) (vi) of the Rome Statute of the International Criminal Court (ICC) to which the DRC is a party since 11 April 2002.

⁴ Linda A. Malone, *International Law* (Aspen Publishers 2008) 31.

As explained in the introductory Chapter, one of the treaties from which the DRC's obligation to eliminate VAW derives is the CEDAW Convention. Its overall object and purpose is "to eliminate all forms of discrimination against women with a view to achieving women's *de jure* and *de facto* equality with men in the enjoyment of their human rights and fundamental freedoms".⁵ In its General Recommendations No. 19 on VAW⁶ and No. 35 on gender-based violence (GBV) against women,⁷ the CEDAW Committee authoritatively determined that the definition of discrimination (contained in article 1 of the CEDAW Convention) includes GBV.⁸ The latter is defined as "violence that is directed against a woman because she is a woman or that affects women disproportionately".⁹ The CEDAW Committee underlined that GBV may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.¹⁰ Therefore, as a State Party to the CEDAW Convention, the DRC has an obligation, under International Law, to eliminate VAW, given that VAW is a form of discrimination against women.

However, as explained by this thesis, despite some measures taken by the DRC, like in many countries there was still a wide gap between the DRC's formal commitment to eliminate VAW and the country's actual practices. This gap translated, in turn, into a discrepancy between the rights promised to women and girls of the DRC and the rights actually delivered to them. According to several

⁵ CEDAW Committee, *General recommendation No. 25, on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures* (2004) paragraph 4.

⁶ CEDAW Committee (n 1) paragraph 6.

⁷ CEDAW Committee, *General recommendation No. 35 on gender-based violence against women*, document no: CEDAW/C/GC/35 (14 July 2017) paragraph 1.

⁸ CEDAW Committee (n 1) paragraph 6.

⁹ Ibid.

¹⁰ Ibid.

International Human Rights bodies,¹¹ including the SRVAW,¹² and also several other sources,¹³ this gap could be partly attributed to the combined effects of unwillingness and lack of capacity to implement the obligation to eliminate VAW on the part of the DRC.

This thesis shared the view that the problems discussed above were also exacerbated by the fact that international Human Rights bodies that are established to ensure that States implement the various international instruments mentioned earlier suffered from several structural weaknesses which, in turn, limited their ability to positively influence the domestic practices of States which were unwilling and/or unable to implement their obligation to eliminate VAW (such as the DRC).

The key argument of thesis was that although relevant UN Human Rights bodies suffered from structural weaknesses that could limit their ability to positively influence the domestic practices of States which are unwilling and/or unable to implement their obligation to end VAW (such as the DRC), it was possible to influence those practices and ultimately narrow the gap between the country's formal

¹¹ See for instance: Human Rights Council, *Report of the independent expert on the situation of human rights in the DRC, Mr. Titinga Frédéric Pacéré*, document no: A/HRC/7/25 (29 February 2008) paragraphs 23 – 24, 27, 40 – 44; Human Rights Council, *Combined report of seven thematic special procedures on technical assistance to the Government of the DRC and urgent examination of the situation in the east of the country*, document no: A/HRC/10/59 (5 March 2009) paragraphs 14 – 15, 28, 57 and 60 – 62; and Human Rights Council, *Second joint report of seven United Nations experts on the situation in the DRC*, document no: A/HRC/13/63 (8 March 2010) paragraphs 34, 49 – 51, 53 – 54, 58 and 101.

¹² See: Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk. Addendum. Mission to the DRC*, document no: A/HRC/7/6/Add.4 (28 February 2008) paragraphs 66 – 69; 74 – 78; 83.

¹³ See for instance: International Trade Union Confederation (ITUC), *Violence against women in Eastern DRC: Whose responsibility? Whose complicity?* (ITUC November 2011) 6 and 28 <https://www.ituc-csi.org/IMG/pdf/ituc_violence_rdc_eng_lr.pdf.pdf > accessed 03 February 2017; Fédération Internationale des ligues des Droits de l'Homme (FIDH) and others, *DRC. Victims of sexual violence rarely obtain justice and never receive reparation: Major changes needed to fight impunity* (October 2013)¹⁵ <https://www.fidh.org/IMG/pdf/rapport_rdc_.pdf > accessed 29 January 2017.

commitment and its actual practices provided that the following conditions are met. First, closing the above-mentioned gap required a much broader array of actors, in addition to UN human rights bodies, to step in and actively participate in efforts aimed at closing the gap in the implementation of the obligation to end VAW in the DRC. The involvement of this much broader array of actors was also needed to overcome some of the structural weaknesses affecting UN Human Rights bodies. The participation of this much broader array of actors in these efforts was also needed to overcome some of the structural weaknesses affecting UN Human Rights bodies responsible for promoting and protecting women's right to be free from violence. Second, and most importantly, bridging the gap in the implementation of the obligation to end VAW in the DRC required this broad array of actors to use the right strategy. Specifically, this called for resorting to "moral consciousness-raising", naming and shaming, argumentation, dialogue, persuasion and capacity building in a coherent manner and in symbiosis. The end goal of this approach was to deal with implementation gaps resulting from both the DRC's unwillingness and lack of capacity to end VAW in an integrated, comprehensive and durable manner.

In order to explore how the aforementioned stakeholders could use moral "consciousness-raising", naming and shaming, argumentation, dialogue, persuasion and capacity building to address the DRC's lack of willingness and capacity to implement its obligation to eliminate VAW, this thesis developed an original model called the "Integrated and Multi-stakeholder Model of Human Rights Change". This model built on insights from Risse, Sikkink and Ropp's "Spiral Model of Human Rights Change" (predicated on the assumption that states are primarily unwilling rather than unable to or incapable of implementing and/or complying with their human rights obligations)¹⁴ and the Chayeses' "Managerial Model" (founded on the

¹⁴ Thomas Risse and Kathryn Sikkink, 'The socialization of international human rights norms into domestic practices: introduction' in Thomas Risse, Stephen C. Ropp and Kathryn Sikkink, *The Power of Human Rights: International Norms and Domestic Change* (Cambridge University Press, 1999) 22 – 24; Thomas Risse and Stephen C. Ropp, 'Introduction and Overview' in Thomas Risse, Stephen C. Ropp, Kathryn Sikkink (eds), *The Persistent Power of Human Rights: From Commitment to Compliance* (Cambridge University Press 2013) 15, 17.

assumption that States' involuntary failures to implement and/or comply with their obligations result from limitations of capacity to do so).¹⁵ The purpose of this chapter is to summarise the key conclusions reached by this thesis.

This thesis was divided into seven chapters. Schematically, this thesis consisted of four major parts. The first part consisted of chapters one and two that discussed the nature and extent of the gap between the DRC's formal commitment to eliminate VAW and the country's actual practices. The second major part comprised chapters three to five which, building on existing information and data, conducted an in-depth analysis of the factors contributing and exacerbating this above-mentioned gap. The third major part consisted of chapter six, which then analysed how my "Integrated and Multi-stakeholder Model of Human Rights Change" could contribute to the aforementioned gap. The fourth and last major part of this thesis consisted of this concluding chapter.

The aim of Chapter one was to set the context for the overall discussion that followed in the remainder of the thesis. To that end, chapter one successively provided a background to the study; then an overview of the socio-historical context of the DRC; then explained how VAW was a multifaceted problem in the DRC; a multifaceted problem. This contextual background was followed with a presentation of the various instruments which formed the legal basis for the DRC's obligation to eliminate and a short discussion on the contributing and exacerbating factors to the gap in the implementation of the above-mentioned obligation in the country. Chapter one then moved onto what this thesis proposes to address the problem described above. To that end, after defining the key concepts used in the thesis; Chapter one presented the key argument of this thesis; introduced the "Integrated and Multi-stakeholder Model of Human Rights Change"; explained the original contribution that this thesis brings to knowledge; presented the research method adopted by this thesis to develop its key argument, namely the sociolegal approach; explained the significance of the study; and finally provide an overview of the structure of the

¹⁵ Abram Chayes and Antonia Handler Chayes, *The New Sovereignty: Compliance with International Regulatory Agreements* (Harvard University Press 1998) 13 – 15.

thesis. Overall, Chapter one showed that VAW, in its multifaceted forms, remained a persisting human rights problem in the DRC despite the country's formal commitment to eliminate it. Put differently, Chapter one introduced the gap between the DRC's formal commitment and the country's actual practices.

Following this, Chapter two sought to better understand, from a human rights law perspective, the nature of the gap between the DRC's obligation to eliminate VAW and the country's actual practices and how that gap manifested itself. To this end, the Chapter discussed the poor implementation by the DRC of its obligations to "respect", "protect", and "fulfil" women's right to be free from VAW. Building on treaty bodies' definitions of these three obligations, Chapter Two explained how the DRC had not properly implement them.

Firstly, Chapter Two clarified that, in a nutshell, the obligation to "respect" women's right required the DRC and its agents to "abstain" or "refrain" from performing, sponsoring or condoning any practice, policy or measure that violates women's right to be free from violence. The Chapter then explained how one of the most telling examples in the Congolese context is were acts of sexual violence perpetrated by states agents such as members of the Congolese national army, Police and/or Security Services.

Secondly, Chapter Two explained that, put simply, the obligation to "protect" therefore required the DRC to take steps to prevent, prohibit and punish VAW by third parties, including in the home and in the community and to provide reparation to the victims of VAW. The Chapter then elaborated on two dimensions of impunity identified in the DRC, namely impunity resulting from the poor enforcement of anti-VAW laws and impunity resulting from the fact that some forms of VAW were not criminalised, particularly domestic violence and marital rape.

Lastly, Chapter Two explained that, in short, the obligation to fulfil required the DRC to take all appropriate steps and measures, including legislative, judicial, administrative, budgetary, economic, promotional and other measures to the maximum extent of its available resources, to ensure the full realization of women's right to be free from violence and close the gap between the "de jure" and "de facto" enjoyment of this right. To illustrate the poor implementation by the DRC of this

obligation, the Chapter elaborated on the country's poor implementation of its anti-VAW policies. Briefly, by adopting the above-mentioned typology, Chapter three shed more light on the multiple dimensions of the gap in the implementation of the obligation to end VAW in the DRC. Indeed, as stressed by Sepúlveda, typologies of obligations reflect the manner in which the State must behave in order to discharge its commitments and hence, assist us to assess the compliance of a State Party with its commitments under human rights instruments.¹⁶ Put differently, Chapter Two contributed to a better understanding of some of the issues that actors using my "Integrated and Multi-stakeholders Model of Human Rights Change" need to analyse in their efforts to close the gap between the DRC's formal commitment to eliminate VAW and the country's actual practices.

The aim of Chapter Three was to better understand, from a theoretical and a practical perspectives, what was meant by unwillingness to implement human rights obligations and how the latter could contribute to the gap between the DRC's formal commitment to eliminate VAW and the country's actual practices. To this end, Chapter Three analysed the DRC's domestic practices through the lenses of the "Spiral Model of Human Rights Change", which as has already mentioned is predicated on the assumption that states are primarily unwilling rather than unable to or incapable of implementing and/or complying with their human rights obligations.¹⁷ Specifically, Chapter three examined the possible links between, on the one hand, two indicators of unwillingness identified by the Model, namely repression of actors who denounced human rights violations and denial of human rights violations¹⁸ and, on the other hand, the poor implementation of the obligation to eliminate VAW by the DRC.

As regards the potential effects of "repression" of actors who denounced VAW, overall, Chapter three showed that by silencing victims, witnesses of VAW

¹⁶ M. Magdalena Sepúlveda, *The Nature of the Obligations Under the International Covenant on Economic, Social and Cultural Rights* (Intersentia 2003) 172.

¹⁷ Risse and Sikkink (n 14) 22 – 24; Risse and Ropp (n 14) 15, 17.

¹⁸ For a complete description of the five stages of the Spiral Model see: Risse and Sikkink (n 14) 22 – 35.

and/or other actors who denounced VAW (or had the intention to do so), repression could contribute to impunity for VAW. This impunity could ultimately contribute to the gap between the DRC's formal commitment to end VAW and their actual performance.

To gain a better understanding of the potential links between “denial” of VAW and the gap between the DRC's formal commitment to end VAW and the country's actual behaviour, Chapter Three built on the work of the sociologist and criminologist Stanley Cohen who explains that there are three possibilities as regards “what” exactly is being “denied”. The first form is “literal denial” which can be summarized in the idea that “nothing happened or is happening”.¹⁹ The second form is “interpretive denial” which can be summarized in the idea that “what happened or is happening is really something else”.²⁰ The last form is “implicatory denial” which translates the idea that “what happened or is happening is justified”.²¹ Chapter Three then showed how these three forms of denial of VAW could lead to inaction on the part of duty-bearers and the State as a whole. In other words, denial of VAW could lead to the poor implementation by the DRC of its obligations to “respect”, “protect” and/or “fulfil” women's right to be free from violence (discussed in detail in Chapter two). Ultimately, this could contribute to the gap between the DRC's formal commitment to eliminate VAW and the country's actual practices.

In a nutshell, the discussions from Chapter Three stressed the importance of gaining a better understanding of the distinct and debilitating effects of unwillingness as a source of the gap between the DRC's formal commitment to eliminate VAW and the country's actual practices. As explained in Chapter One, the distinct effects of unwillingness as a source of noncompliance with International Law is sometimes not fully appreciated in the existing literature. In this respect, Chapter Three explained how the proponents of the Managerial Model appeared to overestimate States' willingness to implement their international obligations and based their Model

¹⁹ Stanley Cohen, *States of Denial: Knowing about atrocities and suffering* (Polity 2001) 7, 104 – 105.

²⁰ Ibid, 105 – 109.

²¹ Ibid, 8.

on the assumption of “a general propensity of states to implement and/or comply with international obligations”.²² One lesson that could be drawn from the discussions in Chapter Three is that this assumption was simply too optimistic and did not fully reflect the reality, particularly in the area of women’s right to be free from violence in the DRC.

To supplement the analysis carried out in Chapter Three, Chapter Four discussed how limitations of capacity could contribute to the gap between the DRC’s formal commitment to eliminate VAW and the country’s actual practices. To this end, Chapter Four studied the DRC’s domestic practices through the lenses of the “Managerial Model” (founded on the assumption that States’ involuntary failures to implement and/or comply with their obligations result from limitations of capacity to do so).²³ Chapter four also built on discussions from Chapter Two which had elaborated on the poor implementation of its obligations to “respect”, “protect”, and “fulfil” women’s right to be free from VAW. Chapter four then explained how limitations of capacity affecting the DRC could contribute to the poor implementation of the obligations to “respect”, “protect” and “fulfil” women’s right to be free from violence by the DRC (discussed in detail in Chapter Two).

Firstly, to better understand how limitations of capacity could contribute to the gap in the implementation by the DRC of its obligation to “respect” women’s right to be free from violence, Chapter Four used the Congolese national army as an example. The Chapter showed how the Congolese national army as an institution could, in some instances, face challenges to uphold the obligation to “respect” women’s right to be free from violence because of a combination of individual and organisational capacity deficits exacerbated by a constraining environment (created for instance, the protracted armed conflicts in the country).

Secondly, to better grasp how limitations of capacity could contribute to the gap in the implementation by the DRC of its obligation to “protect” women’s right to be free from violence, Chapter four used the Congolese justice system as an

²² Chayes and Chayes (n 15) 4.

²³ Ibid, 13 – 15.

illustration. More specifically, Chapter four showed how a combination of individual and organisational capacity deficits could prevent the Congolese justice system from properly enforcing the various anti-VAW laws adopted by the country. Ultimately, this could contribute to the gap between the DRC's commitment to end VAW and the country's actual performance.

Lastly, to better grasp how limitations of capacity could contribute to the gap in the implementation by the DRC of its obligation to "fulfil" women's right to be free from violence, Chapter four used the Congolese Ministry of Gender as a case study. This because this Ministry was responsible for coordinating the implementation of the various anti-VAW policies and strategies adopted by the country. Chapter four then showed how capacity deficits could limit this Ministry's ability to implement the above-mentioned anti-VAW policies and strategies.

In short, the discussions from Chapter Four emphasised the importance of gaining a better understanding of the distinct and debilitating effects of limitations of capacity as a source of the gap between the DRC's formal commitment to eliminate VAW and the country's actual practices. Put differently, the discussions from Chapter Four suggested that arguments that ignore or downplay the debilitating effects of limitations of capacity should be more nuanced, particularly when it comes to the DRC's capacity to implement its international obligation to eliminate VAW.

Indeed, Chapter One had explained that although the Managerial Model convincingly identifies limitations of capacity as a source of noncompliance with International Law, the distinct and debilitating effects of this source of noncompliance are not always fully appreciated. Illustrating this, Chapter One had explained how the proponents of the Spiral Model based their model on the assumption that states are primarily unwilling, rather than unable, to or incapable of, implementing and/or complying with their human rights obligations.²⁴ Chapter one

²⁴ Risse and Ropp (n 14) 15, 17.

had explained that some scholars²⁵ and UN human rights bodies²⁶ seemed to be more receptive to the idea that States are unwilling to implement their human rights obligations and treat limitations of capacity with suspicion and/or scepticism. Linked to the above other authors shared the view that capacity building could be used by States to avoid scrutiny (through much stronger strategies).²⁷ Summed up briefly, the discussions in Chapters Three and Four clarified the distinct and debilitating effects of unwillingness and limitations of capacity in the Congolese context and highlighted the need to better understand and address both problems not in isolation but in an integrated manner. That is one of the reasons why I developed a Model of Human Rights Change that was “Integrated” (in addition to being “Multi-stakeholder”).

To complete the analysis, Chapter Five discussed how the two problems addressed in Chapters Three and Four (the combined effect of the DRC’s unwillingness and limitations of capacity to properly implement its obligation to eliminate VAW) were also exacerbated by an additional challenge. This is the fact

²⁵ See for instance: Rosa Freedman, *The United Nations Human Rights Council: A critique and early assessment* (Routledge 2013) 42, 72 and 105; Alejandro Anaya-Munoz and Natalia Saltamacchia, ‘Factors blocking compliance with international human rights in Mexico’ in Alejandro Anaya-Munoz and Barbara Frey (eds), *Mexico’s Human Rights Crisis* (University of Pennsylvania Press, 2019) 225 – 226.

²⁶ See for instance: Committee on Economic, Social and Cultural Rights (CESCR Committee), *General Comment No. 12: The Right to Adequate Food (Art. 11)*, document no: E/C.12/1999/5 (12 May 1999) paragraph 17; CESCR Committee, *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)*, document no: E/C.12/2000/4 (11 August 2000) paragraph 14.

²⁷ See for instance: Anne F. Bayefsky, *The UN Human Rights Treaty System: Universality at the Crossroads* (Kluwer Law International 2001) 83; Nicholas Howen, ‘The Fundamental Protection Function of the Human Rights Field Operation’ in Michael O’Flaherty, *The Human Rights Field Operation: Law, Theory and Practice* (Ashgate Publishing Limited 2007) 37; Freedman (n 25) 42, 72, and 105; Mark P. Lagon and Ryan Kaminski, ‘The Global Human Rights Regime: Assessing and Renovating the Architecture’ in Mark P. Lagon and Anthony Clark Arend (eds), *Human Dignity and the Future of Global Institutions* (Georgetown University Press 2014) 130; Rashida Manjoo, ‘WPS and the Human Rights Council’, in Sara E. Davies and Jacqui True (eds), *The Oxford Handbook of Women, Peace, and Security* (Oxford University Press, 2019) 322.

the fact that UN Human Rights bodies that are mandated with promoting and protecting women's right to be free from violence enshrined in the various instruments mentioned in Chapter One, such as the CEDAW Committee and the SRVAW, suffered from several structural weaknesses that limited their ability to positively influence the domestic practices of States which were unwilling and/or unable to implement the above-mentioned obligation (such as the DRC). Chapter Five elaborated four areas of structural weaknesses.

Firstly, although unwillingness constituted one of the key sources of noncompliance with human rights standards, relevant UN human rights bodies were not legally empowered to compel recalcitrant or wilful disobedient States, such as the DRC, into compliance. Yet, those bodies were expected to positively influence the domestic practices of States. In summary, when acting on their own, UN Human Rights bodies had limited power to meaningfully contribute to narrowing implementation gaps resulting from States' unwillingness to implement their obligations. This means that unless other stakeholders step in and use other strategies to influence the domestic practices of the DRC, implementation gaps resulting from the country's unwillingness to implement its obligation to end VAW are likely to persist.

Secondly, although limitations of capacity constituted one of the key sources of noncompliance with Human Rights standards, relevant UN Human Rights bodies were neither mandated nor appropriately resourced to respond to many of the capacity deficits that can contribute to the gap between the DRC's formal commitment to end VAW and the country's actual practices. In summary, when acting on their own, these Bodies had limited ability to meaningfully contribute to narrowing implementation gaps resulting from limitations of capacity affecting States. This meant that unless other stakeholders step in and use other strategies to influence the domestic practices of the DRC, implementation gaps resulting from the country's limitations of capacity to implement its obligation to eliminate VAW were likely to persist.

Thirdly, International Human Rights bodies had limited capacity to properly monitor States' domestic practices and determine whether States are implementing

or not their human rights obligations. Besides, those Bodies had limited capacity to properly follow up on the implementation of their own recommendations. In other words, because of their limited capacity to properly monitor States' domestic practices and/or follow up on the implementation of their own recommendations, UN Human Rights bodies could end up being blindsided. As a result, when acting on their own, these Bodies could have difficulties detecting problems which occurred at the domestic level, including situations where States, such as the DRC, show unwillingness and/or lack the capacity to properly implement their human rights obligations or recommendations formulated by International Human Rights bodies. This meant that other stakeholders needed to step in to supplement the work of those Bodies and properly monitor whether the DRC was implementing its obligation to end VAW and also follow up on whether the country was implementing recommendations formulated by those Bodies.

Lastly, there was some distance between UN Human Rights bodies and the real lives of women and girls affected by VAW at the domestic level which could also limit those bodies' ability to positively influence the DRC's domestic practices. In summary, because of the distance described above, the output of UN Human Rights bodies, which could have otherwise contributed to closing implementation gaps could fail to achieve that goal, including because it was poorly known or understood and/or was underused at the domestic level. In summary, Chapter Five showed that because of those structural weaknesses, unless other stakeholders stepped in and used other strategies, implementation gaps resulting from the country's unwillingness and limitations of capacity to implement its obligation to eliminate VAW were likely to persist.

Following the analysis of nature and extent of the gap between DRC's formal commitment to eliminate VAW and the country's actual practices (Chapters One and Two) and the examination of the factors that contributed to this problem (Chapters Three and Four) or exacerbated it (Chapter Five), Chapter Six analysed how the "Integrated and Multi-stakeholder Model" (introduced in Chapter One) could contribute to closing the above-mentioned gap.

1. Key conclusions

This thesis reaches two key conclusions. First, the discussions in Chapter Six showed that when used in a coherent and symbiosis, “moral consciousness-raising”, naming and shaming, argumentation, dialogue, persuasion and capacity building contributed to narrowing the gap between the DRC’s formal commitment to end VAW and the country’s actual practices in a comprehensive, integrated and durable manner. In other words, this thesis confirmed that although relevant UN Human Rights bodies suffered from structural weaknesses that could limit their ability to positively influence the domestic practices of States which are unwilling and/or unable to implement their obligation to end VAW such as the DRC, it was still possible to significantly and durably influence those practices and ultimately narrow the gap between the country’s formal commitment and its actual behaviour by resorting to my “Integrated and Multi-Stakeholder Model of Human Rights Change”. This thesis showed how a much broader array of stakeholders stepped in, thereby overcoming some of the structural weaknesses affecting UN human rights bodies, and used my “Integrated and Multi-Stakeholder Model of Human Rights Change” to positively influence the DRC’s domestic practices. Related to the above, it became clear that although cooperative tools such as dialogue ²⁸ and capacity building²⁹ were considered by some as soft or weak, these tools constituted powerful

²⁸ For criticisms levelled against tools such as dialogue and cooperation, which are seen as a weak see for instance: Michael O’Flaherty and others, ‘Introduction. Human Rights Diplomacy: Contemporary Perspectives’ in Michael O’Flaherty and others (eds), *Human Rights Diplomacy: Contemporary Perspectives* (Martinus Nijhoff Publishers 2011) 7; Surya Deva, *Regulating Corporate Human Rights Violations: Humanizing Business* (Routledge 2012) 116; Kyung-wha Kang, ‘Foreword’, in Michael O’Flaherty and others (eds), *Human Rights Diplomacy: Contemporary Perspectives* (Martinus Nijhoff Publishers 2011) vii; Bertrand G. Ramcharan, *Contemporary Human Rights Ideas* (Routledge 2008) 28; Jakob Th. Moller, ‘Foreword’, in Bertrand G. Ramcharan, *The Fundamentals of International Human Rights Treaty Law* (Martinus Nijhoff Publishers 2011) xiv.

²⁹ One of the main criticisms levelled against capacity building and/or technical assistance is that they can be used by States to avoid scrutiny (through much stronger strategies). See for instance: Bayefsky (n 27) 83; Freedman (n 25) 42, 72, and 105; Lagon and Kaminski (n 27) 130; Manjoo (n 27) 322.

strategies when they were used in my “Integrated and Multi-stakeholder Model of Human Rights Change”. Therefore, their potential needed to be better analysed, understood and harnessed.

However, and this is the second key conclusion, because of structural weaknesses identified in Chapter Five of this thesis, it became also evident that International Human Rights bodies could play a limited role in using moral consciousness-raising, naming and shaming, argumentation, dialogue, persuasion and capacity building. Indeed, the discussions in Chapter Six suggested that narrowing the gap between the country’s formal commitment and its actual practices by resorting to my “Integrated and Multi-stakeholder Model of Human Rights Change” would require the active participation of stakeholders who could operate at the domestic level and use “moral consciousness-raising”, naming and shaming, argumentation, dialogue, persuasion and capacity building in a sustained manner. Resorting to these strategies in a sustained manner was required to address the DRC’s unwillingness and lack of capacity to implement its obligation to eliminate VAW in a durable manner. In other words, this meant that narrowing the gap between the country’s formal commitment and its actual practices by resorting to my “Integrated and Multi-stakeholder Model of Human Rights Change” was a long-term and expensive undertaking whose magnitude may oftentimes exceed the mandate of, capacity of and/or resources available to UN Human Rights bodies tasked with the responsibility to promote and protect women’s right to be free from violence. Put simply, more often than not, using my Model to narrow the gap in the implementation of the obligation to end VAW in the DRC would require looking beyond UN Human Rights bodies. The next two subsections discuss these two points.

1.1. The potential of the “Integrated and Multi-Stakeholder Model of Human Rights Change”

Building on my “Integrated and Multi-Stakeholder Model of Human Rights Change”, this thesis showed how a much broader array of stakeholders used the persuasive power of “moral consciousness-raising”, naming and shaming,

argumentation, dialogue, persuasion and the transformative power of capacity building to positively influence the DRC's domestic practices.

More specifically, this thesis showed how by using "moral consciousness-raising" to put VAW occurring in the DRC on the international agenda, a broad array of domestic and international stakeholders generated some initial "pressure from above" on the DRC, including by publishing the first reports on VAW occurring in the country. To illustrate the power of "moral consciousness-raising" in the Congolese context, Chapter Six explained how some States or institutions adopted legislations addressing VAW following campaigns denouncing how the illegal exploitation and exportation of minerals from the DRC contributed to conflict-related sexual violence.

Secondly, this thesis presented how a broad array of domestic and international stakeholders used naming and shaming to consistently expose violations of the obligation to end VAW occurring in the DRC and generate additional and sustained pressure and thereby supplement moral consciousness-raising. To illustrate the power of "naming and shaming" in the Congolese context, this thesis analysed how the DRC took specific measures to address conflict-related sexual violence after its national army and police were mentioned in so-called "lists of shame". These are the "List of parties that commit rape and other forms of sexual violence against children in situations of armed conflict" and the "List of parties that are credibly suspected of committing or being responsible for patterns of rape and other forms of sexual violence in situations of armed conflict" respectively annexed to the UN Secretary-General's annual reports on children and armed conflicts and on conflict-related sexual violence.

Thirdly, this thesis analysed how once the DRC started showing signs indicating some level of commitment to better implement its obligation to end VAW, those domestic and/or international stakeholders used dialogue to agree with the country on time-bound signed action plans outlining appropriate measures that the DRC needed to take to translate into action its formal commitment to eliminate VAW. Indeed, as a result of naming and shaming and following a dialogue with various stakeholders, including the SRSG on Children and Armed Conflicts, on 04 October 2012, the Congolese government jointly signed with the United Nations an "Action

plan to combat the recruitment and use of children and other serious violations of children's rights by the armed forces and security services of the DRC" and made specific commitments to address sexual violence.³⁰ Similarly, as a result of naming and shaming and following a dialogue with various stakeholders, including the SRSG on Sexual Violence in Conflict, on 30 March 2013, the DRC and the UN signed "Joint communiqué of the Government and the United Nations on combating conflict-related sexual violence" in which the country "reiterated the commitment of Government of the DRC to combating sexual violence, particularly to the "zero tolerance" campaign initiated by the President of the Republic"³¹ and made several other specific commitments to address sexual violence.³²

Fourthly, this thesis analysed how these international and/or domestic stakeholders used capacity building activities to address individual, organisational and societal levels and thereby contributed to addressing deficits that could prevent the DRC from properly implementing its obligation to end VAW. Building on existing data, this thesis showed the positive effects of enhancing the capacity of duty-bearers (for instance, through the training of military justice personnel)³³ and

³⁰ See : Gouvernement de la République Démocratique du Congo et l'Equipe Spéciale des Nations Unies sur les enfants et les conflits armés, *Plan d'action pour la lutte contre le recrutement et l'utilisation d'enfant ainsi que les autres violations graves des droits de l'enfant par les forces armées et services de sécurité de la République Démocratique du Congo entre la Gouvernement de la République Démocratique du Congo et l'Equipe Spéciale des Nations Unies sur les enfants et les conflits armés* (04 October 2012) articles 2(3), 2(5) and 2(8).

³¹ Government of the Democratic Republic of the Congo and the United Nations, *Joint communiqué between the government of the Democratic Republic of the Congo and the United Nations on the fight against sexual violence in conflict* (Kinshasa, 30 March 2013) 2.

³² Ibid, 2.

³³ UN Team of Experts on the rule of law and sexual violence in conflict, *Annual report 2012* (2012) 29 < <https://www.un.org/ruleoflaw/files/2012%20Report%20of%20the%20Team%20of%20Experts-RoL-SVC.pdf> > accessed 03 November 2018; UN Team of Experts on the rule of law and sexual violence in conflict, *Annual report 2013* (2013) 23 < <http://www.stoprapenow.org/uploads/advocacyresources/1399901202.pdf> > accessed 03 November 2018.

strengthening the capacity of rights holders to claim their right to be free from VAW (for instance, through legal clinics).³⁴ This thesis also highlighted the positive effects of strengthening organisational capacities of duty-bearers to implement the obligation to end VAW (through interventions such as “Mobile Courts”).³⁵

Lastly, this thesis showed how throughout the process these international and/or domestic stakeholders used argumentation to persuade the DRC to refrain from actions and/or omissions that can hinder the implementation of its commitments. To illustrate the power of argumentation in the Congolese context, Chapter Six analysed how these actors used the so-called “Zero Tolerance Policy” for Human Rights Violations, including sexual violence announced by the Congolese Head of State on 5 July 2009 in their advocacy and efforts to hold the DRC as a duty-bearer to its previously stated or made formal commitment to eliminate VAW.

In summary, this thesis found that by using an “Integrated and Multi-stakeholder Model” (as articulated in Chapter Six), it was possible to overcome the challenges identified in Chapters Three to Five (the contributing and exacerbating factors behind the gap in the implementation of the obligation to end VAW by the DRC) and address the problem identified in Chapter One and Two (the gap between

³⁴ See for instance: OHCHR, *Legal clinics bring justice and rehabilitation to victims of sexual violence in DR Congo* (25 November 2015); UNDP, *DR Congo: Legal clinics help victims of sexual violence* < <http://www.undp.org/content/undp/en/home/ourwork/ourstories/RDC-lutte-contre-violences-sexuelles.html>> accessed 11 October 2018; UNDP, *Fighting Sexual Violence in the Democratic Republic of Congo* <<http://www.undp.org/content/undp/en/home/ourwork/ourstories/fighting-sexual-violence-in-the-democratic-republic-of-congo.html>> accessed 11 October 2018.

³⁵ Michael Maya, ‘Mobile Courts in the DRC: Complementarity in Action?’, in Juan Carlos Botero and others (eds), *Innovations in Rule of Law: A Compilation of Concise Essays* (Published in support of the High-level Meeting of the UN General Assembly on the Rule of Law, 24 September 2012) 34 <https://worldjusticeproject.org/sites/default/files/documents/wjp_hiil_compilation.pdf> accessed 29 October 2018; UN Team of Experts on the rule of law and sexual violence in conflict (2013) (n 33) 22 < <http://www.stoprapenow.org/uploads/advocacyresources/1399901202.pdf> > accessed 03 November 2018; Open Society Foundations, *Justice in DRC: Mobile courts combat rape and impunity in eastern Congo* <<https://www.opensocietyfoundations.org/sites/default/files/justice-drc-20130114.pdf>> accessed 29 September 2018.

the DRC's formal commitment to end VAW and the country's actual behaviour). In short, when the right stakeholders used the right strategies to influence the domestic practices of the DRC, UN human rights standards prohibiting VAW could play a more meaningful role in eliminating VAW in the DRC.

However, what transpired from the discussions, particularly in Chapters Five and Six, was that in order for an "Integrated and Multi-Stakeholder Model of Human Rights Change" combining "moral consciousness-raising", naming and shaming, argumentation, dialogue, persuasion and capacity building to contribute to narrowing the between the DRC's formal commitment to eliminate VAW and the country's actual behaviour in a significant and durable manner, there was a need to look beyond UN human rights bodies. Specifically, there was a need to seek the participation of a much broader array of stakeholders who could operate at the domestic level and use the above-mentioned strategies in a sustained manner to address the DRC's unwillingness and lack of capacity to implement its obligation to eliminate VAW in a durable manner. From the discussions in Chapter Five, which highlighted challenges resulting from the mandate of, limited capacity of and/or resources available to UN human rights bodies, it was clear that it would be difficult to expect those Bodies to play a meaningful role in this respect. One such key challenge was the fact that using my Model required to consistently operate at the domestic level. Yet, it was mentioned in Chapter Five that the UN High Commissioner for Human Rights acknowledged that International Human Rights system is "(...) often described as disconnected from realities on the ground, with meetings confined to Geneva or New York".³⁶ Related to that, many have pointed out that the International Human Rights system is little known and/or understood by many outsiders.³⁷ Because of all these challenges facing UN Human Rights bodies,

³⁶ United Nations, *Concept paper on the High Commissioner's proposal for a unified standing treaty body: Report by the Secretariat*, document no: HRI/MC/2006/2 (22 March 2006) paragraph 21.

³⁷ Aoife Nolan, Rosa Freedman and Therese Murphy, 'Introduction', in Aoife Nolan, Rosa Freedman, and Thérèse Murphy (eds), *The United Nations Special Procedures System* (BRILL, 2017) 5; Christof H. Heyns and Frans Viljoen, *The Impact of the United Nations Human Rights Treaties on the Domestic Level* (Kluwer Law International 2002) 31; United Nations (n 36) paragraph 21; United

it was important for a much broader array of actors (in addition to UN human rights bodies), to step in and actively participate in efforts aimed at closing the gap in the implementation of the obligation to end VAW in the DRC. Put simply, closing the gap in the implementation of the obligation to end VAW in the DRC required looking beyond UN human rights bodies.

1.2. The need to look beyond UN Human Rights bodies

Chapter Five elaborated four areas of structural weaknesses affecting UN Human Rights bodies and showed that because of those weaknesses implementation gaps resulting from the DRC's unwillingness and limitations of capacity to implement its obligation to eliminate VAW were likely to persist unless other stakeholders stepped in and used other strategies. Addressing the concerns identified in Chapter Five, Chapter Six presented how a much broader array of stakeholders (in addition to International Human Rights bodies) stepped in and used the persuasive power of "moral consciousness-raising", naming and shaming, argumentation, dialogue, persuasion and the transformative power of capacity to positively influence the DRC's domestic behaviour and practices.

However, what transpired from the discussions in Chapter Six was that while the above mentioned strategies contributed to narrowing the gap in the implementation by the DRC of its obligation to eliminate VAW, achieving such an outcome required sustained interactions with duty-bearers and rights-holders as well as sustained interventions at the domestic level. Chapter Six also showed that eliciting human rights change through my Model was a long-term and expensive undertaking. One reason behind this was the fact that the "moral consciousness-raising", naming and shaming, argumentation, dialogue, persuasion and capacity

Nations Human Rights Committee, *A strategic approach to public relations, including relations with the media*, document no: CCPR/C/94/CRP.2/Rev.1 (23 October 2008) paragraph 5; OHCHR, *Strengthening the United Nations human rights treaty body system: A report by the United Nations High Commissioner for Human Rights Navanethem Pillay* (June 2012) 88 <<http://www2.ohchr.org/english/bodies/HRTD/docs/HCReportTBStrengthening.pdf>> accessed 09 April 2018.

building could take time to bring about human rights change. This meant that in order for these strategies to play a meaningful role in closing the gap between the DRC's formal commitment to end VAW and the country's actual practices, they needed to be to be part of a long-term endeavour. Such a long-term undertaking required the involvement of multiple, committed and properly-equipped and resourced stakeholders.

In summary, a lesson that could be drawn from the discussions in Chapters Five and Six was that using my "Integrated and Multi-Stakeholder Model of Human Rights Change" was a long-term and expensive undertaking whose magnitude would oftentimes exceed the mandate of, capacity of and/or resources available to International Human Rights bodies mandated with dealing with VAW. That is the reason why there was a need to look beyond International Human Rights bodies and seek the participation of a much broader array of stakeholders who could operate at the domestic level and use "moral consciousness-raising", naming and shaming, argumentation, dialogue, persuasion and capacity building in a sustained manner to address the DRC's unwillingness and lack of capacity to implement its obligation to eliminate VAW in a durable manner.

2. Limitations and Suggestions for Further Research

This thesis focused on how my "Integrated and Multi-stakeholder Model of Human Rights Change" could be successfully used to address the gap between the DRC's formal commitment to eliminate VAW and the country's actual practices. It is hoped that this thesis achieved that aim. However, further research is needed to examine how and whether my "Integrated and Multi-stakeholder Model" could be used in efforts to narrow the gaps in the implementation of other human rights obligations that the DRC is required to "respect", "protect" and "fulfil". Further research is also needed to examine whether this "Integrated and Multi-stakeholder Model" could be successfully used to narrow the gaps in the implementation of the obligation to eliminate VAW in other countries.

While keeping in mind these limitations, it is hoped that my "Integrated and Multi-stakeholder Model of Human Rights Change" constitutes a new model for

further implementation of UN human rights Standards prohibiting VAW. It is also hoped that my Model is an additional analytical framework that could be used for research on how to close the gap between international human rights standards and States domestic practices. In other words, it is hoped that by developing this “Integrated and Multi-stakeholder Model” and by showing how it can work in the Congolese context, I have also contributed to the academic discussion on how to close the gap between international human rights obligations and countries domestic practices. Lastly, it is hoped that, beyond the academic world, my “Integrated and Multi-stakeholder Model of Human Rights Change” will be useful to the many thousands of individuals and organisations who, through relentless efforts, try to contribute to eliminating VAW in the DRC and all over the world and to the many thousands of women and girls who are subjected to violence in the DRC and all over the world.

BIBLIOGRAPHY

I. BOOKS

Awofeso N, *Organizational Capacity Building in Health Systems* (Routledge 2013)

Baaz M. E and Stern M, *Sexual violence as a weapon of war? Perceptions, prescriptions, problems in the Congo and beyond* (Zed Books 2013)

Bantekas I and Oette L, *International Human Rights Law and Practice* (Second Edition, Cambridge University Press 2016)

Bayefsky A. F, *The UN Human Rights Treaty System: Universality at the Crossroads* (Kluwer Law International 2001)

Birkeland T. K, *Sanctioning of Individuals: The International Criminal Court, the United Nations Security Council, and the Case of Northern Uganda* (ProQuest 2008)

Brechenmacher S, *Civil society under assault: Repression and Responses in Russia, Egypt, and Ethiopia* (Carnegie Endowment for International Peace 2017)
<https://carnegieendowment.org/files/Civil_Society_Under_Assault_Final.pdf>
accessed 22 December 2019

Cardenas S, *Human Rights in Latin America: A Politics of Terror and Hope* (University of Pennsylvania Press 2010)

Chayes A and Chayes A. H, *The New Sovereignty: Compliance with International Regulatory Agreements* (Harvard University Press 1995)

Cheshire L, *Governing Rural Development: Discourses and Practices of Self-help in Australian Rural Policy* (Ashgate Publishing, Ltd., 2006)

Clark D. S (ed), *Encyclopedia of Law and Society: American and Global Perspectives* (SAGE Publications 2007)

Clark J. F (ed), *The African Stakes of the Congo War* (Palgrave Macmillan 2002)

- Cohen S, *States of Denial: Knowing about atrocities and suffering* (Polity 2001)
- Collins C and Green A , *Valuing Health Systems: A Framework for Low and Middle Income Countries* (SAGE Publications India Pvt Ltd 2014)
- Condé V. H, *A Handbook of International Human Rights Terminology* (Second Edition, University of Nebraska Press 2004)
- Coomans F and others, *Human Rights from Exclusion to Inclusion; Principles and Practice: An Anthology from the Work of Theo Van Boven* (Kluwer Law International 2000)
- Darian-Smith E, *Laws and Societies in Global Contexts: Contemporary Approaches* (Cambridge University Press 2013)
- Dash K. N, *Invitation to Social and Cultural Anthropology* (Atlantic Publishers & Distributors 2004)
- DeLaet D. L, *The Global Struggle for Human Rights: Universal principles in world politics* (Second Edition, Cengage Learning 2014)
- den Exter A (ed), *International Health Law and Ethics: Basic Documents* (Maklu Publishers 2009)
- Deva S, *Regulating Corporate Human Rights Violations: Humanizing Business* (Routledge 2012)
- Donnelly J, *International Human Rights* (Fourth Edition, Westview Press 2013)
- Doyle II T. E, Gorman R. F, and Mihalkanin E. S, *Historical Dictionary of Human Rights and Humanitarian Organizations* (Third Edition, Rowman & Littlefield 2017)
- Farran S, *Human Rights in the South Pacific: Challenges and Changes* (Routledge 2009)

Finkelhor D and Yllö K, *License to Rape: Sexual Abuse of Wives* (The Free Press 1985)

Fleck D, *The Handbook of Humanitarian Law in Armed Conflicts* (Oxford University Press 1995)

Freedman J, *Gender, Violence and Politics in the DRC* (Routledge 2016)

Freedman R, *The United Nations Human Rights Council: A critique and early assessment* (Routledge 2013)

Freeman M, *Human Rights: An Interdisciplinary Approach* (Second Edition Fully Revised and Updated, Polity Press 2011)

Genser J and Cotler I, *The Responsibility to Protect: The promise of stopping mass atrocities in our time* (Oxford University Press 2012)

Giacca G, *Economic, social, and cultural rights in armed conflict* (Oxford University Press 2014)

Giorgetti C, *A Principled Approach to State Failure: International Community Actions in Emergency Situations* (BRILL 2010)

Goldsmith J. L and Posner E. A, *The Limits of International Law* (Oxford University Press 2005)

Gondola C. D, *The History of Congo* (Greenwood Press 2002)

Head N, *Justifying violence: Communicative ethics and the use of force in Kosovo* (Manchester University Press 2012)

Hemmati M, *Multi-stakeholder Processes for Governance and Sustainability: Beyond Deadlock and Conflict* (Earthscan Publications Ltd 2002)
<http://www.wageningenportals.nl/sites/default/files/resource/multi_stakeholder_pr

[ocesses for governance and sustainability hemmati 2002.pdf](#)> accessed 16 January 2019

Heyns C. H and Viljoen F, *The Impact of the United Nations Human Rights Treaties on the Domestic Level* (Kluwer Law International 2002)

Higgins R, *Problems and Process: International Law and How We Use It* (Clarendon Press 1996)

Holmes S and Sunstein C. R, *The Cost of Rights: Why Liberty Depends on Taxes* (W. W. Norton & Company 1999)

Horton D and others, *Evaluating Capacity Development: Experiences From Research And Development Organizations Around The World* (International Service for National Agricultural Research International Development Research Centre, and ACP-EU Technical Centre for Agricultural and Rural Cooperation 2003) < <http://idl-bnc.idrc.ca/dspace/bitstream/10625/33404/19/IDL-33404.pdf> > accessed 23 April 2015

Jackson R. J, *Global Politics in the 21st Century* (Cambridge University Press 2013) 286.

Jetschke A, *Human Rights and State Security: Indonesia and the Philippines* (University of Pennsylvania Press 2011)

Johnson H, Ollus N and Nevala S, *Violence Against Women: An International Perspective* (Springer Science & Business Media, LLC 2008)

Johnstone I, *The Power of Deliberation: International Law, Politics and Organizations* (Oxford University Press 2011)

Joseph S and Castan M, *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary* (Third Edition, Oxford University Press 2013)

Keck M. E and Sikkink K, *Activists Beyond Borders: Advocacy Networks in International Politics* (Cornell University Press 1998)

Kelley J. G, *Scorecard Diplomacy: Grading States to influence their reputation and behaviour* (Cambridge University Press 2017)

Kisangani E. F, *Historical dictionary of the Democratic Republic of the Congo* (Fourth Edition, Rowman & Littlefield 2016)

Labonte M, *Human Rights and Humanitarian Norms, Strategic Framing, and Intervention: Lessons for the Responsibility to Protect* (Routledge 2013)

Laurienti J. M, *The U.S. Military and Human Rights Promotion: Lessons from Latin America* (Greenwood Publishing Group 2007)

Leatherman J. L, *Sexual Violence and Armed Conflict* (Polity Press 2011)

Leckie S and Gallagher A, *Economic, Social, and Cultural Rights: A Legal Resource Guide* (University of Pennsylvania Press 2006)

Lopes C and Theisohn T, *Ownership, leadership and transformation: can we do better for capacity development?* (Earthscan Publications Ltd 2003)
<http://www.undp.org/content/dam/aplaws/publication/en/publications/capacity-development/drivers-of-change/leadership/ownership-leadership-and-transformation-executive-summary/Ownership-Leadership-Transformation-Can-We-Do-Better_executive%20summary_.pdf > accessed 07 July 2017

Malanczuk P, *Akehurst's modern introduction to International Law* (Seventh revised edition, Routledge 1997)

Maira S. M, *The 9/11 Generation: Youth, Rights, and Solidarity in the War on Terror* (New York University Press 2016)

Malone L. A, *International Law* (Aspen Publishers 2008)

McDougall G, *The First United Nations Mandate on Minority Issues* (Brill Nijhoff 2016)

Meger S, *Rape Loot Pillage: The Political Economy of Sexual Violence in Armed Conflict* (Oxford University Press 2016)

Mertus J, *The United Nations and Human Rights: A Guide for a New Era* (Second Edition, Routledge 2009)

Monkelbaan J, *Governance for the Sustainable Development Goals: Exploring an integrative framework of theories, tools, and competencies* (Springer 2019)

Montoya C, *From Global to Grassroots: The European Union, Transnational Advocacy, and Combating Violence Against Women* (Oxford University Press 2013)

Murray R, *The Role of National Human Rights Institutions at the International and Regional Levels: The Experience of Africa* (Hart Publishing 2007)

Nikolayenko O, *Youth Movements and Elections in Eastern Europe* (Cambridge University Press 2017)

Nolan A, *Children's socio-economic rights, democracy and the courts* (Hart Publishing 2011)

Nzongola-Ntalaja G, *The Congo: From Leopold to Kabila: A People's History* (Zed Books, 2002)

Nye, Jr. J. S, *Soft Power: The Means to Success in World Politics* (Public Affairs 2004)

O'Neill K, *The Environment and International Relations* (Cambridge University Press 2009)

Oppong J. R and Woodruff T, *Democratic Republic of the Congo* (Infobase Publishing 2007)

Perloff R. M, *The dynamics of persuasion: Communication and Attitudes in the 21st Century* (Second Edition, Lawrence Erlbaum Associates Publishers 2003)

Pickup F, Williams S and Sweetman C, *Ending Violence Against Women: A Challenge for Development and Humanitarian Work* (Oxfam GB 2001)

Prunier G, *Africa's World War: Congo, the Rwandan Genocide, and the Making of a Continental Catastrophe* (Oxford University Press 2009)

Ramcharan B. G, *Contemporary Human Rights Ideas* (Routledge 2008)

Reyntjens F, *The Great African War: Congo and Regional Geopolitics, 1996–2006* (Cambridge University Press 2009)

Schachter O, *International Law in Theory and Practice* (Martinus Nijhoff Publishers 1991)

Schimmelfennig F, *The EU, NATO and the Integration of Europe: Rules and Rhetoric* (Cambridge University Press 2003)

Sepúlveda M. M, *The Nature of the Obligations Under the International Covenant on Economic, Social and Cultural Rights* (Intersentia 2003)

Shaw M. N, *International Law* (Sixth Edition, Cambridge University Press 2008)

Sitaraman S, *State Participation in International Treaty Regimes* (Ashgate Publishing, Ltd., 2009)

Smith R. K, *Textbook on International Human Rights* (Eight Edition, Oxford University Press 2018)

Soohoo C, Catherine Albisa and Martha F. Davis, *Bringing Human Rights Home: Portraits of the movement* (Greenwood Publishing Group 2008)

Subedi S. P, *The Effectiveness of the UN Human Rights System: Reform and the Judicialisation of Human Rights* (Routledge 2017)

Subberwal R, *Dictionary of Sociology* (Tata McGraw-Hill Publishing Company Limited 2009)

Thomas P. N and van de Fliert E, *Interrogating the Theory and Practice of Communication for Social Change: The Basis For a Renewal* (Palgrave Macmillan 2014)

Thörn H, *Anti-Apartheid and the Emergence of a Global Civil Society* (Palgrave Macmillan 2006)

Tiburcio C, *The Human Rights of Aliens Under International and Comparative Law* (Martinus Nijhoff Publishers 2001)

Tomuschat C, *Human Rights: Between Idealism and Realism* (Second Edition, Oxford University Press 2008)

Trowler P, *Cultures and Change in Higher Education: Theories and Practices* (Palgrave Macmillan 2008)

Tyner J. A, *War, violence, and population: Making the body count* (Guilford Press 2009)

Vandenhoe W, *The Procedures Before the UN Human Rights Treaty Bodies: Divergence Or Convergence?* (Intersentia nv, 2004)

Vandenhoe W, *Non-Discrimination and Equality in the View of the UN Human Rights Treaty Bodies* (Intersentia nv 2005)

Van Eemeren F. H and Grootendorst R, *A Systematic Theory of Argumentation: The pragma-dialectical approach* (Cambridge University Press 2004)

Viljoen F, *International Human Rights Law in Africa* (Second Edition, Oxford University Press 2012)

Vincent-Lancrin S, 'Developing Capacity through Cross-border Tertiary Education' in Stéphan Vincent-Lancrin (ed), *Cross-border tertiary education: A way towards capacity development* (2007)

<<https://openknowledge.worldbank.org/bitstream/handle/10986/6865/Cross-border%20Tertiary%20Education.pdf?sequence=5&isAllowed=y>> accessed 23 January 2019

Walton D. N, *The New Dialectic: Conversational Contexts of Argument* (University of Toronto Press Incorporated 1998)

Walton D, *One-Sided Arguments: A Dialectical Analysis of Bias* (State University of New York Press 1999)

II. BOOK CHAPTERS

Aguilar G. O, 'The local relevance of human rights: a methodological approach' in De Feyter K and others (eds), *The Local Relevance of Human Rights* (Cambridge University Press 2011)

Akdeniz Y and Altıparmak K, 'The silencing effect on dissent and freedom of expression in Turkey' in Council of Europe, *Journalism at risk: Threats, challenges and perspectives* (Council of Europe 2015)

Anaya-Munoz A and Saltamacchia N, 'Factors blocking compliance with international human rights in Mexico' in Alejandro Anaya-Munoz and Barbara Frey (eds), *Mexico's Human Rights Crisis* (University of Pennsylvania Press, 2019)

Banakar B, 'Law Through Sociology's Looking Glass: Conflict and Competition in Sociological Studies of Law' in Denis A and Kalekin-Fishman D (eds), *The ISA Handbook in Contemporary Sociology* (SAGE Publications 2009)

Barrett L, 'Physical integrity and Human Rights' in Mihr A and Gibney M (eds), *The SAGE Handbook of Human Rights* (Volume 1, SAGE, 2014)

Benninger-Budel C, 'Introduction' in Benninger-Budel C (ed), *Due Diligence and Its Application to Protect Women from Violence* (BRILL 2008)

Bergen R. K, 'An overview of marital rape research in the United States: Limitations and implications for cross-cultural research' in Yllö K and Torres G (eds), *Marital Rape: Consent, Marriage, and Social Change in Global Context* (Oxford University Press 2016)

Bernard D, 'The Work of the Committee on the Elimination of discrimination against women: its focus on nationality, custom, culture and the rights of the girl-child' in Byrnes A, Connors J. F, and Bik L (eds), *Advancing the Human Rights of Women: Using International Human Rights Standards in Domestic Litigation* (Commonwealth Secretariat 1997)

Biswas A. K, 'Water as a Human Right in the MENA Region: Challenges and Opportunities' in Biswas A. K, Rached E and Tortajada C (eds), *Water as a Human Right for the Middle East and North Africa* (Routledge 2008)

Black D, 'The long and winding road: International norms and domestic political change in South Africa', in Risse T, Ropp S. C, and Sikkink K (eds), *The Power of Human Rights: International Norms and Domestic Change* (Cambridge University Press 1999)

Blandy S, 'Socio-legal Approaches to Property Law Research', in Bright S and Blandy S (eds), *Researching Property Law* (Palgrave Macmillan 2016)

Börzel T. A and Risse T, 'Human rights in areas of limited statehood: the new agenda', in Risse T, Ropp S. C, and Sikkink K (ed), *The Persistent Power of Human Rights: From Commitment to Compliance* (Cambridge University Press 2013)

Brunée J, 'Enforcement Mechanisms in International Law and International Environmental Law' in Beyerlin U, Stoll P-T and Wolfrum R (eds), *Ensuring Compliance With Multilateral Environmental Agreements: A Dialogue Between Practitioners and Academia* (Koninklijke Brill NV. 2006)

Bustelo M. R, 'The committee on the elimination of discrimination against women at the crossroads' in Alston P and Crawford J (eds), *The Future of UN Human Rights Treaty Monitoring* (Cambridge University Press 2000)

Cardenas S, 'Human Rights in Comparative Politics' in Goodhart M (ed) *Human Rights: Politics and Practice* (Second Edition, Oxford University Press 2013)

Chinkin C, 'Sources' in Moeckli D and others, *International Human Rights Law* (Second Edition, Oxford University Press 2014)

Chong D, 'Economic Rights and Extreme Poverty: Moving toward Subsistence' in Bob C (ed.), *The International Struggle for New Human Rights* (University of Pennsylvania Press 2009)

Claude R. P and Weston B. H, 'International Human Rights: Issues Overviews', in Claude R. P and Weston B. H (eds), *Human Rights in the World Community: Issues And Action* (Third Edition, University of Pennsylvania Press 2006)

Clapham A, 'UN Human Rights Reporting Procedures: An NGO Perspective' in Alston P and Crawford J (ed), *The Future of UN Human Rights Treaty Monitoring* (Cambridge University Press, 2000)

Connors J, 'Special Procedures: Independence and Impartiality' in Nolan A, Freedman R, and Murphy T (eds), *The United Nations Special Procedures System* (BRILL, 2017)

Cook R. J, 'State Accountability Under the Convention on the Elimination of All Forms of Discrimination Against Women' in Cook R. J (ed), *Human Rights of*

Women: National and International Perspectives (University of Pennsylvania Press 2011)

Copelon R, 'Toward Accountability for Violence Against Women in War: Progress and Challenges' in Heineman E. D (ed), *Sexual Violence in Conflict Zones: From the Ancient World to the Era of Human Rights* (University of Pennsylvania Press 2011)

Crawford J, 'The UN human rights treaty system: A system in crisis?' in Alston P and Crawford J (eds), *The Future of UN Human Rights Treaty Monitoring* (Cambridge University Press, 2000)

Davenport C, 'Introduction' in Christian Davenport (ed), *Paths to State Repression: Human Rights Violations and Contentious Politics* (Rowman & Littlefield Publishers 2000)

Dean A, 'Democratic Republic of Congo' in Susan M. Shaw and others (eds.), *Women's Lives around the World: A Global Encyclopedia* (Volume 1, ABC-CLIO, 2018)

De Feyter K, 'In defence of a multidisciplinary approach to Human Rights' in De Feyter K and Pavlakos G (eds), *The tension between group rights and human rights: A multidisciplinary approach* (Hart Publishing 2008)

Deng F, 'The International Challenge of State Failure and Internal Displacement' in Adebajo A and Scanlon H, *A Dialogue of the Deaf: Essays on Africa and the United Nations* (Jacana Media (Pty) 2006)

de Frouville O, 'Working Out a Working Group: A view from a Former Working Group Member' in Nolan A, Freedman R, and Murphy T (eds.), *The United Nations Special Procedures System* (BRILL 2017)

Engle K, 'A genealogy of the criminal turn in Human Rights' in Engle K, Miller Z and Davis D. M (eds), *Anti-Impunity and the Human Rights Agenda* (Cambridge University Press 2016)

Evatt E, 'Ensuring effective supervisory procedures: the need for resources' in Alston P and Crawford J (eds), *The Future of UN Human Rights Treaty Monitoring* (Cambridge University Press, 2000)

Freeman M. A, 'Article 16' in Freeman M. A, Chinkin C and Rudolf B (eds), *The UN Convention on the Elimination of All Forms of Discrimination Against Women: A Commentary* (Oxford University Press 2012)

Freedman J, 'Taking gender seriously in asylum and refugee policies' in Khory K. R (ed), *Global Migration: Challenges in the Twenty-First Century* (Palgrave Macmillan 2012)

Fukuda-Parr S, Lopes C and Malik K, 'Institutional Innovations For Capacity Development' in Fukuda-Parr S, Lopes C and Malik K (eds), *Capacity for development new solutions to old problems* (Earthscan Publications Ltd and United Nations Development Programme 2002)
<<http://www.undp.org/content/dam/aplaws/publication/en/publications/capacity-development/capacity-for-development-new-solutions-to-old-problems-full-text/Capacity-Dev-NewSolutions-OldProbs-FULL.pdf>> accessed 04 April 2019

Gallagher A, 'Making human rights treaty obligations a reality: working with new actors and partners' in Alston P and Crawford J (eds), *The Future of UN Human Rights Treaty Monitoring* (Cambridge University Press 2000)

Galligan D and Sandler D, 'Implementing Human Rights', in Halliday S and Schmidt P. D (eds), *Human Rights brought home: Socio-legal perspectives on Human Rights in the national context* (Hart Publishing 2004)

Gargarella R and Ramiro Ugarte R. A, 'Freedom of expression and social protest' in Gonzalez-Bertomeu J. F and Gargarella R (ed), *The Latin American Casebook: Courts, Constitutions, and Rights* (Routledge 2016)

Goodman R and Pegram T, 'Introduction: National Human Rights Institutions, States Conformity, and Social Change' in Goodman R and Pegram T (eds), *Human Rights, State Compliance, and Social Change: Assessing National Human Rights Institutions* (Cambridge University Press 2012)

Hathaway O. A, 'The Promise and Limits of the International Law of Torture', in Levinson S (ed), *Torture: A Collection* (Oxford University Press, 2004)

Holtmaat R, 'The CEDAW: A holistic approach to women's equality and freedom' in Helleman A and Aasen H. S (eds), *Women's Human Rights: CEDAW in International, Regional and National Law* (Cambridge University Press 2013)

Howen N, 'The Fundamental Protection Function of the Human Rights Field Operation' in O'Flaherty M, *The Human Rights Field Operation: Law, Theory and Practice* (Ashgate Publishing Limited 2007)

Ignatieff M, 'Rights Inflation and Role Conflict in the Office of the High Commissioner for Human Rights' in Gaer F. D and Broecker C. L (eds), *The United Nations High Commissioner for Human Rights: Conscience for the World* (Martinus Nijhoff Publishers 2014)

Johnstone R. L, 'When Private and Public Meet: Three CEDAW Committee Views on Intra-Familial Violence' in Stefano A (ed), *Gender Issues and International Legal Standards: Contemporary Perspectives* (ed.it 2010)

Joseph S and Kyriakakis J, 'The United Nations and Human Rights' in Joseph S and McBeth A (eds), *Research Handbook on International Human Rights Law* (Edward Elgar Publishing 2010)

Kakucs N and Sata R, 'Violence against Women in European Societies: East and West' in Fischer S, Pleines H and Schröder H. H (eds), *Movements, Migrants, Marginalisation: Challenges of Societal and Political Participation in Eastern Europe and the Enlarged EU* (ibidem-Verlag Haunschild Schoen GbR, 2007)

Kalin W, 'Examination of state reports' in Keller H and Ulfstein G, *UN Human Rights Treaty Bodies: Law and Legitimacy* (Cambridge University Press, 2012)

Kang K-W, 'Foreword' in M and others, (eds), *Human Rights Diplomacy: Contemporary Perspectives* (Martinus Nijhoff Publishers 2011)

Keller H and Ulfstein G, 'Introduction' in Keller H and Ulfstein G, *UN Human Rights Treaty Bodies: Law and Legitimacy* (Cambridge University Press 2012)

Keller H and Ulfstein G, 'Conclusions' in Keller H and Ulfstein G (eds), *UN Human Rights Treaty Bodies: Law and Legitimacy* (Cambridge University Press 2012)

Koch I. E, 'From invisibility to indivisibility: The International convention on the rights of persons with disabilities' in Arnardóttir O. M and Quinn G (eds), *The UN Convention on the Rights of Persons With Disabilities: European and Scandinavian Perspectives* (Martinus Nijhoff Publishers 2009)

Kanbur R, Patel E and Stiglitz J. E, 'Sustainable Development Goals and the measurement of economic and social progress' in OECD, *For Good Measure Advancing Research on Well-being Metrics Beyond GDP* (OECD Publishing, 2018) <<http://policydialogue.org/files/publications/papers/FINAL-For-Good-Measure-Advancing-Research-on-Well-being-Metrics-Beyond.pdf>> accessed 06 November 2019

Kurtz G, 'Securitization of Climate Change in the United Nations 2007 – 2010' in Scheffran J and others (eds), *Climate Change, Human Security and Violent Conflict: Challenges for Societal Stability* (Springer 2012)

Lagon M. P and Kaminski R, 'The Global Human Rights Regime: Assessing and Renovating the Architecture' in Lagon M. P and Arend A. C (eds), *Human Dignity and the Future of Global Institutions* (Georgetown University Press 2014)

Leckie S, 'The Committee on Economic, Social and Cultural Rights: Catalyst for change in a system needing reform' in Alston P and Crawford J (eds), *The Future of UN Human Rights Treaty Monitoring* (Cambridge University Press 2000)

Lemarchand R, 'The Democratic Republic of the Congo: From Failure to Potential Reconstruction' in Rotberg R. I(ed), *State Failure and State Weakness in a Time of Terror* (Brookings Institution Press 2003)

Limon M, 'Strengthening Cooperation: The key to unlocking the potential of the Special Procedures' in Nolan A, Freedman R and Murphy T (eds), *The United Nations Special Procedures System* (BRILL 2017)

Lin Y. H. D, 'In the name of the father? The law and social norms of children's surnames in Taiwan' in Maria Tam S. M and others (eds), *Gender and Family in East Asia* (Routledge 2014)

Manjoo R, 'WPS and the Human Rights Council' in Davies S. E and True J (eds), *The Oxford Handbook of Women, Peace, and Security* (Oxford University Press 2019)

Maya M, 'Mobile Courts in the DRC: Complementarity in Action?' in Botero J. C and others (eds), *Innovations in Rule of Law: A Compilation of Concise Essays* (Published in support of the High-level Meeting of the UN General Assembly on the Rule of Law, 24 September 2012)
<https://worldjusticeproject.org/sites/default/files/documents/wjp_hiil_compilation.pdf> accessed 29 October 2018

Meger S, 'Militarized masculinities and the political economy of wartime sexual violence in the Democratic Republic of Congo' in Freedman J, *Engaging men in the fight against gender violence: Case studies from Africa* (Palgrave Macmillan 2012)

Mertus J, 'Evaluating NHRIs: Considering Structure, Mandate, and Impact' in Goodman R and Pegram T (eds), *Human Rights, State Compliance, and Social Change: Assessing National Human Rights Institutions* (Cambridge University Press 2012)

Moller J. T, 'Foreword', in Ramcharan B. J, *The Fundamentals of International Human Rights Treaty Law* (Martinus Nijhoff Publishers 2011)

Neuman G. L, 'Subsidiarity' in Shelton D (ed), *The Oxford Handbook of International Human Rights Law* (Oxford University Press 2013)

Nickel J. W, 'A defense of welfare rights as human rights' in Christiano T and Christman J (eds), *Contemporary debates in political philosophy* (John Wiley-Blackwell 2009)

Nolan A, Freedman R and Murphy T, 'Introduction' in Nolan A, Freedman R and Murphy T (eds), *The United Nations Special Procedures System* (BRILL 2017)

Nossel S and Broecker C. L, 'The High Commissioner for Human Rights and UN Human Rights Council' in Felice D. Gaer and Christen L. Broecker (eds), *The United Nations High Commissioner for Human Rights: Conscience for the World* (Martinus Nijhoff Publishers 2014)

Nowak M, 'The International Covenant on Civil and Political Rights' in Isa F. G and de Feyter K (eds), *International Human Rights Law in a Global Context* (University of Deusto 2009)

O'Flaherty M and others, 'Introduction. Human Rights Diplomacy: Contemporary Perspectives' in O'Flaherty M and others (eds), *Human Rights Diplomacy: Contemporary Perspectives* (Martinus Nijhoff Publishers 2011)

Perry-Kessaris A, 'What does it mean to take a socio-legal approach to international economic law?' in Perry-Kessaris A (ed), *Socio-legal Approaches to International Economic Law: Text, Context, Subtext* (Routledge 2013)

Risse T and Ropp S. C, 'International human rights norms and domestic change: conclusions', in Risse T, Ropp S. C and Sikkink K (eds), *The Power of Human Rights: International Human Rights and Domestic Change* (Cambridge University Press 1999)

Risse T and Sikkink K, 'The Socialization of international human rights norms into domestic practices: introduction' in Risse T, Ropp S. C and Sikkink K (eds), *The Power of Human Rights: International Human Rights and Domestic Change* (Cambridge University Press 1999)

Risse T, 'Governance in Areas of Limited Statehood: Introduction and Overview' in Risse T (ed), *Governance Without a State? : Policies and Politics in Areas of Limited Statehood* (Columbia University Press 2013)

Risse T and Ropp S. C, 'Introduction and Overview' in Risse T, Ropp S. C, Sikkink K (eds), *The Persistent Power of Human Rights: From Commitment to Compliance* (Cambridge University Press 2013)

Robinson N. A, 'The UN SDGs and Environmental Law: Cooperative Remedies for Natural Disaster Risks' in Peel J and Fisher D (eds), *The Role of International Environmental Law in Disaster Risk Reduction* (Brill Nijhoff 2016)

Rodley N. S, 'The Role and Impact of Treaty Bodies' in Shelton D (ed), *The Oxford Handbook of International Human Rights Law* (Oxford University Press 2013)

Rodley N, 'The International Court of Justice and Human Rights Treaty Bodies', in Green J. A and Waters C. P. M (eds), *Adjudicating International Human Rights: Essays in Honour of Sandy Ghandhi* (BRILL 2015)

Schmidt M, 'Servicing and financing human rights supervisory bodies' in Alston P and Crawford J (eds), *The Future of UN Human Rights Treaty Monitoring* (Cambridge University Press, 2000)

Schokman B and Lynch P, 'Effective NGO engagement with the Universal Periodic Review' in Charlesworth H and Larking E (eds), *Human Rights and the Universal Periodic Review* (Cambridge University Press 2014)

Sharman J. C, 'The agency of peripheral actors: small states tax havens and international regimes as weapons of the weak' in Hobson J. M and Seabrooke L (eds), *Everyday Politics of the World Economy* (Cambridge University Press 2007)

Shelton D and Gould A, 'Positive and Negative Obligations' in Shelton D (ed), *The Oxford Handbook of International Human Rights Law* (Oxford University Press 2013)

Smith R. K. M, 'The United Nations Human Rights System' in Baderin M. A and Ssenyonjo M (eds), *International Human Rights Law: Six Decades After the UDHR and Beyond* (Ashgate Publishing, Ltd., 2010)

Smith-Cannoy H, 'Mainstreaming Human Rights' in Mihr A and Gibney M (eds), *The SAGE Handbook of Human Rights* (Volume 1, SAGE Publications Limited 2014)

Ulfstein G, 'Individual complaints' in Keller H and Ulfstein G, *UN Human Rights Treaty Bodies: Law and Legitimacy* (Cambridge University Press 2012)

van Alebeek R and Nollkaemper A, 'The legal status of decisions by human rights in treaty bodies in national law' in Helen Keller and Geir Ulfstein (eds), *UN Human Rights Treaty Bodies: Law and Legitimacy* (Cambridge University Press 2012)

Villanueva Z, 'Legislative and Judicial Reforms Regarding Domestic Violence: Costa Rica' in Morrison A. R and Biehl M. L (eds), *Too close to home: Domestic Violence in the Americas* (the Inter-American Development Bank Distributed by the Johns Hopkins University Press 1999)

Vincent-Lancrin S, 'Developing Capacity through Cross-border Tertiary Education' in Vincent-Lancrin S (ed), *Cross-border tertiary education: A way towards capacity development* (2007)

<<https://openknowledge.worldbank.org/bitstream/handle/10986/6865/Cross-border%20Tertiary%20Education.pdf?sequence=5&isAllowed=y>> accessed 23 January 2019

Wagner W, 'International Relations Theories and Human Rights' in Mihr A and Gibney M (eds), *The SAGE Handbook of Human Rights* (Volume 1, SAGE 2014)

Wahab N, 'Online ideas to offline action: The role of civil society in the Egyptian uprising' in Abdulwahab Alkebsi, Nathan J Brown, and Charlotta Sparre (eds), *Reconstructing the Middle East: Political and Economic Policy* (Routledge 2017)

Weissbrodt D, 'Non-State Entities and Human Rights within the Context of the Nation-State in the 21st Century' in Baehr P. P. R and others (eds), *The Role of the Nation-state in the 21st Century: Human Rights, International Organisations, and Foreign Policy: Essays in Honour of Peter Baehr* (Martinus Nijhoff Publishers 1998)

Welch M, 'Moral panic, denial, and human rights: scanning the spectrum from overreaction to underreaction' in Downes D and others, (eds), *Crime, Social Control and Human Rights: From Moral Panics to States of Denial, Essays in Honour of Stanley Cohen* (Routledge 2011)

Winkler I. T and de Albuquerque C, 'Doing It All and Doing It Well? A Mandate's Challenge in Terms of Cooperation, Fundraising and Maintaining Independence' in Nolan A, Freedman R and Murphy T (eds), *The United Nations Special Procedures System* (BRILL 2017)

III. JOURNAL ARTICLES

Baaz M. E and Stern M, 'Making sense of violence: voices of soldiers in the Congo (DRC)' (2008) 46 (1) *Journal of Modern African Studies* 57 – 86

Baaz M. E and Stern M, 'Why Do Soldiers Rape? Masculinity, Violence, and Sexuality in the Armed Forces in the Congo (DRC)' (2009) 53 *International Studies Quarterly* 495–518

Baaz M. E and Verweijen J, 'The volatility of a half-cooked bouillabaisse: rebel–military integration and conflict dynamics in eastern DRC' (2013) 112/449 *African Affairs* 563–582

Bajaj M, 'Human Rights Education: Ideology, Location, and Approaches' (2011) 33 *Human Rights Quarterly* 481 – 508

Bartels S. A and others, 'Patterns of sexual violence in Eastern Democratic Republic of Congo: reports from survivors presenting to Panzi Hospital in 2006' (2010) 4 (9) *Conflict and Health* 1 – 10

Bolger J, 'Capacity Development: Why, What and How' (2000) 1(1) *Capacity Development Occasional Series*, CIDA, Policy Branch 1 – 8

Bosmans M, 'Challenges in Aid to Rape Victims: the Case of the DRC' (2007) 4(1) *Essex Human Rights Review* 1 – 12

Carlsen E, 'Ra/pe and War in the Democratic Republic of the Congo' (2009) 21 (4) *Peace Review* 474-483

Breton-Le Goff G, 'Ending Sexual Violence in the DRC' (2010) 34(1) *Fletcher Forum of World Affairs* 13 – 40

Branche R, 'Torture of terrorists? Use of torture in a “war against terrorism”: justifications, methods and effects: the case of France in Algeria, 1954–1962' (2007) 89 (867) *International Review of the Red Cross* 543 - 560

Douma N and Hilhorst D, 'Fond de commerce? Sexual violence assistance in the DRC' (2012) 02 *Disaster Studies*, Occasional paper 1- 78

Dutton Y. M, 'Commitment to International Human Rights Treaties: The Role of Enforcement Mechanisms' (2012) 34(1) University of Pennsylvania Journal of International Law 1 – 65

Elengemoke Mpilambo J and others, 'Determinants of Early Marriage among Young Women in Democratic Republic of Congo' (2017) 52 (1-3) Journal of the Social Sciences 82-91

Grayson A. C, 'Delivering Justice for Sexual Violence in the D.R. Congo and Beyond: Cooperation, Education, and Capacity-Building through National and International Courts' (2012) 2(2) Journal of Global Citizenship & Equity Education 123 – 141

Hafner-Burton E. M, 'Sticks and Stones: Naming and Shaming the Human Rights Enforcement Problem' (2008) 62(04) International Organization 689–716

Kalonda J-C O, France K and Danielle P, 'Stigma of Victims of Sexual Violence's in Armed Conflicts: Another Factor in the Spread of the HIV Epidemic?' (2013) (3) (2) Epidemiology 1

Koh H. H, 'Why Do Nations Obey International Law?' (1997) 106 The Yale Law Journal 2599 – 2659

Koh H. H, 'How Is International Human Rights Law Enforced?' (1999) 74(4)(9) Indiana Law Journal 1397 – 1417

Liebling H, Slegh H and Ruratotoye B, 'Women and Girls Bearing Children through Rape in Goma, Eastern Congo: Stigma, Health and Justice Responses' (2012) IV Itupale Online Journal of African Studies 18 – 44

Meger S, 'Rape of the Congo: Understanding sexual violence in the conflict in the DRC' (2010) 28 (2) Journal of Contemporary African Studies 119-135

Mertens C and Pardy M , 'Sexurity' and its effects in eastern Democratic Republic of Congo (2016) Third World Quarterly 1 – 24

Mulumeoderhwa M, 'A Girl Who Gets Pregnant or Spends the Night with a Man is No Longer a Girl': Forced Marriage in the Eastern Democratic Republic of Congo' (2016) 20 *Sexuality & Culture* 1042–1062

Petersen C. J, 'Bridging the Gap?: The Role of Regional and National Human Rights Institutions in the Asia Pacific' (2011) 13(1) *Asian-Pacific Law & Policy Journal* 174 – 209

Pritchett S. M, 'Entrenched Hegemony, Efficient Procedure, or Selective Justice?: An Inquiry into Charges for Gender-Based Violence at the International Criminal Court' (2008) 17(265) *Transnational Law & Contemporary Problems* 265 – 305

Ruffer G, 'Testimony of Sexual Violence in the DRC and the Injustice of Rape: Moral Outrage, Epistemic Injustice, and the Failures of Bearing Witness' (2013) 15 (225) *Oregon Review of International Law* 225 – 270

Sachs J. D and Warner A. M, 'Natural Resources and Economic Development: The curse of natural resources' (2001) 45 *European Economic Review* 827 – 838

Sahin B and Kula S. L, 'What Women Want before Justice: Examining Justice Initiatives to Challenge Violence against Women in the DRC (2018) 0 *International Journal of Transitional Justice* 1–18

Slaughter A-M and Burke-White W, 'The Future of International Law Is Domestic (or, The European Way of Law)' (2006) 47(2) *Harvard International Law Journal* 327 – 352

Stoop N, Verpoorten M and van der Windt P, 'More legislation, more violence? The impact of Dodd-Frank in the DRC' (2018) 13(8) *PLoS ONE* 1 – 19

Williamson I. P, Rajabifard A and Enemark S, 'Capacity Building for SDIs' (2003) *Proceedings of 16th United Nations Regional Cartographic, Okinawa, Japan* 1 – 14.

IV. WORKING PAPERS, DISCUSSION PAPERS AND CONFERENCE PAPERS

Baaz M. E and Stern M, *The Complexity of Violence: A critical analysis of sexual violence in the DRC*, in Working Paper on Gender Based Violence (Swedish International Development Cooperation Agency (SIDA) May 2010) < <http://nai.diva-portal.org/smash/get/diva2:319527/FULLTEXT02.pdf> > accessed 01 May 2019

Blagescu M. and Young J, 'Capacity Development for Policy Advocacy: Current thinking and approaches among agencies supporting Civil Society Organisations' (2006) 260 Overseas Development Institute Working Paper 1 – 50 < <http://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/156.pdf> > accessed 01 May 2019

Börzel T. A, Hofmann T and Sprungk C, 'Why Do States not Obey the Law? Lessons from the European Union' [Paper prepared for the EUSA Conference, Nashville, March 27-30, 2003 (2003)] <http://userpage.fu-berlin.de/~europe/forschung/docs/boerzel_hofmann_sprungk_2003.pdf > accessed 01 May 2019

Bott S, Morrison A and Ellsberg M, 'Preventing and responding to gender-based violence in middle and low income countries: a global review and analysis' (2005) 3618 World Bank Policy Research Working Paper 1 – 61

Feeley R and Thomas-Jensen C, *Getting Serious about Ending Conflict and Sexual Violence in Congo* (ENOUGH Strategy Paper #15, 2008) <<http://www.enoughproject.org/files/CongoSerious.pdf>> accessed 14 May 2017

Kets E and de Vries H, *Limits to supporting security sector interventions in the DRC* (Institute for Security Studies (ISS) Paper 257, July 2014) <<http://www.issafrica.org/uploads/Paper257.pdf>> accessed 10 October 2014

Smits R and Cruz S, 'Increasing Security in DR Congo: Gender-Responsive Strategies for Combating Sexual Violence' (2011) 17 Clingendael Conflict Research Unit (CRU) Policy Brief 1 – 9 <
https://www.clingendael.org/sites/default/files/pdfs/20110531_cru_policybrief_rsmits.pdf> accessed 07 February 2014

V. REPORTS AND OTHER RELATED DOCUMENTS

African Association for the Defence of Human Rights (ASADHO-RAF) and World Organisation Against Torture (OMCT), *Violence Against Women in the Democratic Republic of Congo (DRC): Alternative report prepared for the Committee on the Elimination of Discrimination Against Women. 36th Session – 7-25 August 2006* (July 2006) < <https://reliefweb.int/report/democratic-republic-congo/violence-against-women-democratic-republic-congo-drc-jul-2006> > accessed 11 July 2017

Amougou A. D. A and others, *Evaluation finale et externe des deux ans de mise en œuvre de la stratégie nationale de lutte contre les violences basées sur le genre en RDC* (Juin 2013) <
<https://www.google.ch/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&ved=0ahUKewjn07yKorzaAhVL66QKHQRRaolQFghHMAI&url=http%3A%2F%2Fmptf.undp.org%2Fdocument%2Fdownload%2F12211&usq=AOvVaw1TOOI0HM0cY7F1VDhH-jL7>> accessed 15 March 2018

Amnesty International, *DRC. Surviving rape: Voices from the East* (October 2004) <
<https://www.amnesty.org/download/Documents/92000/afr620192004en.pdf> >
 accessed 21 March 2018

— — *DRC. Mass rape: Time for remedies* (October 2004) <
<https://www.amnesty.org/download/Documents/92000/afr620182004en.pdf>>
 accessed 04 April 2019

— — *DRC: North Kivu: no end to war on women and children* (29 September 2008)
<<https://www.amnesty.org/download/Documents/52000/afr620052008en.pdf>>
accessed 02 November 2017

— — *DRC: Crisis in North Kivu* (November 2008) <
<https://www.amnesty.org/download/Documents/52000/afr620142008en.pdf>>
accessed 14 March 2018

— — *Mass rapes in Walikale: still a need for protection and justice in Eastern Congo*
(December 2010)
<<https://www.amnesty.org/download/Documents/36000/afr620112010en.pdf>>
accessed 14 March 2018

— — *The time for justice is now: New strategy needed in the Democratic Republic
of the Congo* (August 2011)
<<http://www.iccnw.org/documents/afr620062011en.pdf>> accessed 03 April 2017

— — *Human rights defenders under threat– a shrinking space for civil society* (May
2017) <[https://www.amnesty.at/media/2457/human-rights-defenders-under-
threat.pdf](https://www.amnesty.at/media/2457/human-rights-defenders-under-threat.pdf)> accessed 05 November 2018

Antonowicz L and Diallo V, *Too often in silence: A report on school-based violence
in West and Central Africa* (UNICEF, Plan West Africa, Save the Children Sweden
West Africa and ActionAid, Marc 2010)
<https://www.unicef.org/wcaro/VAC_Report_english.pdf> accessed 13 May 2017

Arieff A, *Sexual Violence in African Conflicts* (Congressional Research Service
2010) <<https://fas.org/sgp/crs/row/R40956.pdf>> accessed 04 May 2017

Boshoff H, *Summary overview of security sector reform processes in the DRC*
(Institute for Security Studies Situation Report, 2005) <
[https://reliefweb.int/report/democratic-republic-congo/summary-overview-security-
sector-reform-processes-drc](https://reliefweb.int/report/democratic-republic-congo/summary-overview-security-sector-reform-processes-drc)> accessed 01 May 2019

Coalition pour la convention sur l'élimination de toutes formes des discriminations à l'égard des femmes (C.CEDEF), *Rapport alternatif sur la mise en oeuvre de la Convention sur l'élimination de toutes les formes de discrimination à l'égard des femmes: examen des sixième et septième rapports périodiques de la RDC* (March 2013)

<https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/COD/INT_CEDAW_NGO_COD_13298_F.pdf> accessed 12 August 2018

Columbia University's School of International and Public Affairs (SIPA) and Physicians for Human Rights (PHR), *Barriers to Justice: Implementing Reparations for Sexual Violence in the DRC* (May 2013) <

https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=18&ved=2ahUKEwjbnCdzguHhAhVNdJoKHYPRAzQ4ChAWMAAd6BAglEAI&url=https%3A%2F%2Fsipa.columbia.edu%2Ffile%2F3193%2Fdownload%3Ftoken%3DxnYW6A24&usg=AOvVaw0d9kQ3x_zcaGN4oxS5hXQ- > accessed 21 April 2019

Commission Nationale des Droits de l'Homme (CNDH), *Rapport parallèle de la Commission Nationale des Droits de l'Homme présenté au titre du Huitième rapport périodique de la République Démocratique du Congo relatif à la mise en œuvre de la Convention sur l'élimination de toutes les formes de discrimination* (28 September 2018)

<https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/COD/INT_CEDAW_IFL_COD_32605_F.pdf> accessed 25 January 2019

Cuvelier J and others, *Analyzing the Impact of the Dodd-Frank Act on Congolese Livelihoods* (SSRC Conflict Prevention and Peace Forum 2014)

<https://s3.amazonaws.com/ssrc-cdn1/crmuploads/new_publication_3/%7B57858126-EF65-E411-9403-005056AB4B80%7D.pdf> accessed 20 December 2018

Davis L, *Justice-Sensitive Security System Reform in the DRC* (2009) 18
<<https://www.ictj.org/sites/default/files/ICTJ-DRC-Justice-Security-2009-English.pdf>> accessed 27 May 2015

Fédération internationale des ligues des droits de l'Homme (FIDH) and others, *DRC. Victims of sexual violence rarely obtain justice and never receive reparation: Major changes needed to fight impunity* (October 2013)
<https://www.fidh.org/IMG/pdf/rapport_rdc_.pdf > accessed 29 January 2017

Flinterman C and Zwamborn M, *From development of human rights to managing human rights development: global review of the OHCHR technical cooperation programme: synthesis report* (Netherlands Institute of Human Rights (SIM) in partnership with MEDE European Consultancy, September 2003)
<<https://www.ohchr.org/Documents/Countries/global-reviewsynthesis.pdf> >
accessed 04 December 2018

Free The Slaves, *The Congo Report: Slavery in 'Conflict Minerals'* (June 2011)
<<https://www.freetheslaves.net/wp-content/uploads/2015/03/The-Congo-Report-English.pdf> > accessed 04 April 2019

— — *Congo's Mining Slaves: Enslavement at South Kivu Mining Sites. Investigative Field Report* (June 2013) <<https://www.freetheslaves.net/wp-content/uploads/2015/03/Congos-Mining-Slaves-web-130622.pdf>> accessed 03 February 2017

Freedom from Torture, *Freedom from Torture submission to the Committee on the Elimination of Discrimination against Women for its examination of the DRC: Torture of women in the DRC 2006-2011* (July 2013)
<http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/COD/INT_CE_DAW_NGO_COD_13430_E.pdf > accessed 03 April 2017

— — *Rape as torture in the DRC: Sexual violence beyond the conflict zone. Country Reporting Programme* (June 2014) <

https://www.freedomfromtorture.org/sites/default/files/final_web_-_a4.pdf >
accessed 03 April 2017

Global Witness, *“The Hill Belongs to Them”: The need for international action on Congo’s conflict minerals trade* (Global Witness, December 2010) <https://site-media.globalwitness.org/archive/files/library/the%20hill%20belongs%20to%20them141210_0.pdf > accessed 23 January 2017

Groupe d’Action pour les Droits de la femme (GADF) and International Service for Human Rights (ISHR), *Liste de questions relatives au huitième rapport périodique de la République Démocratique du Congo au Comité pour l’élimination de la discrimination envers les femmes (CEDEF)* (1 October 2018) <https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/COD/INT_CEDAW_ICO_COD_32594_F.pdf> accessed 25 January 2020

Hall A and LaRocco A, *Time Works Against Justice: Ending Impunity in Eastern Congo* (The Enough Project 2012) <<https://enoughproject.org/files/Ending%20Impunity%20in%20Eastern%20Congo.pdf> > accessed 03 May 2019

Harvard Humanitarian Initiative and the Open Society Institute, *Characterizing Sexual Violence in the DRC: Profiles of Violence, Community Responses, and Implications for the Protection of Women* (August 2009) <http://hhi.harvard.edu/sites/default/files/publications/publications_-_women_-_characterizing_sexual_violence.pdf > accessed 03 February 2017

— — and Oxfam America, *Now, the world is without me”: an investigation of sexual violence in Eastern Democratic Republic of Congo* (April 2010) <<https://www.oxfam.org/sites/www.oxfam.org/files/DRC-sexual-violence-2010-04.pdf> > accessed 07 July 2016

— — and “Learning on Gender and Conflict in Africa” (LOGiCA) Program of the World Bank, *A Patient Heart Stigma, Acceptance and Rejection around Conflict-*

Relates Sexual Violence in the DRC (April 2011) <<https://hhi.harvard.edu/publications/patient-heart-stigma-acceptance-and-rejection-around-conflict-related-sexual-violence> > accessed 04 April 2019

Hersh M, *Congolese women: What Happened to the Promise to Protect?* <https://www.refugeesinternational.org/s/ri_drc_field_report-web.pdf > accessed 02 December 2017

Human Rights Watch, *World Report 1994* <https://www.hrw.org/reports/1994/WR94/Africa-10.htm#P457_208487 > accessed 07 December 2012

— — *World Report 1995: Zaire* <http://www.hrw.org/reports/1995/WR95/AFRICA-11.htm#P581_209577 > accessed 07 December 2012

— — *Behind bars in Brazil* (December 1998) <https://www.hrw.org/sites/default/files/related_material/BRAZL98D.pdf> accessed 13 January 2019

— — *The war within the war: sexual violence against women and girls in Eastern Congo* (June 2002) <<https://www.hrw.org/reports/2002/drc/Congo0602.pdf>> accessed 18 November 2017

— — *The war within the war: sexual violence against women and girls in Eastern Congo* (2002) <<https://www.hrw.org/reports/2002/drc/Congo0602.pdf>> accessed 18 November 2017

— — *Ituri: "Covered in blood". Ethnically targeted violence in Northeastern DR Congo* (July 2003) <<https://www.hrw.org/sites/default/files/reports/DRC0703.pdf>> accessed 14 March 2018

— — *D.R. Congo: War Crimes in Bukavu: Human Rights Watch Briefing Paper* (June 2004)

<https://www.hrw.org/sites/default/files/reports/2004_DR Congo_WarCrimesinBukavu.pdf> accessed 14 March 2018

— — *Seeking Justice: The Prosecution of Sexual Violence in the Congo War* (March 2005) <<https://www.hrw.org/sites/default/files/reports/drc0305.pdf>> accessed 14 March 2018

— — *Getting Away with Torture? Command Responsibility for the U.S. Abuse of Detainees* (April 2005) <<https://www.hrw.org/reports/2005/us0405/us0405.pdf>> accessed 24 January 2017

— — *DR Congo: Hold Army Commanders Responsible for Rapes. Government Should Enforce Its 'Zero-Tolerance' Policy on Sexual Violence* (16 July 2009) <<https://www.hrw.org/news/2009/07/16/dr-congo-hold-army-commanders-responsible-rapes>> accessed 14 August 2016

— — *Letter to the Prime Minister of DR Congo Regarding Public Attacks on Human Rights Organizations* (31 July 2009) <<https://www.hrw.org/news/2009/07/31/letter-prime-minister-dr-congo-regarding-public-attacks-human-rights-organizations>> accessed 04 January 2017

— — *"You Will Be Punished" Attacks on Civilians in Eastern Congo* (December 2009) < <https://www.hrw.org/sites/default/files/reports/drc1209webwcover2.pdf> > accessed 14 March 2018

— — *Soldiers Who Rape, Commanders Who Condone: Sexual Violence and Military Reform in the DRC* (2009) < <https://www.hrw.org/sites/default/files/reports/drc0709web.pdf> > accessed 25 September 2017

— — *Always on the Run: The Vicious Cycle of Displacement in Eastern Congo* (September 2010)

<<https://www.hrw.org/sites/default/files/reports/drc0910webwcover.pdf> > accessed 14 March 2018

— — *World Report 2010* (2010) <
<http://www.hrw.org/sites/default/files/reports/wr2010.pdf> > accessed 07 February 2014

— — *World Report 2012: Events of 2011* (2012)
<<https://www.hrw.org/sites/default/files/reports/wr2012.pdf>> accessed 16 May 2017

— — *DRC: Ending Impunity for Sexual Violence. New Judicial Mechanism Needed to Bring Perpetrators to Justice* (10 June 2014)
<https://www.hrw.org/sites/default/files/related_material/DRC0614_briefingpaper_brochure%20coverJune%209%202014.pdf > accessed 20 October 2017

— — *Pakistan: Reinstate Death Penalty Moratorium* (17 December 2014)
<<https://www.hrw.org/news/2014/12/17/pakistan-reinstate-death-penalty-moratorium>> accessed 23 January 2017

The International Bar Association and the International Legal Assistance Consortium, *Rebuilding courts and trust: An assessment of the needs of the justice system in the DRC* (August 2009)
<http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=16&cad=rja&uact=8&ved=2ahUKEwi_3-CTvMbfAhVGb1AKHVG_DJQ4ChAWMAV6BAgGEAI&url=http%3A%2F%2Fwww.ilacnet.org%2Fdownload%2Freports_documents%2Fmission-reports_documents%2FDRC_report-English_2009.pdf&usq=AOvVaw3rXkj-4c9jv8pjiTHq9xgk> accessed 30 November 2018

International Crisis Group (ICG), *Security sector reform in the Congo* (Africa Report N°104, 13 February 2006) <<https://d2071andvip0wj.cloudfront.net/104-security-sector-reform-in-the-congo.pdf> > accessed 29 December 2017

International Federation for Human Rights (FIDH) and others, *Denial of justice for victims of crimes of sexual violence* (July 2013) <<https://www.fidh.org/IMG/pdf/175338103-rdcjustice612cedawuk2013.pdf>> accessed 17 January 2018

International Trade Union Confederation (ITUC), *Violence against women in Eastern DRC: Whose responsibility? Whose complicity?* (ITUC November 2011) <https://www.ituc-csi.org/IMG/pdf/ituc_violence_rdc_eng_lr.pdf.pdf > accessed 03 February 2017

IRIN, *Mass rape in Goma prison* (24 June 2009) <<http://www.irinnews.org/report/84982/drc-mass-rape-goma-prison> > accessed 03 April 2017

Johns Hopkins Bloomberg School of Public Health Center for Communication Programs, *Community perspectives on sexual and gender-based violence in Eastern DRC. Report prepared by for International Medical Corps* (September 2011) <<http://ccp.jhu.edu/documents/Community%20Perspectives%20on%20SGV%20in%20Eastern%20DRC.pdf>> accessed 03 April 2017

Kayembe P. and others, *Connaissances, perceptions, attitudes et pratiques des membres de la Police Nationale Congolaise en matière de violences sexuelles dans trois provinces de la République Démocratique du Congo* (2010) <<https://reliefweb.int/report/democratic-republic-congo/connaissances-perceptions-attitudes-et-pratiques-des-membres-de-la>> accessed 04 April 2019

Kelly J and others, *Assessment of human trafficking in artisanal mining towns in Eastern DRC* (2014) <http://pdf.usaid.gov/pdf_docs/PA00K5R1.pdf> accessed 03 February 2017

Limon M and Piccone T, *Human Rights Special Procedures: Determinants of Influence. Understanding and strengthening the effectiveness of the UN's independent human rights experts. Policy Report* (Universal Rights Group 2014)

<<https://www.brookings.edu/wp-content/uploads/2016/06/un-human-rights-experts-evaluation-piccone.pdf>> accessed 02 November 2017

Matthysen K and Montejano A. Z, *'Conflict Minerals' initiatives in DR Congo: Perceptions of local mining communities* (November 2013) <<http://ipisresearch.be/publication/conflict-minerals-initiatives-dr-congo-perceptions-local-mining-communities/>> accessed 04 April 2019

(The) National coalition of non-governmental organizations for monitoring and reporting on the human rights situation, Human Rights House (CORRSDH – MDH) and Thematic group on women's rights and sexual violence (GTDFVS), *Additional shadow report to the 6th and 7th combined report of the DRC on the implementation of the CEDAW Convention* (2013) <http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/COD/INT_CE_DAW_NGO_COD_13595_E.pdf> accessed 24 September 2017

Norwegian Agency for Development Cooperation (NORAD), *Guidance Note: Reconstruction and Long-term Capacity Development in Haiti* (2010) <<https://norad.no/globalassets/import-2162015-80434-am/www.norad.no-ny/filarkiv/vedlegg-til-publikasjoner/guidance-note-reconstruction-and-long-term-capacity-development-in-haiti.pdf>> accessed 11 October 2018

Open Society Foundations, *Justice in DRC: Mobile courts combat rape and impunity in eastern Congo* <<https://www.opensocietyfoundations.org/sites/default/files/justice-drc-20130114.pdf>> accessed 29 September 2018

Oxfam America, *No will, no way: US-funded security sector reform in the DRC* (Oxfam America 2010) <<https://www.oxfamamerica.org/static/oa4/no-will-no-way.pdf>> accessed 09 April 2017

MADRE and others, *Gender-based violence and discrimination against women and girls in the Democratic Republic of the Congo: A report for the UN Committee on the*

Elimination of All Forms of Discrimination Against Women for the formulation of the list of issues and questions for the review of the Democratic Republic of the Congo's compliance with the Convention on the Elimination of All Forms of Discrimination Against Women (October 2018) <https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/COD/INT_C_EDAW_ICO_COD_32830_E.pdf> accessed 25 January 2019

M. Papinutto, « La violence à l'école » (UNICEF, DRC, 2009) cited in Marie Devers and others, *Gender-based violence at school in French-speaking sub-saharan africa: understanding its impact on girls' school attendance to combat it more effectively* (Directorate-General of Global Affairs, Development and Partnerships, French Ministry of Foreign Affairs 2012) <http://www.diplomatie.gouv.fr/IMG/pdf/Rapport_Violences_de_genre_GB_bd_cle0d9e43.pdf> accessed 13 May 2017

Pratt M and Werchick L, *Sexual Terrorism: Rape as a Weapon of War in Eastern DRC: An assessment of programmatic responses to sexual violence in North Kivu, South Kivu, Maniema, and Orientale Provinces, January 9-16, 2004* (USAID/DCHA assessment report, 18 March 2004) <http://pdf.usaid.gov/pdf_docs/Pnadm346.pdf> accessed 04 January 2017

Prendergast J, *Can You Hear Congo Now? Cell Phones, Conflict Minerals, and the Worst Sexual Violence in the World* (April 2009) <<http://www.enoughproject.org/files/Can%20Your%20Hear%20Congo%20Now.pdf>> accessed 09 July 2016

Réseau des Femmes pour un Développement Associatif, Réseau des Femmes pour la Défense des Droits et la Paix and International Alert, *Women's Bodies as a Battleground: Sexual Violence Against Women and Girls During the War in the Democratic Republic of Congo South Kivu (1996-2003)* (2005) <<http://www.international-alert.org/sites/default/files/publications/women%27s-bodies-as-a-english.pdf>> accessed 23 June 2015

Rispo M. and others, *Evaluation of UNDP's support to mobile courts in Sierra Leone, DRC, and Somalia* (UNDP, May 2014) <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0ah_UKEwiZt_74p_XTAhVpslQKHx-YCooQFggsMAE&url=https%3A%2F%2Ferc.undp.org%2Fevaluation%2Fdocuments%2Fdownload%2F8260&usg=AFQjCNGfSKT6HEhCAE-y0WR-vsL9KwJy7g&sig2=gEPYX2OqZiHTze3B2dVDvA> accessed 16 May 2016

Sirkin S, *Changing the Narrative on Sexual Violence in the DRC* (26 November 2014) <<http://physiciansforhumanrights.org/blog/changing-the-narrative-on-sexual-violence-in-the-drc.html?print=t>> accessed 29 March 2018

Songo G. B, *Etude sur les lois relatives à la protection des droits des femmes et à la repression des violences faites aux femmes* (February 2013) <http://cocafemgl.org/wp-content/uploads/2016/08/etude_rdc-1.pdf> accessed 01 May 2019

Sutherland E, *Coltan, the Congo and your cell phone: The connection between your mobile phone and Human Rights abuses in Africa* (11 April 2011) <<http://web.mit.edu/12.000/www/m2016/pdf/coltan.pdf>> accessed 23 January 2017

Tearfund, *Masculinities, faith and ending sexual and gender-based violence: DRC summary report* (May 2014) <https://learn.tearfund.org/~media/files/tilz/hiv/drc_report_final.pdf?la=en> accessed 02 May 2019

— — *Men, faith and masculinities: DRC. A baseline assessment on the social attitudes, relations, and practices of men in relation to gender, and sexual and gender-based violence in the Democratic Republic of Congo (DRC)* <<https://wewillspeakout.org/wp-content/uploads/2014/06/Men-faith-and-masculinities-DRC-FINAL.pdf>> accessed 05 January 2017

United States Department of State, *Country Reports on Human Rights Practices for 2016: DRC* (2017) < <https://www.state.gov/documents/organization/265454.pdf> > accessed 13 May 2017

— — *Country Reports on Human Rights Practices for 2017: DRC* (2018) < <https://www.state.gov/documents/organization/277231.pdf> > accessed 13 August 2018

— — *2018 Trafficking in Persons Report* (2018) <<https://www.state.gov/documents/organization/282798.pdf>> accessed 21 February 2019

Wairagu F, *The Forgotten Rape Capital of the World* (08 Mar 2012) <<https://reliefweb.int/report/democratic-republic-congo/forgotten-rape-capital-world>> accessed 29 March 2018

Wolters S and Boshoff H, *The impact of slow military reform on the transition process in the DRC* (Institute for Security Studies 2006) <<https://www.files.ethz.ch/isn/136896/100706DRC.PDF>> accessed 30 November 2017

Women's International League for Peace & Freedom (WILPF), *Life at the bottom of the chain: women in artisanal mines in DRC* (First Edition, WILPF 2016) < https://wilpf.org/wp-content/uploads/2016/10/WomenInArtisanalMinesInDRC_web.pdf > accessed 21 March 2019

Women's International League for Peace and Freedom (WILPF), *Shadow report by the Women's International League for Peace and Freedom – Democratic Republic of the Congo section (WILPF DRC) - Committee on the Elimination of Discrimination against Women - 73rd Pre-Sessional Working Group for the adoption of the list of issues* (12-16 November 2018) (4 October 2018);

<https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/COD/INT_CEDAW_ICO_COD_32668_E.pdf> accessed 25 January 2020

World Organisation against Torture (OMCT) and Women's Synergy for Victims of Sexual Violence (SFVS), *Report on violence against women in North and South Kivu, in the DRC: Alternative report for the Committee on the elimination of all forms of discrimination against women* (55th session July 8 – 26, 2013) (2013) <http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/COD/INT_CEDAW_NGO_COD_13434_E.pdf> accessed 03 March 2014

VI. DOCUMENTS OF INTERNATIONAL AND INTERGOVERNMENTAL ORGANISATIONS AS WELL AS DEVELOPMENT AGENCIES

Commission des droits de l'homme, *Compte-rendu analytique de la 55e séance tenue au Palais des Nations, à Genève, le mardi 19 avril 2005, à 9 heures*, document no: E/CN.4/2005/SR.55 (27 April 2005)

Commission on Human Rights, *Situation of Human Rights in Zaire: Report by the Secretary-General*, document no: E/CN.4/1994/49 (23 December 1993)

— — *Written statement submitted by the International Federation of Human Rights, a non-governmental organization in consultative status (category II)*, document no: E/CN.4/1994/NGO/13 (4 February 1994)

— — *Resolution 1994/45. Question of integrating the rights of women into the human rights mechanisms of the United Nations and the elimination of VAW* (4 March 1994)

— — *Interim report on opposition to the impunity of perpetrators of human rights violations (economic, social and cultural rights), prepared by Mr. El Hadji Guisse, pursuant to, Sub commission resolution 1994/34*, document no: E/CN.4/Sub.2/1995/19 (27 June 1995)

— — *Report of the Special Rapporteur on the question of the impunity of perpetrators of violations of human rights (civil and political rights)*, document no: E/CN.4/Sub.2/1996/18 (20 June 1996)

— — *Note verbale from the Ministry of Foreign Affairs of the DRC addressed to the United Nations Secretariat*, document no: E/CN.4/1998/142 (20 March 1998)

— — *Note verbale dated 10 March 1998 from the Permanent Mission of the DRC to the United Nations Office at Geneva addressed to the secretariat of the Commission on Human Rights*, document no: E/CN.4/1998/149 (2 April 1998)

— — *Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy. Addendum: Mission to Indonesia and East Timor on the issue of violence against women* (20 November – 4 December 1998), document no: E/CN.4/1999/68/Add.3 (21 January 1999)

— — *Violence against women in the family: Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, submitted in accordance with Commission on Human Rights resolution 1995/85*, document no: E/CN.4/1999/68 (10 March 1999)

— — *Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, submitted in accordance with Commission on Human Rights resolution 2001/49. Addendum: Mission to Colombia* (1-7 November 2001), document no: E/CN.4/2002/83/Add.3 (11 March 2002)

— — *Extrajudicial, summary or arbitrary executions. Report of the Special Rapporteur, Ms. Asma Jahangir, submitted pursuant to Commission on Human Rights resolution 2002/36. Addendum: Mission to the DRC*, document no: E/CN.4/2003/3/Add.3 (4 November 2002)

— — *Report of the Special Rapporteur on VAW, its causes and consequences, Yakin Ertürk. Addendum: Communications to and from Governments*, document no: E/CN.4/2005/72/Add.1 (18 March 2005)

— — *Report of the Special Rapporteur on VAW, its causes and consequences, Yakin Ertürk. Addendum: Communications to and from Governments*, document no: E/CN.4/2006/61/Add.1 (27 March 2006)

— — *Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk. Addendum: Mission to the Russian Federation*, document no: E/CN.4/2006/61/Add.2 (26 January 2006)

— — *Report of the Special Representative of the Secretary-General, Hina Jilani – Addendum: Summary of cases transmitted to Governments and replies received*, document no: E/CN.4/2006/95/Add.1 (22 March 2006)

Committee of Foreign Relations, United States Senate, *Confronting Rape and Other Forms of Violence against women in Conflict Zones; Spotlight: The DRC and Sudan* (13 May 2009) <<http://www.gpo.gov/fdsys/pkg/CHRG-111shrg53635/html/CHRG-111shrg53635.htm>> accessed 02 February 2014

Committee on Economic, Social and Cultural Rights (CESCR Committee), *General Comment No. 12: The Right to Adequate Food (Art. 11)*, document no: E/C.12/1999/5 (12 May 1999)

— — *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)* (11 August 2000)

— — *General comment No. 16 (2005): The equal right of men and women to the enjoyment of all economic, social and cultural rights (art. 3 of the International Covenant on Economic, Social and Cultural Rights)*, document no: E/C.12/2005/4 (11 August 2005)

— — *General Comment No. 17 (2005): The right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author (article 15, paragraph 1 (c), of the Covenant)*, document no: E/C.12/GC/17 (12 January 2006)

— — *The right to work. General comment No. 18: Article 6 of the International Covenant on Economic, Social and Cultural Rights*, document no: E/C.12/GC/18 (6 February 2006)

— — *General Comment no. 19: The right to social security (art. 9)*, document no: E/C.12/GC/19 (4 February 2008)

— — *Concluding observations of the Committee on Economic, Social and Cultural Rights on the combined second to fourth periodic reports of the DRC*, document no: E/C.12/COD/CO/4 (16 December 2009)

— — *General comment No. 21: Right of everyone to take part in cultural life (art. 15, para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights)*, document no: E/C.12/GC/21 (21 December 2009)

Committee on the Elimination of Discrimination against Women (CEDAW Committee), *General Recommendation No. 19 on Violence against women* (1992)

— — *Second periodic reports of States parties: Zaire*, document no: CEDAW/C/ZAR/2 (10 February 1997)

— — *Third periodic report of States parties: DRC*, document no: CEDAW/C/COD/1 (18 June 1999)

— — ‘Concluding Comments on the Initial report and second and third periodic reports: DRC’ in CEDAW Committee, *Report of the Committee on the Elimination of Discrimination against Women*, document no: A/55/38 (2000)

- — *Combined fourth and fifth periodic reports of States parties: DRC*, document no: CEDAW/C/COD/4-5 (30 November 2004)
- — *General recommendation No. 25, on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures* (2004)
- — *Concluding comments on the combined fourth and fifth periodic report of the DRC*, document no: CEDAW/C/COD/CO/5 (25 August 2006)
- — *General recommendation No. 28 on the core obligations of States parties under article 2 of the CEDAW Convention*, document no: CEDAW/C/GC/28 (16 December 2010)
- — *Combined sixth and seventh periodic report of States parties: DRC*, document no: CEDAW/C/COD/6-7 (21 December 2011)
- — *Concluding observations on the fifth periodic report of Jordan*, document no: CEDAW/C/JOR/CO/5 (9 March 2012)
- — *List of issues and questions with regard to the consideration of periodic reports: DRC*, document no: CEDAW/C/COD/Q/6-7 (2 November 2012)
- — *Concluding observations on the combined sixth and seventh periodic reports of the DRC*, document no: CEDAW/C/COD/CO/6-7 (30 July 2013)
- — *Summary record of the 1134th meeting Held at the Palais des Nations, Geneva, on Thursday, 11 July 2013, at 10 a.m.*, document no: CEDAW/C/SR.1134 (31 July 2013)
- — *General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women*, document no: CEDAW/C/GC/32 (14 November 2014)

— — *Concluding observations on the sixth periodic report of Jordan*, document no: CEDAW/C/JOR/CO/6 (9 March 2017)

— — *General recommendation No. 35 on gender-based violence against women*, document no: CEDAW/C/GC/35 (14 July 2017)

— — *Eighth periodic report submitted by the DRC under article 18 of the Convention, due in 2017*, document no: CEDAW/C/COD/8 (1 May 2018)

Committee on the elimination of racial discrimination (CERD Committee), *Concluding observations of the Committee on the third to ninth and tenth periodic reports: Zaire*, document no: CERD/C/304/Add.18 (27 September 1996)

— — *Concluding observations on the eleventh, twelfth, thirteenth, fourteenth and fifteenth periodic reports of the DRC*, document no: A/62/18

Committee on the Rights of Persons with Disabilities (CRPD), *Concluding observations on the initial report of Jordan*, document no: CRPD/C/JOR/CO/1 (15 May 2017)

Committee on the Rights of the Child (CRC Committee), *Concluding observations on the initial report of the DRC*, document no: CRC/C/15/Add.153 (9 July 2001)

— — *Concluding observations on the second periodic report of the DRC*, document no: CRC/C/COD/CO/2 (10 February 2009)

— — *Consideration of reports submitted by States parties under article 8, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. Concluding observations: DRC*, document no: CRC/C/OPAC/COD/CO/1 (7 March 2012)

— — *Concluding observations on the combined third to fifth periodic reports of the DRC*, document no: CRC/C/COD/CO/3-5 (28 February 2017)

— — *Concluding observations on the report submitted by the DRC under article 12 (1) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*, document no: CRC/C/OPSC/COD/CO/1 (28 February 2017)

Department of Economic and Social Affairs/Division for the Advancement of Women (DESA/DAW), *Handbook for Legislation on Violence against Women* (2010) <<http://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf>> accessed 01 December 2017

Fourth World Conference on Women, *Beijing Declaration and Platform for Action. Annex I: The Declaration* (15 September 1995) <<http://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf>> accessed 05 March 2017

— — *Beijing Declaration and Platform for Action. Annex II: Platform for Action* (15 September 1995) <<http://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf>> accessed 05 March 2017

Human Rights Committee, *A strategic approach to public relations, including relations with the media*, document no: CCPR/C/94/CRP.2/Rev.1 (23 October 2008)

— — *A strategic approach to public relations, including relations with the media*, document no: CCPR/C/94/CRP.2/Rev.1 (23 October 2008)

— — *Concluding observations of the Human Rights Committee on the third periodic report of the DRC*, document no: CCPR/C/COD/CO/3 (26 April 2006)

Human Rights Council, *Report of the Special Rapporteur on VAW, its causes and consequences, Yakin Ertürk. Addendum: Communications to and from Governments*, document no: A/HRC/4/34/Add.1 (19 March 2007)

— — *Report of the Special Rapporteur, Anebyi Ligabo – Addendum: Summary of cases transmitted to Governments and replies received*, document no: A/HRC/4/27/Add.1 (26 March 2007)

— — *Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council*, Resolution 5/2 (18 June 2007)

— — *Report of the Special Rapporteur on VAW, its causes and consequences, Yakin Ertürk. Addendum: Communications to and from Governments*, document no: A/HRC/7/6/Add.1 (27 February 2008)

— — *Report of the Special Rapporteur on VAW, its causes and consequences, Yakin Ertürk. Addendum. Mission to the DRC*, document no: A/HRC/7/6/Add.4 (28 February 2008)

— — *Report of the independent expert on the situation of human rights in the DRC, Mr. Titinga Frédéric Pacéré*, document no: A/HRC/7/25 (29 February 2008)

— — *Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy. Addendum: Mission to the DRC*, document no: A/HRC/8/4/Add.2 (11 April 2008)

— — *Report submitted by the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin. Addendum: Mission to the DRC*, document no: A/HRC/8/6/Add.3 (16 May 2008)

— — *Combined report of seven thematic special procedures on technical assistance to the Government of the DRC and urgent examination of the situation in the east of the country*, document no: A/HRC/10/59 (5 March 2009)

— — *Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk. Addendum: Mission to Tajikistan*, document no: A/HRC/11/6/Add.2 (29 April 2009)

— — *Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk. Addendum. Mission to the Republic of Moldova*, document no: A/HRC/11/6/Add.4 (8 May 2009)

— — *Report of the Special Rapporteur on VAW, its causes and consequences, Yakin Ertürk, Addendum: Communications to and from governments*, document no: A/HRC/11/6/Add.1 (26 May 2009)

— — *Report of the Working Group on the Universal Periodic Review: DRC*, document no: A/HRC/13/8 (4 January 2010)

— — *Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya – Addendum: Summary of cases transmitted to Governments and replies received*, document no: A/HRC/13/22/Add.1 (24 February 2010)

— — *Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya: Addendum - Mission to the DRC (21 May – 3 June 2009)*, document no: A/HRC/13/22/Add.2 (25 February 2010)

— — *Second joint report of seven United Nations experts on the situation in the DRC*, document no: A/HRC/13/63 (8 March 2010)

— — *Report of the Special Rapporteur on VAW, its causes and consequences, Rashida Manjoo. Addendum: Communications to and from Governments*, document no: A/HRC/14/22/Add.1 (2 June 2010)

— — *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston – Addendum: Mission to the DRC*, document no: A/HRC/14/24/Add.3 (14 June 2010)

— — *Third joint report of seven United Nations experts on the situation in the DRC*, document no: A/HRC/16/68 (9 March 2011)

- — *Resolution 16/7 of 21 March 2011: Mandate of the Special Rapporteur on VAW, its causes and consequences*, document no: A/HRC/RES/16/7 (8 April 2011)

- — *Report of the Special Rapporteur on VAW, its causes and consequences, Rashida Manjoo. Addendum: Communications to and from Governments*, document no: A/HRC/17/26/Add.1 (18 May 2011)

- — *Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo. Addendum: Mission to Algeria*, document no: A/HRC/17/26/Add.3 (19 May 2011)

- — *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns. Addendum: Follow-up to country recommendations: DRC*, document no: A/HRC/20/22/Add.1 (16 April 2012)

- — *Report of the Special Rapporteur on violence against women, its causes and consequences, on her mission to Somalia (9-16 December 2011)*, document no: A/HRC/20/16/Add.3 (14 May 2012)

- — *Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya*, document no: A/HRC/25/55 (23 December 2013)

- — *Report of the Working Group on the Universal Periodic Review: DRC*, document no: A/HRC/27/5 (7 July 2014)

- — *Technical assistance and capacity-building options for integrating Human Rights into national policies: Report of the Office of the United Nations High Commissioner for Human Rights*, document no: A/HRC/27/41 (24 July 2014)

- — *Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo. Addendum: Mission to India*, document no: A/HRC/26/38/Add.1 (1 April 2014)

— — *Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo. Addendum: Mission to Azerbaijan*, document no: A/HRC/26/38/Add.3 (18 June 2014)

— — *Technical assistance and capacity-building options for integrating human rights into national policies: Report of the Office of the United Nations High Commissioner for Human Rights*, document no: A/HRC/27/41 (24 July 2014)

— — *Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo. Addendum: Mission to Honduras*, document no: A/HRC/29/27/Add.1 (31 March 2015)

— — *Report of the Working Group on the issue of discrimination against women in law and in practice*, document no: A/HRC/29/40 (2 April 2015)

— — *Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo. Addendum: Mission to Afghanistan*, document no: A/HRC/29/27/Add.3 (12 May 2015)

— — *Report of the Special Rapporteur on extreme poverty and human rights on his mission to Romania*, document no: A/HRC/32/31/Add.2 (8 April 2016)

— — *Report of the Special Rapporteur on violence against women, its causes and consequences on her mission to the Sudan*, document no: A/HRC/32/42/Add.1 (18 April 2016)

— — *Report of the Special Rapporteur on the situation of human rights in Myanmar*, document no: A/HRC/34/67 (1 March 2017)

— — *Report of the Special Rapporteur on the situation of human rights in Eritrea, Sheila B. Keetharuth*, document no: A/HRC/35/39 (7 June 2017)

— — *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, document no: A/HRC/38/35 (6 April 2018)

— — *Report of the Working Group on the issue of discrimination against women in law and in practice*, document no: A/HRC/38/46 (14 May 2018)

International Law Commission (ILC), *Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries* (2001)
<http://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf>
accessed 30 January 2017

Office of the United Nations High Commissioner for Human Rights (OHCHR), *Advisory Services and Technical Cooperation in the Field of Human Rights: Fact Sheet No.3 (Rev.1)* (OHCHR, 1996)
<<http://www.ohchr.org/Documents/Publications/FactSheet3Rev.1en.pdf>>
accessed 08 June 2017

— — *Manual of Operations of the Special Procedures of the Human Rights Council* (August 2008) <
https://www.ohchr.org/Documents/HRBodies/SP/Manual_Operations2008.pdf>
accessed 11 June 2016

— — *Report of the Mapping Exercise documenting the most serious violations of human rights and international humanitarian law committed within the territory of the Democratic Republic of the Congo between March 1993 and June 2003* (August 2010)
<http://www.ohchr.org/Documents/Countries/CD/DRC_MAPPING_REPORT_FINAL_EN.pdf> accessed 14 May 2017

— — *Report of the Panel on Remedies and Reparations for Victims of Sexual Violence in the Democratic Republic of Congo to the High Commissioner for Human Rights* (March 2011)
<http://www.ohchr.org/Documents/Countries/CD/DRC_Reparations_Report_en.pdf>
> accessed 14 November 2016

— — JUA COD 2/2011 (15 April 2011) <
<https://spcommreports.ohchr.org/Tmsearch/TMDocuments> > accessed 23 April
2018

— — *Strengthening the United Nations human rights treaty body system: A report
by the United Nations High Commissioner for Human Rights Navanethem Pillay*
(June 2012)
<<http://www2.ohchr.org/english/bodies/HRTD/docs/HCREportTBStrengthening.pdf>
> accessed 09 April 2018

— — *Chad: UN Human Rights expert alarmed by the executions of 10 people
following a swift trial* (7 September 2015)
<[http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16388
&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16388&LangID=E) > accessed 23 January 2017

— — *Legal clinics bring justice and rehabilitation to victims of sexual violence in DR
Congo* (25 November 2015)
<<https://www.ohchr.org/EN/NewsEvents/Pages/AccessJusticeInDRC.aspx>>
accessed 11 October 2018

— — “REFERENCE: YH/follow-up/DRC/62” (14 December 2015) <
[http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/COD/INT_CED
AW_FUL_COD_22530_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/COD/INT_CEDAW_FUL_COD_22530_E.pdf) > accessed 29 December 2016

— — JUA COD 6/2016 (22 July 2016) <
<https://spcommreports.ohchr.org/Tmsearch/TMDocuments> > accessed 23 April
2018

— — “Communication report and search” <
<https://spcommreports.ohchr.org/Tmsearch/TMDocuments> > accessed 31 January
2019

— — “REFERENCE: YH/follow-up/Democratic Republic of the Congo/64” (10 August 2016) <
http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/COD/INT_CEDAW_FUL_COD_24841_E.pdf > accessed 29 December 2016

— — “Reporting status for DRC” <
https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/countries.aspx?CountryCode=COD&Lang=EN > accessed 17 January 2019

— — “Treaty Body Database” <
https://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=En&CountryID=48 > accessed 02 February 2019

Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict, *Provisional guidance note: Implementation of Security Council Resolution 1960 (2010) on Women, Peace and Security (conflict-related sexual violence)* (June 2011) <
<http://www.refworld.org/pdfid/4e23ed5d2.pdf.provisional> > accessed 01 May 2019

Organisation for Economic Co-operation and Development (OECD), *Contracting out government functions and services in post-conflict and fragile situations* (2010) <
<http://www.gpoba.org/sites/gpoba/files/Handbook.pdf> > accessed 30 December 2019

— — *Greening Development: Enhancing Capacity for Environmental Management and Governance* (OECD Publishing 2012) <
<https://www.oecd-ilibrary.org/docserver/9789264167896-en.pdf?expires=1583674057&id=id&accname=ocid195767&checksum=8DF5576CC8D1E08C44DA937896DD6B04> > accessed 11 October 2018

— — *The Challenge of Capacity Development: working towards good practice* (OECD 2006)

<http://www.fao.org/fileadmin/templates/capacitybuilding/pdf/DAC_paper_final.pdf
> accessed 10 October 2018

Pillinger J, *Violence and harassment against women and men in the world of work: trade union perspectives and action* (International Labour Organization 2017)
<http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---actrav/documents/publication/wcms_546645.pdf> accessed 21 February 2019

United Nations, *Report of the Secretary-General's Investigative Team charged with investigating serious violations of human rights and international humanitarian law in the DRC*, document no: S/1398/581 (29 June 1998)

— — *Concept paper on the High Commissioner's proposal for a unified standing treaty body: Report by the Secretariat*, document no: HRI/MC/2006/2 (22 March 2006)

— — 'Rules of procedure of the Committee on the Elimination of discrimination against women' [UN doc no: A/56/38 (SUPP), as amended by A/62/38 (SUPP) Chapter V] in United Nations, *International human rights instruments compilation of rules of procedure adopted by human rights treaty bodies*, document no: HRI/GEN/3/Rev.3 (28 May 2008)

— — *Tackling sexual violence must include prevention, ending impunity – UN official* (27 April 2010) <
<http://www.un.org/apps/news/story.asp?NewsID=34502#.V7kaNqKuly0>> accessed 20 August 2016

United Nations Development Programme (UNDP), *Capacity assessment and development in a systems and strategic management context* (Technical Advisory Paper No. 3, 1998)
<<https://www.cbd.int/doc/pa/tools/Capacity%20assessment%20and%20development.pdf>> accessed 04 January 2017

— — *Capacity Development Practice Note* (2008)
<http://www.unpcdc.org/media/8651/pn_capacity_development.pdf> accessed 29 January 2017

— — *Capacity development: A UNDP Primer* (2009)
<http://www.undp.org/content/dam/aplaws/publication/en/publications/capacity-development/capacity-development-a-undp-primer/CDG_PrimerReport_final_web.pdf> accessed 29 January 2017

— — *Measuring capacity* (June 2010) <http://content-ext.undp.org/aplaws_publications/2679640/UNDP_Measuring_Capacity_July_2010.pdf> accessed 19 November 2017

— — *DR Congo: Legal clinics help victims of sexual violence* <<http://www.undp.org/content/undp/en/home/ourwork/ourstories/RDC-lutte-contre-violences-sexuelles.html>> accessed 11 October 2018

— — *Fighting Sexual Violence in the DRC*
<<http://www.undp.org/content/undp/en/home/ourwork/ourstories/fighting-sexual-violence-in-the-democratic-republic-of-congo.html>> accessed 11 October 2018

United Nations Department of Economic and Social Affairs (UN DESA), *World Statistics Pocketbook 2017 edition* (Series V, No. 41, 2017)
<<https://unstats.un.org/unsd/publications/pocketbook/files/world-stats-pocketbook-2017.pdf>> accessed 29 December 2017

United Nations Division for the Advancement of Women (UNDAW), *Ending violence against women: From words to action. Study of the Secretary-General* (2006)
<http://www.un.org/womenwatch/daw/public/VAW_Study/VAWstudyE.pdf>
accessed 13 July 2018

United Nations General Assembly (UNGA), *Resolution A/RES/48/141 adopted on 20 December 1993: High Commissioner for the promotion and protection of all Human Rights*, document no: A/RES/48/141 (7 January 1994)

— — *Strengthening of the United Nations: an agenda for further change: Report of the Secretary-General*, document no: A/57/387 (9 September 2002)

— — *Report of the United Nations High Commissioner for Human Rights*, General Assembly Official Records, Sixtieth Session, Supplement No. 36 (A/60/36) (2005)

— — *Resolution 60/251 adopted on 15 March 2006: Human Rights Council*, document no: A/RES/60/251 (3 April 2006)

— — *Report of the Chairs of the Human Rights treaty bodies on their twenty-sixth meeting. Annex I: Guidance note for States parties on the constructive dialogue with the Human Rights treaty bodies*, document no: A/69/285 (11 August 2014)

— — *Status of the human rights treaty body system: Report of the Secretary-General*, document no: A/71/118 (18 July 2016)

United Nations General Assembly (UNGA) and United Nations Security Council (UNSC), *Children and armed conflict: Report of the Secretary-General*, document no: A/63/785–S/2009/158 (26 March 2009)

— — and — — *Children and armed conflict: Report of the Secretary-General*, document no: A/64/742–S/2010/181 (13 April 2010)

— — and — — *Children and armed conflict: Report of the Secretary-General*, document no: A/65/820–S/2011/250 (23 April 2011)

— — and — — *Conflict-related sexual violence: Report of the Secretary-General*, document no: A/66/657–S/2012/33 (13 January 2012)

— — and — — *Children and armed conflict: Report of the Secretary-General*,
document no: A/66/782–S/2012/261 (26 April 2012)

— — and — — *Sexual violence in conflict: Report of the Secretary-General*,
document no: A/67/792–S/2013/149 (14 March 2013)

— — and — — *Children and armed conflict: Report of the Secretary-General*,
document no: A/67/845*–S/2013/245* (15 May 2013)

— — and — — *Children and armed conflict: Report of the Secretary-General*,
document no: A/68/878–S/2014/339 (15 May 2014)

— — and — — *Children and armed conflict: Report of the Secretary-General*,
document no: A/69/926*–S/2015/409* (5 June 2015)

— — and — — *Children and armed conflict: Report of the Secretary-General*,
document no: A/70/836–S/2016/360 (20 April 2016)

— — and — — *Children and armed conflict: Report of the Secretary-General*,
document no: A/72/361–S/2017/821 (24 August 2017)

— — and — — *Children and armed conflict: Report of the Secretary-General*,
document no: A/72/865–S/2018/465 (16 May 2018)

— — and — — *Sexual violence in conflict: Report of the Secretary-General*,
document no: A/67/792–S/2013/149 (14 March 2013)

— — and — — *Children and armed conflict: Report of the Secretary-General*,
document no: A/63/785–S/2009/158 (26 March 2009)

— — and — — *Children and armed conflict: Report of the Secretary-General*,
document no: A/64/742–S/2010/181 (13 April 2010)

— — and — — *Children and armed conflict: Report of the Secretary-General*,
document no: A/65/820–S/2011/250 (23 April 2011)

— — and — — *Children and armed conflict: Report of the Secretary-General*, document no: A/66/782–S/2012/261 (26 April 2012)

— — and — — *Children and armed conflict: Report of the Secretary-General*, document no: A/67/845*–S/2013/245* (15 May 2013)

— — and — — *Children and armed conflict: Report of the Secretary-General*, document no: A/68/878–S/2014/339 (15 May 2014)

— — and — — *Children and armed conflict: Report of the Secretary-General*, document no: A/69/926*–S/2015/409* (5 June 2015)

— — and — — *Children and armed conflict: Report of the Secretary-General*, document no: A/70/836–S/2016/360 (20 April 2016)

— — and — — *Children and armed conflict: Report of the Secretary-General*, document no: A/72/361–S/2017/821 (24 August 2017)

— — and — — *Children and armed conflict: Report of the Secretary-General*, document no: A/72/865–S/2018/465 (16 May 2018)

United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) and Office of the United Nations High Commissioner for Human Rights (OHCHR), *Report on the investigation missions of the United Nations joint human rights office into the mass rapes and other human rights violations committed in the villages of Bushani and Kalambahiro, in Masisi territory, North Kivu, on 31 December 2010 and 1 January 2011* (July 2011) < http://www.ohchr.org/Documents/Countries/ZR/UNJHROReportMassRapesBushani_en.pdf > accessed 07 February 2014

— — and — — *Report of the United Nations Joint Human Rights Office on Human Rights violations perpetrated by soldiers of the Congolese armed forces and combatants of the M23 in Goma and Sake, North Kivu Province, and in and around Minova, South Kivu Province, from 15 November to 2 December 2012* (May 2013)

<http://www.ohchr.org/Documents/Countries/CD/UNJHROMay2013_en.pdf> accessed 09 April 2017

— — and — — *Progress and obstacles in the fight against impunity for sexual violence in the Democratic Republic of the Congo* (April 2014) <<https://monusco.unmissions.org/sites/default/files/UNJHRO%20-%20Report%20on%20Fight%20against%20Impunity%20Sexual%20Violence%20-%20April%202014%20-%20ORIGINAL%20VERSION.pdf>> accessed 30 December 2016

— — and — — *Accountability for Human Rights Violations and Abuses in the DRC: Achievements, Challenges and Way forward* (1 January 2014 - 31 March 2016) (October 2016) <http://www.ohchr.org/Documents/Countries/CD/UNJHROAccountabiliteReport2016_en.pdf> accessed 11 January 2017

United Nations Population Fund (UNFPA), *Marrying Too Young: End Child Marriage* (UNFPA 2012) <<https://www.unfpa.org/sites/default/files/pub-pdf/MarryingTooYoung.pdf>> accessed 03 February 2017

United Nations Security Council (UNSC), *Resolution 1882 (2009)*, document no: S/RES/1882 (2009) (4 August 2009)

— — *Twenty-eighth report of the Secretary-General on the United Nations Organization Mission in the DRC*, document no: S/2009/335 (30 June 2009)

— — *Resolution 1960 (2010)*, document no: S/RES/1960 (2010) (16 December 2010)

— — *Conflict-related sexual violence: Report of the Secretary-General*, document no: S/2014/181 (13 March 2014)

— — *Conflict-related sexual violence: Report of the Secretary-General*, document no: S/2015/203 (23 March 2015)

— — *Report of the Secretary-General on conflict-related sexual violence*, document no: S/2016/361 (20 April 2016)

— — *Report of the Secretary-General on conflict-related sexual violence*, document no: S/2017/249 (15 April 2017)

— — *Report of the Secretary-General on conflict-related sexual violence*, document no: S/2018/250 (23 March 2018)

(The) United Nations Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights Special Rapporteur on Freedom of Expression and Access to Information, *Joint declaration on freedom of expression and "fake news", disinformation and propaganda* (3 March 2017) <<https://www.ohchr.org/Documents/Issues/Expression/JointDeclaration3March2017.doc>> accessed 05 November 2018

The United Nations Special Rapporteur on Violence against Women, Its Causes and Consequences, *15 years of the United Nations Special Rapporteur on violence against women, its causes and consequences* <<https://www.ohchr.org/Documents/Issues/Women/15YearReviewofVAWMandate.pdf>> accessed 13 September 2018

UN Women, Office of the United Nations High Commissioner for Human Rights (OHCHR) and UNDP Moldova, *Study on the situation of Romani women and girls in the republic of Moldova* (2014) <http://md.one.un.org/content/dam/unct/moldova/docs/pub/Study_on_the_Situation_of_Romani_women_and_girls_in_the_Republic_of_Moldova.eng.pdf> accessed 25 October 2018

(The) World Bank, *Using Training to Build Capacity for Development: An Evaluation of the World Bank's Project-Based and WBI Training* (2008) <http://siteresources.worldbank.org/EXTTRABUICAPDEV/Resources/full_doc.pdf> accessed 04 April 2019

World Conference on Human Rights, *Vienna Declaration and Programme of Action* (25 June 1993) <<https://www.ohchr.org/Documents/ProfessionalInterest/vienna.pdf>> accessed 01 May 2019

World Health Organization (WHO), *Global and regional estimates of violence against women: prevalence and health effects of intimate partner violence and non-partner sexual violence* (World Health Organization 2013) <http://apps.who.int/iris/bitstream/handle/10665/85239/9789241564625_eng.pdf;jsessionid=8BCB9CDBFA6045A04D85894CBFD2B1B2?sequence=1> accessed 9 November 2018

VII. NEWSPAPERS AND MAGAZINES AND OTHER MEDIA REPORTS

Agoa Info, *Congo slams US AGOA decision* (24 December 2010) <<https://agoa.info/news/article/4681-congo-slams-us-agoa-decision.html>> accessed 07 February 2014

AllAfrica Global Media, *Congo-Kinshasa: 'New Dawn' in Land of Rape and Child Soldiers* (13 July 2015) <<http://allafrica.com/stories/201507131888.html>> accessed 15 August 2015

— — *Congo-Kinshasa: Remarks by Jeanine Mabunda Lioko Mudiayi* (14 July 2015) <<http://allafrica.com/stories/201507171677.html>> accessed 14 September 2017

Antoine C, *The woman charged with stopping rape in Congo: A Q&A with Jeanine Mabunda* (14 May 2015) <<http://www.womensmediacenter.com/women-under-siege/the-woman-charged-with-stopping-rape-in-congo-a-qa-with-jeanine-mabunda>> accessed 29 March 2018

Bangré H, *RD Congo: « capitale mondiale du viol », vraiment ?* (08 March 2016) <<http://www.jeuneafrique.com/308280/societe/rd-congo-capitale-mondiale-du-viol-vraiment/>> accessed 29 March 2018

Basala J, *Violence conjugale à l'égard des femmes : une violence passée sous silence à Kinshasa* (12 June 2014) <<http://speakjhr.com/2014/06/violence-conjugale-legard-des-femmes-une-violence-passee-sous-silence-kinshasa/>> accessed 01 May 2019

British Broadcasting Corporation (BBC), *DR Congo: 48 rapes every hour, US study finds* (12 May 2011) <<http://www.bbc.co.uk/news/world-africa-13367277>> accessed 01 May 2019

— — *Chad reintroduces death penalty for acts of terror* (31 July 2015) <<http://www.bbc.com/news/world-africa-33732176>> accessed 23 January 2017

Butty J, *DRC Spokesman Defends Expulsion of UN Human Rights Official* (21 October 2014) <<http://www.voanews.com/a/drc-spokesman-defends-expulsion-of-un-human-rights-official/2490573.html>> accessed 18 May 2017

Cardoso L, *Lambert Mende : «Les viols allégués contre les FARDC ne sont ni avérés, ni corroborés »* (30 July 2011) <<https://www.lecongolais.cd/lambert-mende-%C2%ABles-viols-allegues-contre-les-fardc-ne-sont-ni-averes-ni-corrobores-%C2%BB/>> accessed 11 July 2016

Chonghaile C. N, *Top Congo official hopes to shed country's 'rape capital of the world' tag* (4 Mar 2015) <<https://www.theguardian.com/global-development/2015/mar/04/congo-presidential-adviser-hopes-shed-rape-capital-tag>> accessed 29 March 2018

Citera P, *Congo Government: Mass Rapes Can't Be Stopped Without More International Aid* (26 August 2010)

<http://www.huffingtonpost.com/2010/08/26/congo-mass-rapes-international-aid_n_696329.html> (accessed 07 February 2014)

Curry C, *In 'Rape Capital of the World,' 12 Soldiers Convicted of Raping Children* (14 December 2017) <<https://www.globalcitizen.org/en/content/in-rape-capital-of-the-world-12-soldiers-convicted/>> accessed 29 March 2018

DR Congo Avenir, *Jeanine Mabunda : Fin de l'impunité pour les violences sexuelles faites à la femmes en RDC* (8 July 2017) <<http://drcongoavenir.com/20170708-6496/>> accessed 06 August 2018

eNews Channel Africa (ENCA), *DR Congo renounces UN support for rebel offensive* (16 February 2015) <<https://www.enca.com/africa/dr-congo-renounces-un-support-rebel-offensive>> accessed 15 August 2016

(The) Global Enquirer, *Congo: Rape Capital of the World* (15 May 2016) <<https://theglobalenquirer.news/2016/05/15/congo-rape-capital-of-the-world/>> accessed 29 March 2018

(The) Independent, *UN report: Congo government troops blamed for mass rape* (22 July 2011) <<http://www.independent.co.uk/news/world/africa/un-report-congo-government-troops-blamed-for-mass-rape-2318808.html>> accessed 07 February 2014

Jeune Afrique, *Viols collectifs: le gouvernement proteste contre la représentante de l'ONU* (29 October 2010) <<http://www.jeuneafrique.com/Article/ARTJAJA2598p016.xml1/>> accessed 07 February 2014

Kibangula T, *Jeannine Mabunda : « Assez de la caricature 'RDC, capitale mondiale du viol' »* (02 November 2015) <<http://www.jeuneafrique.com/275624/societe/jeannine-mabunda-assez-de-caricature-rdc-capitale-mondiale-viol/>> accessed 29 March 2018

Laccino L, *DR Congo bans documentary of surgeon Denis Mukwege who treated 40,000 women raped in conflict* (03 September 2015) <<https://www.ibtimes.co.uk/dr-congo-bans-documentary-surgeon-denis-mukwege-who-treated-40000-women-raped-conflict-1518315>> accessed 04 October 2016

Lloyd-Davies F, *Why eastern DR Congo is 'rape capital of the world'* (25 November 2011) <<http://www.cnn.com/2011/11/24/world/africa/democratic-congo-rape/>> accessed on 27 February 2016

Mail and Guardian Africa, *UN pulls support to DR Congo army operation in row over tainted generals* (11 February 2015) <<http://mgafrika.com/article/2015-02-11-un-pulls-support-to-dr-congo-army-operation-in-row-over-tainted-generals>> accessed 18 May 2017

Mas J. M, *Terreur au Kivu/Plus de 200 femmes violées: Lambert Mende: la RD Congo n'est pas la capitale mondiale du viol* (26 August 2010) <<http://leclimat.cd/News/Details/Politique/terreur-au-kivuplus-200-femmes-violees-lambert-mende-rd-congo-nest-pas-capitale-mondiale-du-viol>> accessed 07 February 2014

Migabo R, *Bukavu. Harcèlement sexuel : de plus en plus croissant dans les universités* (16 October 2014) <<http://speakjhr.com/2014/10/harcelement-sexuel-de-plus-en-plus-croissant-dans-les-universites/>> accessed 21 February 2019

Mis M, *Congo steps up drive to curb sexual violence, shake off 'rape capital' tag* (10 March 2016) <<https://www.reuters.com/article/us-congodemocratic-rape-government-idUSKCN0WC2KM>> accessed 29 March 2018

Mulobo G, *Le harcèlement sexuel à l'école freine le développement des filles* <<https://deboutcongolaises.org/harcelement-sexuel-a-lecole-freine-developpement-filles/>> accessed 21 February 2019

Mwadi G, *Le harcèlement sexuel en milieu scolaire, un blocage pour le développement de la jeune fille* (16 February 2016) < <http://citaf.over-blog.com/2016/02/le-harcelement-sexuel-en-milieu-scolaire-un-blocage-pour-le-developpement-de-la-jeune-fille.html> > accessed 21 February 2019

Mwanamilongo S, *Congo president slams U.N. withdrawal from anti-rebel mission* (15 February 2015) <<http://www.washingtontimes.com/news/2015/feb/15/congo-president-slams-un-withdrawal-from-anti-rebe/>> accessed 19 May 2017

Nkurunziza A, *La COCAFEM/GL relance son plaidoyer pour le lancement de la Campagne Tolérance Zéro envers les crimes de Violences Sexuelles et Basées sur Genre/VSBG et l'impunité en RDC* (22 September 2016) <<http://cocafemgl.org/2016/09/22/la-cocafemgl-relance-son-plaidoyer-pour-le-lancement-de-la-campagne-tolerance-zero-envers-les-crimes-de-violences-sexuelles-et-basees-sur-genrevsbg-et-limpunite-en-rdc/>> accessed 06 September 2018

Okwess O, *Dénoncer le harcèlement sexuel à l'IFASIC de Kinshasa* (27 November 2012) <<http://genderlinks.org.za/classification/themes/dnoncer-le-harclement-sexuel-lifasic-de-kinshasa-2012-11-27/>> accessed 21 February 2019

O'Grady S, *Documentary About Rape Banned in 'Rape Capital of the World'* (3 September 2015) <<http://foreignpolicy.com/2015/09/03/documentary-about-rape-banned-in-rape-capital-of-the-world/>> accessed 29 March 2018

Radio France Internationale (RFI), *UN criticises DR Congo over mass rapes* (17 September 2010) <<http://www.english.rfi.fr/africa/20100917-un-criticises-dr-congo-over-mass-rapes>> 07 February 2014

— — *RDC: nouveaux cas de violences faites aux femmes au Sud-Kivu* (20 November 2015) <<http://www.rfi.fr/afrique/20151120-rdc-femmes-violees-kalehe-sud-kivu-onu>> accessed 06 September 2018

Radio Okapi, *Equateur : harcèlement sexuel dans les écoles de Bolomba* (17 March 2007) <<http://www.radiookapi.net/actualite/2007/03/17/equateur-harcelement-sexuel-dans-les-ecoles-de-bolomba/>> accessed 10 September 2016

— — *Matadi: dans la rue, les femmes dénoncent le harcèlement sexuel* (27 February 2010) <<http://www.radiookapi.net/actualite/2010/02/27/matadi-dans-la-rue-les-femmes-denoncent-le-harcelement-sexuel/>> accessed 10 September 2016

— — *Masisi: « les FARDC n'auraient pas violé des femmes », selon Lambert Mende* (28 July 2011) <<http://www.radiookapi.net/actualite/2011/07/28/masisi-%25c2%25ab-les-fardc-n%25e2%2580%2599auraient-pas-viole-des-femmes-%25c2%25bb-selon-lambert-mende>> accessed 01 October 2016

— — *L'Onu lance un ultimatum à la RDC pour sanctionner des soldats accusés de viols à Minova* (28 March 2013) <<http://www.radiookapi.net/actualite/2013/03/28/lonu-lance-ultimatum-la-rdc-pour-sanctionner-des-soldats-accuses-de-viols-minova>> accessed 31 December 2016

— — *RDC: les poursuites judiciaires contre les militaires accusés de viols à Minova sont en cours, affirme Lambert Mende* (28 March 2013) <<http://www.radiookapi.net/actualite/2013/03/28/rdc-les-poursuites-judiciaires-contre-les-militaires-accuses-de-viols-minova-sont-en-cours-affirme-lambert-mende>> accessed 31 December 2016

— — *Kinshasa : 64 % de femmes connaissent un harcèlement sexuel au travail, selon une étude du ministère de la Santé* (27 April 2016) <<http://www.radiookapi.net/actualite/2012/04/27/kinshasa-64-3-de-femmes-connaissent-harcelement-sexuel-au-travail-selon-une-etude-du-ministere-de-la-sante>> accessed 10 September 2016

— — *Lambert Mende, « RDC: Lambert Mende dénonce «l'ingérence» extérieure* (07 July 2016)

<[http://www.radiookapi.net/2016/07/07/actualite/politique/rdc-lambert-mende-denonce-lingerence-exterieure?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+radiookapi%2Factu+\(Radiookapi.net\)](http://www.radiookapi.net/2016/07/07/actualite/politique/rdc-lambert-mende-denonce-lingerence-exterieure?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+radiookapi%2Factu+(Radiookapi.net))> accessed 19 May 2017

— — *Kasai-Oriental : les militaires sensibilisés sur les violences sexuelles et les droits humains* (18 October 2017) <<https://www.radiookapi.net/2017/10/18/actualite/securite/kasai-oriental-les-militaires-sensibilises-sur-les-violences-sexuelles>> accessed 07 September 2018

— — *La RDC en voie de sortir de la liste noire des pays indexés par les violences sexuelles* (06 October 2017) <<https://www.radiookapi.net/2017/10/06/actualite/en-bref/la-rdc-en-voie-de-sortir-de-la-liste-noire-des-pays-indexes-par-les>> accessed 09 October 2017

Kim Willsher, *Congo 'shutting down debate on rape', says director of banned film* (3 September 2015) < <http://www.theguardian.com/world/2015/sep/03/congo-shutting-down-debate-on-says-director-of-banned-film>> accessed 27 February 2016

VIII. INTERNET SOURCES AND WEBSITES

“Denis Mukwege: The Nobel Peace Prize 2018” <<https://www.nobelprize.org/prizes/peace/2018/mukwege/facts/>> accessed 09 February 2019

“Dictionary definition of ‘enforcement’” <<http://www.oxforddictionaries.com/definition/english/enforcement>> accessed 11 May 2016

“Dictionary definition of ‘dialogue’” <<http://www.oxforddictionaries.com/definition/english/dialogue>> accessed 17 July 2015

“Dictionary definition of ‘impunity’”
<<https://en.oxforddictionaries.com/definition/impunity>> accessed 14 March 2018

“Dictionary definition of ‘impunity’” <<https://www.merriam-webster.com/dictionary/impunity>> accessed 14 March 2018

“Dictionary definition of ‘impunity’”
<<https://dictionary.cambridge.org/dictionary/english/impunity>> accessed 14 March 2018

“Dictionary definition of ‘integrated’” <<https://dictionary.cambridge.org/dictionary/english/integrated>>
accessed 16 February 2019

“Dictionary definition of ‘repression’”
<<https://en.oxforddictionaries.com/definition/repression>> accessed 21 March 2018
<<https://dictionary.cambridge.org/dictionary/english/repression>> accessed 21 March 2018

“Dictionary definition of ‘unwillingness’”
<<https://en.oxforddictionaries.com/definition/unwillingness>> accessed 04 January 2017

“Dodd-Frank Wall Street Reform and Consumer Protection Act” (05 January 2010)
<<https://www.sec.gov/about/laws/wallstreetreform-cpa.pdf>> accessed 23 January 2017

OHCHR, “Information on the follow-up procedure” (26 February 2013) 1
<http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_FGD_7103_E.pdf> accessed 10 October 2016

“Opening Statement of Senator Dick Durbin Chairman, Subcommittee on Human Rights and the Law, Hearing on ‘Rape as a Weapon of War: Accountability for Sexual Violence in Conflict’” (1 April 2008)

<https://www.judiciary.senate.gov/imo/media/doc/durbin_statement_04_01_08.pdf
> accessed 09 July 2017

OutRight Action International formerly known as the International Gay and Lesbian Human Rights Commission (IGLHRC), *Making the mountain move: An Activist's Guide to How International Human Rights Mechanisms Can Work for You* (18 December 2000) <<https://www.outrightinternational.org/sites/default/files/179-1.pdf>> accessed 24 April 2017

“Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas” in Official Journal of the European Union (L130, Volume 60, 19 May 2017) <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2017:130:FULL&from=EN>> accessed 04 November 2018

“Specialized Corporate Disclosure” <<https://www.sec.gov/spotlight/dodd-frank/speccorpdisclosure.shtml>> accessed 23 January 2017

“Statement by Senator Russ Feingold At the Hearing Before the Senate Judiciary Committee Subcommittee on Human Rights and the Law on ‘Rape as a Weapon of War: Accountability for Sexual Violence in Conflict’” (01 April 2008) <https://www.judiciary.senate.gov/imo/media/doc/feingold_statement_04_01_08.pdf> accessed 07 February 2014

“Testimony of Lisa F. Jackson, Documentary Maker and Director of ‘The Greatest Silence: Rape in the Congo’ Before the Subcommittee on Human Rights and the Law Committee on the Judiciary United States Senate” (01 April 2008) <https://www.judiciary.senate.gov/imo/media/doc/jackson_testimony_04_01_08.pdf> accessed 09 July 2017

“Testimony of Dr. Kelly Dawn Askin, Senior Legal Officer Open Society Justice Initiative before the Subcommittee on Human Rights and the Law Committee on the Judiciary United States Senate” (01 April 2008) <
https://www.judiciary.senate.gov/imo/media/doc/askin_testimony_04_01_08.pdf >
accessed 09 July 2017

“Testimony of Dr. Denis Mukwege, Director, Panzi General Referral Hospital Bukavu, South Kivu, DRC before the Subcommittee on Human Rights and the Law Committee on the Judiciary United States Senate” (01 April 2008)
<https://www.judiciary.senate.gov/imo/media/doc/mukwege_testimony_04_01_08.pdf> accessed 09 July 2017

“Testimony of Karin Wachter, Gender-Based Violence Technical Advisor, International Rescue Committee Before the Subcommittee on Human Rights and the Law Committee on the Judiciary United States Senate” (01 April 2008)
<https://www.judiciary.senate.gov/imo/media/doc/wachter_testimony_04_01_08.pdf> accessed 09 July 2017

The Danish Institute for Human Rights, *The SDG – Human Rights Data Explorer*
<<https://www.humanrights.dk/tools/sdg-human-rights-data-explorer>> accessed 31 December 2019

The Danish Institute for Human Rights, *The Human Rights Guide to the Sustainable Development Goals* <<https://www.humanrights.dk/tools/human-rights-guide-sustainable-development-goals>> accessed 31 December 2019

“The man who mends women. The wrath of Hippocrates: a movie by Thierry Michel & Colette Braeckman” <<http://mukwege-themovie.com/lefilm.html>> accessed 09 February 2019

“The World Bank in DRC” <<http://www.worldbank.org/en/country/drc/overview>>
accessed 29 December 2017

IX. CONGOLESE GOVERNMENT'S REPORTS, POLICY DOCUMENTS, STRATEGIES AND ACTION PLANS

Accord global et inclusif sur la transition en République Démocratique du Congo signé à Pretoria (République d'Afrique du Sud) le 17 décembre 2002 et adopté à Sun City le 1er avril 2003

Gouvernement de la République Démocratique du Congo et l'Equipe Spéciale des Nations Unies sur les enfants et les conflits armés, *Plan d'action pour la lutte contre le recrutement et l'utilisation d'enfant ainsi que les autres violations graves des droits de l'enfant par les forces armées et services de sécurité de la République Démocratique du Congo entre la Gouvernement de la République Démocratique du Congo et l'Equipe Spéciale des Nations Unies sur les enfants et les conflits armés* (04 October 2012) <<https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/101406/122160/F474283417/NT-101406.pdf>> accessed 06 July 2016

Government of the DRC and the United Nations, *Joint communiqué between the government of the DRC and the United Nations on the fight against sexual violence in conflict* (Kinshasa, 30 March 2013) <<https://www.un.org/ruleoflaw/files/Joint%20Communique%20GoDRC%20and%20UN%20on%20the%20Fight%20Against%20Sexual%20Violence.pdf>> accessed 06 July 2016

Ministère du Plan et Suivi de la Mise en œuvre de la Révolution de la Modernité (MPSMRM), Ministère de la Santé Publique (MSP) and ICF International, *Enquête Démographique et de Santé en République Démocratique du Congo 2013-2014* (MPSMRM, MSP and ICF International 2014) <<https://reliefweb.int/report/democratic-republic-congo/deuxi-me-enqu-te-d-mographie-et-de-sant-eds-rdc-ii-2013-2014>> accessed 04 April 2019

République Démocratique du Congo, Ministère du Budget, *Budget 2013. Pouvoir Central : Synthèse des dépenses par administration* (07 November 2012)

<http://www.budget.gouv.cd/2012/budget2013/projet/budget_2013_synthese_par_administration.pdf> accessed 23 January 2017

— — *Budget du Pouvoir Central de l'Exercice 2014. Synthèse par administration* (11 February 2014)
<http://www.budget.gouv.cd/2012/budget2014/vote/depenses/synthese_administration.pdf> accessed 23 January 2017

— — *Budget du pouvoir central de l'exercice 2015: Synthèse par administration* (21 January 2015)
<http://www.budget.gouv.cd/2012/budget2015/vote/depenses/06_synthese_administration.pdf> accessed 23 January 2017

— — *Budget du pouvoir central de l'exercice 2016: Synthèse des dépenses par administration* (19 October 2015)
<http://www.budget.gouv.cd/2012/budget2016/6_developpement_titre_des_credits_exercice2016.pdf> accessed 02 January 2016

République Démocratique du Congo, Ministère du Genre, de la Famille et de l'Enfant, *Politique nationale genre* (July 2009) 34
<<http://www.ilo.org/dyn/natlex/docs/MONOGRAPH/95092/111828/F-1600593133/COD-95092.pdf>> accessed 06 July 2016

— — *Stratégie nationale de lutte contre les violences basées sur le genre (SNVBG)* (November 2009)
<<http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/95106/111851/F-1047853986/COD-95106.pdf>> accessed 06 July 2016

— — *Plan d'action de la stratégie nationale de lutte contre les violences basées sur le genre* (November 2009)
<https://monusco.unmissions.org/sites/default/files/old_dnn/Plan%20of%20Action%2026-11-09.pdf> accessed 06 July 2016

— — *Plan d'Action National de la mise en œuvre de la politique nationale genre* (October 2010)

<<https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/95095/111833/F1922363659/COD-95095.pdf>> accessed 21 January 2017

— — *Enquête qualitative sur les violences basées sur le genre dans les Zones hors conflits en RDC* (2012) < <http://docplayer.fr/33105644-Enquete-qualitative-sur-les-violences-basees-sur-le-genre-dans-les-zones-hors-conflits-en-rdc-1.html> >

accessed 02 May 2019

— — *Rapport national sur la revue et évaluation du plan d'action de Beijing+20* (June 2014) <http://www.uneca.org/sites/default/files/uploaded-documents/Beijing20/NationalReviews/drc_beijing_review_report.pdf >

accessed 05 January 2017

République démocratique du Congo, *Rapport à la commission africaine des droits de l'homme et des peuples relatif à la mise en œuvre de la charte africaine des droits de l'homme et des peuples couvrant la période 2008-2015(11ème,12ème,13ème rapports périodiques) et du protocole à la charte africaine des droits de l'homme et des peuples relatif aux droits des femmes couvrant la période 2005-2015 (Rapport initial et 1er, 2ième et 3ième rapports périodiques)* <http://www.achpr.org/files/sessions/61st/state-reports/2005-2015/rdc_rapport_periodique_2005_2015_fre.pdf > accessed 04 April 2019