I. Introduction

1. Physicians for Human Rights is an international human rights organization registered in the Democratic Republic of the Congo (DRC) that uses science and medicine to document human rights violations and support accountability. PHR has worked with partners in the DRC for over 10 years to promote accountability and justice for survivors of conflict-related sexual violence (CRSV).

2. It is estimated that between 250,000–1,000,000 survivors in the DRC have experienced CRSV since the 1990s.[1] Ongoing conflict in eastern DRC has caused significant unrest and instability and led to massive sexual violence (SV). The recent resurgence of violence between non-state armed groups and government forces has displaced nearly 7 million[2] people and more than 90,000 reported cases of SV.[3] This resurgence comes as the United Nations Stabilization Mission in the DRC (MONUSCO) begins a three-phase process of withdrawal from the country (S/RES/2717).[4] While the withdrawal in the province of South-Kivu is set for the end of April 2024, many questions remain unanswered as numerous violations of human rights and international humanitarian law (IHL) are committed.

3. The worsening humanitarian situation and increasing rates of violence against civilians highlight the urgent need for the DRC to fulfill its obligations to support survivors by strengthening systems to prevent SV, combatting impunity, and increasing support for survivors. This submission follows up on recommendations accepted and noted by the DRC during the 3rd cycle of the Universal Periodic Review (UPR) in 2018. Specifically, this submission raises the following concerns:
    a. The humanitarian crisis linked to armed conflicts in eastern DRC.
    b. Access to justice for survivors of grave violations, particularly CRSV.
    c. Access to reparations for survivors of serious crimes of SV as provided for under the law.
    d. The end of the moratorium on the use of the death penalty in DRC.

II. International Legal Framework

4. CRSV is a violation of international human rights law (IHRL), IHL,[5] and international criminal law.[6] DRC is a party to numerous international treaties that obligate the government to investigate, prosecute, punish, and provide remedy - including reparation - for SV, and gender-based violence (GBV) in general, including in conflict.[7]

5. The Geneva Conventions prohibit targeted or indiscriminate attacks against civilians or civilian sites and obligate all parties involved in conflict to take

precautionary measures to minimize harm to civilians.[8] Further, the four Geneva Conventions and their two Additional Protocols implicitly and explicitly prohibit rape as well as other forms of SV as serious violations of humanitarian law in both international and internal conflicts.[9]

6. The DRC has signed and ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which the Committee on the Elimination of Discrimination against Women (CEDAW Committee) has clarified in General Recommendations 19, 30, and 35 prohibits gender-based violence (GBV)[10] including in international and non-international conflict and post-conflict periods.[11]

7. States parties must prevent and redress CRSV, including violence perpetrated by non-state actors.[12] Concerning CRSV, states parties are obligated to include "training and the adoption, implementation and monitoring of legal provisions, administrative regulations and codes of conduct, and for investigating, prosecuting and applying appropriate legal or disciplinary sanctions, as well as providing reparation, in all cases of gender-based violence against women, including those constituting international crimes."[13] The CEDAW Committee establishes that states parties' measures to prevent SV should "provide mandatory, recurrent and effective capacity-building, education and training for members of the judiciary, lawyers and law enforcement officers, including forensic medical personnel, legislators and health-care professionals."[14] Further, the Committee calls on states parties to address conflict-related GBV by adopting gender-sensitive investigative protocols, and taking steps to "develop and disseminate standard operating procedures and referral pathways to link security actors with service providers on gender-based violence, including one-stop shops offering medical, legal and psychosocial services for SV survivors, multipurpose community centers that link immediate assistance to economic and social empowerment and reintegration, and mobile clinic."[15]

8. IHRL recognizes that women in conflict-affected areas face heightened risks of SV, sexually transmitted infections, and unplanned pregnancy due to CRSV as well as disruptions in access to essential services. Even during conflict, states parties are obligated[16] to provide basic health services and information, including sexual and reproductive health, family planning, maternal health, and contraceptive services. Further, IHL requires all parties to a conflict to respect the protection, health, and assistance needs of women affected by armed conflict and establishes special protections for medical personnel and facilities to ensure the functioning of health care throughout a conflict.[17] Civilians in conflict areas have the right to receive humanitarian aid, including medical and other supplies essential to survival.[18] IHL allocates primary responsibility for meeting civilian needs to the state or party that controls the territory in which the civilians are located.[19]

9. Survivors of human rights violations, including specifically survivors of SV have a right to reparation.[20] The CEDAW Committee has stated that following conflict, "State parties obligations also require them to ensure women's right to a remedy, which encompasses the right to adequate and effective reparations for violations of their rights under the Convention."[21] In particular, states parties must "ensure funding for reparations to all victims/survivors" of GBV.[22]

10. While accountability for SV is a state obligation, it is important to note that human rights law condemns use of the death penalty as a deterrent for human rights violations. The death penalty is inconsistent with the rights to life and to live free from torture or cruel, inhuman, or degrading treatment or punishment[23] and the U.N. continues to encourage States that have not abolished the death penalty to adopt a moratorium with the goal of abolition.[24] The U.N. Human Rights Committee in General Comment 36 has called on states to avoid retrogression on the death penalty, noting that states parties "may not transform into a capital offence any offence that, upon ratification of the Covenant or at any time thereafter, did not entail the death penalty."[25] Furthermore, the African Charter on Human and Peoples' Rights upholds the inviolability of life.[26]

III. National Legal Framework

11. The DRC has enacted laws to comply with its international legal requirements listed above. Regarding the fight against SV, the DRC had taken innovative measures through its reform of the penal code,[27] the code of penal procedure,[28] and later the law on judicial organization and jurisdiction.[29] To enable better implementation of the Rome Statute, three harmonization laws were passed modifying and supplementing the military penal code (15/023),[30] the penal code (15/022),[31] as well as the penal procedure code (15/024).[32] In addition, in 2020 the DRC revised and validated the National Strategy to Combat Gender-Based Violence and the Action Plan to Combat Gender-Based Violence in 2020, expanding the definition of GBV to include domestic violence and SGBV in humanitarian settings.[33]

12. The DRC adopted Law No. 22/065 in 2022 which establishes the fundamental principles relating to the protection and reparation of victims of CRSV and victims of crimes against the peace and security of humanity. However, this measure has not yet resulted in reparations for many survivors. In 2022, the DRC received the first instalments of 65 million USD from Uganda in reparations following an International Court of Justice ruling that Uganda had violated IHL during conflict in the DRC between 1998 to 2003.[34] The ICJ award of $225 million to the DRC was for loss of life, rape, recruitment of child soldiers, and displacement of civilians.[35] Despite the long-awaited reparations,

the DRC has yet to share a public plan for how it would disburse reparations to survivors.[36]

13. Regarding the death penalty, the DRC had observed a de facto moratorium[37] that was not enshrined in any legal text. Separately, SV crimes were considered exempt from the death penalty under the amendments to Article 170 of the Criminal Code, adopted in 2006.[38] However, a circular note from the Minister of Justice on March 13, 2024, lifted the moratorium and recognized that the punishable crimes include war crimes and crimes against humanity,[39] of which SV may be a constituent act.

IV. Humanitarian Needs and Prevention

14. During its previous UPR, the DRC accepted over 25 recommendations concerning SV, including specifically to:
    a. Provide adequate support and services to the victims of SGBV, especially women and children.
    b. Allocate adequate funds to the health sector to allow for better care in services relating to SV.
    c. Take all necessary measures to prevent SGBV in conflict-affected provinces.

15. Since the 2019 UPR, however, CRSV has persisted; the DRC suffers some of the highest levels of SV in the world, particularly against children.[40] There is an urgent need for targeted medical and psychosocial support for SV,[41] as health care workers in North Kivu have documented SV against children as young as nine years old and are seeing survivors nearly every day who are facing unwanted pregnancies, health complications, stigma, and suicidal thoughts.[42] Displaced women and girls are at increased risk of SV, particularly as women must venture farther from camps for supplies, increasing their risk of isolation and violence.[43] Healthcare workers in the Bulengo camp in North-Kivu are seeing 5-7 survivors of SV per day.[44] OCHA estimates that a staggering 685,000 people in DRC are at risk of GBV and will require specialized care in 2024.[45] While the national protocols for the care of survivors of sexual violence call for a comprehensive approach, there is a lack of coordination amongst the actors involved in these responses due to lack of training, staff shortages, and lack of resources. These circumstances impede the application of even the minimum standards of care for survivors of sexual violence.[46]

16. The humanitarian crisis in eastern DRC is exacerbated by continuing violence that prevents humanitarian agencies from delivering essential assistance to isolated populations in Masisi territory and Rutshuru.[47] Further, UNHCR has received reports of bombs falling on civilian areas in Sake and Goma, where an estimated 65,000 internally displaced persons (IDPs) are sheltering, prompting "significant concerns" for their safety.[48] UNHCR has stated that the presence of

unexploded ordnance poses a particular threat to children and that since the first week of February 2024, at least 15 civilians had been killed and 29 injured around Goma and Sake.[49]

17. **Recommendations to the DRC:**
    a. Immediately adopt measures to prevent CRSV by ending hostilities as committed to in the Luanda Process and the East African Community (EAC)-Led Nairobi Process,[50] ensuring that armed forces and police forces, as well as various armed groups involved in the hostilities, do not engage in SV, and by referring the perpetrators of these crimes to the appropriate courts to combat impunity.
    b. Strengthen oversight mechanisms to prevent sexual violence, and address risk factors for sexual violence in camps such as lack of food and other humanitarian supplies.
    c. Take all measures to prevent SV and establish conditions to enable IDPs to return to their living environments, including multisectoral coordinated care for survivors, emergency humanitarian aid and community recovery.
    d. Support survivors who wish to report CRSV and carry out geographic mapping of where violations have occurred to ensure coherent, effective, and efficient holistic response.

18. **Suggested questions to be posed:**
    a. What measures are the DRC taking to enhance coordination among national and international actors to ensure access to medical supplies, food, and other humanitarian relief for vulnerable populations?
    b. What measures are the DRC taking to promote adherence by all parties to IHL and the national prohibition on international crimes to prevent SV and ensure the adequate protection of medical facilities and IDP camps?

V. Accountability

19. The DRC accepted all 2019 UPR recommendations from member states calling for positive steps to prevent SV and combat impunity for perpetrators, including to:
    a. Increase measures to address SGBV.
    b. Strengthen mechanisms to combat impunity including by building the capacity and independence of the judicial system to investigate and prosecute perpetrators of SGBV and providing effective and necessary support for victims.[51]

20. Since then, the DRC has taken positive steps to address impunity for perpetrators of SV, including the validation of the revised National Strategy to Combat Gender-Based Violence and the Action Plan to Combat Gender-Based Violence in 2020. This revised strategy aims to eradicate all forms of SV against

women and provides a comprehensive framework for prevention of this violence and support for survivors.[52]

21. Enhancing tools and multisectoral training for forensic documentation is crucial for survivors' access to justice and combating impunity. The DRC should be commended for its adoption in 2021 of the Forensic Evidence Certification Sheet, which is a pivotal tool designed for high quality, trauma-informed forensic data collection based on international best practices.[53] However, despite the validation and widespread use of the Certification Sheet by professionals in DRC after over 10 years of development, the Ministry of Health has been slow to organize its national distribution. The absence of a user guide and a national capacity development plan for professionals implementing these forms remains a significant barrier.

22. **Recommendations to the DRC:**
    a. Mobilize resources to support clinicians, law enforcement, and legal officials to provide services to affected populations, including the documentation of forensic evidence of SV crimes, and work to remove the barriers to access to urgent care.
    b. Adopt and rollout a guidance document for clinicians clarifying the proper use of tools for forensic data collection, including the Forensic Evidence Certification Sheet,
    c. Increase capacity of medical, law enforcement, and legal actors to document forensic evidence of SV, by validating a national continuing education curriculum on the proper collection, conservation, and documentation of forensic evidence.

23. **Suggested questions to be posed:**
    a. What measures are being taken to improve access to survivor-centered and trauma-informed documentation practices for survivors of SV?
    b. How many medical professionals in the DRC have been formally trained in the collection and documentation of forensic evidence and in the use of the Forensic Evidence Certification Sheet?
    c. What measures are being taken to develop and adopt a guidance document for the Forensic Evidence Certification Sheet?

VI. Reparations and Justice

24. In its 3rd UPR in 2019, the DRC accepted several recommendations to support transitional justice and survivor support services, including:
    a. Implementation of mechanisms of transitional justice including justice, reparations, and reform.
    b. Creation of support programs to give survivors access to reparations, including a national reparation fund.

25. As noted above, the DRC adopted Law No. 22/065 in 2022 on reparations for CRSV. This law includes the creation of The National Fund for the Reparation

of Victims to support access to justice, reparation, and community recovery for victims and their dependents. PHR applauds the DRC for the adoption of Law No. 22/065, but issues of victim identification and lack of transitional justice mechanisms[54] could impede its effective implementation. To date, no survivors of CRSV in the DRC have received formal reparations.[55] In addition, in 2022 the DRC launched a series of national consultations to inform the government's transitional justice policy.[56] While a framework bill on transitional justice was drafted following these consultations, the DRC has yet to formally adopt the law.[57]

26. **Recommendations to the DRC:**
    a. Prioritize the development of a policy for the National Fund for the Reparation of Victims to make the identification of survivors who are eligible for reparations more effective and secure, including the digitalization of medico-legal documentation.
    b. Building upon the national consultations held throughout the country, the DRC should adopt a binding legal text to support the implementation of transitional justice mechanisms which have thus far remained dormant.

27. **Suggested questions to be posed:**
    a. What measures are being taken to develop a comprehensive policy on victim identification?
    b. What transitional justice mechanisms, alongside reparations, are being considered to provide a more coherent and comprehensive response to conflict in the DRC?

VII. The Death Penalty

28. PHR notes with concern that the DRC Ministry of Justice on March 13, 2024 announced the decision to resume executions for certain crimes following a 21-year moratorium on capital punishment.[58] The punishable crimes include war crimes, potentially including SV and crimes against humanity, among others. While PHR notes the DRC's motivation to discourage crime amidst the escalating crisis,[59] data continues to show that capital punishment does not effectively deter crime.[60] The end of the moratorium of the death penalty is a retrogressive step in accountability in DRC and would constitute cruel and inhumane punishment.[61]

29. **Recommendations to the DRC:**
    a. Reinstitute immediately the moratorium on the death penalty and work towards permanent abolition of the death penalty.
    b. Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) aimed at the abolition of the death penalty.[62]

30. **Suggested questions to be posed:**
    a. What steps are being taken to abolish the death penalty, as required under IHRL?

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