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DRC

Submission by:

Dr Ewelina Ochab

International Bar Association's Human Rights Institute

Chancery House 53-64 Chancery Lane

London WC2A 1QS United Kingdom

Email: ewelina.ochab@int-bar.org

I. Introduction

1. This report, produced by the International Bar Association's Human Rights Institute (IBAHRI) and the Coalition for Genocide Response, focuses on the issue of rape and sexual violence and impunity for the crimes.

2. Established in 1947, the International Bar Association (IBA) is the world's leading international organisation of legal practitioners, bar associations and law societies. The IBAHRI works with the global legal community to promote and protect human rights and the independence of the legal profession worldwide.

3. Coalition for Genocide Response is a UK-based charity that works towards a comprehensive response to genocide and other international crimes, engaging the UK, regional and international actors.

II. The Use of Rape and Sexual Violence

4. The use of rape and sexual violence as a weapon of war in the DRC has a long history stemming from colonial occupation. After DRC gained its independence in 1960, sexual violence was included as a method of torture by the Mobutu government but was not prevalent. It is in the mid-1990s that rape became, again, a common occurrence and tool to torture. This wave of atrocities coincides with DRC seeing an influx of foreign, multi-ethnic génocidaires from Rwanda and Uganda, who brought their violent extremist ideology with them and spread crime across DRC, including killings, abductions, rape and other forms of sexual violence. However, while Hutu militants were responsible for some of these atrocities, other actors are not without blame. This violence continued despite the end of the two wars. This ongoing violence was perpetrated by several actors, including M23, a Tutsi-based rebel group supported by foreign governments.

5. The use of sexual violence in DRC continues to this day. For example, in 2020, the United Nations Organisation Stabilisation Mission in the Democratic Republic of the Congo (MONUSCO) documented 1,053 cases of conflict-related sexual violence, affecting 675 women, 370 girls, three men and five boys.[1]

6. Human Rights Watch documented how Rwanda-backed M23 rebels in eastern DRC have committed unlawful killings, rape, and other apparent war crimes since late 2022.[2] Human Rights Watch documented 8 unlawful killings and 14 cases of rape by M23 fighters:

> Survivors reported cases of M23 fighters raping women in front of their children and husbands, which adds to the trauma experienced by victims and erodes the social fabric of communities and families. Gang rapes were reported involving up

[1] See: https://www.un.org/sexualviolenceinconflict/countries/democratic-republic-of-the-congo/.
[2] See: https://www.hrw.org/news/2023/06/13/dr-congo-killings-rapes-rwanda-backed-m23-rebels.

to five assailants. Due to stigma and underreporting by survivors, the full number of incidents of sexual violence by armed groups is most likely much higher.[3]

7. Human Rights Watch recorded the testimonies of women who were subjected to sexual violence. A 22-year-old on the life under the control of M23:

> The M23 harassed people and looted houses. They took what they wanted and took men away. I don't know where they took them…. After two weeks, they started raping women. They didn't care if we were married or not. They came to my house in the evening on February 20. They told my husband to leave. There were seven of them, and five raped me. My husband couldn't stand what happened to me and left me. I had to flee on my own, through the forest.[4]

8. A 28-year-old woman described being gang raped y by M23 fighters:

> After my husband left to go to work, five men came and knocked on my door around 10 a.m…. They said they were M23 and asked me if I was married. I said yes. They all raped me. I screamed but my neighbours were too afraid to come in. (...) I offered them money, but they said no. I asked for forgiveness. But they still held down my hands and legs and raped me until I lost consciousness…. Now I am pregnant, and I don't know whose baby it is. I am so ashamed. Now my husband has left for good.[5]

9. A woman, 37, testified on the abuse she suffered:

> They tore my clothes, I was crying and begging them to kill me rather than rape me. They raped me one by one; I was screaming so much. As the third one was raping me, I lost consciousness.[6]

10. Human Rights Watch further documented six cases of rape by rebels linked to other armed groups, including the Democratic Forces for the Liberation of Rwanda.[7]

11. In May 2023, medical professionals working in eastern DRC reported that sexual violence in the region is 'catastrophic' in scale.[8] Doctors Without Borders/Médecins Sans Frontières (MSF) indicated that during two weeks in April 2023, in camps for displaced people around Goma, the provincial capital of North Kivu, they treated more than 674 girls and women (on average 48 victims per day) for sexual violence.[9] According to their reporting, between April 17 and 30, 2023, MSF teams treated 314 victims of sexual

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[3] Ibid.
[4] Ibid.
[5] Ibid.
[6] Ibid.
[7] Ibid.
[8] See: https://www.doctorswithoutborders.org/latest/witnessing-catastrophic-scale-sexual-violence-north-kivu.
[9] Ibid.

violence in Bulengo, Lushagala, Kanyaruchinya, Eloime, and Munigi camps, and 360 in Rusayo—one of the newest and most densely populated camps, west of Goma.[10] In Rusayo, Bulengo, and Kanyaruchinya, more than half of the survivors reported being attacked by armed men. MSF made it clear that those who seek care for sexual violence likely represent only a fraction of the true number of victims as MSF is not present in all camps. Furthermore, there are many other barriers to seeking care, including stigma.

12. In September 2023, MSF indicated that the poor living conditions in camps make women more vulnerable to sexual violence.[11] As they reported:

> For hundreds of thousands of displaced people living in camps around Goma, DRC, survival is a daily struggle, especially for women. Every day, about 70 women who are survivors of sexual assault visit MSF health facilities in Lushagala, Bulengo, Elohim, Shabindu, Rusayo, and Kanyaruchinya camps. This unacceptable situation requires urgent action.
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> Many of the displaced people living in the camps around Goma have fled their homes due to the resurgence of armed conflict in North Kivu. In the camps, they face overcrowded, unsanitary conditions that add to health needs. Women are often the sole providers for their families, leaving many with no choice but to leave their camp in search of wood and food, exposing them to the risk of violence—particularly sexual violence. Most sexual assaults occur outside camps, to women doing just that.[12]

13. In July 2023 alone, MSF teams at Rusayo, Shabindu, and Elohim camps provided care to 1,500 female survivors of sexual violence.[13]

14. In November 2023, the International Rescue Committee stated that the Eastern DRC has ***'become one of the most dangerous places in the world for women and children.'***[14]

15. In February 2024, the World Food Programme reported on the concerning situation of women and girls in Goma, among others:

> As conflict intensifies, so do the atrocious violations and crimes perpetrated against women and children, notably sexual violence, child recruitment into armed groups and abductions. Women and children in the camps around Goma are subjected to dangerous conditions. The camps are overcrowded, shelters are

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[10] Ibid.
[11] See: https://reliefweb.int/report/democratic-republic-congo/why-sexual-violence-rise-gomas-displacement-camps.
[12] See: https://msf.org.au/article/stories-patients-staff/drc-daily-struggles-women-gomas-displacement-camps.
[13] See: https://msf.org.au/article/stories-patients-staff/drc-daily-struggles-women-gomas-displacement-camps#:~:text=Providing%20care%20for%20a%20growing,Kabore%2C%20MSF%20head%20of%20mission..
[14] See: https://www.rescue.org/press-release/drc-women-and-children-most-risk-following-recent-escalation-violence-warns-irc?fbclid=PAAaZJsQjY4LY0Z_MkaA9zQyoyC4ZmRo_pt5UFZ_RklpCm-ZXdouVlV_oTMEk_aem_AZ0gD98lmtPdI-3SeFZa2M-TwcZtiYOJ5idqAk6XSQZVDYcxj3Pz-Og0YNK99Rkaww.

makeshift, there is no lighting at night and hygiene facilities are inadequate, exposing women and girls to abuse. Additionally, civil protection and security measures are minimal. Outside of the camps, women and girls face sexual violence when travelling in search of income opportunities and firewood for cooking and generating income.

In times of crisis, women and girls suffer. When resources are scarce, women and girls are more likely to be subjected to gender-based violence at home, are denied access to essentials, and are forced to engage in negative coping mechanisms to generate income for the family. Girls are forced into marriage to reduce the number of mouths to feed in the household and to gain income from another household.

Loss of income and high food insecurity can lead to spiking violence, abuse and exploitation of women and girls. The high prevalence of gender-based violence across DRC is an indication of underlying gender inequality and discriminatory gender norms that existed prior to the conflict.[15]

16. In March 2024, Save the Children reported that women and children fleeing deadly violence in the eastern DRC have reported surviving gruesome sexual attacks and genital mutilation by armed men using tree branches, guns, and knives.[16] According to Save the Children, psychologists working with Save the Children's local partners in displacement camps in North Kivu have documented mass events of sexual violence against children as young as nine. As they reported:

> The majority of sexual violence cases in North Kivu happen when survivors are fleeing the escalating fighting between the DRC army, the M23, and many other armed groups, which has forced more than 250,000 people, including about 130,000 children, from their homes.[17]

17. A clinical psychologist with Save the Children's partner organisation, Heal Africa, indicated that:

> What pains me the most is the seriousness of the atrocities being committed. Some survivors tell us several men raped them at the same time, and objects were used on them, such as knives, tree branches, and guns. Others have been raped on numerous occasions, during different armed displacements, return movements or in search of something to eat in their village.
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> These girls are left with unwanted and very high-risk pregnancies. Some survivors, no longer wanting to bear it, have the urge to commit suicide. I work

[15] See: https://reliefweb.int/report/democratic-republic-congo/women-girls-and-protection-crisis-eastern-drc.
[16] See: https://www.savethechildren.org.uk/news/media-centre/press-releases/children-face-mass-sexual-violence-and-mutilation-in-the-drc.
[17] Ibid.

with the survivors, so they know that what happened to them is not their fault. I establish jointly with the person or their relatives, a safety plan to mitigate the risk of suicide.[18]

18. The current wave of violence follows a year of heightened outbreaks of conflict in North Kivu in 2023. The conflict resulted in more than 1 million people being displaced, including at least 500,000 children.

19. Save the Children documented more than 800 cases of sexual and gender-based violence across the provinces of Ituri, North Kivu and South Kivu.

20. It is expected that the above-mentioned numbers are only the tip of the iceberg.

III. Impunity for CRSV

21. As the CRSV in the DRC is ongoing, more needs to be done to ensure that all the crimes are investigated and the perpetrators are brought to justice, both for historic and most recent crimes. However, as it stands, despite some investigations and prosecutions, impunity for CRSV in the DRC is rampant. This ongoing impunity will beget further crime as it sends the outrageous message that one can get away with rape. The international community must work together to combat this impunity, including using the principle of universal jurisdiction to prosecute the perpetrators. Where not possible, targeted sanctions must become the standard response used against every perpetrator. However, at the same time, other options must be pursued until justice and accountability become the norm.

22. Some steps towards justice and accountability have been taken over the years.

23. Among others, mobile courts have been operating in the DRC for more than a decade. Such mobile courts have been bringing judges, prosecutors, and defence lawyers to remote villages to ensure justice and accountability.

24. In 2022, 314 people in DRC, including 71 soldiers and 143 members of armed groups, are said to have been convicted of offences related to human rights violations and abuses, such as sexual violence, according to the United Nations Joint Human Rights Office in Congo (UNJHRO).[19]

25. In February - March 2023, 15 military officers faced proceedings for the rape of minors, before a mobile court in Mangombe, Kamanyola in eastern DRC. 12 were ultimately found guilty of the crimes.[20]

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[18] Ibid.

[19] See: https://www.aljazeera.com/news/2023/3/17/mobile-court-offers-rare-chance-of-justice-for-east-congo-rape-victims.

[20] See: https://www.reuters.com/world/africa/mobile-court-offers-rare-chance-justice-east-congo-rape-victims-2023-03-17/.

26. In May 2023, the Military Tribunal of Uvira sentenced Munyololo Mbao (also known as Ndarumanga), former leader of a faction of the Raia Mutomboki armed group in the (DRC, to life imprisonment for crimes against humanity. Among the charges confirmed by the court is the crime of forced pregnancy, the first ever such a conviction for the crime before a national court. The conviction comes after Ndarumanga was arrested in November 2021, and a judicial investigation by the military prosecutor led to his indictment in August 2022. The crime of forced pregnancy is included in the list of war crimes (pursuant to Article 8(2)(e)(vi)) and crimes against humanity (Article 7(1)(g)) in the Rome Statute of the International Criminal Court (ICC). As per the Rome Statute, forced pregnancy means 'the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law.' The crime of forced pregnancy is grounded in the woman's right to personal and reproductive autonomy and the right to family.

27. As reported by TRIAL International, a non-governmental organisation, during the DRC domestic trial of Ndarumanga, three survivors testified about the crimes they were subjected to. One of them testified that*:*

> After I was kidnapped by Ndarumanga's men in 2012 when I was a minor, I was imprisoned for two years. Ndarumanga himself used me as a sex slave and to cook food. He forced me to have sex many times and made me pregnant twice. I was abused by him and his men when I tried to escape and was forced to give birth to my first child in captivity.[21]

28. TRIAL International supported the efforts to document the crimes of Ndarumanga and assisted in the proceedings.

29. The trial before the Uvira Military Tribunal took place from 8 until 15 May 2023 and heard from dozens of victims and witnesses. The Tribunal found that Ndarumanga was responsible for crimes against humanity by murder, torture, rape, sexual slavery, forced pregnancy, imprisonment and other acts. He was sentenced to life in prison. He was further ordered to pay compensation to all victims. **This is the first time a national criminal court has recognised the crime of forced pregnancy as an international crime and secured a conviction thereto.**

30. Another positive step towards justice and accountability for CRSV in the DRC, although taken by actors other than the DRC authorities, was taken by the UK Government.

31. In June 2023, for the International Day for Elimination of Sexual Violence in Conflict, the UK government imposed targeted sanctions on several individuals involved in

[21] See: https://trialinternational.org/latest-post/drc-conviction-for-forced-pregnancy-and-other-crimes-against-humanity-for-warlord-ndarumanga/.

conflict-related sexual violence in the DRC.[22] The targeted sanctions, the Magnitsky sanctions, include freezing orders and travel bans. An asset freeze prevents any UK citizen, or any business in the UK, from dealing with any funds or economic resources which are owned, held or controlled by the designated person. A travel ban means that the designated person is refused leave to enter or remain in the United Kingdom. Among those sanctioned are two militia leaders in the DRC for violating international humanitarian law by commanding groups to carry out acts of sexual violence, Désiré Londroma Ndjukpa and William Yakutumba.

32. Désiré Londroma Ndjukpa has been involved in violations of international humanitarian law in the DRC, including rape, mass rape and other forms of sexual and gender-based violence, through his role as a leader of the Cooperative for the Development of the Congo. William Yakutumba has been involved in the commission of violations of international humanitarian law in the DRC, including rape, mass rape and other forms of sexual and gender-based violence, through his role as leader of the armed Mai-Mai Yakutumba rebel group. In December 2022, both individuals were also sanctioned by the European Union, among others individuals implicated in serious human rights violations in the DRC, with an asset freeze and a ban on entering European territory.

33. Imposing such sanctions on individuals involved in CRSV is a powerful tool, especially where other avenues for justice and accountability are not available or severely hampered, as in the DRC.

34. Despite some small positive steps towards justice and accountability, the ongoing impunity enables further use of rape and sexual violence in the DRC.

VI. Recommendations

35. In view of the above, IBAHRI and the Coalition for Genocide Response recommend the following to the Government of the DRC:

- To investigate all atrocities perpetrated in the DRC, and in particular, all cases of CRSV.
- To introduce compulsory training to all members of the military on conflict-related sexual violence.
- To invest in general education and public campaigns on the issue of conflict-related sexual violence.
- To provide assistance to victims and survivors of all atrocities.
- To support the establishment of an effective and functional justice mechanism, accessible to all regions, capable of putting an end to impunity and discrimination against victims of crimes of rape and sexual violence.

[22] See: https://www.gov.uk/government/news/uk-sanctions-perpetrators-of-conflict-related-sexual-violence.

- To establish training programs for judges, police officers and all health professionals in contact with victims, in order to support them in their efforts and collect evidence with respect.

- To guarantee that perpetrators of crimes of sexual violence committed in the past or more recently, particularly within the security forces, and regardless of their rank, are prosecuted and convicted, including abroad.

- To recognise victim or survivor status, including for groups of victims in cases of mass rape, and provide victims with access to transitional justice mechanisms, including reparations.[23]

- To establish a national reparations fund managed and funded by the State with overweight from victim/survivor representatives.

- To create a support program for victims, for access to justice (legal and financial support), access to care (a generalisation of the holistic model in all health institutions in the country), and access to activities generating income.

- To establish a consolidated and disaggregated statistical data system (including sex/gender and age) on rape and sexual violence: cases reported to the police and judicial authorities, number of complaints, investigations and prosecutions completed, reparations granted, sanctions, convictions, etc.

- To proceed with the opening and/or reopening of fair and equitable trials for the benefit of all victims of rape and sexual violence.

- To establish a national survivors' day, and consult survivors to choose the most appropriate symbolic day.

- To implement concrete prevention programs, in schools, in its institutions, at all levels, so that gender inequalities, and therefore sexual violence, are no longer tolerated. These programs must include women's rights, but also discussions on masculinities, to escape the model of toxic masculinity which imprisons many men in a system of violence but also of rejection of their wives if she has been raped.

- To urgently take all necessary measures to ensure that the population of the east of the country, in particular, and the entire country, in general, is kept safe. These provisions must include the disarmament of all militias and the acceleration of the reform.

- To work with international partners to establish a truth and justice commission.[24]

[23] On transitional justice, see Appendix A: Pansy Foundation's Holistic National Transitional Justice Strategy.
[24] Recommendations from the Dr Mukwege Foundation.