

# Responses to Information Requests - Immigration and Refugee Board of Canada

Democratic Republic of the Congo: Domestic and sexual violence, including treatment of survivors; legislation; state protection and support services (2019–March 2021)

## 1. Overview

### 1.1 Domestic Violence

According to a report by a coalition of civil society organizations [1] for the UN's Universal Periodic Review (UPR) of human rights in the Democratic Republic of the Congo (DRC), domestic violence is a [translation] "widespread phenomenon across the country" (Civil society coalition [2018], 6). An August 2019 periodic report on the DRC by the UN Committee on the Elimination of Discrimination Against Women (CEDAW) notes that CEDAW is concerned about "[h]igh rates of domestic violence owing to accepted social norms" (UN 6 Aug. 2019, para. 26(c)).

### 1.2 Sexual Violence

A March 2019 report on human rights in the DRC by the International Federation for Human Rights (Fédération internationale pour les droits humains, FIDH) states that "[v]iolence against women and girls of the Congo is endemic, especially sexual violence" (FIDH Mar. 2019, 13). A UPR submission on the human rights of women and girls in the DRC, coordinated by Female Solidarity for Integrated Peace and Development (Solidarité féminine pour la paix et le développement intégral, SOFEPADI) [2] and MADRE [3], in collaboration with 152 DRC women's organizations and activists, notes that "[d]ecades of armed conflict since the 1990s in eastern DRC, paired with rampant corruption and impunity in the judicial sector, have exacerbated sexual and gender-based violence (SGBV) in Congolese society" (SOFEPADI and MADRE 12 Oct. 2018, 8). An October 2018 joint report on sexual violence submitted for the DRC UPR and written by the Movement of Survivors of Rape and Sexual Violence in the DRC (Mouvement des survivant.e.s de viols et violences sexuelles en RDC) [4], the Dr. Denis Mukwege Foundation [5], the Panzi Foundation [6], and the Right Livelihood Award Foundation [7] indicates that rape and sexual violence [translation] "continue to be committed in the DRC in a generalized manner" (Mouvement des survivant.e.s, et al. 4 Oct. 2018, 3).

The CEDAW report notes a "high prevalence of gender-based violence, including sexual violence and group rape, including of minors" (UN 6 Aug. 2019, para. 26(a)). The 2020 Freedom House annual report on the DRC indicates that "sex crimes affect women, girls, men, and boys" (Freedom House 4 Mar. 2020, Sec. G3). However, sources report that [young (DYJEF 18 Sept. 2018, 5)] women and girls are most affected by sexual violence (DYJEF 18 Sept. 2018, 5; UN 3 June 2020, para. 14).

A September 2018 report by the Dynamique de la jeunesse féminine (DYJEF) [8], submitted for the DRC UPR, states that [translation] "[s]exual violence is increasing every day" (DYJEF 18 Sept. 2018, 5). The Movement of Survivors, et al. report notes

that in Bukavu, [the capital of South Kivu province], Panzi Hospital has seen an increase in victims of sexual violence since 2016 (Mouvement des survivant.e.s, et al. 4 Oct. 2018, 4). A November 2020 Secretary-General's report on the UN Organization Stabilization Mission in the DRC (MONUSCO), covering the period from 19 September to 1 December 2020, indicates that between July and October 2020, MONUSCO documented 248 victims of "conflict-related sexual violence," including 152 women, 94 girls and 2 men; "[t]his represented a decrease of almost 33 per cent compared with the previous four months" (UN 30 Nov. 2020, para. 1, 53). The same source explained that the decrease "can be attributed in part to increased difficulties in documenting such cases in many of the conflict-affected provinces," but that "ongoing efforts to demobilize armed groups ... may also have contributed" (UN 30 Nov. 2020, para. 53). The MONUSCO report notes that in some areas of North Kivu, survivors of sexual violence were "prevented, including by perpetrators, from gaining access to medical care, which, in turn, hampered the reporting process" (UN 30 Nov. 2020, para. 53).

The 2020 Freedom House annual report on the DRC states that SGBV is "especially" common in "conflict zones" (Freedom House 4 Mar. 2020, Sec. G3). The UPR submission coordinated by SOFEPADI and MADRE indicates that "decades" of armed conflict "have exacerbated" SGBV in Congolese society (SOFEPADI and MADRE 12 Oct. 2018, 8). The UN Entity for Gender Equality and the Empowerment of Women (UN Women) reports that, of the "more than 35,000 cases of sexual violence" that were recorded in 2018, the majority occurred in the eastern part of the country (UN 1 Sept. 2020). Sources note that SGBV was particularly prevalent in the provinces of North Kivu and South Kivu (UN 24 Sept. 2019; Mouvement des survivant.e.s, et al. 4 Oct. 2018, 3) as well as Tanganyika, Ituri, and Kasai (Mouvement des survivant.e.s, et al. 4 Oct. 2018, 3).

The CEDAW report notes that there has been an increase in the "number of women and girls in conflict-affected areas who are victims of sexual violence, including rape, mass rape, gang rape and sexual slavery" perpetrated by the Armed Forces of the DRC (Forces armées de la République démocratique du Congo, FARDC), the national police, armed groups, and militias (UN 6 Aug. 2019, para. 109(a)). A 2019 statement by the UN Deputy High Commissioner for Human Rights indicates that "conflict-related sexual violence continues to be perpetrated on a large scale by State agents and combatants of armed groups" (UN 24 Sept. 2019). The MONUSCO report states that "armed groups" were responsible for 55 percent of incidents of conflict-related sexual violence (UN 30 Nov. 2020, para. 53). The same report documented that 30 girls under 18 were "raped or subjected to other forms of sexual violence" from 19 September to 1 December 2020, including 11 whose rapes were "attributable to State agents" (UN 30 Nov. 2020, para. 52). According to the same source, of the cases of conflict-related sexual violence attributed to State actors, the FARDC accounted for 30 percent of the cases, and the national police accounted for 12 percent (UN 30 Nov. 2020, para. 53). Freedom House notes that both "[r]ebel fighters and government soldiers have regularly been implicated in rape and sexual abuse" (Freedom House 4 Mar. 2020, Sec. G3).

## **2. COVID-19 and Domestic and Sexual Violence**

UN Women reports that during the COVID-19 pandemic, violence increased by 99 percent in North Kivu province (UN 1 Sept. 2020). A December 2020 report by UNICEF's Social Sciences Analytics Cell (CASS) on the impact of the COVID-19 pandemic on women and girls in the DRC notes that there has been an increase in

the incidence of SGBV in the country and that it has been "particularly severe" in North Kivu and its capital, Goma (UN Dec. 2020, 2). The same source reports that there has been an increase in the number of SGBV cases being seen at health care centres (UN Dec. 2020, 3). The CASS report notes that the NGO Médecins du monde "reported double the number of cases of SGBV received in its health centres in Kinshasa between April and June" (UN Dec. 2020, 8). A June 2020 Reuters article reports that the volume of calls to the [Kinshasa-based (UN Dec. 2020, 8)] Forum of Women Citizens and Activists for Governance, Democracy and Development (Forum des femmes citoyennes et engagées pour la gouvernance, la démocratie et le développement), which runs "Congo's first domestic abuse hotline," "has increased tenfold in recent months" (Reuters 2 June 2020). The CASS report notes that the same hotline "recorded 20 times more calls from women than men" during the national state of emergency from April to July and that 78 percent of the calls received during this time concerned physical and sexual violence against children under the age of 14 (UN Dec. 2020, 8).

### 3. Legislation

According to sources, there is no law prohibiting domestic violence (WILPF DRC Oct. 2018, 5; OECD 2019, 4). An October 2018 report by the national section of the Women's International League for Peace and Freedom (WILPF) [9] in the DRC, submitted for the 2019 UPR, notes that domestic violence is not "specifically criminalised" but rather falls under the Penal Code's general provisions against assault, battery, and rape (WILPF DRC Oct. 2018, 1, 5). The CEDAW report indicates that domestic violence and marital rape are not criminalized and that there has been a "lack of progress in adopting the draft law for the protection of vulnerable persons, which includes a framework for assistance for victims of sexual violence" (UN 6 Aug. 2019, para. 26).

The 2019 Organisation for Economic Co-operation and Development (OECD) Social Institutions and Gender Index (SIGI) indicates that, in 2009, the DRC developed a National Strategy Against Gender-Based Violence (Stratégie nationale de lutte contre les violences basées sur le genre, SNVBG) and established the National Agency for Eliminating Violence against Women and Adolescent and Very Young Girls (Agence nationale de lutte contre les violences faites à la femme, à la jeune et petite fille, AVIFEM) (OECD 2019, 3). The same source notes that the SNVBG includes the following five initiatives:

1. combat "impunity"
2. ensure "protection and prevention"
3. launch "security sector reforms"
4. provide "multi-sectoral assistance"
5. gather "data and [undertake] mapping" (OECD 2019, 3).

According to UN Women, in response to the increase in violence during the COVID-19 pandemic, the government introduced a revised SNVBG in August 2020 (UN 1 Sept. 2020). The same source indicates that the revision extended the definition of gender-based violence to include domestic violence (UN 1 Sept. 2020). Further information on the SNVBG could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

The 2006 Constitution (amended in 2011) provides the following regarding sexual violence:

[translation]

## **Article 15**

The public authorities see to the elimination of sexual violence.

Without prejudice to international treaties and agreements, any sexual violence committed against any person with the intent to destabilize, to displace a family, or to make a whole people disappear, is established as a crime against humanity punishable by law. (DRC 2006a)

In 2006, the DRC passed a sexual violence law amending the 1940 Penal Code (DRC 2006b). The 2006 amendment provides the following:

[translation]

### **Article 42 (bis)**

The official status of the perpetrator of an offence relating to sexual violence can in no way exonerate him or her from criminal responsibility or constitute cause for reducing the sentence.

### **Article 42 (ter)**

Hierarchical rank or command of a "legitimate civil or military authority in no way exonerates the perpetrator of an offence relating to sexual violence from responsibility."

...

## **Section II: Sexual violence offences**

### **Paragraph 1: Indecent assault**

#### **Article 167**

Any immoral act committed intentionally and directly against a person without their valid consent constitutes an indecent assault. Any indecent assault committed without violence, trickery or threats against the person or by means of a child under the age of 18 shall be punishable by a prison term of six months to five years. The age of the child may be determined by medical examination, in the absence of civil registration.

#### **Article 168**

Indecent assault committed with violence, trickery or threats against persons of either sex shall be punishable by a prison term of six months to five years. Indecent assault committed with violence, trickery or threats against the person or by means of a child under the age of 18 shall be punishable by a prison term of five to fifteen years. If the assault was committed against persons or by means of persons under the age of 10, the term of imprisonment shall be five to twenty years.

### **Paragraph 2: Rape**

#### **Article 170**

Will have committed rape, either by means of violence, serious threats or coercion against a person, exercised directly or through a third party, by surprise, through psychological pressure or in a coercive environment, by taking advantage of a person who, as a result of illness, impaired faculties or any other accidental cause, has lost the use of their senses or has been deprived of the use of their senses through artifice:

1. any man, whatever his age, who has inserted his sexual organ, however superficially, into that of a woman, or any woman, whatever her age, who has forced a man to insert his sexual organ, however superficially, into hers;
2. any man who has penetrated, however superficially, the anus, mouth or any other orifice of the body of a woman or a man with a sexual organ or other body part, or with any object whatsoever;
3. any person who has inserted, however superficially, any other body part or any object whatsoever into the vagina; and
4. any person who has forced a man or a woman to penetrate, however superficially, his or her anus, mouth or any other body part with a sexual organ or any other body part, or with any object whatsoever.

Any person convicted of rape shall be sentenced to a prison term of five to twenty years and fined not less than 100,000 Congolese francs [C\$64].

The mere physical contact of genitals is considered rape by means of violence against persons described in article 167, paragraph 2.

#### Article 171

If the rape or indecent assault causes the death of the person against whom it was committed, the perpetrator shall be sentenced to life imprisonment. (DRC 2006b)

The Movement of Survivors, et al. report indicates that the application of these laws against sexual violence [translation] "remains problematic and signals a lack of will on the part of authorities to seriously combat this violence" and that the authors have not observed a decrease in sexual violence since the laws were implemented (Mouvement des survivant.e.s, et al. 4 Oct. 2018, 3, 4). Further and corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

## 4. State Protection

The DYJEF report notes that, although there is a law against sexual violence, the [translation] "majority" of victims are unable to initiate legal proceedings for several reasons, including "lack of financial means, social shaming, socio-cultural inertia, distance from judicial authorities, lack of protection for victims, [and the] corruption of justice officials (the police, judge, etc.) by the rapists" (DYJEF 18 Sept. 2018, 5). Additionally, according to the civil society coalition report, a lack of awareness of the procedures and insufficient legal aid services create barriers for survivors in accessing justice (Civil society coalition [2018], 6). The Movement of Survivors, et al. report indicates that filing a complaint is difficult for people who have experienced sexual violence because many do not know who the perpetrator is and because the burden of proof falls on the victim, who must fulfill a complex set of requirements (Mouvement des survivant.e.s, et al. 4 Oct. 2018, 5). The same source notes that the costs associated with filing a complaint are also a barrier for victims (Mouvement des survivant.e.s, et al. 4 Oct. 2018, 5). Because there are few

[translation] "competent" jurisdictions, survivors need to travel for the trial and must pay for their own transportation; moreover, they "often" have to remain away from their community for the duration of the trial, which increases their risk of being stigmatized upon their return (Mouvement des survivant.e.s, et al. 4 Oct. 2018, 5). The Movement of Survivors, et al. report further states that victims are [translation] "denigrate[d]," stigmatized, and "held responsible by society" for what they have experienced (Mouvement des survivant.e.s, et al. 4 Oct. 2018, 5).

According to sources, fear of reprisals prevents victims from reporting cases of sexual violence (Civil society coalition [2018], 6; UN 6 Aug. 2019, para. 10(c); Mouvement des survivant.e.s, et al. 4 Oct. 2018, 5). The Movement of Survivors, et al. report notes that many people who have experienced sexual violence do not speak out about it because they do not want to be rejected by their families and those around them (Mouvement des survivant.e.s, et al. 4 Oct. 2018, 5).

The CEDAW report indicates that the SNVBG "is being revised to take into account reparations for victims and that a fund has been established to assist victims of sexual violence" (UN 6 Aug. 2019, para. 26). Further and corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

#### **4.1 Police and Judiciary**

The CEDAW report indicates that the military and national police have adopted action plans for ending SGBV (UN 6 Aug. 2019, para. 10). Additionally, according to the same source, the Attorney General has created "special units" in public prosecutor offices to combat sexual violence (UN 6 Aug. 2019, para. 26). However, the report notes that CEDAW is concerned about "the lack of cases of domestic violence, including marital rape, brought before the courts," which in part is the result of "the limited number of perpetrators who are punished" (UN 6 Aug. 2019, para. 26(c)). The Movement of Survivors, et al. report indicates that survivors of sexual violence risk being retraumatized when providing their testimony in legal proceedings by police and judges who are not trained in issues involving sexual violence (Mouvement des survivant.e.s, et al. 4 Oct. 2018, 5). The same source reports that survivors are afraid of experiencing further sexual violence if they go to the police (Mouvement des survivant.e.s, et al. 4 Oct. 2018, 6). A June 2020 report by the UN Secretary-General on conflict-related sexual violence states that, in 2019, MONUSCO documented 62 incidents of sexual violence perpetrated by the Congolese National Police (Police nationale congolaise) (UN 3 June 2020, para. 27).

The Freedom House report indicates that convictions for SGBV offences "remain rare" (Freedom House 4 Mar. 2020, Sec. G3). The Movement of Survivors, et al. report states that [translation] "[i]mpunity prevails in the majority of cases of sexual violence, and is mainly linked to the Congolese government's lack of will to eradicate such violence" (Mouvement des survivant.e.s, et al. 4 Oct. 2018, 4). The same source reports that, because of corruption in the judicial system, some individuals are released after being convicted of sexual violence-related crimes (Mouvement des survivant.e.s, et al. 4 Oct. 2018, 5).

The MONUSCO report indicates that, in October 2020, two members of Raia Mutomboki Hamakombo [also known as Raia Mutomboki], [an armed group in eastern DRC (Reuters 19 Nov. 2019),] were sentenced to 20 years in prison for "crimes against humanity," including murder, rape, and sexual slavery (UN 30 Nov.

2020, para. 43). A November 2019 Reuters article reports that, in November 2019, the chief of Raia Mutomboki and two of his allies were convicted of sexual violence, enslavement and other "crimes against humanity"; the chief was given a life sentence (Reuters 19 Nov. 2019). The same source indicates that the court found the State "liable for failing to protect the victims" and ordered it to compensate the victims and pay their medical fees (Reuters 19 Nov. 2019). However, the article notes that a legal adviser for TRIAL International, a Geneva-based NGO, stated that "[p]recedents have shown" the State to be "unwilling" to pay compensation to victims, even when ordered by the courts (Reuters 19 Nov. 2019). Other sources similarly report that Congolese courts have previously awarded reparations to victims of sexual violence and other serious crimes, but that these have "rarely," ["if ever" (HRW 24 Nov. 2020)], been paid (HRW 24 Nov. 2020; Freedom House 4 Mar. 2020, Sec. F2). Sources report that, on 23 November 2020, the leader of the Nduma Defence of Congo (Nduma défense du Congo, NDC), a Congolese militia (HRW 24 Nov. 2020), was sentenced to life in prison for "war crimes" ["committed by his militia" (HRW 24 Nov. 2020)], including murder, rape, and sexual enslavement (UN 30 Nov. 2020, para. 44; HRW 24 Nov. 2020). The MONUSCO report also indicates that the Kalemie Garrison Military Court (Tribunal militaire de garnison de Kalemie) began fourteen trials against members of the FARDC and the Congolese National Police for "alleged sexual violence" and that as of 10 November 2020, nine members of the FARDC had been convicted and two police officers had been acquitted (UN 30 Nov. 2020, para. 43).

## 5. Support Services

Sources report a lack of shelters, counselling and rehabilitation services for survivors of SGBV (Civil society coalition [2018], 6; UN 6 Aug. 2019, para. 26(f)). The Movement of Survivors, et al. report indicates that there is not [translation] "widespread" access to healthcare in the DRC because of the uneven geographic distribution of health care centres and the cost of healthcare (Mouvement des survivant.e.s, et al. 4 Oct. 2018, 8). According to the same source, few women can access services that integrate medical and psychological care (Mouvement des survivant.e.s, et al. 4 Oct. 2018, 8). The Movement of Survivors, et al. report states that the Panzi Foundation provides support to survivors of sexual violence, but it does so in the absence of a [translation] "comprehensive, funded government program" providing such services (Mouvement des survivant.e.s, et al. 4 Oct. 2018, 8). Further and corroborating information on government support for survivors of sexual violence could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

### Notes

[1] The following civil society organizations contributed to this report: Association of Women Lawyers of the Democratic Republic of the Congo (Association des femmes avocates de la RDC, AFEAC), Association of Congolese Women Judges (Association des femmes juristes congolaises, AFEJUCO), AFIA MAMA, Permanent Consultation Framework for Congolese Women (Cadre permanent de concertation de la femme

congolaise, CAFCO), Forum for the Rights of Children and Youth in the Congo (Forum pour les droits des jeunes et enfants au Congo, FODJEC), Women in Media for Justice in the Congo (Femmes des médias pour la justice au Congo, FJMC), Restoration African Center (RAC), Women's International League for Peace and Freedom (WILPF), and Shalupe Foundation (Civil society coalition [2018], 1).

[2] Female Solidarity for Integrated Peace and Development (Solidarité féminine pour la paix et le développement intégral, SOFEPADI) is an NGO in the Democratic Republic of the Congo (DRC) that works to prevent and respond to sexual and gender-based violence (SGBV) by providing "holistic care" for survivors, mobilizing communities, conducting outreach and engaging in advocacy work at the local, national, and international levels (SOFEPADI and MADRE 12 Oct. 2018, 1).

[3] MADRE "is an international women's human rights organization that works in partnership with community-based women's organizations worldwide to address issues of health and reproductive rights, economic development, education and other human rights" (SOFEPADI and MADRE 12 Oct. 2018, 1).

[4] The Movement of Survivors of Rape and Sexual Violence in the DRC (Mouvement des survivant.e.s de viols et violences sexuelles en RDC) is an organization that brings together survivors of conflict-related sexual violence to fight against it (Mouvement des survivant.e.s, et al. 4 Oct. 2018, 2).

[5] The Dr. Denis Mukwege Foundation is an international human rights organization that aims to eradicate conflict-related sexual violence and works to ensure access to high-quality care and recognition for survivors of sexual violence (Mouvement des survivant.e.s, et al. 4 Oct. 2018, 2).

[6] The Panzi Foundation was established by Denis Mukwege and builds on the work of Panzi Hospital to provide support to survivors of sexual violence (Mouvement des survivant.e.s, et al. 4 Oct. 2018, 2).

[7] The Right Livelihood Award Foundation aims to honour and advocate for individuals and organizations that have [translation] "shown courage" in proposing "solutions to the most urgent challenges" (Mouvement des survivant.e.s, et al. 4 Oct. 2018, 3).

[8] The Dynamique de la jeunesse féminine (DYJEF) is a network that campaigns for the promotion, protection, and defence of the rights of young women in the DRC (DYJEF n.d.).

[9] Women's International League of Peace and Freedom (WILPF) is an organization that advocates for women to play a greater role in decision-making because their "full and equal participation" is necessary to achieve "sustainable peace" (WILPF n.d.).

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**Oral sources:** Care International; Centre de développement pour la femme; City of Joy; Coalition des femmes pour la paix et le développement; Comité national femme et développement; Dr. Denis Mukwege Foundation; Dynamique de la jeunesse féminine; Dynamique des femmes juristes; Femme plus (RDC); Fonds pour les femmes congolaises; Kvinna till Kvinna Foundation; Ligue pour le droit de la femme congolaise; Mouvement des survivant.e.s de viols et violences sexuelles en RDC; Oxfam – Oxfam GB, Oxfam-Québec; Panzi Foundation; Programme d'appui aux initiatives féminines; Réseau des femmes pour la défense des droits et la paix; Réseau national des ONG pour le développement de la femme; Solidarité féminine pour la paix et le développement intégral; Synergie des femmes pour les victimes des violences sexuelles; UN – UN Population Fund Democratic Republic of the Congo.

**Internet sites, including:** Actualité; Agency for Technical Cooperation and Development; Amnesty International; Australia – Department of Foreign Affairs and Trade; *L'Avenir*; BBC; Bertelsmann Stiftung; Borgen Project; Care International; Centre for International Law Research and Policy – Case Matrix Network; Council on Foreign Relations; Democratic Republic of the Congo – ministère du Genre, Famille et Enfant; Deutsche Welle; *Le Devoir*; Digitalcongo.net; ecoi.net; *Elle*; EU – European Asylum Support Office; Gender and COVID-19; Geneva Foundation for Medical Education and Research; International Committee of the Red Cross; International Crisis Group; International Rescue Committee; Kvinna till Kvinna Foundation; Médecins sans frontières; New York University–Congo Research Group; Oxfam – Oxfam-Québec; *Le Phare*; Physicians for Human Rights; Radio Okapi; Switzerland – State Secretariat for Migration; *The Telegraph*; UK – Home Office; UN – Refworld, UN Population Fund, World Health Organization; *The Washington Post*; World Bank; 7sur7.cd.