

### Sexual and Gender-Based Violence in Armed Conflicts: A Comparative Analysis of Democratic Republic of Congo and Nigeria

Stanley O. Ehiane<sup>1,2\*</sup>, Ayoola Abuloye<sup>3</sup>

<sup>1</sup> *Department of Political and Administrative Studies, Faculty of Social Sciences, University of Botswana, Gaborone, Botswana*

<sup>2</sup> *School of Public Management, Governance and Public Policy (SPMGPP), College of Business and Economics (CBE), University of Johannesburg, Johannesburg, South Africa*

<sup>3</sup> *Department of Business Law, Faculty of Law, Obafemi Awolowo University, Ile Ife, Nigeria*

*Received: January 28, 2024 ▪ Reviewed: March 13, 2024*

*▪ Accepted: March 29, 2024 ▪ Published: June 30, 2024*

#### Abstract:

Sexual and gender-based violence (SGBV) has been a central feature in several conflicts in Africa, including those occurring in Angola, Algeria, Uganda, and Liberia. This paper aims to discuss SGBV about women and girls, which has been a pervasive and alarming feature of the armed conflict in the Eastern Democratic Republic of Congo (DRC) and Northern Nigeria. The Eastern part of the Democratic Republic of Congo (DRC) has been called ‘the rape capital of the world’ because of the recurrent rapes that have been reported. Likewise, the persistent armed conflict in Northern Nigeria has been characterized by the sexual exploitation of women and girls. This paper assesses the African Charter on Human and Peoples Rights, the MAPUTO Protocol, and other laws enacted to prohibit SGBV against women in Africa. A qualitative research design interpreted the African Union legal framework, and desktop research collected data from current literary resources such as books, journal articles, and other relevant written academic literature. This paper reveals the violation of human rights during armed conflict, explores the severity of sexual breaches in these regions, and further discusses the position of women who are vulnerable to sexual violence. This study is significant because there is a dire need to curb SGBV in Armed Conflicts in tandem with the legal framework in the international sphere and Africa. The paper concludes that SGBV perpetrators continue to enjoy near-complete impunity, and over the past decade and more, the number of successful prosecutions has been insignificant relative to the scale of the crime. The paper recommends that the governments of these nations strengthen their legislative frameworks by increasing the specialized expertise of the justice system to handle violent crimes and by involving institutions and other stakeholders in confronting this dangerous act.

---

Corresponding Author: Stanley O. Ehiane, Department of Political and Administrative Studies, Faculty of Social Sciences, University of Botswana, Gaborone, Botswana; School of Public Management, Governance and Public Policy (SPMGPP), College of Business and Economics (CBE), University of Johannesburg, Johannesburg, South Africa; email: [ehianes@ub.ac.bw](mailto:ehianes@ub.ac.bw), [stanleyehiane@yahoo.com](mailto:stanleyehiane@yahoo.com)

*This article is an open-access article distributed under the terms and conditions of the Creative Commons Attribution License (<http://creativecommons.org/licenses/by/4.0>)*

**Keywords:** sexual and gender-based violence, women and girls, armed conflict, Democratic Republic of Congo, Nigeria.

## 武装冲突中的性暴力和性别暴力：刚果民主共和国和尼日利亚的比较分析

### 摘要：

性暴力和性别暴力(性粒细胞减少症)是非洲多起冲突的主要特征，包括发生在安哥拉、阿尔及利亚、乌干达和利比里亚的冲突。本文旨在討論有關婦女和女孩的性暴力和基於性別的暴力，這是剛果民主共和國東部(剛果民主共和國)和尼日利亞北部武裝衝突中普遍存在且令人震驚的特徵。剛果民主共和國東部地區因經常發生強姦案而被稱為「世界強姦之都」。同樣，尼日利亞北部持續的武裝衝突的特徵是對婦女和女孩的性剝削。本文評估了《非洲人權和人民權利憲章》、《馬普托議定書》以及其他為禁止非洲婦女遭受性暴力和基於性別的暴力而頒布的法律。定性研究設計解釋了非洲聯盟的法律框架，桌面研究從書籍、期刊文章和其他相關書面學術文獻等當前文學資源中收集資料。本文揭示了武裝衝突期間侵犯人權的情況，探討了這些地區性侵犯的嚴重性，並進一步討論了易受性暴力侵害的婦女的處境。這項研究意義重大，因為迫切需要與國際領域和非洲的法律框架結合來遏制武裝衝突中的性暴力和基於性別的暴力。文件的結論是，性暴力和基於性別的暴力犯罪者仍然幾乎完全不受懲罰，而且在過去十多年裡，成功起訴的數量相對於犯罪規模來說微不足道。該文件建議這些國家的政府透過增加司法系統處理暴力犯罪的專業知識以及讓機構和其他利益相關者參與對抗這種危險行為來加強其立法框架。

**关键词：**性暴力和性别暴力、妇女和女童、武装冲突、刚果民主共和国、尼日利亚。

### 1. Introduction

The United Nations Office of the High Commissioner for Human Rights (UNHCR) defines SGBV as any act targeted at a person's will due to unequal power relationships, and it includes physical, psychological, emotional, and sexual violence (UNHCR, 2017). Sexual violence, a prominent feature of SGBV, has been defined by the World Health Organization (WHO) as an attempt to obtain a sexual act or unwanted sexual comments directed against a person by the use of coercion, which may include psychological, intimidation, blackmail, or other threats (Kings et al, 2002). Amnesty International also defines sexual violence as the use of physical force to compel a person to engage in a sexual act against his or her will, whether or not the act is completed.

SGBV targeting women and girls has been a central feature of all conflicts, including those in the former Yugoslavia, India, the Russian Federation, Angola, Algeria, Liberia, Nigeria, and the Democratic Republic of Congo (DRC).

Wars and conflicts result in the re-occurrence of rape, which means direct physical harm, trauma, and social exclusion for the victim. SGBV against women has been a pervasive and alarming feature of armed conflict in the eastern DRC and Nigeria. Forces involved in the conflict assaulted (raped and tortured) tens of thousands of women and girls. These include rebel groups, militias, government security forces, non-state actors, and criminal organizations. In addition,

humanitarian and peacekeeping workers have been accused of sexual abuse and exploitation.

Civilians in African conflict zones, particularly women and children, are often vulnerable to SGBV, including sexual slavery, rape, and other forms of abuse. The Eastern part of the DRC has been called 'the rape capital of the world' because of the re-occurring rapes that have been reported since the war started in the country more than a decade ago. Some of these incidents appear opportunistic of the deteriorating rule of law and social order surrounding the conflict. In other cases, sexual violations were employed by combatant groups as a strategic tool. The international system has recognized the continuous sexual violations of women and girls in the DRC and has condemned all these various forms of systematic SGBV.

By disrupting economic activities and destroying bases for economic support, the DRC's armed conflict places women at risk for trafficking and having to engage in 'survival' sex or sex bartering through which many women are becoming infected with HIV/AIDS, unwanted pregnancies, abortions, sexually transmitted diseases, destroyed reproductive systems and even death. Countries, international and regional organizations have intervened, and peacekeeping forces have been deployed to the DRC in the past two decades to eradicate violence committed in the North and South Kivu. However, to date, peace remains elusive in the DRC, despite attempts by national, regional, and international legislation to prohibit sexual violence

against women and girls in the DRC (Ahere, 2012). Likewise, in Nigeria, SGBV is a common feature of the Armed conflict pervading the Country for over a decade. The Boko Haram terrorist organization and the Islamic State for West Africa Province (ISWAP), who are largely responsible for most of the terrorist activities in Northern Nigeria, have been accused of widespread rape and other forms of SGBV e against women in that part of the Country. Different forms of SGBV include the abduction of girls by non-State actors. While in captivity, these girls are forcefully married off and sexually exploited. The kidnapping of 294 secondary school girls in Chibouk, Bornu State on April 14, 2014, has gained international recognition with the Bring Back Our Girls group at the front burner of the campaign for the release of the girls. (Aljazeera, 2020). Over the years, 107 girls have been released by Boko Haram in a deal broker between the sect and the federal government, while over 100 girls remain missing (Foyou, 2018). On February 19, 2018, Boko haram kidnapped 110 girls from their school in Dapchi, Yobe State. After negotiations between the sect and the federal government, the majority of the girls were released. However, one girl, Leah Sharibu, was kept back. Leah has remained in captivity for six years since his abduction. Leah has been reported to have been forcefully married off to a warlord and now has two children (United States Commission on International Religious Freedom, 2024).

The African Union, of which both the DRC and Nigeria are members, has fashioned a legal framework to prohibit sexual violations, but despite continuous regional and international pressure, SGBV remains rife in these two Countries. This paper argues that perpetrators of SGBV continue to enjoy near-complete impunity, and over the past decade, the number of successful prosecutions has been insignificant relative to the scale of the crime.

Widespread SGBV has been reported as a feature of several active conflicts in Africa. The most prominent conflicts are those in the eastern DRC and the Darfur region of Sudan. Peacekeeping forces have been deployed to these countries to promote peace and security and intervene in wars and conflicts. Rape and other forms of SGBV have been a feature of conflict in the DRC, going back to at least the civil war of the mid-1990s and the subsequent regional war of 1998-2003. The sexual violations occurring in North and South Kivu are deemed to be of large scale because of their systematic nature and number of victims. In the context of recurring conflicts, state security forces, rebel groups, and combatants from neighboring countries have inflicted sexual violence on the DRC's civilian (particularly women and girls) population on a massive scale. Women in eastern DRC are often viewed as 'disproportionately disadvantaged socially and economically'; therefore, they are frequently pushed by the war to resort to sex-battery violence, which increases their vulnerability to SGBV. (United Nations Security Council, 2015). The SGBV against women

occurring in the DRC is said to be further perpetuated by the weak judicial system, which makes it difficult for prosecutors to conduct proper trials and thus contributes to the persistence of violence inflicted on Congolese women. As such, the present study assesses the African Union (AU) legal framework established to prohibit SGBV against women in the DRC and Nigeria.

This paper uses a qualitative research design to describe and interpret the legal framework established by the African Union to prohibit sexual violations against women in the DRC and Nigeria. The paper employs desktop research that collects data from current literary resources such as books, journal articles, and other relevant written academic literature. Desk research is an effective tool as it gathers and analyzes information from primary sources such as treaties, charters, and protocols and secondary sources such as books, reports, and articles.

## 2. Human Rights Violations in Conflict Settings

According to Amnesty International, armed conflicts have long been associated with human rights violations. In the 21<sup>st</sup> century, violence and armed conflict continue to be at the heart of some of the worst human rights violations across the globe. Today, the extent and intensity of these conflicts in the world threaten to engulf the international systems and legal frameworks established to promote and protect human rights. The standard of international humanitarian law that the international community has worked hard to build since the Second World War is slowly deteriorating (Samuels, 1993).

Human rights are considered the causes, symptoms, consequences, or even means to transform or perpetuate violent conflicts (Ortega et al., 2017). As a cause of conflict, this paper argues that persistent human rights violations can cause crises or conflicts. Even if human rights violations are not the only cause of conflict in a certain scenario, structural or institutional conditions such as horizontal inequalities along ethnocultural wars, corruption, abusive systems of governance, injustice, and insecurity have the effect of generating violent conflict (Ortega et al., 2017). Continued human rights violations in a prolonged or intractable conflict setting can also serve as driving factors that deepen divisions and hostility among parties to a conflict. Therefore, human rights violations can occur as a consequence of violent conflict.

Vulnerable groups and communities often suffer the most serious human rights violations during conflicts. Increasingly and devastatingly targeted by the perpetrators of violence, the civilian population accounts for the vast majority of victims of the world's conflict, a toll that falls heaviest on women and children (Martus & Helsing, 2006). Violations in question include extra-judicial executions, disappearances, torture, rape, hostage-taking, arbitrary arrest, and the failure to protect refugees, among others. Sexual

violence (mostly against women) is a major form of human rights violation, seconded by violence against children, with these two forms of violence becoming very common during conflicts. Contemporary conflicts and crises have forced millions of people: men, women, and children—to flee to escape suffering human rights violations and starvation (Martus & Helsing, 2006). While it is often held that states are the perpetrators of human rights violations, some non-state actors also perpetrate these violations in conflict settings (Ahere, 2012). These include non-state groups that include rebel groups, opposition groups, terrorists, and other armed groups. These non-state groups also include economic non-state actors, such as multinational corporations and private military and security companies.

### 3. SGBV and Its Dynamics in the DRC and Nigeria

The DRC is home to abundant mineral resources, such as copper, diamonds, cobalt, uranium, oil, and gold, which make the country (theoretically) one of the richest countries in the world (Kitharidis, 2015). However, due to colonialism, slavery, and corruption, the DRC remains one of the poorest countries in the world. The DRC has been embroiled in violence including but not limited to wars fought in demand for natural resources, political freedom, and territorial gain. These wars known as the First Congo Wars occurring between 1996 and 1997 and the Second Congo War occurring between 1998 and 2003 have caused physical and psychological damage to civilians, the destruction of infrastructure, and violations of human rights (Meger, 2010). The DRC's armed conflicts involve the national military and foreign local militia groups.

The DRC conflict has been referred to as the “world's bloodiest” conflict since the Second World War. This is because the conflicts have claimed the lives of millions of people, leaving thousands of people with little or no food and have resulted in hundreds of women being rape victims (Meger, 2010). Brutal widespread human rights violations, including rapes throughout the DRC characterized the First and Second Congo Wars. According to Human Rights Watch, victims of sexual exploitation in the DRC are girls as young as two years old and women as old as eighty years old (Freedman, 2011).

Despite the peace agreement and the official end to the conflict in 2002, armed militia groups continue to perpetrate violence in eastern regions with weak governance and a lack of law enforcement. The military operations since early 2009 have contributed to an increase in sexual violations (Ahere, 2012). Since conflicting groups attack and rape civilians during military operations, waging proxy wars more often than battling each other directly, some scholars have argued that sexual violence is being used as a weapon of war in eastern DRC (Meger, 2010).

SGBV against women and girls has been a defining

aspect of conflict in the DRC, and several studies have highlighted its use as a weapon of war (Kitharidis, 2015).

Although SGBV in the Eastern DRC is pervasive, precise data on its extent are unfortunately rare. Existing data tend to be under-reported because of the insecurity and remoteness of many places, inadequate health care, weak judicial systems, the sensitivity of the issue, and the associated stigma. Nevertheless, some estimates have been put forward. The United Nations Population Fund (UNFPA) concluded that more than 8000 cases of sexual violence occurred annually in 2009 and 2010 in the eastern DRC (UNFPA, 2011). In a population-based study, Johnson et al. (2010) reported that approximately 40% of women in eastern DRC had experienced sexual violence in their lifetime (Johnson, et al., 2010). Nationally representative household data from 2007 found that up to 1.8 million Congolese women of childbearing age experienced sexual violence in their lifetime (Peterman et al., 2011).

The worst forms characterizewartime SGBV in the Eastern DRC. Sexual assaults include gang rapes, which represent the majority of all cases; rape in public or in the presence of family members; rape with instruments; genital mutilation; and forced incest (Ahere, 2012). Men wearing military uniforms, including armed men unidentified with a specific armed group or the military often perpetrate gang rape (Kitharidis, 2015). According to UNFPA, in 2010, 44% of the perpetrators were civilians and 49% were armed men in North and South Kivu, and civilians were slightly less, with 33% of all actors (UNFPA, 2011). The Congolese national army (FARDC) and the National Congolese Police (PNC) have been accused of gang rape and abduction of Congolese women.

Rebel groups, including the Rwandan rebel group (FDLR), Ugandan rebel groups, Burundian rebel groups, the Allied Democratic Forces (ADF), and the Lord's Resistance Army (LRA), have been accused of sexual violence, the incapacitation of women's bodies, mutilation of female genitals, and abduction of women and children for recruitment and sexual slavery (Guy, 2014). It is also widely believed that ex-combatants comprise most of the civilians who have reintegrated into civilian life without proper rehabilitation measures and who thus continue to have a wartime mentality and conduct (Masfield, 2009). Some members of the United Nations peacekeeping forces have been accused of human rights violations, such as rape and forced prostitution, against Congolese women. It is believed that as military activities increase in one area after another, so do rapes and other crimes against women, which pose a serious threat to women's rights (Guy, 2014).

Like the DRC, Nigeria has been enmeshed in more than a decade of Armed conflict, with the Boko Haram terrorist organization and other terrorist organizations such as ISWAP on one side and the Nigerian Armed Forces in collaboration with the Armed Forces of the

Lake Chad Basin Countries and civilian volunteers on the other side, countering attacks by the terrorist groups. (Onuoha, 2014) In addition to attacks against humans and property, abduction remains a common occurrence by terrorist groups. Some examples are the widely known:

–The case of the Chibok school girls’ kidnap on 14<sup>th</sup> April 2014: At night, the Boko Haram Terrorist organization kidnaped 276 students of the Chibok girls school in Bornu State; 57 of those girls managed to escape in the succeeding months (BBC News, 2017). Amina Ali, who was identified as one of the girls also escaped in 2016 and claimed 6 of the girls had died in custody. Upon negotiations between the Nigerian Government and Boko Haram, 21 girls were freed in October 2016; one girl was rescued later, and another was found. 82 more girls were released in May 2017 and one girl was rescued in January 2018;

–The Dapchi school girls’ kidnap on February 19, 2018: 113 schoolgirls of the Government Girls Secondary School Dapchi were abducted by the Boko Haram terrorist organization; 107 of the girls were later released by the group after negotiations with the Nigerian government; 5 of the girls died during the abduction and 1 of the girls, Leah Sharibu, remains in custody (Leadership Newspapers, ‘2019);

–The more recent Kankara school boys’ kidnap on December 11, 2020: more than 300 boys were abducted from a Government Boys Science School in Katsina State, the boys were later freed upon negotiation by the Federal Government of Nigeria with the Boko Haram organization (The Economist, 2020);

–The Kagara school kidnap of 17<sup>th</sup> February 2021: 42 people, including school children, their teachers, and relatives were kidnaped from a government school. One person was killed during the raid. The abductees were later released upon negotiation with the federal government and the Boko haram organization (Aljazeera News, 2021);

–The Zamfara school girls kidnap of 27<sup>th</sup> February 2021: more than 300 girls were kidnaped from a boarding school in Jangebe, Zamfara State. The girls, like the earlier cases, were released upon negotiations between the federal government and the Boko Haram organization (BBC News, 2021).

In Nigeria, women and girls are targets of SGBV. A study conducted by Human Rights Watch in 2014 reported copious accounts of rape by survivors, especially when they were abducted and taken into captivity (Usman and Abubakar, 2021). This has been reported to have also occurred in other war-torn Countries like the abduction, forced slavery, and sexual exploitation of Yazidi girls by the Islamic State of Syria (ISIS) in Iraq and the abduction and sexual exploitation of Somali girls by Al- Shabaab fighters (Mazurana *et al.*, 2019). There have also been reports of rapes at internally displaced camps by the Nigerian military and Civilian JTFs (Human Rights Watch, 2014). Women and girls engage in sexual activities in exchange for

food, survival, and sometimes for protection. It has been alleged that aid workers who are present in conflict areas in Northern Nigeria to provide humanitarian interventions take advantage of women and girls in return for humanitarian assistance such as food and other necessities. Security agents involved in counter-terrorism have also been alleged to sexually exploit women in return for assured protection from terrorists and material gains (Njoku and Akintayo, 2021). Women and girls are also targeted for rape when they go out to bathe in IDP camps.

Furthermore, the UN Special Rapporteur on human rights from the Office of the High Commissioner for Human Rights reported in 2016 that sexual violence is a common feature of displacement in Nigeria (OHCHR, 2016).

#### **4. The Social and Sociocultural Perceptions of SGBV in DRC and Nigeria**

To understand the underlying reasons for SGBV targeting women and girls, it is essential to take into consideration the socioeconomic status of women in the Eastern part of the DRC and Northern Nigeria. When war broke out in the DRC, the local population, especially women, had already been made vulnerable by the dysfunctional state structures and the lack of viable economic and social infrastructures caused by the thirty years under the dictatorial regime of President Mobutu (Cannon, 2012). For over a decade, Boko Haram and ISWAP terrorism in Northern Nigeria have crippled the economy of the region. People have been killed, infrastructure and means of livelihood have been destroyed. Most people have been displaced from their homes and are seeking refuge in internally displaced camps. The region is mostly agrarian, and terrorist activities have made it difficult for people to earn a livelihood. Thus, terrorism fuels poverty and economic imbalance in Northern Nigeria (Njoku & Akintayo, 2021). Against this background of generalized impoverishment, the burden of finding survival strategies has increasingly fallen on women, while the lack of economic and social development has meant the impoverishment of the female population, especially in rural and semi-rural areas (Freedman, 2011). The term ‘feminization of poverty’ is used to characterize the position of women in South and North Kivu. This position is argued to be exacerbated by the lack of policies and mechanisms intended to advance women’s economic status, and it is also embedded in cultural terms by the persistence of customs, practices, and legislation that discriminate against women (Kitharidis, 2015).

Women drive the subsistence economy (farming and livestock) in eastern DRC. Women are also active in informal sectors such as petty trade, sewing, and basketry. They are also found on the fringes of the mining industry where they are employed as exploited and underpaid laborers (Cannon, 2012). Before the

violent conflict that permeated Nigeria, Northern Nigeria was popular for producing cash crops and livestock farming (Kar, 2017). Women were at the forefront of subsistence farming and the trading of farm produce, particularly in the now war-ravaged areas of Gworza, Bama Mungono, Rann, and Damasak. Armed Conflicts have had a devastating impact on women's economic and social activities. In addition to the unstable security situation, women face basic structural problems that exacerbate their impoverishment.

Certain customs, practices, and laws constitute obstacles to women's access to property, education, modern technology, and information. Women suffer from illiteracy or poor education because in many family boys still get preference over girls regarding education and schooling (Masfield, 2009). Many girls, especially from disadvantaged families and communities, drop out of school because of child marriage and early pregnancies. Certain aspects of Congolese legislation still discriminate against women (Cannon, 2012). It is difficult for women to obtain access to means of production such as land, property, and credit. These factors make women vulnerable in situations of armed conflict. Not only do they make gender-based violence more likely, but in the eyes of the abusers, at least they legitimize it.

## 5. Effects of SGBV on Women and Girls in the DRC and Nigeria

The SGBV crime has direct profound and life-changing consequences for women who have been attacked and harmed (Lubunga, 2016). These life-changing consequences include high rates of HIV/AIDS and unplanned pregnancies, which result in victims struggling to provide for their children and sexually transmitted infections, as well as pelvic and other traumatic injuries. Other consequences of SGBV in girls include post-traumatic stress disorder (PTSD), anxiety, depression, behavioral, and psychosomatic complaints. Research has shown that younger children below 6 years who have experienced SGBV are always gripped with fear and anxiety, are usually sad, and are always crying. In their relationships with their peers, they are either aggressive or withdrawn (Shenoda & Goldaghen, 2023).

In the Bakassi IDP camp in Borno State, Nigeria, a total of 3,213 pregnancies were recorded within a spate of six months in 2016 (Read, 2017). Girls who have survived the atrocity of rape usually drop out of school due to illness, disease, trauma, displacement, and stigma. Moreover, these young girls who were impregnated due to rape now have the responsibility to look after a child. All these victims live in fear of retaliation by the perpetrator, stigmatization by the community or rejection by their husbands, which prevents them from talking about the sexual violence that they have experienced (Kitharidis, 2015). The fear of taking any action to have the offender prosecuted and

the possibility of rejection faced by the victims leads them from withholding information on their horrendous experience in an attempt to avoid further humiliation, victimization, social incrimination, and banishment (Peterman et al., 2011).

## 6. Legal Framework of SGBV

The African Union's human rights system took the position that the rights and freedoms guaranteed in the African Charter on Human Rights and People's Rights (African Charter) apply in peace and war times. The African Union (AU) has set targets as efforts to mobilize the African continent toward (a) silencing guns by 2020, which forms part of the goals of Agenda 2063, namely 'A peaceful and secure Africa' premised on the recognition that social inclusion, respect for human rights, gender equality, justice, rule of law, good governance and democracy are entrenched and developed.

The Charter outlines that African development should be people-driven and entails empowering women to play their rightful roles in all spheres of life, as well as for full gender equality. The DRC and Nigeria have signed and ratified the African Charter and the Maputo Protocol as their guiding frameworks to deal with the sexual violation of women and girls.

### 6.1. The African Charter

The African Charter is the founding instrument of the African human rights system. It was formally adopted in June 1981 by the Organization of African Unity (now African Union) and entered into force in October 1986. The Charter recognizes the civil, economic, and political rights of individuals and seeks to protect them from institutional, social, and political conditions that threaten their freedom, physical integrity, and freedoms. The African Charter enshrines almost all internationally recognized rights.

The Charter comprises three parts (i) Articles 1 to 29 specify the list of human and people's rights; (ii) Articles 30 to 63 address the establishment of the organization of the African Commission on Human and People's Rights (ACHPR); and (iii) Articles 64 to 68 contain general procedures and provisions. Article 5 of the African Charter prohibits all forms of exploitation and degradation of human beings, including slavery, the slave trade, torture, cruel, inhuman, or degrading punishment and treatment. In 2017, the African Commission adopted General Comment No. 4 on the Right to Redress For Victims of Torture and Other Cruel, Inhuman, or Degrading Punishment of Treatment under Article 5 of the African Charter. The right to redress applies to the reparation of all persons, including victims or survivors who have been subjected to torture and other ill treatment.

Article 16 of the Charter reiterates that every individual has the right to enjoy the best physical and mental health. The right to health is crucial for every human being, as it requires the government to provide

accessible health care and effective access to health-related education and information, including sexual and reproductive health. Article 18 (3) of the African Charter employs member states to eliminate any form of discrimination against women and to ensure the protection of the rights of women and children as stipulated in international declarations and conventions. Article 11 of the Charter speaks to the protection of women in armed conflict, the protection of asylum-seeking women, refugees, returnees and internally displaced persons against all forms of violence, rape and other forms of sexual exploitation and/or crimes against humanity and their perpetrators, which are brought to justice before a competent criminal jurisdiction.

The Charter is associated with an instrument for addressing human rights issues in conflict and crisis and equipping the African Commission, as the principal human rights body of the AU, with the necessary tools to effectively and systematically address these issues. The Charter provides for coordinated action by drawing on the leverage of the AU mechanism notably those forming part of the African peace and security architecture.

In 2006, the African Commission's Resolution About Women in the DRC raised grave concern over the widespread sexual violence against women in the DRC, as well as the incapability of government and non-government authorities to prevent such crimes and arrest perpetrators. In 2007, the major concerns raised in the African Commission's Resolution on the Right to a Remedy and Reparation for Women and Gil Victims of Sexual Violence include the prevailing impunity for perpetrators, the severity of the physical and psychological trauma that victims face, and legal obstacles such as the inability to access justice.

In 2014, the African Commission's Resolution on the Suppression of Sexual Violence against Women in the Democratic Republic of Congo included more concerns about gender-based violence and the persistence of the violation of women's rights in the DRC. In its resolution, the African Commission urged the Congolese government to ensure the protection of Congolese women, to ensure access to justice, and to end impunity by prosecuting perpetrators before competent courts within a reasonable time.

## **6.2. The African Charter on the Rights of Women in Africa (Maputo Protocol)**

The Protocol to the African Charter on Human Rights and People's Rights on the Rights of Women in Africa (Maputo Protocol) was also ratified by both the DRC and Nigeria. The Maputo Protocol was adopted to address the concern that despite the ratification of the African Charter and other international human rights instruments by member states of the AU, women in Africa continue to be victims of discrimination and harmful practices. The Protocol aims to eliminate all forms of discrimination and harmful practices against women, the Protocol emphasizes the contextual realities

of women in Africa, as it addresses serious issues, including violence against women, female gender mutilation and sexual reproductive rights. Like the African Charter, the Maputo Protocol contains several articles that have specific provisions that envision the right to peace and protection during armed conflict. The Maputo Protocol moves beyond the definition of the United Nations Declaration on Violence against Women by including violence against women in conflict situations.

Article 2 of the Protocol provides for the elimination of discrimination against women. Article 3 of the Protocol states that member States are duty-bound to adopt and implement appropriate measures to prohibit the exploitation or degradation of women and ensure the protection of every woman's right to respect for her dignity and protection of women from all forms of violence, particularly sexual and verbal violence. Article 4 covers the right to life, integrity, and security of every woman. The state parties' obligations include the enforcement of laws to prohibit all forms of violence against women, including forced sex, whether the violence takes place in private or public, the identification of causes and consequences of violence against women, as well as the punishment of perpetrators of violence against women and the implementation of programs for the rehabilitation of women victims.

Article 5 of the Maputo Protocol guarantees the prohibition and condemnation of state parties from all forms of harmful practices that negatively affect the human rights of women. Article 5 covers state parties' responsibilities to take all necessary legislative measures to eliminate harmful practices, including the provision of basic services such as health services, legal and judicial support, emotional and psychological counseling as well as the protection of women who are at risk of being subjected to harmful or other forms of violence. Article 8 mentions the state parties' responsibilities to ensure that women have access to effective judicial and legal services, including legal assistance.

Articles 10 and 11 directly reference the right to peace, which affirms that women have the right to peaceful existence and protection in armed conflict. Article 11 states that "State parties shall take all necessary measures to ensure that no child, especially girls under 18 years take a direct part in hostilities and that no child is recruited as a soldier". Articles 11 (2) and Article 11(3) require Member States to "protect civilians including women, irrespective of the population to which they belong." This provision includes asylum-seeking women, refugees, returnees and internally displaced persons against all forms of violence, rape and other forms of sexual exploitation and to ensure that such acts are considered war crimes, genocide or crimes against humanity.

Under Article 11(2), these crimes are defined following the obligations imposed by international humanitarian law. This provision is important because,

first, sexual violence during armed conflict constitutes a crime against humanity, a war crime, and even genocide acts that constitute authoritative norms from which States can derogate. Second, the violations also constitute what the Constitutive Act of the AU under Article 4 terms as grave circumstances that warrant intervention against the state in which they occur if there is a threat of occurrence. Even though such regional legislation exists, the violation of women's rights in these countries continues to prevail. This is due to a weak judicial and administrative system, weakened government institutions, and deteriorated rule of law. Therefore, governments, regional institutions, and international organizations should make collective efforts.

### 6.3. Other Laws

Besides the African Charter and the Maputo protocol, other instruments address sexual violence and the exploitation of women. The African Charter on the Rights and Welfare of the Child (ACRWC) 11 July 1990 entered into force on 29<sup>th</sup> November 1999 adopted by the African Union protects girls and boys from sexual violence. Article 16 prohibits Child abuse and torture, while Article 22 specifically provides for protecting children during Armed Conflicts. It provides that State Parties must uphold the tenets of international humanitarian law during armed conflicts.

The Geneva Conventions of 1949 classified sexual violence as a crime against humanity. It is considered an inhumane and degrading treatment that violates Articles 3 to 5 of the Geneva Conventions. The 1993 International Conference for the Protection of War Victims classified sexual violence such as rape as grave breaches of International Humanitarian Law (IHL) that are punishable by the International Criminal Court (ICC). The Rome Statutes of 1998 provide that rape, sexual slavery, and other forms of sexual violence constitute grave breaches of IHL.

In *Prosecutor v. Jean-Paul Akayesu*, (ICTR The Prosecutor v Jean-Paul Akayesu, Case No. ICTR 96-4, Judgment (Trial Chamber), 2<sup>nd</sup> September 1998, para 688.) the Trial Chamber of the International Criminal Tribunal for Rwanda (ICTR) punished the accused for acts of sexual violence, including rape committed during the Rwandan genocide of 1994. The decision of the tribunal has been followed in some other cases, including *Prosecutor v. Alfred Musema* (ICTR Prosecutor v. Alfred Musema Case No. ICTR 96-13 Judgment (Trial Chamber), January 27, 2000, para 965).

## 7. Conclusion and Recommendations

Civilians in African conflict zones, particularly women and children, are often vulnerable to SGBV, including sexual slavery, rape, and other forms of abuse. This paper has assessed legal instruments, including the African Charter, the Maputo Protocol, the ACRWC, and the Geneva Conventions, as legal

frameworks for prohibiting sexual violations. The paper argued that SGBV perpetrators continue to enjoy near-complete impunity, and over the past decade, the number of successful prosecutions has been insignificant relative to the scale of the crime. This paper has discussed the violation of human rights during armed conflict, explored the severity of SGBV in the DRC and Nigeria, and further discussed the position of women in these countries, which makes them vulnerable to SGBV. Women and girls are made vulnerable to SGBV because of the deteriorating economic and social structures that exist in the country that often do not support women. The term 'feminization of poverty' is used to characterize the position of women in the South and North Kivu, this is exacerbated by the lack of policies and mechanisms intended to advance women's economic status and is also embedded in cultural terms that discriminate against women. The paper has contributed to knowledge by advancing the effects of sexual violations on women, which include high rates of HIV/AIDS, unplanned pregnancies that result in victims struggling to provide for their children, and sexually transmitted infections as well as pelvic and other traumatic injuries. This paper has assessed the legal instruments and uncovered the provisions of these legal frameworks and efforts to prohibit SGBV during armed conflicts. These frameworks oblige the member countries to be geared toward preventing and dealing with human rights violations as they occur or threaten to occur within their territories. The rationale for adopting these human rights statutes and protocols was based on the concern that despite the ratification of international human rights instruments, women in Africa continue to be victims of discrimination and harmful practices.

Existing studies in this field have investigated the effects of SGBV on women and girls, but this study has not only examined the consequences of SGBV but has also gone further to discuss the underlying factors, which may be described as the remote causes of SGBV in DRC and Nigeria. These factors include the post-conflict economic situation of those countries and their cultural and patriarchal nature.

This paper recommends that even if these protocols are international treaties, their effects must be felt nationally. The human rights status against sexual abuse of women places an obligation on the State parties (including DRC and Nigeria) to provide appropriate remedies in their domestic legal system and to ensure that such remedies are adjudicated by competent judicial, administrative, and legislative authorities. The Congolese and Nigerian governments should investigate, inspect, and prosecute the perpetrators of sexual violence in their countries with immediate effect. The Congolese government needs to strengthen its legislative framework by increasing the specialized expertise of the judiciary to handle violent crimes by appointing qualified members.

African countries should embark on campaigns to

educate and sensitize men and women through public education to break down stereotyping and culturally engrained patterns of superiority and inferiority. African countries must provide budgetary resources to ensure the effective implementation of rights. Article 62 of the African Charter requires member States to submit reports to the African Commission every two years indicating the measures taken to implement the Charter. Therefore, the African Commission must ensure full compliance with the reports to eliminate violations of human rights in the continent. The United Nations, the African Union, and regional groups should also investigate and prosecute peacekeepers who commit sexual violence. All these institutions should continue to support the DRC and work hard to achieve peace and security within the country.

## 8. Limitations and Further Study

The study would have benefitted from the use of empirical data. Therefore, future studies will focus on primary data.

## Acknowledgments

We hereby acknowledge the National Institute for the Humanities and Social Sciences (NIHSS), Johannesburg, South Africa, for their mentorship.

## Authors' Contributions

The first author conceptualized the study and made contributions on SGBV in DRC, while the second author researched in Nigeria and wrote the manuscript.

## References

- [1] AHERE, J. (2012). *The Peace Process in the DRC: A Transformation Quagmire*. Centre for Constructive Resolution of Disputes (ACCORD) Policy and Practice Brief Knowledge for Durable Peace, 1–10.
- [2] ALJAZEERA NEWS (2021). *Kidnappers Release 42 Abducted From School in Nigeria*. Retrieved from <https://www.aljazeera.com/news/2021/2/27/kidnappers-release-42-abducted-from-school-in-nigeria>
- [3] BBC NEWS (2021). *Nigeria's Zamfara School Abduction: More Than 300 Nigerian Girls Missing*. Retrieved from <https://www.bbc.com/news/world-africa-56188727>
- [4] BBC NEWS (2017). *Nigeria Chibok Abductions: What We Know*. Retrieved from [www.bbc.com](http://www.bbc.com).
- [5] CANNON, P. (2012). A Feminist Response to Rape as a Weapon of War in Eastern Congo. *Peace Review: A Journal of Social Justice*, 24(4), 478–483.
- [6] FREEDMAN, J. (2011). Explaining Sexual Violence and Gender Inequalities in the DRC. *Peace Review: A Journal of Social Justice*, 23(2), 170–175.
- [7] FOYOU, V.E., NGWAFU, P., SANTOYO, M., & ORTIZ, A. (2018). The Boko Haram insurgency and its impact on Border Security, Trade and Economic Collaboration between Nigeria and Cameroon: An Exploratory Study. *African Social Science Review*, 9(1).
- [8] GUY, K.M. (2014). Mai-Mai Militia and Sexual Violence in the Democratic Republic of Congo. *International Journal of Emergency Mental Health and Human Resilience*, 16(2), 366–372.
- [9] HILHORST, D., & DOUMA, N. (2017). Beyond the Hype? The Response To Sexual Violence in the DRC in 2011 and 2014. *Disasters*, 42(S1) Special Issue: Gender, sexuality, and violence in humanitarian crises, 79–90.
- [10] JOHNSON, L., SCOTT, J., ASHER, J., ONG, R., LAWRY, L., KISIELEWSKI, M., ASHER, J., ONG, R., & LAWRY, L. (2010). Association of Sexual Violence and Human Rights Violations with Physical and Mental Health In Territories of Eastern Democratic Republic of Congo. *JAMA*, 304(5), 553–562.
- [11] KADIR, A., SHENODA, S, GOLDAGHEN, J, & PITTERMAN, S. (2018). The Effects of Armed Conflicts on Children. *Pediatrics* 142(6), e20182586. [www.researchgate.net](http://www.researchgate.net)
- [12] KINGS, E.G., DAHLBERG, L.L., MERCY, J.A., ZWI, A.B., & LOZANO, R. (2002). *World Reports on Violence and Health*. WHO, Geneva. Retrieved from [https://web.archive.org/web/20150222104217id/http://whqlibdoc.who.int/publications/2002/9241545615\\_eng.pdf](https://web.archive.org/web/20150222104217id/http://whqlibdoc.who.int/publications/2002/9241545615_eng.pdf)
- [13] KITHARIDIS, S. (2015). Rape as a weapon of war: Combating sexual violence and impunity in the Democratic Republic of Congo and the way forward. *African Human Rights Law Journal*, 15(2), 449–472.
- [14] LEADERSHIP NEWSPAPERS (2019). *Nigeria Ranking on Terrorism Index*. Retrieved from [www.leadership.ng/2019](http://www.leadership.ng/2019)
- [15] LUBUNGA, E. (2016). The Impact of Conflict in the Democratic Republic of Congo on Women and their Response to Peacebuilding. *Stellenbosch Theological Journal*, 2(2), 347–364.
- [16] MARTUS, J., & HELSING, J. (2006). *Human Rights and Conflict: Exploring the Links Between Rights, Laws and Peacebuilding*. Washington D.C: US Institute of Peace Press.
- [17] MASFIELD, J. (2009). Prosecuting Sexual Violence in the Eastern Democratic Republic of Congo: Obstacles for Survivors on the Road to Justice. *African Human Rights Law*, 9(2), 367–408.
- [18] MAZURANA, D., MARSHAK, A., & SPEARS, K. (2019). Child Marriage in Armed Conflict. *International Review of the Red Cross*, 101(911), 575–601.
- [19] MEGER, S. (2010). Rape of Congo: Understanding Sexual Violence in the Conflict in the Democratic Republic of Congo. *Journal of Contemporary African Studies*, 28(2), 119–135.
- [20] NJOKU, E.T., & AKINTAYO, J. (2021). Sex for Survival: Terrorism, Poverty and Sexual Violence in Northern Nigeria. *South Africa Journal of*

- International Affairs*, 28(2), 285–303. <https://www.tandfonline.com/doi/pdf/10.1080/10220461.2021.1927166>
- [21] ORTEGA, O., HERMAN, J., & CHANDRA, S. (2017). *War, Conflict and Human Rights: Theory and Practice*. New York: Routledge.
- [22] PETERMAN, A., PALENMO, T., & BREDEKAMP, C. (2011). Estimates and Determinants of Sexual Violation against Women in Democratic Republic of Congo. *American Journal of Public Health*, 101(6), 1060–1067.
- [23] READ J. (2017). Sexual Violence and the Boko Haram crisis in the North – East Nigeria. Humanitarian Practice Network. [www.odihpn.org](http://www.odihpn.org)
- [24] SAMUELS, A. (1993). *Violations of Human Rights In Armed Conflicts: Proposals for Action*. London: Amnesty International.
- [25] THE ECONOMIST (2020). *The Lost Boys of Kankara*. Retrieved from [www.economist.com/middle-east-and-africa/2020/12/19/more-than-300-schoolchildren-are-abducted-in-nigeria](http://www.economist.com/middle-east-and-africa/2020/12/19/more-than-300-schoolchildren-are-abducted-in-nigeria)
- [26] UNCHR (2017). UNCHR emergency handbook. Retrieved from <https://emergency.unhcr.org>
- [27] UNFPA (2011). *More than 8000 Women Raped Last Year By Fighters in Eastern DRC*. United Nations News Centre.
- [28] USMAN, A., & ABUBAKAR, I. (2021). *Sexual Violence against Women in Armed Conflicts: A Case Study of Boko Haram Insurgency in Nigeria*. Retrieved from [www.researchgate.net](http://www.researchgate.net)
- 參考文：**
- [1] 阿赫雷, J. (2012)。剛果民主共和國的和平進程：轉型泥淖。建設性解決爭端中心持久和平政策與實踐簡知, 1-10。
- [2] 半島新聞 (2021)。尼日利亞學校綁架者釋放42名被綁架者。取自 <https://www.aljazeera.com/news/2021/2/27/kidnappers-release-42-abducted-from-school-in-nigeria>
- [3] 英國廣播公司新聞 (2021)。尼日利亞扎姆法拉學校遭綁架：300多名尼日利亞女孩失蹤。取自 <https://www.bbc.com/news/world-africa-56188727>
- [4] 英國廣播公司新聞 (2017)。尼日利亞奇博克綁架事件：我們所知道的。取自 [www.bbc.com](http://www.bbc.com)。
- [5] 坎農, P. (2012)。女權主義者對剛果東部將強暴作為戰爭武器的回應。和平評論：社會正義雜誌, 24(4), 478–483。
- [6] 弗里德曼, J. (2011)。解釋剛果民主共和國的性暴力和性別不平等。和平評論：社會正義雜誌, 23(2), 170–175。
- [7] FOYOU, V.E., NGWAFU, P., SANTOYO, M. 與 ORTIZ, A. (2018)。博科聖地叛亂及其對尼日利亞和喀麥隆之間邊境安全、貿易和經濟合作的影響：探索性研究。非洲社會科學評論, 9(1)。
- [8] 蓋伊, K.M. (2014)。剛果民主共和國的馬伊-馬伊民兵與性暴力。國際緊急心理健康和人類復原力雜誌, 16(2), 366–372。
- [9] HILHORST, D. 與 DOUMA, N. (2017)。超越炒作？2011年和2014年剛果民主共和國對性暴力的反應。
- [10] 約翰遜, L., 斯科特, J., 阿瑟, J., 翁, R., LAWRY, L., KISIELEWSKI, M., 阿瑟, J., 翁, R., & LAWRY, L. (2010)。剛果民主共和國東部領土性暴力與侵犯人權行為與身心健康協會。《美國醫學會雜誌》, 304(5), 553–562。
- [11] 卡迪爾, A., 謝諾達, S, 戈爾達格恩, J, & 皮特曼, S. (2018)。武裝衝突對兒童的影響。兒科 142(6), e20182586. [www.researchgate.net](http://www.researchgate.net)
- [12] KINGS, E.G., DAHLBERG, L.L., MERCY, J.A., ZWI, A.B. 與 LOZANO, R. (2002)。世界暴力與健康報告。世界衛生組織, 日內瓦。取自 [https://web.archive.org/web/2015022104217id\\_/http://whqlibdoc.who.int/publications/2002/9241545615\\_eng.pdf](https://web.archive.org/web/2015022104217id_/http://whqlibdoc.who.int/publications/2002/9241545615_eng.pdf)
- [13] 基薩里迪斯, S. (2015)。強暴作為世界人權的武器：打擊剛果民主共和國的性暴力和有罪不罰現像以及前進的道路。非洲人權法雜誌, 15(2), 449–472。
- [14] 領導報紙 (2019)。尼日利亞恐怖主義指數排名。取自 [www.leadership.ng/2019](http://www.leadership.ng/2019)
- [15] 盧邦加 (2016)。剛果民主共和國衝突對婦女的影響及其對和平建設的反應。斯泰倫博斯神學雜誌, 2(2), 347–364。
- [16] MARTUS, J. 與 HELSING, J. (2006)。人權與衝突：探索權利、法律與建設和平之間的連結。華盛頓特區：美國和平研究所出版社。
- [17] 馬斯菲爾德, J. (2009)。起訴剛果民主共和國東部的性暴力：倖存者走向正義的障礙。非洲人權法, 9(2), 367–408。
- [18] MAZURANA, D., MARSHAK, A. 與 SPEARS, K. (2019)。武裝衝突中的童婚。《紅十字國際評論》, 101(911), 575–601。
- [19] 梅格, S. (2010)。剛果的強暴：了解剛果民主共和國衝突中的性暴力。當代非洲研究雜誌, 28(2), 119–135。
- [20] NJOKU, E.T. 與 AKINTAYO, J. (2021)。以性求生存：尼日利亞北部的恐怖主義、貧窮和性暴力。南非國際事務雜誌, 28(2), 285–303. <https://www.tandfonline.com/doi/pdf/10.1080/10220461.2021.1927166>

- 
- [21] 奧特加, O., 赫爾曼, J., & 錢德拉, S. (2017)。戰爭、衝突與人權：理論與實踐。紐約：勞特利奇。
- [22] 彼得曼, A., 帕倫莫, T., & 布雷登坎普, C. (2011)。剛果民主共和國針對婦女的性暴力的估計和決定因素。美國公共衛生雜誌, 101(6), 1060–1067。
- [23] 閱讀 J. (2017)。尼日利亞東北部的性暴力和博科聖地危機。人道主義實踐網絡。www.odihpn.org
- [24] 薩繆爾斯, A. (1993)。武裝衝突中的侵害人權行為：行動建議。倫敦：國際特赦組織。
- [25] 《經濟學人》 (2020)。坎卡拉迷失的男孩。取自www.economist.com/middle-east-and-Africa/2020/12/19/more-than-300-schoolchildren-are-abducted-in-nigeria
- [26] 聯合國人權事務高級專員辦事處 (2017)。聯合國人權事務高級專員辦事處緊急狀況手冊。取自https://emergency.unhcr.org
- [27] 人口基金 (2011)。去年，剛果民主共和國東部有8,000多名婦女被武裝分子強暴。聯合國新聞中心。
- [28] 烏斯曼, A., 和阿布巴卡爾, I. (2021)。武裝衝突中針對婦女的性暴力：尼日利亞博科聖地叛亂案例研究。取自www.researchgate.net