

## **GENDER INEQUALITY AND SOCIAL INSTITUTIONS IN THE D.R.CONGO.**

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### **BACKGROUND INFORMATION**

The analysis of the current context in the Democratic Republic of Congo (DRC) makes obvious **the existing persistence gender imbalance** in all the domains of economical, social, cultural and political development<sup>1, 2</sup>. Congolese women constitute 53% of the DRC population: their visibility and contribution to food security for the survival and running of the Congolese society is undeniable and internationally recognised<sup>2, 3, 4, 5</sup>.

However, studies and recent investigations show that the position of Congolese women in several domains of national life remains preoccupying low in comparison with men. Access of women to decision making tables, as well as to national economical resources and production factors remains very limited<sup>1, 2</sup>. The situation has deteriorated in latter years with the negative effects of wars in repetition, to the current persistent insecurity. In fact, 61.2% of Congolese women live underneath the poverty threshold against 51.3% of men, while 44% of women cannot attain economical timeliness<sup>1, 2, and 4</sup>.

Furthermore, in the DRC, the situation of gender-based violence; particularly domestic violence on women and young girls is very worrying. Collected national data on various forms of **Violence Against Women (VAW)** demonstrates how it strongly **correlates with under-development** (human, economic, social and infrastructure). These statistics show how women are vulnerable, and they illustrate the numerous abuses committed by men against women because of the dominant position conferred to men by the society and the inferior status of women in the DRC<sup>6</sup>.

### **LEGAL FRAMEWORKS**

The Democratic Republic of Congo ratified international legal instruments notably the Universal Declaration of Human Rights, which dedicates the principle of equality between men and women in its first two articles<sup>7</sup>. The DRC established the Ministry of Advancement of Women in 1980 and ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1986<sup>8</sup>. The preamble of the 2006 promulgated DRC Constitution upholds the principle of equality between men and women<sup>9</sup>. The articles 5, 14 and 15 set up the foundations of legitimisation of any policy of equality and equity in the RDC.

Article 14 of the Constitution provides that “the State shall have the duty to ensure the elimination of all forms of discrimination against women and ensure the respect and promotion of their rights.” The State must “take measures to address all forms of violence against women in public and private life”, and assure the “full participation of women in the development of the nation” particularly guaranteeing the “right to significant representation in national, provincial and local institutions”. The State must guarantee the application of the principle of parity between women and men in these institutions, by regulating the application of these rights<sup>9</sup>.

The DRC is also signatory to various international and regional legal frameworks specific for the protection women and young girls's rights, including the Convention on the Rights of the Child<sup>10</sup> and the Rome Statute of the International Criminal Court<sup>11</sup>. The DRC state adopted the "Solemn Declaration on Gender Equality in Africa" in 2004 thus proposed to monitor on gender mainstreaming<sup>12</sup>. The DRC has recently, in 2009, ratified the Protocol on the Rights of Women in Africa<sup>13</sup>. The DRC also signed the SADC Protocol on Gender and Development<sup>14</sup>, a legally binding agreement compelling to hasten efforts towards gender equity in the country.

However, all these legal frameworks are not having an impact on the lives of women, as **the law is not often implemented, and only sometimes applied for those who could afford to pay to enjoy their rights**. The DRC constitutional frameworks and mechanism for the advancement of women remains extremely weak<sup>15, 16</sup>. The DRC sends reports to the CEDAW Commission<sup>17</sup>; however, despite several key reforms provisions contained in the DRC Constitution and various recommendations, by the CEDAW Committee, the Congolese legislation remains contradictory and discriminatory towards women on many different levels. The last recommendations received from the CEDAW committee since the 2006 report, are still yet to be addressed. Women remained disenfranchised from the political and judicial systems. Discrimination is particularly obvious in the area of ownership, labour, education, political and socio-economic rights<sup>16, 18</sup>.

## **1. LABOUR RIGHTS**

Regardless of their 53% representation in the population<sup>2,3</sup>, and that the right to employment is constitutionally recognised for all<sup>9</sup>, **women only constitute 2, 8% of state waged employment/activities against 12% of men in the DRC**. Opportunities for women have generally been limited. They are underrepresented in the formal workforce, especially in higher-level positions, and generally earn less than their male counter-parts in the same jobs<sup>1, 2, 15,16</sup>. Married women's lack any lawful capacity to independently sign legal contracts as by law; they needed their husband's permission to work, to open a bank account, to obtain credit, to start a business or to travel. Furthermore, many women are often illegally denied pensions and right of inheritance, particularly widows<sup>15,16</sup>.

## **2. POLITICAL RIGHTS**

At the national level, clearly in the texts, the DRC legislation protect women's political rights and states that women have the right to equitable representation within the national, provincial and local institutions. Furthermore, **the parity law was established in the 2006 Constitution**<sup>9, 19</sup>. The DRC adopted Solemn Declaration on Gender Equality in Africa<sup>12</sup> and the UN SC RES 1325<sup>20</sup>, therefore should provide space for women participation and representation in conflict prevention, peace building, consolidation of peace and reconstruction of the DRC. However, during the development of the electoral law, which entered in force on the 9<sup>th</sup> March 2006<sup>9, 22</sup>, the Congolese legislature developed a contradictory provision by making it possible for political parties not to ensure the representation of women in their lists<sup>15,16</sup>.

Article 13.3 of the DRC electoral law stipulates that “each political party’s list is established in consideration of the equal representation between women and men, and the promotion of handicapped persons<sup>9, 19</sup>. However, in article 13.4 it is added that “the non-realisation of equality between men and women during the upcoming elections does not make the list inadmissible<sup>9, 15, 16, 21</sup>. Article 13 lacks coercive or incentive dispositions in the incorporation of women in useful position in the electoral roll. Therefore, inequalities and disparities between women and men in politics remain high<sup>1, 15, 19, 21</sup>.

**Congolese women are not effectively represented and have never participated in the governance of the country since 1960, year of the independence of the country.** No woman has ever been a head of state or head of government (prime minister), neither head of armed groups<sup>15, 16, 19</sup>. Several obstacles further make women’s participation in the electoral process more difficult than men’s. These obstacles include cultural factors such as deficit of civic duty, practical obstacles such as family responsibilities or even the fear to compete with men, physical security-related fears and economic obstacles that make access to infrastructures difficult, as well as a high level of ignorance<sup>15, 16, 19</sup>.

Although women constituted 63 % of the DRC electorate and were extensively mobilised as a propaganda tool during the 2006 National Election, however the current overall representation of women is only 7.2% in the high positions of recently established institutions (parliament as well as in the government)<sup>15, 19, 21</sup>. The DRC government, national assembly and major institutions are largely run by men. Furthermore, many of the organisations that characterise the DRC civil society are run by men. Ironically, there are even organisations that provide service for women that are run by men in the DRC<sup>15</sup>.

Currently there is no woman member of the office of the Senate and there is only one single woman among the seven members of the office of the National Assembly. Out of the 108 Senators, there are only 6 women of which only one is the chair of a commission (on socio-cultural affairs). There are 43 elected women out 500 elected members of the DRC national assembly. Out of the 45 members of the Government, there are only 5 women of which 4 ministers and 1 vice minister. There is no woman Governor or Vice Governor of the 11 current Provinces of the Republic<sup>1, 2, 15, 19, 21</sup>.

The analysis of provincial repartition of female parliamentarians reveals that it is in the province of Kinshasa that the proportion of women is the highest (17 %); followed by the southern province of Katanga (13 %). The Provinces with the least proportion of female parliamentarians are the Bas Congo (8 %), Kasai Occidental (7,5 %), Kasai Oriental (5 %), Equateur (5 %) and the eastern province of South Kivu (3 %)<sup>15, 19</sup>. The province of Maniema with the influence of Islam and the worst form of retrograde patriarchy counts no female parliamentarian, and is the least developed province in the DR Congo. This weak provincial representation of Congolese women at the level of the National Assembly could be explained by several factors among which notably socio-cultural retrogressive traditions, religion, the high rate of illiteracy of women due to low access to higher education and extreme poverty<sup>6, 15, 19</sup>.

### **3. FAMILY CODE:**

**The DRC Family Code organises marital life on a discriminatory basis.** Married women have a low degree of protection in regard to family matters. Law n°87/010 of the family code, accounts in its first paragraph: « *the present law aimed at unifying and at adapting rules which touch the rights of the person and the family to the Congolese mentality* ». Moreover, article 215 limits the autonomy of the wife. Article 444 says that the man is the head of the household and the woman must obey him<sup>9,16,23</sup>.

In theory, spouses equal parental authority with regards to rights and responsibilities in matters relating to their children. However, in article 448 of the family code, married women must obtain authorisation from their husbands for any legal act, which clearly limits their capacity to independently fulfill activities associated with parental authority<sup>9</sup>. Moreover, the primacy of the father is clearly established where there is a difference of opinion or dispute<sup>9,16,23</sup>. These laws are in contradiction with CEDAW article 15.1 which requires States Parties to grant women equality with men before the law<sup>8,16,18</sup>.

Furthermore, if the husband is deemed absent by a court or if he dies, the wife must share the running of the household with one of her husband's relatives<sup>15,16,23</sup>. Concerning inheritance rights, article 758 gives preferential treatment to the children of the deceased but does not discriminate between women and men within the second category of heirs<sup>9</sup>. However, following the death of a husband, in many tribal traditions; wives must share the running of the household with a male relative of the deceased – in part to compensate for women's lack of ability to sign legal acts. In many cases, the property and several items are confiscated from the widows<sup>15,16,23</sup>.

**Early marriage is a common practice** and an estimated 74 percent of women between 15 and 19 years of age are married, mostly in rural areas<sup>6,15,16,23</sup>. The legal minimum age for marriage is 15 for women and 18 for men<sup>16,23</sup>. As a result, the incidences of early marriage of girls as young as 13 years old, particularly in rural areas, are very common. These children are forced to enter into sexual relationships with men as old as 65 years old to ensure their wellbeing and that of their family without any provision for education<sup>15</sup>. Furthermore, it is estimated that 20% per cent of rural girls between 15 and 19 years old of age are mothers, either married, single, divorced or widowed<sup>2,15</sup>.

The official matrimonial system in DRC is monogamy; **however polygamy is widely practiced by men in total impunity**, due to poverty and demography; women being a majority. A phenomenon known as the “deuxième bureau” (literally, the “second office”) has developed, whereby a married man enjoys extramarital relationships with several women. The women consider themselves to be genuine spouses, engage in this practice act and consider themselves to like legal spouses, and may even carry the identification cards of married women. They do not, however, have the legal status of a wife<sup>15,23</sup>.

The “*deuxième bureau*” phenomenon is particularly common among rich men and Congolese politicians, particularly the highly educated elites. Although the phenomenon is seen by some Congolese women as well as their family as a form of ensuring their overall wellbeing and material gain, nevertheless it is **a form of institutional prostitution as the woman is been given to the richest man**, and can sometime be sent abroad to marry a man that she has never met but who could guarantee her and her family material gain. However, polyandry is a crime; if a married woman commits adultery, she is legally given a more severe penalty than an man who has committed adultery<sup>15,23</sup>.

#### **4. PHYSICAL INTEGRITY:**

The DRC is subject to both international and domestic legislation regarding women’s rights and the physical protection of women. The DRC’s domestic framework includes several structures and laws to address Violence against women (VAW). Article 15 of the DRC constitution state that authorities shall take care in the elimination of any form of sexual violence used as a weapon of destabilization or of dislocation of the family<sup>9,16</sup>.

In 2006, the transitional parliament approved a new sexual violence law, which broadened the definition of rape to include male victims. Laws 06/018 and 06/019 set out the modalities for the implementation of the above mentioned rights, thus amending and complementing the Code and Congolese Criminal Procedure through the integration of the rules of international humanitarian law on sexual violence offences. This represents considerable progress given that before the adoption of the new laws, the Congolese Criminal Code did not define rape and described as indecent assault any form of sexual violence without penetration<sup>9,16</sup>.

To date, the amendments made to the new sexual violence law, inter alia, include male rape victims, clarify the offence of sexual violence and define new forms of violence liable to criminal sanctions. **The law criminalises rape and also addresses sexual slavery, sexual harassment, forced pregnancy**, and other sexual crimes not previously covered by law<sup>9</sup>. Rape is punishable by a prison sentence of five to twenty years, and indecent assault is punishable by prison terms between six months and twenty years, depending on the age of the victim and whether violence, ruse or threat was used<sup>9,16</sup>.

However, the current situation of gender-based violence continue to be extremely worrying in the DRC. **Violence Against Women is widely spread<sup>6</sup>, particularly domestic violence and sexual violence with rape in the marriage, being common in the DRC<sup>6,15</sup>**. Recent obtained statistics reveal that about 1,100 cases of sexual violence are documented each month in various health zones, which amounts to on average 36 victims a day. The most affected population is comprised of girls aged between 10 and 17, although 10% of the victims are less than 10 years old<sup>24</sup>.

Furthermore, up to this date, there are no known official statistics, provided by either the DRC government or local institutions, on the national extent of this kind of violence. It is reported that the police rarely intervene in domestic disputes<sup>6,15</sup>. **Furthermore, violence against women has been exacerbated by armed conflicts since 1997<sup>2,6,15</sup>. The increased in the cases of sexual violence is proportionally linked to the armed conflicts in the DRC and the subsequent climate of insecurity and impunity<sup>2,6,15,25,26,27</sup>.**

Laws protecting the physical integrity of women in the DRC are rarely implemented. **The government has not demonstrated political will to effectively enforce these laws<sup>15</sup>. Therefore the DRC national institutions have failed in their responsibility for bringing perpetrators of sexual violence and other human rights violations to justice, mainly due amnestied crimes, weak judicial system and poor infrastructure.** There is a lack of political will in the judiciary regarding the 2006 laws on sexual violence, and interference by the executive and or judiciary powers in judiciary matters. Victims and experts have cited widespread impunity as the main reason for the continuation of sexual violence<sup>15,28</sup>.

Although current national statistics of Sexual Gender Based Violence are difficult to confirm, nevertheless from available reports of victims' point of view, the major challenges to overcome are ignorance of the law, geographic distance, and lack of financial resources to facilitate access to justice, fears for reprisal. Broad dissemination and sensitisation of the law on sexual violence is the first step in a strategy designed to protect victims and to put an end to impunity<sup>15,28</sup>. The community therefore adopts a major role in accompanying, whistle blowing, securing, fighting stigmatisation and installing counseling offices for the victims in collaboration with justice<sup>15</sup>.

In DRC, women and children are the most affected by the conflict. It is estimated that nearly 75% of refugees and internally displaced populations (IDPs) are women and children. Women are victims of physical and sexual assaults during the war<sup>2,15,28</sup>. It is estimated that over 250,000 were raped or sexually mutilated during the conflicts, including up to two thirds of girls and women between the ages of 10 and 30 in eastern DRC<sup>15</sup>. Furthermore, other severe types of violence emerged, such as rape with extreme violence with penetration of sharp objects<sup>29</sup>, amputation of limbs, decapitation, and live burials of women<sup>15,26,27</sup>. It has also been suggested that 70 percent of these attacks were part of a coordinated strategy of war, including contamination with HIV AIDS<sup>30,31</sup>. In a report published in 2002, Human Rights Watch noted that **sexual violence was used as a weapon of war and intimidation<sup>30</sup>.**

In 1998, the WHO provides figures of recorded cases of sexual violence since the beginning of the war in 1997: 25000 in the South Kivu Province; 11350 in the Maniema Province; 1625 cases in Goma; and 3250 cases in the southeastern town of Kalemie. According to Panzi General Hospital's director, Dr Denis Mukwege Mukengere, the hospital in Bukavu, South Kivu's capital admits at least ten victims of sexual assault daily, an average of 3,600 cases a year. Since 2000, an estimated 16,000 victims of rape, many suffering from obstetric fistula, have been treated at the hospital<sup>30,31,32</sup>.

In 2003, Médecins Sans Frontières-Suisse has noted that between 30 and 500 patients reported sexual assaults every month in Ituri. Between June 2006 and May 2007, UNICEF identified nearly 13,000 survivors of sexual violence in the eastern Congo of whom 33 percent were children. The United Nations Population Fund (UNFPA) estimated the occurrence of 350 rape cases a month in North Kivu alone during 2007, with a third committed against children under 18<sup>30,31,32</sup>. Further statistics collected by the UNFPA showed that 3,060 cases of sexual violence principally against women were reported in the North Kivu and 515 in the South Kivu, for the early period of the year 2008<sup>30,31,32</sup>. From a study of 10,381 survivors of violence recorded by UN partners in the East of the RDC up to June 2007, 37% were children<sup>33</sup>. There is also an increase of reported cases in the Bas Congo and Bandundu, near the border with Angola<sup>15</sup>. Furthermore, insecurity and violence to women has reached the west of the country, as studies show that from October 2006 up to October 2007, the St Joseph Hospital of Kinshasa received 209 cases of victims of sexual violence, in average 24 cases a month<sup>34</sup>.

The law forbids the practice of female genital mutilation (FGM). Although it is not widespread, nevertheless it is practiced on young girls among isolated groups in northern parts of the country<sup>15</sup>. The government campaigns have reportedly addressed the problem<sup>35</sup>. The WHO reports that about 5% of women in DRC undergo FGM. The population sex ratio in DRC has been stable for the past 50 years, suggesting the low concern with regard to missing women<sup>2</sup>. However, trafficking of women is often linked to local or international prostitution, particularly in cases of marriage abroad<sup>15</sup>.

## **5. SOCIO-ECONOMIC RIGHTS**

The DRC has a myriad of international and domestic legislation regarding women's socio-economic rights. However **the current socio-economic situation of the DRC is characterized by the feminisation of poverty**. This is accentuated by the absence of policies and mechanisms for the promotion of women and the persistence usages of discriminating practices on women<sup>15,36</sup>.

In spite of the weak female economic power due to several factors such as poverty, the lack of access to lands, lack of estate property, lack of access to appropriate technologies, their marginalisation in the macro-economic sector, as well as insecurity in rural areas following armed conflicts, Congolese women are true agents of development. **Thanks to their small income generating activities, they have been significantly contributing to the survival of their families and the whole DRC nation**. However, taking into account the low rate of female access to basic social welfare (healthcare, education, accommodation, water and electricity), human development indicators demonstrate that the DRC would not meet the targets of the Millennium Development Goals by 2015<sup>15,36</sup>.

## **6. OWNERSHIP RIGHTS:**

DR Congo law is weak in terms of supporting financial independence for women. As mentioned above, married women do not have the legal capacity to sign certain acts and contracts without the consent of their husbands. Women have very limited access to land. By law, **the right to lands or concessions can be given to men and women without distinction but traditional attitudes and customs that discriminate against women remain strong in this area** <sup>15,16,36</sup>.

Legally Married women in DR Congo do not have access to property or lands, since everything must be administered by their husbands. Moreover, they must seek a court order to prevent mismanagement of property, should such a situation arise. Similarly, as Congolese wives cannot sign any legal acts without the authorisation of their husbands, they have virtually no access to bank loans and bank accounts. However single women and wealthy married women have access to bank loan and bank account. There are very few sanctions when married women break this law as it is widely tolerated now <sup>15,16,36</sup>.

## **7. CIVIL LIBERTIES:**

By law, Congolese women have full civil liberty. There are no restrictions on the freedom of movement, expression or association for men and women. However, with regard to the conjugal domicile, a married woman is legally obliged to live with her husband and to follow him wherever he sees fit to reside. Married women were also legally demanded to seek permission of their husband before traveling <sup>9,15,16</sup>, contradicting the UDHR of 1948.

Although there is no reported limitation to women's freedom of dress; **it is reported that female parliamentarians are not allowed to wear trouser during the sessions at the DRC National Assembly. Ironically this is amongst the first laws that were passed in the national assembly; while Congolese people were expecting their MPs to debate on important matters for peace, security and survival** <sup>15</sup>. Women lose their Congolese nationalities if they marry a foreign national. The children of a Congolese woman were not guaranteed the Congolese nationality if they were born from a foreign man even in the territories of the DRC <sup>9,16</sup>. However children from foreign woman have automatically the Congolese nationality if born from a Congolese man even abroad.

According to international texts, primary Education must be free, however this is not the case in the DRC, due to the political, economic and social situation. Children's education is seriously affected, particularly that of girls; who can be forced to exploit their bodies <sup>15</sup>. An "All Girls at School" campaign, initiated by UNICEF, failed to reach its objectives, probably due to the retrograde patriarchal mentality and lack of resources allocated by the DRC government. Furthermore, **the government often fails to address the issues of sanitary pads in the DRC national budget to meet the menstrual biological need of girls. Therefore, many young girls miss up to 1 week of school per month, leaving their education to fall behind that of boys** <sup>15</sup>.

Insufficiency of education for Congolese girls and women contributes to ignorance and absence in the decision-making processes. Although many non-governmental organisations have set up centers for the elimination of illiteracy of Congolese women, without State support, female illiteracy rate is very high<sup>15</sup>. Congolese women are also more expected to provide daily survival. They are also expected to care for children, sick parents or husband than men; however nobody cares for women<sup>15</sup>. Due to poverty and a lack of provision legal aid and social benefit by the DRC state, Congolese Women are also expected to get education for themselves as well as defend themselves against discrimination and exclusion. Moreover, the work of women is extremely dependent on the question of child care. However the DRC State does not include a provision to address this issue in the DRC annual budget<sup>15</sup>.

It also worth mentioning the influence religion plays in gender inequality in the DRC. Although many catholic schools, particularly those for girls have contributed significantly in the advancement and scholarisation and instruction of young girls; however, it is worth outlining that **the religious system and hierarchy is male dominated, hence it patriarchal nature is not favouring the advancement of women in the Congolese society**<sup>15,36,37</sup>. It worth stressing that several leaders of Congolese women's NGOs claims that **the role of women in the Congolese society has gone from full participation in the pre-colonial period, to marginalisation during the colonial period to complete exclusion during the post-colonial period**<sup>15,36</sup>.

## **8. GENDER, DEMOBILISATION AND DISARMEMENT**

The DRC adopted the United Nations Resolution 1325 (2000) on Women Peace and Security. In it paragraph 13; it encourages all those involved in the planning for disarmament, demobilization and reintegration to consider the different needs of female and male ex-combatants and to take into account the needs of their dependants<sup>20</sup>. Although no female has ever lead the army or armed groups in the DRC, nevertheless **women and girls were associated to various armed forces and groups in the DRC wars, at a different level or degree**<sup>15,38</sup>. However, the exact number of women and girls who were actively involved in the armed conflicts is not known as the National DDR document did not indicate a specific breakdown of the estimated numbers of women and girls it would cater for. Nevertheless, it is estimated that 5% of the total number of combatants, in the National DDR Programs, to be females, but again the numbers of women and young girls are not indicated<sup>15,38</sup>.

**Women took part in armed conflicts next to men under several categories: women Combatants, Women and girls linked to Force and Armed Groups such as arms carriers' holders, nurses, healers, slaves sexual, brides by force, cooks, spies, etc. Nevertheless women remain outside of the DRC DDR process programs.** The various criteria established by different DDR programs are often tainted with a fuzziness which is detrimental to the women<sup>15,38</sup>. The gender analysis in the DDR programs process is not only about the inclusion of the women: it is rather a process to better access the composition of the Congolese society. It also allows developing a legal frame to standardise operational procedures and programs of actions in respect to the real needs of the population, in order to facilitate reconstruction of a fair and equal society.

## **8. CONCLUSION**

For more than 4 centuries, women of the big Congo River Basin, are objectified and dehumanised by violence and poverty maintained by a system of oppression and exploitation that uses militarism, retrograde patriarchy, violent masculinity and misogyny. **Congolese women are denouncing these crimes and are resisting all forms of violence against women and young girls in the DRC that are maintaining their country underdeveloped.** They no longer want to remain silent, survive in fear, be ignorant, raise their children in despicable poverty and leave their offspring to die of hunger, malnutrition, controllable diseases or to become delinquent / armed outlaws dehumanised by militarism or living exploited in fear.

This report contributes therefore to break the heavy silence and pays great tribute to numerous surviving and dead Congolese women; particularly the victims of armed conflicts. This compilation of information was undertaken to update the OECD<sup>39</sup> gender index by Congolese women members of the Women's International League for Peace and Freedom (WILPF) and COMMON CAUSE UK, the platform of Congolese women in the United Kingdom in 2010.

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