



NEAR EAST UNIVERSITY

FACULTY OF LAW

DEPARTMENT OF INTERNATIONAL LAW

**THE IMPACT OF THE UNITED NATIONS HUMAN RIGHTS COMMITTEE: THE
CASE OF HUMAN RIGHTS VIOLATIONS IN REPUBLIC OF CONGO**

LLM. THESIS

Osborn UWACU

NICOSIA

May, 2024

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MASTERS THESIS

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APPROVAL

We certify that we have read the thesis submitted by OSBORN UWACU titled **“THE IMPACT OF THE UNITED NATIONS HUMAN RIGHTS COMMITTEE: THE CASE OF HUMAN RIGHTS BIOLATIONS IN REPUBLIC OF CONGO”** and that, in our combined opinion, it is fully adequate, in scope and quality, as a thesis for the degree of Master of International Law.

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DECLARATION

I, Osborn Uwacu, declare that this dissertation entitled '**THE IMPACT OF THE UNITED NATIONS HUMAN RIGHTS COMMITTEE: THE CASE OF HUMAN RIGHTS VIOLATIONS IN REPUBLIC OF CONGO**' has been prepared under the guidance and supervision of Assist. Prof. Dr Tutku Tugyan, in partial fulfillment of the Near East University, Graduate School of Social Sciences regulations, does not, to the best of my knowledge, breach the Law of Copyrights and has been tested for plagiarism, and a copy of the result can be found in the Thesis.

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ACKNOWLEDGEMENT

From the tiniest details to the most monumental milestones, God has guided me through my academic journey, and for that I am eternally grateful. I have come this far because of His grace.

All the love, support, and selflessness from my parents has meant the world to me, and I will be forever grateful. My parents, Mr. Emmanuel Gashaija and Mrs. Mary Ingabire Gashaija, have been my rock through thick and thin. Also, I want to thank my brothers, Mr. Lenin Mutsinzi Gashaija and Mr. Isaac Musoni, from the bottom of my heart.

I am deeply grateful to my friends for the friendship and unfaltering support they have provided me mostly Mr. Godson Chibuzo, Mr. Eugene Ntambara and all my colleagues. Thanks to your friendship, this journey will always be in my heart.

Assoc. Prof. Dr Tutku Tugyan, who oversaw my thesis and provided me with essential feedback and direction, has my deepest gratitude. This thesis would not have been possible without his guidance and criticism.

Near East University has given me so much, and I am really grateful. My deepest gratitude to Ms. Muhabbat Akyon, my boss at work, for her beautiful soul.

My deepest gratitude goes out to everyone who has helped shape this thesis and my academic experience, no matter how large or tiny their role may have been. Thank you once again.

Osborn UWACU

ABSTRACT:
THE IMPACT OF THE UNITED NATIONS HUMAN RIGHTS
COMMITTEE: THE CASE OF HUMAN RIGHTS VIOLATIONS IN THE
REPUBLIC OF CONGO

Osborn Uwacu

Assist. Prof. Dr. Tutku Tugyan

L.L.M., Department of International Law

May 2024, pages 85

In D.R.C., there have been several violations of political and civil liberties that have increasingly become unaddressed because law enforcement offices conducted them. This thesis investigates the police's disregard for human rights and military personnel of the DRC as a violation of the ICCPR and C.A.T. It explores the admonition of the Convents Committees that has the authority to examine the violation in D.R.C. The thesis identified that the failure to uphold Article 7 of ICCPR and Article 7 of the C.A.T. within domestic mechanisms such as the D.R.C. courts in ensuring justice for cases of extrajudicial killings, rape, undue detention, and political oppression has led to the need for employing the boomerang strategy of examining the Committee admonition. According to International Legal Positivism, the consent and commitment of the state are crucial to promoting human rights and place a legal responsibility on the State. The case of D.R.C. has reflected a lack of commitment to civil and political rights, given the increasing perpetration by government security agencies.

This study questions whether D.R.C. is acting in accordance with Article 7 of the ICCPR and Article 7 of the C.A.T. in D.R.C. In the case of violation, it also examined whether the individual complaint procedure is taking effect to enable individuals to seek readdress. The admonitions of the Committees established for the promotion of the Covenants have also been examined for effectiveness. This study utilizes qualitative methodology by examining national reports, the Committee's report, cases, and the Committee's admonition to determine. The findings expose which

violation of human rights by the D.R.C. security personnel reflect a lack of commitment to upholding human rights, as this issue was not reported in the periodic reports to the Committee. Therefore, D.R.C. is not acting according to Article 7 of the ICCPR and C.A.T. as no personnel has been prosecuted with reference to these covenants despite violations.

Furthermore, individual complaints procedures are hindered in D.R.C. because domestic courts do not grant individuals the rights accorded by the covenants. The Committee's report found more violations relating to the police and military; however, they cannot pursue a case against D.R.C. except for pressuring the judicial system. This thesis recommends that such pressure be directed toward the application of ICCPR and C.A.T. in domestic courts ratifying to allow individual complaint procedures.

Keywords: D.R.C., Human rights, Violations, Police, Military, United Nations Human Rights Committee,

SOYUT:

**BİRLEŞMİŞ MİLLETLER İNSAN HAKLARI KOMİTESİ'NİN ETKİSİ:
KONGO CUMHURİYETİ'NDEKİ İNSAN HAKLARI İHLALLERİ
ÖRNEĞİ**

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Mayıs 2024, sayfa 85

DRC'de, kolluk kuvvetleri tarafından yürütüldüğü için giderek daha fazla ele alınmayan siyasi ve sivil özgürlüklerin çeşitli ihlalleri olmuştur. Bu tez, polisin DRC'nin insan haklarını ve askeri personelini ICCPR ve CAT'nin ihlali olarak göz ardı etmesini araştırmaktadır. D.R.C.'deki ihlali inceleme yetkisine sahip olan Manastır Komitelerinin uyarısını araştırıyor. Tez, yargısız infaz, tecavüz, haksız tutuklama ve siyasi baskı vakalarında adaletin sağlanmasında D.C.C. mahkemeleri gibi yerel mekanizmalar içinde ICCPR'nin 7. maddesinin ve C.A.T.'nin 7. maddesinin desteklenmemesinin, Komite uyarısını incelemeye yönelik bumerang stratejisinin kullanılması ihtiyacına yol açtığını tespit etmiştir. Uluslararası Hukuki Pozitivizme göre, devletin rızası ve taahhüdü, insan haklarının geliştirilmesi ve Devlete yasal bir sorumluluk yüklenmesi için çok önemlidir. D.R.C. davası, devlet güvenlik kurumları tarafından artan suçlar göz önüne alındığında, medeni ve siyasi haklara bağlılık eksikliğini yansıtmaktadır. Bu çalışma, D.R.C.'nin D.R.C.'de ICCPR'nin 7. maddesine ve C.A.T.'nin 7. maddesine uygun hareket edip etmediğini sorgulamaktadır. İhlal durumunda, bireysel şikayet prosedürünün bireylerin yeniden ele alınmalarını sağlamak için yürürlüğe girip girmediğini de inceledi. Antlaşmaların tanıtımı için kurulan Komitelerin uyarıları da etkinlik açısından incelenmiştir. Bu çalışma, ulusal raporları, Komite'nin raporunu, vakaları ve Komite'nin belirleme tavsiyesini inceleyerek nitel metodolojiyi kullanmaktadır. Bulgular, D.R.C. güvenlik personelinin hangi insan hakları ihlalinin, bu konu Komite'ye sunulan periyodik raporlarda bildirilmediği için, insan haklarını koruma taahhüdünün eksikliğini yansıttığını ortaya koymaktadır. Bu nedenle, D.R.C., ICCPR ve C.A.T.'nin 7. maddesine göre hareket etmemektedir, çünkü ihlallere rağmen bu sözleşmelere atıfta bulunulan hiçbir personel hakkında kovuşturma yapılmamıştır. Ayrıca, D.R.C.'de

bireysel şikayet prosedürleri engellenmektedir, çünkü yerel mahkemeler bireylere sözleşmelerin tanıdığı hakları vermemektedir. Komite'nin raporu, polis ve ordu ile ilgili daha fazla ihlal buldu; ancak yargı sistemine baskı yapmak dışında D.R.C. aleyhine dava açamazlar. Bu tez, bu tür bir baskının, bireysel şikayet prosedürlerine izin vermeyi onaylayan yerel mahkemelerde ICCPR ve C.A.T.'nin uygulanmasına yönlendirilmesini önermektedir.

Anahtar Kelimeler: K.K.E., İnsan hakları, İhlaller, Polis, Askeriye, Birleşmiş Milletler İnsan Hakları Komitesi.

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LIST OF ABBREVIATIONS

CAT	Convention against Torture and Other Cruel, Inhumane or Other Degrading Treatment of Punishment
CEDAW	Elimination of All forms of Discrimination against Women
C.R.C	Convention on the Rights of the Child
D.R.C	Democratic Republic of Congo
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social, and Cultural Rights
UN	United Nations
UNHRC	United Nations Human Right Committee
HR	Human rights
ICC	International Criminal Court
BPUFF	Basic Principles for Using Force and Firearms by Law Enforcement Officials

CHAPTER I

INTRODUCTION TO HUMAN RIGHTS IN DEMOCRATIC REPUBLIC OF CONGO

1.1 Introduction

Human rights are explored through several lenses and interpreted differently in different fields, societies, and eras.¹ Therefore, the definition of human rights will have specific elements unique to every discipline of human rights; clarifying their meanings, development, and importance from a legal perspective is this section is concerned with. Fundamentally, Human rights are the basic entitlements inherent to everyone, irrespective of socius economic status, ethnicity, or nationality. They are rights that we enjoy due to being someone who identifies as human. Nevertheless, a diverse view of human rights provides a thorough comprehension of the intricacies included in the notion of human rights and see its enduring significance in the modern world through the instrumentalization of international law.² This thesis introduction begins with a general perspective and then highlights human rights challenges in the DRC.³

The legal understanding of human rights begins within a state's domestic affairs⁴ The English Magna Carta acknowledged and protected the Barons from the king's oppression and unjust prosecution. This protection of rights accorded to people evolved as a European practice, as Grotius and other Enlightenment scholars

¹ Makau Mutua, The complexity of universalism in Human Rights in Human Rights with Modesty: The Problem of Universalism (Brill Nijhoff 2004) 51

² Oliver De Schutter, International Human Rights Law (Cambridge University Press 2019) 28.

³ Jack Donnelly, The Relative Universality of Human Rights' (2007), 29 Human Rights Quarterly 281.

⁴ Jennifer Nedelsky, Communities of Judgement and Human Rights' (2001) 1Theoretical Inquires in Law. 4

discussed the natural law tradition. Individual who are unable to conduct themselves by respecting the rights of others according to the natural law,⁵ therefore, needs to be curtailed.⁶ The Constitutions of several countries across the globe gradually adopted the existence of human rights in the country's foundation. e.g., the American Declaration of Independence declares the rights of the people of the United States.⁷ The idea such as *Liberté, égalité, and fraternity* formed the basis by which revolution was conducted for the expansion of rights beyond a group of French people. Therefore, human rights became institutionalized in the domestic law, putting the responsibility of protecting human rights in the hands of countries' governments. The duty bearer of human rights is the government.⁸

The International acknowledgment and protection of human rights stem from violations and abuse of human rights by the government that is saddled with the responsibility to protect the rights of citizens and other humans living under its law and its sovereign territory. The horrors of the World War 2 were conducted by the government of Germany under Adolph Hitler.⁹ The horrendous crimes against humanity, such as dehumanization towards genocide by Adolph Hitler, led to the introduction of international treaties and declarations for the protection of human rights. Hence, the expansion of duty bearers to include international organizations

⁵ Charles Goodhart and others, *Financial Regulation: Why, How and Where Now?* (Routledge 1998) 56.

⁶ Louis Henkin, *The Constitution, Treaties, and International Human Rights* (1968) 116 *University of Pennsylvania Law Review* 1012.

⁷ Peter Jones, *Human Rights and Diverse Cultures: Continuity or Discontinuity?* (2000) 3 *Critical Review of International Social and Political Philosophy* 27, 27.

⁸ Friedrich von Gentz, *The Origin and Principles of the American Revolution, Compared with the Origin and Principles of the French Revolution* (Asbury Dickins 1800) 88.

⁹ Daniel Levy and Natan Sznaider, *The Institutionalization of Cosmopolitan Morality: The Holocaust and Human Rights* (2004) 3 *Journal of Human Rights* 143, 143.

using international law as a mechanism for protection was established.¹⁰ Firstly, the Universal Declaration of Human Rights (UDHR) by the United Nations (U.N.) establishes a norm that human rights exist for everyone and, therefore, must be protected. Legal instruments such as the covenants were introduced to the countries and demanded to be ratified into domestic law. ICCPR¹¹ and ICESCR with the UDHR are called the International Bill of Human Rights.¹²

Therefore, International treaties and declarations, such as the 1948 United Nations General Assembly's adoption of the Universal Declaration of Human Rights (UDHR), serve as the cornerstone of contemporary human rights law.¹³ This viewpoint holds that human rights include civil, political, economic, social, and cultural rights legally binding on nations and governments and incorporated in international law. Legal experts stress the significance of codifying and upholding human rights standards through national laws and international procedures to safeguard people from prejudice, injustice, and abuse.¹⁴ Further need for monitoring human rights violations or protection prompted the U.N. to establish the Human Rights Committee as the organ responsible for upholding the ICCPR. Rights include the right to life, dignity, equality before the law, and privacy; freedoms such as freedom of speech, freedom to assemble and association, freedom of religion, freedom from fear and torture, and freedom from arbitrary arrest.

¹⁰ Jack Donnelly, *Universal Human Rights in Theory and Practice* (Cornell University Press 2013) 48.

¹¹ International Covenant on Civil and Political Rights (adopted 19 December 1966, entered into force 23 March 1976) 999 UNTS 171 art 31(1).

¹² Johannes Morsink, *The Universal Declaration of Human Rights and the Holocaust: An Endangered Connection* (Georgetown University Press 2019) 89.

¹³ Mashood A Baderin and Manisuli Ssenyonjo, *Development of International Human Rights Law Before and After the UDHR*, *International Human Rights Law* (Routledge 2010) 19.

¹⁴ Morsink (1999) pp 101

The rights were extended to African countries after independence, and therefore, the governments of African countries are expected to ratify and uphold the International Bill of Human Rights.¹⁵ However, the various civil conflicts and wars that have destroyed the fabric of the African post-independence period have led to the violation of the human rights of their citizens. The Democratic Republic of Congo is a leading example of significant violations.

Torture, arbitrary arrest, unjust imprisonment, and the illegal use of force are only some of the fundamental transgressions that the D.R.C. must contend with, among many others. To resolve the problem, the United Nations and the D.R.C. Military Force conducted a sequence of collaboration to educate security operatives and armed forces within the country. The guideline provided instruction on the proper use of guns and other forms of force by Military enforcement. Despite this enormous effort, the nation's human rights state and circumstances remain in disarray. Therefore, it is essential in order to deal with the problem of breaches of citizens' human rights. Recently, however, military violence and cruelty in D.R.C. have reached new heights of outrage. A recent continuous violation by the armed forces has resulted in the deaths of countless young people, and various demonstrations and rallies have been organized to rectify the situation. Social media is only one of several channels to spread the word about reforming the Military and eliminating some of its affiliates. As people from other countries have started demonstrating their support, the movement is trying to expand internationally. Human rights violations are on the increase, and because national governments have abandoned their citizens to the mercy of the Military, international law must be used to combat this ruthless conduct. As a result, this study will likely examine the effectiveness of legal mechanisms that can contribute to protecting human rights in D.R.C.

¹⁵ Charles Parkinson, *Bills of Rights and Decolonization: The Emergence of Domestic Human Rights Instruments in Britain's Overseas Territories* (OUP Oxford 2007) 78.

DRC has ratified several HR treaties and ratified several human rights charters. Two fundamental mechanisms are examined in the study thesis: ICCPR adopted by D.R.C. on the 1st of November 1976 and the CAT and Other Cruel Inhuman or Degrading Treatment or Punishment ratified by D.R.C. on 18 Mar 1996.¹⁶ The ICCPR recognizes that enjoying civil and political rights is contingent upon accomplishing economic, social, and cultural rights. The ICCPR further highlights the right to development and the fact that civil and political rights cannot be universalized in isolation from economic, social, and cultural rights. Individuals should be required to take steps to ensure their right to personal freedom is respected. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment recognizes the inherent dignity and worth of every human being. It prohibits the use of torture and other forms of cruel, inhuman, or degrading treatment or punishment under any circumstances. It establishes a comprehensive framework for preventing, investigating, prosecuting, and punishing acts of torture, as well as providing redress and rehabilitation for victims of torture. The convention also requires state parties to take adequate measures to prevent torture in any territory under their jurisdiction and to ensure that individuals are not subjected to extradition, expulsion, or refoulement to countries where there are substantial grounds for believing they would be at risk of torture.

Additionally, the convention emphasizes the importance of international cooperation in combating torture and promoting respect for human rights. The ICCPR and C.A.T. combined will be examined as legal mechanisms to improve the protection of human rights in D.R.C. This thesis examines the role of the Human Rights Committee in the progressive development of its jurisprudence of individual communication procedure enshrined in the optional protocol 1 of the ICCPR and C.A.T., which the

¹⁶ Peter Burns and Obiora Okafor, 'The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment or How It Is Still Better to Light a Candle than to Curse the Darkness' (1997) 9 Otago Law Review 399.

D.R.C. ratified.¹⁷ Nevertheless, studies on ICCPR and CAT must acknowledge that despite their binding status, they have elements of soft law in their implementation. Soft legal frameworks, including guidelines, codes of conduct, best practices, and international standards that are not legally enforceable, have the potential to have significant and diverse impacts on various regimes, including international relations and domestic policy. The potential for soft law, a critical effect of soft law, is needed in areas where consensus on complex law is difficult because of state interests, political ideology, or economic power for various reasons. Soft law has a significant and far-reaching impact because of its ability to shape values, influence conduct, encourage cooperation, and foster policy change across sectors and levels of government. Perhaps resources and many aspects of its application will exhibit various features associated with soft law. By "soft law," we mean standards and principles that, despite their influence, do not have a common interpretation that provides for "lawful binding." Although there is consensus on ICCPR and CAT, the implementation shows a level of lack of consensus especially with regards to the function of the Committee and the recommendations. These principles can influence national law and corporate practice without legally binding international treaties. Because weak regulation is voluntary, it allows for buy-in from various actors including non-state actors such as multinational corporations and civil society organizations. This helps to create a mass consumption mechanism for problem-solving. Nevertheless, the binding International Law reflect such feature despite its upheld status. This nature of international law features in this study.

1.2 Statement of the problem

Despite the ratification of the ICCPR and C.A.T., torture, arbitrary arrest, unjust imprisonment, and the illegal use of force are only some of the fundamental transgressions that the D.R.C. must contend with, among many others. In addition,

¹⁷ Jan Eckel, Human Rights and Decolonization: New Perspectives and Open Questions (2010) 1 Humanity: An International Journal of Human Rights, Humanitarianism, and Development 111.

the D.R.C. Military Force was among the many contributors to the reports issued by the U.N due to an allied between the United Nations and Security personnel in D.R.C. The guideline provides instruction on the proper use of guns and other forms of force by Military enforcement.¹⁸ Despite this enormous assistance by the D.R.C. Military Force, Military circumstances throughout the nation remain in disarray. Therefore, it is crucial to address the issue of Military personnel violating citizens' human rights. Recently, however, military violence and cruelty in D.R.C. have reached new heights of outrage. After a recent breach by the Military force resulted in the deaths of countless young people, various demonstrations and rallies have been organized to rectify the situation. Social media is only one of several channels to spread the word about reforming the Military and eliminating some of its affiliates. As people from other countries have started demonstrating their support, the movement is trying to expand internationally. Human rights violations are on the increase, and because national governments have abandoned their citizens to the mercy of the Military, international law must be used to combat this ruthless conduct. As a result, this study will likely show the limitations of admonitions in the case of D.R.C. and, therefore, propose some pressure level.¹⁹ As a result of the lack of coercive power, officials often reject admonition and recommendations or implement them only partially without direct legal consequences. This is a characteristic of soft law. The options associated with these agreements that allow private complaints and investigations do

¹⁸ John Karlsrud, 'The UN at War: Examining the Consequences of Peace-Enforcement Mandates for the UN Peacekeeping Operations in the CAR, the DRC and Mali' (2015) 36 Third World Quarterly, pp. 40.

¹⁹ Jeremy Julian Sarkin, 'Will the International Criminal Court (Icc) Be Able to Secure the Arrest of Vladimir Putin When He Travels? Understanding State Cooperation Through Other Icc Non-Arrest Cases Against Malawi, Chad, Nigeria, the Democratic Republic of Congo, South Africa, Djibouti, Uganda, and Jordan' (2023) 12 International Human Rights Law Review 26, pp. 38.

not identify legally binding elements but rather provide findings and recommendations that governments consider, and it happens. States can ratify the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Rights of the Child (CAT) to demonstrate their commitment to human rights and gain international legal legitimacy, even if they do not plan even if all the rules are strictly followed.

1.3 Purpose of the Study

The overall goal of this research is to examine the jurisprudence of HRC as a means to address the persistent violation of HR in the D.R.C. despite the existence of HR agreements that have been ratified. Treaties signed and the optional protocol within the framework of international law need a broader grasp against the rapidly expanding human rights problem since it has damaged the rights of so many individuals, and there is no recourse for these breaches by the state. This study examines how the H.R.C. engages the issue of security personnel, such as the military and police involvement in human rights abuses reported by individuals. This is a concern since, on multiple instances, the Military tasked with providing internal defense has unlawfully infringed the rights of people. The preamble to the African Charter states, reiterating language from the United Nations Charter, that it recognizes believes basic HR are based on human characteristics that warrant protection at the national and international levels, and that human rights should be guaranteed by respect for and actualization of individual rights. Sadly, this is not the case in D.R.C., where the Military disregards the rule of law. The role of the committee using the ICCPR and C.A.T. is analyzed. A case of D.R.C. study will be elaborated upon and explored in depth to reveal discrepancies in the military force. The thesis will also examine the H.R.C effectiveness in monitoring and applying the ICCPR and C.A.T. in instances of violation.

This issue must be discussed because people have a right to a life of dignity without interference from others—the charter of the U.N., the ICCPR, and the UDHR. Article 5 of the latter treaty implies that a person should not be subjected to any torture or cruel, vicious, and degrading treatment, and the D.R.C. armed forces have repeatedly

violated this concept. Rule 78(3) of the optional protocol states that the H.R.C. will examine communication received from individuals of the state party as it is within its jurisprudence. Human rights across the globe will benefit greatly from this study, which will shed light on human rights abuses committed by law enforcement and H.R.C.'s work to enhance human rights values.

1.4 Research Questions / Hypotheses

The objective of this study is to address the following inquiries:

1. Does the D.R.C. act in accordance with the ICCPR and C.A.T.?
2. Is the Individual Complaint Procedure, the first Optional Protocol of ICCPR and C.A.T., effective in the case of D.R.C.?
3. To what extent has the H.R.C. impacted the D.R.C. through its jurisprudence within the optional protocol?

1.5 Significance of the study

The executive authorities in D.R.C. continue to violate human rights even though several Ratification of human rights instruments has taken place., and the purpose of this research is to investigate these violations. Since this is a problem that has an impact on the rights of so many people and because, to a significant degree, there is no recourse for the crimes committed by the state, D.R.C. people have no choice but to go to international law to gain a deeper comprehension of this rapidly expanding human rights concern.²⁰ The violation of HR by those who are entrusted with the protection of the law is the topic that will be investigated in this study. This presents an issue since law enforcement agents, whose responsibility it is to ensure the nation's internal security, have, on multiple occasions, wrongfully infringed on the rights of civilians. The United Nations Charter, which was reaffirmed by the preamble of the African Charter, reassures fundamental human rights by stating, In doing so, it acknowledges that basic human rights are inherent to being human and hence warrant

²⁰ Milli Lake, *Organizing Hypocrisy: Providing Legal Accountability for Human Rights Violations in Areas of Limited Statehood* (2014) 58 *International Studies Quarterly* 515.

protection on a global and national scale, and that human rights must be guaranteed by both the actuality and the respect for individual rights.²¹ In other words, the United Nations Charter recognizes that fundamental HR originate from the characteristics of human beings, which justifies the need for national and international protection of human rights.⁵ Sadly, this is not the case in D.R.C, at least to some extent, as the police and the army forces continue to behave as though it is above the law. In light of this goal, the research will look at the guiding principles formed according to UN standards about police brutality. In addition, it will investigate the HRC effectiveness in monitoring and applying the U.N. standards to situations in which they have been violated. A comprehensive case study will be elaborated on and evaluated to reveal the discrepancies in how the Forces enforce the law.²²

It is essential to discuss this subject since people have a right to an existence of dignity in which their rights are not infringed upon—the charter of the U.N., the ICCPR, and the UDHR. The three agreements stated above expressly encapsulate the concepts of human rights, and the last of these documents, article 5, makes it quite plain that a person should not be subjected to any torture or cruel, inhuman, or degrading treatment; yet, the Congolese force has repeatedly violated this principle. To adequately address this issue, it is necessary to carefully investigate the degree to which those who violate human rights face the consequences; however, it is impossible because the government supports them. Because it draws attention to human rights violations—especially those perpetrated by law enforcement—and seeks to strengthen the basic principles of human rights under UN auspices, this research will be useful for international human rights

²¹ Bonnie Campbell, *Mining in Africa: Regulation and Development* (IDRC 2009) 187.

²² Alexis Arieff and Thomas Coen, *Democratic Republic of Congo: Background and U.S. Policy* 29.

1.6 Methodology

The study uses a qualitative research methodology by employing primary and secondary sources. Firstly, the governing texts, including the US Constitution of the DRC, case laws, the covenants, the ICCPR, and C.A.T. are examined because the two treaties established the foundation of this study. More specifically, Article 7 of both covenants is examined—cases to explore using legal article analysis, which involves the interpretation of the article from a treaty. Secondly, the implementation of these treaties in D.R.C. is examined against specific cases of violation is examined by considering secondary documents and report analysis within the country. The reports on violations will be examined to understand if the individual complaint procedures are adequate. The process by which the individual complaint is admissible will be traced to highlight whether individuals can file a complaint. Therefore, legal sources are complemented by examining non-legal sources, such as the report of the HRC and some evidence from media coverage. By analyzing diverse secondary sources of information, this thesis gains insights into the effectiveness of these mechanisms and the weaknesses in the implementation of Article 7 of ICCPR and C.A.T. in the case of D.R.C. However, the limitation is that this thesis does not involve direct information collection from the police officers and committee officials working on D.R.C. due to time and distance. Hence, this research relied mainly on secondary sources.

1.7 Definition of terms

Human rights are a set of fundamental liberties and protections that every person has by virtue of being human. They include cultural, social, economic, political, and civil rights that are generally acknowledged and safeguarded by international law. The ideas of human rights lay the groundwork for a just and equitable society that respects the inherent dignity and equality of every individual.²³

²³ Donnelly (n 11) pp48.

Human rights violations refer to actions or omissions by state or non-state actors that infringe upon or deny individuals their fundamental human rights. These violations can take various forms, including arbitrary detention, torture, discrimination, censorship, extrajudicial killings, forced displacement, and denial of access to necessities such as food, shelter, and healthcare. Systemic patterns of abuse often characterize human rights violations and can occur in both peacetime and during armed conflict.²⁴

The rights and responsibilities of the states that are party to an international human rights covenant are laid out in a legally enforceable treaty or agreement. Civil and political rights (ICCPR) and ICESCR are the two primary international human rights agreements. There is a comprehensive framework in place to preserve and promote human rights globally, and these covenants and other international treaties, such the UDHR, serve as its cornerstone.²⁵

International human rights agencies have a process in place that allows individuals, groups, or nations to make complaints about human rights violations. This process is called the individual complaint procedure, communications procedure, or interstate complaints method. After domestic remedies have been tried and failed, this mechanism permits victims of HR abuses to seek justice and hold those responsible to account. Regional human rights courts or the UNHRC, among other international human rights authorities, may investigate these claims, make suggestions, or even decide on a course of action to resolve the claimed violations²⁶

Admonition is a way to convey displeasure, censure, or caution towards someone, something, or some state for what they've done, whether formally or informally.

²⁴ David S Weissbrodt and Connie de la Vega, *International Human Rights Law: An Introduction* (University of Pennsylvania Press 2007) pp. 29.

²⁵ Rhona KM Smith, *International Human Rights Law* (Oxford University Press 2022) pp. 63.

²⁶ Jann K Kleffner and Liesbeth Zegveld, 'Establishing an Individual Complaints Procedure for Violations of International Humanitarian Law¹' (2000) 3 *Yearbook of International Humanitarian Law* pp. 384.

International human rights organizations, nations, or civil society groups may use the admonition to highlight human rights breaches, demand adherence to international human rights norms, and demand changes or reforms. By urging others to follow human rights principles and values, admonitions help bring those responsible for human rights abuses to justice.²⁷

²⁷ John Witte, *The Reformation of Rights: Law, Religion and Human Rights in Early Modern Calvinism* (Cambridge University Press 2007) 27.

CHAPTER II

THEORETICAL FRAMEWORK AND ASSESSMENT OF DEBATES ON HUMAN RIGHTS IN DRC

2.1 Theoretical Framework

Different scholars have postulated many theories to validate human rights and how valuable these theories are to the rights of humans. For this research, moral theory, legal positivism, and international legal positivism will be examined in analysing the work. The moral theory of humans is the foundation of a deontological perspective rather than the violations. It presumes that morality will help uphold human rights protection. Legal positivism emphasizes the enforcement and formal recognition of rights rather than their intrinsic moral value when applied to the human rights view. International legal positivism, therefore, extends enforcement and formal recognition of rights to the international environment. The insufficiency of moral theory is the lack of enforcement however, the legal positivism ensures enforcement. The international legal positivism is adopted since the ICCPR and CAT are examined in the study. While moral theory contributed to the protection of human rights is limited because it does not see.

2.2 Moral Theory of Human Rights

Boesky emphasizes that human rights moral theory is a multifaceted and complex concept that seeks to replace the existing idea of HR as regards ethical principles.²⁸ In essence, this theory argues that, due to their membership in humans, humans possess certain fundamental rights, which are inalienable and universal. The human rights moral foundation's exploration requires examining many ethical underpinnings and philosophical perspectives that justify the protection and existence of these HR. A popular moral theory that supports human rights is often

²⁸ Rachel Bayefsky, 'Dignity, Honour, and Human Rights: Kant's Perspective' (2013) 41 Political Theory 809.

linked to Immanuel Kant's deontological approach.²⁹ In the human rights context, deontological ethics propound that people have intrinsic worth and dignity, and depriving them of their rights is wrong. Immanuel Kant's vital category, which stresses treating people as ends in themselves and not treating people as means to an end, connects with the notion that views human rights as inviolable because of the intrinsic value of individuals.³⁰

In the human rights context, deontological ethics propound that people have intrinsic worth and dignity, and depriving them of their rights is wrong. Immanuel Kant's vital category, which stresses treating people as ends in themselves and not treating people as means to an end, connects with the notion that views human rights as inviolable because of the intrinsic value of individuals.³¹ In contrast, utilitarianism, promoted by philosophers such as John Stuart and Jeremy Bentham, proposed a consequentialist view on morality. Similarly, from the standpoint of a utilitarian, the moral value of every action is bent on the greatest happiness or overall utility to get the most significant result.³² When applied to human rights, it can be concluded that protecting and respecting people's rights can result in a harmonious and just society, resulting in a maximized total well-being.³³

Furthermore, another popular moral theory in human rights discourse is known as the natural law theory.³⁴ Founded on the belief that specific ideas are naturally intrinsic and may be known through reasoning, this law serves as the basis for

²⁹ Burke A Hendrix, 'International Law as a Moral Theory of State Territory?' (2001) 6 *Geopolitics* pp. 141-162.

³⁰ A Boldizar, 'Ethics, Morals and International Law' (1999) 10 *European Journal of International Law* pp.279-311.

³¹ Gary Herbert, 'Immanuel Kant: On Treating Persons as Persons, *The Personalist Forum* (JSTOR 1999) pp. 247-256.

³² Amartya Sen, *Well-Being, Agency and Freedom the Dewey Lectures 1984 Justice and the Capabilities Approach* (Routledge 2012) pp. 51.

³³ Neumann, Michael. Did Kant respect persons? *Res Publica* 6 (2000): pp. 285.

³⁴ John Finnis, *Natural Law and Natural Rights* (OUP Oxford 2011) 34.

comprehending HR regarding the broader knowledge of moral order. Natural law advocates contend that human rights cannot be merely socially formed but founded in a universal, higher order that transcends legal and cultural differences.³⁵

Despite his emphasis on natural law, Grotius also recognized the significance of the nation sovereignty and consent in the formation of international legal norms.³⁶ He believed that states had a right to govern themselves and enter into agreements with other states based on mutual consent. Grotius's theory helped establish the principle of *pacta sunt Servando* (agreements must be kept), which remains a fundamental principle of modern international law.³⁷ Grotius's theory of international law represents a foundational moment in the evolution of modern international legal thought. His emphasis on natural law and state sovereignty reflects contemporary debates and discussions within the field of international law, providing enduring insights into the principles and norms that govern relations between states and other international actors.³⁸

Natural Law and Sovereignty are seemingly contrasting perspectives because one focuses on the protection of human rights while the other focuses on the sovereignty of the state. State sovereignty is a foundational principle of international law that reflects the autonomy and independence of states in managing their internal affairs without external interference. Sovereignty grants states the authority to govern their territory, enforce laws, and protect the rights and interests of their citizens without

³⁵ Jerome J Shestack, *The Philosophic Foundations of Human Rights*, *Human Rights* (Routledge 2017) pp. 36.

³⁶ Hans W Blom, 'Sovereignty in Grotius', *Early Modern Sovereignties* (Brill Nijhoff 2020) pp. 47.

³⁷ Orazio Condorelli, *Grotius's Doctrine of Alliances with Infidels and the Idea of Respublica Christiana* (2020) 41 *Grotiana* pp. 13-39.

³⁸ Benjamin Straumann, *Early Modern Sovereignty and Its Limits* (2015) 16 *Theoretical Inquiries in Law* 446.

undue external pressure or intervention. Respect for state sovereignty is essential for maintaining stability, order, and cooperation in the international system.³⁹

While the protection of human rights is undoubtedly essential, the primacy of state sovereignty ensures that states retain ultimate control over decisions affecting their domestic policies and governance structures. External intervention in the name of HR protection risks undermining the sovereignty of states and infringing upon their right to self-determination. Moreover, interventions justified on humanitarian grounds can be politically motivated or selectively applied, leading to accusations of hypocrisy and double standards in the international community.⁴⁰

On the other hand, the protection of HR is a fundamental moral imperative that transcends national boundaries and requires collective action by the international community.⁴¹ The recognition of universal human rights norms, enshrined in international treaties and customary law, reflects a shared commitment to uphold the dignity and well-being of all individuals, irrespective of their nationality or citizenship. States have a responsibility to respect, protect, and fulfill the HR of their citizens, and the international community has to intervene when states fail to uphold these obligations.⁴²

To ensure that states are held responsible for human rights crimes and that those responsible are held accountable, international human rights law provides a framework.⁴³ In order to ensure that states adhere to human rights standards and that abuse victims receive justice, mechanisms like regional human rights courts, treaty bodies, and international tribunals are vital.⁴⁴ When governments fail or refuse to

³⁹ Fassue Kelleh, *The Changing Paradigm of State Sovereignty in the International System* (MA, University of Missouri - Kansas City) 99.

⁴⁰ Thomas M Franck, *The Emerging Right to Democratic Governance* (1992) 86 *The American Journal of International Law* 46, pp. 91.

⁴¹ Thomas J Biersteker, 'State, Sovereignty and Territory' [2013] *Handbook of international relations* pp. 245-272.

⁴² Introduction, *A Companion to Philosophy of Law and Legal Theory* (John Wiley & Sons, Ltd 2010) 30.

⁴³ 'State Sovereignty and Globalization: Are Some States More Equal?' 28 381.

⁴⁴ Thomas G Weiss, *Humanitarian Intervention* (John Wiley & Sons 2016) 55.

safeguard human rights, the international community can step in collectively to prevent or end atrocities like genocide, crimes against humanity, and war crimes according to the humanitarian intervention principle.⁴⁵ By prioritizing human rights protection over strict adherence to state sovereignty, the international community demonstrates its commitment to universal values of justice, equality, and human dignity. Upholding HR norms strengthens the legitimacy of the international legal order and fosters a more peaceful and just world for all.⁴⁶

The main obligation falls on the states to protect and promote human rights within their jurisdiction, and international human rights mechanisms should complement, rather than supplant, domestic efforts to address human rights abuses.⁴⁷ Constructive engagement and dialogue between states, supported by technical assistance and capacity-building initiatives, offer more effective and sustainable approaches to advancing human rights protection while respecting state sovereignty and national sovereignty. The conflict between human rights and sovereignty is further resolved through the theory of Legal Positivism.

2.3 Legal Positivism

In jurisprudence philosophy, legal positivism maintains that a law's legality depends on its moral source, not its content. Legal positivism offers a unique view that focuses on the enforcement and formal recognition of rights rather than their intrinsic moral value when applied to the human rights view.⁴⁸

Hart is among the notable scholars who contributed to legal to legal positivism, and his findings have notably encouraged the theory. Hart discloses that the nature of

⁴⁵ Francis Kofi Abiew, *The Evolution of the Doctrine and Practice of Humanitarian Intervention* (Martinus Nijhoff Publishers 1999) pp.34.

⁴⁶ JL Holzgrefe and Robert O Keohane (eds), *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas* (1. publ., 5. print, Cambridge Univ Press 2007) 56.

⁴⁷ Hilary Charlesworth, 'Human Rights as Men's Rights', *Women's Rights, Human Rights* (Routledge 1995) 16.

⁴⁸ Mark Tebbit, *Philosophy of Law: An Introduction* (Routledge 2017) pp.35.

legal positivism depends on morality and separation of law.⁴⁹ In the human rights context, this shows that the validity and existence of rights depend on their inclusion in a legal framework using known legal procedures. Human rights are viewed as a result of legal norms and not moral or natural principles within legal positivism. The abandoning of natural law theories that propound global or inherent fundamentals of human rights resulted in an essential questioning of the authority and nature of this right.⁵⁰ Legal positivist views emphasize the duties of the legal system and state institutions towards safeguarding and creating human rights. These rights are valid once established using legitimate lawful means, like constitutional or legislative provisions. This legal emphasis can result in accepting rights that may go against specific ethical or moral standards but are considered valid due to its legal framework.⁵¹

Critics contend that legal positivism's detachment of morality from law may go against basic human rights principles. They argued that a natural positivist idea poses risks of legitimizing unjust policies or laws once they conform to existing legal procedures. However, the tension between moral legitimacy and legal validity poses a significant concern when applying legal positivism toward human rights.⁵²

Legal positivism struggles with the concept of cultural relativism. In its demand for the advantages of legal acceptance, this theory can be viewed as accepting cultural variation regarding the protection and interpretation of H.R.⁵³ Cultural ethics can gain an edge over basic human rights without facing legal reprimand because of its

⁴⁹ HLA Hart, 'Positivism and the Separation of Law and Morals' (1958) 71 Harvard Law Review 593, 63.

⁵⁰ Torben Spaak and Patricia Mindus, *The Cambridge Companion to Legal Positivism* (Cambridge University Press 2021) 78.

⁵¹ Teraya Koji, 'Multifaceted Conceptions of Implementation and the Human Rights Approach', *Public Interest Rules of International Law* (Routledge 2009) p.96.

⁵² Pierre Thielbörger, 'The "Essence" of International Human Rights' (2019) 20 German Law Journal 924, 54–939.

⁵³ Spaak and Mindus (n 52) 77.

expansive scope, which begs the question of whether or not cultural rights are universally applicable. In addition, the examination of the responsibilities of international law within the framework of human rights is made possible by legal positivism. Furthermore, there are numerous obstacles to implementing legal positivism's principles globally due to the fact that it is based on national legal systems.⁵⁴ To bridge this divide and highlight the universal recognition of human rights, the field of international human rights law has been actively working to activate. Using the legal positivism framework, we may now think about the interplay between domestic and international legal systems at this stage of development.

2.4 International Legal Positivism

International legal positivism regarding human rights deals with the view that the authenticity of H.R depends on the already established legal sources and processes within the global legal system. In the context of this thesis, the ICCPR and C.A.T. are the legal sources examined.⁵⁵ The positivist philosophers contend that recognized sources like conventions, treaties, and customary international law authorize these values. A significant action of international legal positivism is the emphasis on national consent. From the positivist perspective, human rights duties depend on the state to an extent whereby they genuinely accept the duties via explicit consent, manifested through agreements or treaties.⁵⁶

This action stresses the usefulness of formal legal norms that the state uses to assume their human rights duties voluntarily. Those who criticize international legal positivism contend that a stern reliance on national consent may result in shortcomings regarding the protection of fundamental rights. They argued that this concept may undermine the inalienability and universality of these rights by putting

⁵⁴ Ibid Koji

⁵⁵ Jörg Kammerhofer, 'International Legal Positivism' (7 August 2014) p.45.

⁵⁶ Jens David Ohlin, 'Is the Concept of the Person Necessary for Human Rights?' in Fleur Johns (ed), *International Legal Personality* (1st ed, Routledge 2017) 437.

them at the state's discretion. Also, several concerns are made about individuals' capability to lay claims to rights, and the state has the ability not to accept some human rights values.⁵⁷

Another concept of international legal positivism deals with the duties of the global establishment regarding the development of human rights values. Positivist philosophers often clamor for nations' need to engage in these norms to be approved legally and voluntarily.⁵⁸ At the same time, these establishments perform an essential role in monitoring and codifying human rights. This view showcases a trust in the importance of national limitations and sovereignty regarding the authority of the international establishment.⁵⁹ The positivist philosopher widely asserts that convention and treaties are the fundamental origins of international law, and inconsistent general principles or customary norms can be subordinate—the International Convention on Civil and Political Rights and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The ICCPR is a multilateral treaty adopted by the United Nations General Assembly in 1966.⁶⁰ It enshrines a wide range of civil and political rights, such as the right to life, freedom of speech, and freedom of religion. D.R.C. is a party to the ICCPR and commits itself through consent to respect, protect, and fulfill these rights for all individuals within their jurisdiction. By ratifying or acceding to the ICCPR, D.R.C. consents to be bound by its provisions, thus affirming the principles of legal positivism within the legal framework for the protection of human rights. Similarly, the C.A.T. is an international treaty adopted by the United Nations General Assembly

⁵⁷ Charles A Reich, 'Individual Rights and Social Welfare: The Emerging Legal Issues', *Welfare Law* (Routledge 2020).

⁵⁸ Harold J Berman, 'The Western Legal Tradition in a Millennial Perspective: Past and Future' (1999) 60 *La. L. Rev.* 739, 739.

⁵⁹ Abdullahi Ahmed An-naim and Francis M Deng, *Human Rights in Africa: Cross-Cultural Perspectives* (Brookings Institution Press 2010) pp.67.

⁶⁰ Dana Baldinger, The 1966 International Covenant on Civil and Political Rights (Iccpr), *Vertical Judicial Dialogues in Asylum Cases* (Brill Nijhoff 2015) 66.

in 1984. It aims to prevent and prohibit torture and other forms of cruel, inhuman, or degrading treatment or punishment worldwide. D.R.C., by ratifying or acceding to the C.A.T., states acknowledge their legal obligations under international law and consent to be bound by its provisions. This reflects the positivist principle that legal norms derive their validity from the consent of states. The International Legal Positivist theory aligns with the principle of State responsibility and will be applied to the D.R.C. within the human rights discussion⁶¹.

2.5 Literature Review on UDHR and Human Rights

United Nations played a significant role in advancing the framework and discourse of human rights at the international level. The UDHR, adopted by the General Assembly of the United Nations in 1948, is the primary document in this section. The UDHR marked a historical moment, showcasing a broad set of freedoms and rights intrinsic to everyone, irrespective of ethnicity, nationality, and other status.⁶² Additionally, after the UDHR achievement, the U.N. earnestly worked towards ensuring these values were translated into a legally binding document. This effort led to many human rights treaties and conventions like the ICESCR and ICCPR adopted in 1996.⁶³ These norms increased various rights hinged on UDHR and founded the instruments for enforcing and monitoring compliance. The commitment of the U.N. was further reinforced towards human rights by setting up specialized establishments like the United Nations Human Rights Council (UNHRC) in 2006. Making recommendations towards addressing issues, addressing violations, and

⁶¹ Philipp Lottholz, *Critiquing Anthropological Imagination in Peace and Conflict Studies: From Empiricist Positivism to a Dialogical Approach in Ethnographic Peace Research* (2018) 25 *International Peacekeeping*, p.695.

⁶² Serene J Khader, *Decolonizing Universalism: A Transnational Feminist Ethic* (Oxford University Press 2018) p. 43.

⁶³ *Ibid* ICCPR, Article 7

internationally protecting and promoting human rights are all the duties of UNHRC.⁶⁴

Moreover, besides establishing a legal system, the U.N. engaged in many initiatives to promote education on human rights. Similarly, the Office of the United Nations High Commissioner for Human Rights (OHCHR) is also taking the lead towards coordinating these efforts, ensuring a world in which people are sensitive to their various rights and empowered to claim them. Although various breakthroughs have been made, challenges persist. The U.N.'s effectiveness in addressing the issues of violations of human rights varies, and this has drawn lots of criticism to enforcement agencies due to their limitations. The U.N. undoubtedly remains active in developing global human rights programs, promoting a world where individuals' rights and dignity can be respected, and adapting to various new challenges.

Increasing these ideas and adding more details, references, and examples to certain documents will also add to a detailed and comprehensive tracking of the U.N.'s duties toward human rights.

2.6 Debating human rights violations in D.R.C.

Previous studies on D.R.C. began with the problems of lack of personal security. Using the doctrine of State responsibility and arguing that it can be linked to human rights, their studies have stated that state responsibilities extend to the international arena, where they are expected to be committed to the international covenants. The principle of *pacta sunt Servando* obliged state is that states are bound by the treaties and contracts they sign in international law⁶⁵. Therefore, even when these obligations are within the territory of the state, as in the case of human rights, the state must uphold the responsibilities⁶⁶.

⁶⁴ Ibid Khader pp. 67

⁶⁵ Jan Klabbers, *The Concept of Treaty in International Law* (BRILL 2023) 78.

⁶⁶ Article 52(1) of the 2006 Constitution of the Democratic Republic of Congo

The principle of state accountability is recognized in international law and can be applied to human rights legislation as well.⁶⁷ Breach of a state's international responsibilities, whether caused by or due to the state, is a matter of state responsibility and must be punished accordingly. Such global responsibilities have their roots in customary international law and international human rights accords. According to Zegveld, states can only be held liable for damages inflicted by armed opposition groups—which could be individuals or non-state actors—in cases where they have neglected to conduct due diligence, as shown by international practice⁶⁸. This conclusion can be drawn from the study's findings. The state is obligated to undertake appropriate measures to prevent and repress the injurious acts of both its agencies and departments, especially the armed forces and those of non-state actors, by exercising due care⁶⁹.

Concerning the situation in the (D.R.C.), additional research has shown that numerous reports published by the U.N Office of the High Commissioner on Human Rights and other national and international non-governmental organizations (N.G.O.s) point out severe flaws in the procedures that are in place to prevent, repress, and redress human rights violations in the country, with a particular emphasis on the right to personal security. These reports have been published in

⁶⁷ Lyal S Sunga, 'Individual Responsibility in International Law for Serious Human Rights Violations', *Individual Responsibility in International Law for Serious Human Rights Violations* (Brill Nijhoff 2021) 78.

⁶⁸ Liesbeth Zegveld, *Accountability of Armed Opposition Groups in International Law* (Cambridge University Press 2002) 182.

⁶⁹ Leonardo Borlini, 'The Security Council and Non-State Domestic Actors: Changes in Non-Forcible Measures between International Lawmaking and Peacebuilding' (2020) 61 *Va. J. Int'l L.* 489, 489.

several different countries. Moving forward, studies identified these deficiencies progressively.⁷⁰

Exercising due diligence entails the state adopting proactive efforts to avoid violations, conducting investigations, prosecuting perpetrators of human rights offenses, and punishing them, as well as providing victims with legal remedies. According to Chirwa, due diligence is essentially about the reasonableness or seriousness of the measures and steps taken by the State⁷¹. The precedents set by both the Inter-American Court of Human Rights and the European Court of Human Rights serve as the basis for Chirwa's argument. It is feasible for the state to acquit itself of this obligation to undertake due diligence by utilizing the law, physical protection, and several other strategies that are utilized in the prosecution process.

Another facet that has been investigated by scholars like Cook is the need to safeguard government legislation⁷². Based on a comprehensive review of case law and a study of international practice, it was determined that the state is obligated to provide a legal framework that allows for the prevention and repression of abuses of H.R. The legal monopoly of military courts and tribunals over dealing with war crimes, crimes against humanity, and any other civilian crimes perpetrated by weapons of war, was one of the critical limitations of the present legal framework in the (D.R.C.). According to research that analyzed and determined that this is one of the significant weaknesses in the framework, the regime of government puts forth

⁷⁰ Masrur Mahmud Khan, Samwat Naiear Ahona and Subiggo Chakma, 'Human Rights Protection in UN Peace Operations: A Case Study of the Democratic Republic of the Congo' (2021) 03 Chinese Journal of International Review 2150003, 213.

⁷¹ Danwood Mzikenge Chirwa, 'The doctrine of state responsibility as a potential means of holding private actors accountable for human rights' 5 State Responsibility 36.

⁷² Rebecca J Cook, 'State Responsibility for Violations of Women's Human Rights' (1994) 7 Harvard Human Rights Journal 125, 125.

the protection or violation of human rights. The current political, military, and social environment in the D. R. C has been shown to put possible attempts to repress violations of the right to personal security in jeopardy ⁷³.

The results of victim studies show that victims of rape and other breaches of the right to personal security committed by soldiers or civilians armed with weapons of war cannot lawfully seek reparation through the military courts and tribunals. A further defect stemming from the fact that criminal offences, rape, and kidnapping are exclusively within the purview of military justice is this.

Other studies argued that, In spite of this, it is essential to point out that the Democratic Republic of the Congo has taken a step toward eliminating such shortcomings. It has been proposed that a measure be developed with the intention of putting into effect the Rome Statute of the International Criminal Court. This measure includes sexual offenses as part of its list of crimes against humanity and war crimes that are codified. In addition to this, it broadens the scope of the civilian judiciary's authority to cover crimes against humanity and war crimes that members of the armed forces perpetrate. It has been judged to be adequately prepared by Amnesty International and Human Rights Watch, and if it were to be adopted, it would include international legal norms on the most severe crimes in Congolese law⁷⁴.

⁷³ Al-Makura, A.H.M. *The Challenges and Effects of Violent Conflict on Development: A Study of The Democratic Republic of Congo (Drc)* (Doctoral dissertation, Doctoral Dissertation, Baze University) (2021) pp. 47.

⁷⁴ Jean Chrysostome K Kiyala, 'General Introduction on the Democratic Republic of Congo' in Jean Chrysostome K Kiyala (ed), *Child Soldiers and Restorative Justice: Participatory Action Research in the Eastern Democratic Republic of Congo* (Springer International Publishing 2019).

Additionally, it would move the burden for prosecuting such crimes from the authority of the Military to the jurisdiction of civilian tribunals. On the other hand, according to some author's understanding, the measure has not yet been passed into law and has been sitting in Parliament since the year 2003⁷⁵. This is compelling evidence that the State did not exercise the level of diligence that is required of them. It was expected that Parliament would swiftly pass such a measure in light of the worrisome human rights situation that exists in the eastern half of the Democratic Republic of the Congo. Failure to do so constitutes a breach of the right of its people to personal security, and hence, it ought to be held accountable by a jurisdiction that is competent in the matter.

According to research that investigated the origins of violations, it was found that in the D.R.C, violations of the right to personal security are mainly carried out by uncontrolled armed groups⁷⁶. However, it is unfortunate that members of the national army are also responsible for these violations. This latter fact only serves to make problems worse because it raises the question of who would then be responsible for ensuring the population's physical protection. Nevertheless, the official armed forces are obligated to take appropriate measures to protect by either avoiding transgressions of this nature or intervening promptly to put a stop to them and protect the people. Sadly, extensive violations that have taken place over the previous few

⁷⁵ Juliane Kippenberg and Human Rights Watch (Organization), *Soldiers Who Rape, Commanders Who Condone: Sexual Violence and Military Reform in the Democratic Republic of Congo* (Human Rights Watch 2009).

⁷⁶ Isidore Agha Ndzamangwi, 'The dynamics of conflict and peace building in africa: the case of the democratic republic congo, Central African Republic, and Mali. pp. ' 56.

years and very recently make it quite evident that the actions adopted by the D.R.C. do not pass the due diligence standard ⁷⁷ .

Several individuals' scholars have claimed that the absence of resources is a factor that contributes to the violation of human rights⁷⁸. One wonders if the (D.R.C.) may be able to present the argument that it cannot provide its population with the required resources for protection to explain its inability to provide them with physical protection in some instances. Even though this is something that may be considered, the obligation of the state can still be established about the proper application of due diligence in the management of national resources. Within the context of the Metrorail case, the Constitutional Court of South Africa determined that the state is obligated to explain its inability to safeguard its citizens from violence⁷⁹. It is necessary to specify the exact nature of the financial and human resource limitations within the framework of the total funding of the state organ. This holds true irrespective of the nature of the limitations, be they monetary or interpersonal. The reasonableness standard, when properly applied, complies with the constitutional principles of accountability, which demand that decision-makers explain their reasoning behind their actions, and the principle of effectiveness, without unduly limiting their authority to decide what are reasonable and appropriate measures in the context of their activities as a whole. But it doesn't make decision-makers reveal why they did what they did.⁸⁰

⁷⁷ Ines Yagi, *Conflict-Related Sexual Violence against Men in the Democratic Republic of Congo: Lifting the Veil of Secrecy around a Controversial and Taboo Subject* (Peters Publishers 2023) 79.

⁷⁸ Kirstin Wagner and others, 'UNsupported: The Needs and Rights of Children Fathered by UN Peacekeepers in the Democratic Republic of Congo' (2022) 23 Human Rights Review 305, 305.

⁷⁹ Tumo Charles Maloka, 'A Critical Appraisal of Dismissals at the Behest of a Third Party: The Impact of the Constitutional Labour Rights' (2021) 42 Obiter 105, 105.

⁸⁰ Christopher Jaeger, *The Empirical Reasonable Person* (2021) 887.

An analysis of a study that focused on persecution demonstrates that the state's obligation to protect via prosecution requires the state to take three different actions⁸¹. This includes the responsibility to conduct an investigation into the violations, the responsibility to punish those who are responsible for the breaches, and the responsibility to provide victims or family members with remedies. The need to bring criminal charges against those who violate human rights is not explicitly included in all international human rights accords. The only two conventions that contain the most explicit obligations to investigate and punish specific human rights crimes that will be examined in this study are ICCPR and the C.A.T.

Unlike the C.A.T., the most comprehensive human rights treaties, in particular (ICCPR), do not expressly require state parties to punish infractions of the rights that they guarantee. Certain monitoring agencies and other authorities, on the other hand, have construed such accords in such a way that they require state parties to investigate and punish those who commit significant violations of physical integrity. These obligations are a direct result of the affirmative obligation that the States Parties have to provide the rights that are outlined in these Conventions. Therefore, ICCPR and C.A.T. would be the focus of this thesis regarding the violation of human rights in D.R.C. and how the H RC has interacted with D.R.C. government

⁸¹ Guillermo Trejo and Camilo Nieto-Matiz, 'Containing Large-Scale Criminal Violence Through Internationalized Prosecution: How the Collaboration Between the CICIG and Guatemala's Law Enforcement Contributed to a Sustained Reduction in the Murder Rate' (2023) 56 Comparative Political Studies 1328, 1328.

CHAPTER III

POLITICAL HISTORY AND HUMAN RIGHTS IN THE DEMOCRATIC REPUBLIC OF CONGO

3.1 Historical literature on Congo from independence to human rights violation

Leopold, the Belgian monarch, is a member of the nonprofit Association Internationale Africaine, they have Had complete authority over Zaire. Leopold was the sole executive and shareholder. Any territory that is currently part of the DRC was formerly part of the state. The Congo Free State, presided over by Leopold II, became infamous around the turn of the last century for a number of reasons.⁸² Foreign officials who had committed horrific killings during a resource-collection expedition were prosecuted and imprisoned as a consequence of the report by the British Consul Roger Casement. At least 122 local Congolese citizens were shot by one of these officials—a Belgian. Estimates of fatalities vary substantially. It is far more difficult to assess the population loss during that time since the first census was only carried out in 1924. Approximately 10 million people were estimated in the famous 1904 study by Roger Casement. Casement found that tropical diseases, indiscriminate warfare, starvation, and a falling birthrate contributed to the country's population reduction. In 1900, news outlets in the US and Europe spread the word about what was happening in the Congo Free State. Leopold II became the Belgian Congo colony in 1908 after receiving diplomatic and public pressure to annex the Congo.⁸³

⁸² 'History Repeating Itself' 55

<<https://www.tandfonline.com/doi/epdf/10.1080/10246029.2003.9627250?needAccess=true>>
accessed 23 May 2024.

⁸³ Olawale R Olaopa and Victor Ojakorotu, 'Conflict about Natural Resources and the Prospect of Development in the Democratic Republic of Congo (DRC)' [2016] Journal of Social Sciences pp. 244.

3.1.1 The D.R.C.'s Belgian Government Administration

On November 15, 1908, King Leopold II of Belgium formally relinquished sovereignty and jurisdiction over Congo Free State. The newly formed Belgian Congo was directly governed by the Belgian government's Ministry of Colonies. The interests of the Belgian state, missionaries, and private companies formed the basis of Belgian colonial power in the Congo. Regional specialization occurred as a result of the massive influx of riches into the Congo brought about by the prioritization of Belgian economic interests.⁸⁴ A stronger link between the public and private sectors was created when the state helped companies terminate strikes and remove other hurdles erected by the indigenous population. In contrast to the colonialists' preferred indirect rule—in which local leaders were given authority but ultimately subject to colonial oversight—the country was divided into nested, hierarchically structured executive subdivisions and run consistently according to a predetermined native policy. Additionally, racial segregation was rather high. Upon arriving in Zaire following the end of WWII, a significant number of white immigrants, who came from diverse socioeconomic levels, were perceived as superior to the Black population.⁸⁵

The colonial rulers in the Congo launched a number of development programs in an effort to turn the area into a model colony in response to the unprecedented level of urbanization that occurred in the 1940s and 1950s. Diseases like African trypanosomiasis now have much more effective treatments. An effect of these practices was the formation of a middle class in the city comprised of individuals with Europeanized African Evolutionary traits. In the 1950s, the Congo's workforce surpassed all other African colonies in terms of wage earners. As the Cold War wore on, the United States and the Soviet Union took a keen interest in the Congo for its

⁸⁴ *Ibid pp 251*

⁸⁵ Adam Zachariah Trautman, 'From Zaire to the DRC: A Case Study of State Failure' (MA, University of South Florida 2013) pp.59.

rich supply of natural resources, especially uranium. In fact, a major amount of the uranium used in the United States' nuclear program during WWII came from the Congo.⁸⁶

3.1.2 The Congolese people's involvement in politics

A new socioeconomic group called the Evolved emerged in the Congo in the latter stages of WWII.⁸⁷ As a result of the economic growth, they were able to secure skilled positions, which

allowed them to join the colony's middle class. There were no hard and fast rules about how to measure an African's level of Europeanization, but it was generally assumed that one needed fluency in French, strong Christian beliefs, and at least some secondary school education. Historically, the developed people made an early effort to take use of their superior status in the Congo. The ruling elite of Congolese isolated themselves from the common people by joining exclusive clubs and taking use of the little privileges afforded them by the colonial government, which offered them limited opportunities for advancement. Congolese people might band together via a variety of groups, such as graduate associations, ethnic syndicates, and labor unions. For the Kongo people of the Lower Congo, one of the most important was the Alliance des Bakongo (ABAKO). They were, however, constrained in their actions by the government. Even if European settlers were asked for their ideas while choosing certain officials, the Congolese still couldn't have their voices heard in the

⁸⁶ Olawale R Olaopa and Victor Ojakorotu, 'Conflict about Natural Resources and the Prospect of Development in the Democratic Republic of Congo (DRC)' [2016] *Journal of Social Sciences* 247 <<https://www.tandfonline.com/doi/abs/10.1080/09718923.2016.11893618>> accessed 23 May 2024.

⁸⁷ Ibid, pp 266.

political processes. The government used native leaders as proxies to forward its goal, regardless of whether they could actually execute laws in some areas⁸⁸.

Up to the 1950s, the majority of Evolved solely dealt with social injustices and the treatment of Belgians by those in power. The administration was invited by ABAKO to review a list of proposed candidates for a municipal seat in Léopoldville in 1954, but concerns of self-government were not addressed until then. Under Joseph Kasavubu's leadership, the organization became increasingly hostile towards the colonialist authority and advocated for the independence of Congolese lands in the Congo Valley that same year.⁸⁹ Several European professors helped a group of Congolese intellectuals in 1956 to publish a manifesto that demanded independence after 30 years of transition. The ABAKO quickly responded by demanding independence. The Belgian government's reluctance to grant the Congo its independence stems from its belief that it would maintain tight control over the decolonization process, which it started to recognize in 1957. By enacting new regulations in December 1957, the colonial authority paved the way for local elections and the formation of probable dominant parties⁹⁰. Several political groups from Belgium attempted to set up shop in the colony. But most people paid them no mind in support of groups headed by Congolese. In 1958, nationalism began to gain momentum as more Evolved began reaching out to individuals outside of their immediate social circles and discussed the potential structure of a modern Congolese state. On the other hand, political mobilization primarily occurred along tribe and regional lines.⁹¹ A coalition of multiple tribal tribes in Katanga came together to establish the Confédération des associations tribales du Katanga (CONAKAT), which was headed by Godefroid Munongo and Moïse Tshombe. It advocated for regional autonomy and strong ties with Belgium while being anti-immigration. The

⁸⁸ Ibid pp 63

⁸⁹ 'DRC History Essay.ASS'22. Pdf' 292.

⁹⁰ Adam Zachariah Trautman, 'From Zaire to the DRC: A Case Study of State Failure' (MA, University of South Florida 2013) PP. 59.

⁹¹ 'DRC History Essay.ASS'22. Pdf' PP. 294.

majority of its backers were chiefs, businessmen, and European migrants from the southern Katanga region. The General Jason Association voiced their opposition.⁹²

3.1.3 The Movement of National Congolese (M.N.C.) founder and leader Patrice Lumumba

In October 1958, the Movement of National Congolese (M.N.C.) was created by Patrice Lumumba and prominent Léopoldville Evolved figures including Joseph Iléo. A varied group of people came together to form a political party with the goals of ending regionalism, improving political education for the general public, and peacefully achieving independence for the Congo. The bulk of the M.N.C.'s membership came from the Stanleyville people—a community in the east where Lumumba was famous—and the Kasai people—whose uprising was led by Muluba businessman Albert Kalonji. Given its moderate and non-separatist stance, the Belgian authorities granted Patrice permission to attend the All-African Peoples' Conference that took place in Accra, Ghana in December 1958. Lumumba was profoundly affected by the Pan-Africanist principles put forward by Ghanaian President Kwame Nkrumah after his return to the Congo and the leadership of a more revolutionary party platform. He spoke to an energised audience in Léopoldville, where he recounted his adventures and pleaded for the actual independence of the country.⁹³

After worrying that Lumumba and the M.N.C. would steal the spotlight from them, Kasa-Vubu and the ABAKO government announced they staged a campaign in the capital at the beginning of 1959. Prompt notification was given to the Belgian-dominated municipal government, informing them of the only authorized exclusive

⁹² Erik Gobbers, 'Territorial *Découpage* and Issues of "Autochthony" in Former Katanga Province, the Democratic Republic of Congo: The Role of Urban Ethnic Associations' (2021) 20 *Ethnopolitics* 590, pp. 24.

⁹³ Mvemba Phezo Dizolele, 'The Mirage of Democracy in the DRC' (2010) 21 *Journal of Democracy* 143, 143.

meetings. According to the campaign's agenda, the leaders told the crowd to disperse because there would be no demonstration. A wrathful mob began snatching European products and throwing stones at police officers three days in a row, setting the stage for disastrous rioting. Force Publique, the colonial army, brutally suppressed the rebellion after being summoned to action. Kasa-Vubu and his lieutenants were imprisoned after the riots. Similar to other grievance claims, the majority of the complainants were illiterate city people rather than Evolved. The general opinion in Belgium was one of profound astonishment and dismay. The riots, according to the investigative panel, were caused by a mix of issues including racial discrimination, congestion, and unemployment, as well as a desire for greater political autonomy. On January 13, the Belgian King Baudouin announced that the Congo will eventually obtain independence, along with various government-outlined adjustments.⁹⁴

Discontent among the M.N.C. leadership surfaced as Lumumba maintained his grip on the party's politics. The relationship between Lumumba and Kalonji also became tight due to the former's anger at the latter's decision to convert the Kasai subsidiary into an exclusively Luba group, which enraged other tribes. In the end, the party split into two factions: MNC-Lumumba, which was MNC-L under Patrice's leadership, and MNC-Kalonji, which was MNC-K under Joseph and Kalonji. Their advocacy of federalism came later. Adoula left her position with the organization. Lumumba became even more strident in his demands for independence when he had ABAKO as an adversary and no one else to support him. In October, he was arrested in Stanleyville after a disturbance.

Still, his influence and that of the MNC-L continued to grow rapidly. The party began to form alliances with regional groups such as the Kivu Centre for Regrouping in Africa, and it called for the abolition of Belgian sovereignty and the establishment of a strong, united, and nationalistic state.⁹⁵ Despite the Belgians' preference for the former over the projected federalism, they were concerned about Lumumba's

⁹⁴ Georges Nzongola-Ntalaja, *From Zaire to the Democratic Republic of the Congo* (Nordic Africa Institute 2004) 67.

⁹⁵ *Ibid* pp. 53

growing radical beliefs. The National Party was formed by moderates Paul Bolya and Albert Delvaux with the colonial government's tacit backing. The movement advocated for centralization, the maintenance of historic features, and close ties to Belgium. The African Solidarity Party was founded in the province of Léopoldville in the south of the country. It is a socialist party with a federal character. The chapter in Léopoldville was headed by Cléophas Kamitatu, and its president was Antoine Gizenga.⁹⁶

3.1.4 Independence and the Crisis in the Congo

Riots in Stanleyville (October 31, 1959) and Leopoldville (November 2, 1959) made the Belgians realize they couldn't govern such a huge area, even though independence demands were rising.⁹⁷ Political heavyweights from the Belgian and Congolese governments met in Brussels for a Round Table Conference on January 18, 1960. After the meeting ended on January 27, 1960, the dates for the Congo's elections were announced for May 22, 1960, and the country's full independence was set for June 30, 1960. Patrice Lumumba, a nationalist, was appointed prime minister, while Joseph Kasavubu was declared president according to the election results. The name of the country changed to the Republic of the Congo after it gained independence. Since the French colonial region of the Central Congo also chose the name Republic of the Congo upon achieving independence, the two countries were more widely known as Congo-Léopoldville and Congo-Brazzaville, after their respective capital towns.⁹⁸

Very few capable bureaucrats survived in 1960 as a result of the departure of the Belgian rulers and the country's tremendous instability. There was a marked increase in the power of regional tribe leaders relative to that of the federal government.

⁹⁶ Harrie Willie Esterhuyse, 'A Comparative Study of Governance and State Development in Post-Colonial Botswana and Zaire/ DRC' 43.

⁹⁷ Dizolele (n 98) 143.

⁹⁸ Gordon Mace, Andrew Fenton Cooper and Timothy M Shaw (eds), *Inter-American Cooperation at a Crossroads* (1 . publ, Palgrave Macmillan 2011) pp. 195- 199.

Almost no one in the newly constituted nation had any idea how to manage a country the size of the Congo when it came to university graduation in 1956. On July 5, 1960, when troops from the Congo rose up in rebellion against their European masters, the city was looted extensively. Katanga, the country's richest province, proclaimed independence from the central government on July 11, 1960, when Moise Tshombe was in power. Twenty thousand soldiers were dispatched by the United Nations to restore order and protect the European populace. In order to protect their interests, mining companies frequently hired mercenaries and paramilitaries from the West, who also began to enter the country. Meanwhile, on August 8, 1960, Kasai—the second-richest province in the Congo—declared its independence.⁹⁹

After failing to secure assistance from the United States and the United Nations, Patrice Lumumba turned to the Soviet Union for help. Khrushchev extended a helping hand by supplying state-of-the-art weaponry and technical advisors. For the United States, the Soviet Union represented an opportunity to set up a puppet regime in sub-Saharan Africa. The United Nations told its troops to prevent the entry of any weapons into the country. Along with Lumumba, the United States was looking for a new head of state. President Kasavubu had opposed Prime Minister Lumumba's vision of a cooperation with the Soviet Union and instead advocated for a relationship with the US. To counter the Soviet presence and bolster Joseph Vubu's forces, the United States deployed armaments and C.I.A. officers.¹⁰⁰

3.2 United Nations and the Democratic Republic of Congo

Human Rights Council, its Universal Periodic Review, and particular theme protocols are only a few of the several United Nations bodies that oversee the Democratic Republic of the Congo as a member state entity promoting human rights. There are a number of international human rights accords to which the Democratic Republic of the Congo has signed. The Congo's policies and actions are monitored

⁹⁹ Ibid pp. 199

¹⁰⁰ Claude Kabemba, 'THE DEMOCRATIC REPUBLIC OF CONGO': pp.58.

by United Nations treaty authorities. It has received notification of the procedure for handling disputes between the two treaty bodies.¹⁰¹

On September 20, 1960, under the name Zaire, D.R.C. began to sign the United Nations Charter; in 1997, it was officially recognized as D.R.C. by the U.N. Although the Universal Declaration of Human Rights is not a legally enforceable document, the D.R.C. has also participated in accepting it. The Democratic Republic of the Congo deepened its dedication by joining three international covenants: the 1976 Convention on the Elimination of All Forms of Racial Discrimination, the 1976 International Covenant on Economic, Social, and Cultural Rights (with optional protocol 1), and the 1976 International Covenant on Civil and Political Rights. In 1978, it joined the Rome Statutes in ratifying the Convention against Apartheid, demonstrating its dedication to human rights. It wasn't until 1987 that it ratified the African Charter on Human and People's Rights, despite being a member of the African Union since 1963.¹⁰²

C.R.C., which deals with children in armed conflict, child prostitution, and the sale of children-explicit material, approved the optional protocols to C.A.T. and the Democratic Republic of the Congo as the country descended further into turmoil. In regards to the treaties it has ratified, the state must provide reports to each United Nations treaty body. These reports are required to be prepared by the D.R.C. administration on a periodic basis and detail the necessary activities. Implementation of the agreement has commenced in the Democratic Republic of the Congo. The Democratic Republic of the Congo has also given its blessing to the optional processes via which citizens can lodge complaints against the state, alleging that the government has violated the ICCPR.

A growing number of UN treaties now include mechanisms for investigations into alleged serious or ongoing violations of human rights in D.R.C. The C.A.T. investigation techniques have been received by the Democratic Republic of the Congo. In order for special rapporteurs and working groups to conduct internal visits,

¹⁰¹ 'DECENTRALIZATION AND THE DRC – AN OVERVIEW' 72.

¹⁰² Sarah Demart and Leïla Bodeux, 'Postcolonial Stakes of Congolese (DRC) Political Space: 50 Years after Independence' (2013) 6 *African Diaspora* 72, pp.72.

they must request specific invitations from the Democratic Republic of the Congo, since the country does not regularly invite the United Nations to special proceedings. Use the Exclusive The UN Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions visited in October 2009 and issued a report on the visit in June 2010. In order to uncover infractions and the committee's assertions, the next chapter delves deeper into DRC's behavior.

CHAPTER IV

ANALYSIS OF VIOLATIONS AND WEAKNESSES OF LEGAL INSTRUMENTS IN THE DEMOCRATIC REPUBLIC OF CONGO

4.1 Violation of Constitutional provisions, ICCPR, C.A.T., And Individual Complaint Procedure

The legal mechanism for the protection of human rights as regards DRC includes the country's constitution and international mechanisms. The DRC constitutions of 2006 contain the range of H.R and fundamental freedoms that are to be enjoyed by its citizens. However, there are several challenges facing the protection of HR. This chapter begins by examining the similar rights expressed in the constitution and the ICCPR and CAT to establish whether the violations result from the weakness of the constitution or the weakness in the enforcement of the HR mechanisms. Several indications reveal that it is a result of the lack of enforcement. However, these must be proven by examining the article across each other. Afterward, it focused on the ICCPR, CAT, and individual complaint procedures and examined the impact of the human rights committees.

The issue of violence and armed conflict has been put forward in the constitution since there has been a pronounced challenge of violations of human rights conducted by rebels, armed groups, militias, and government security personnel.¹⁰³ Article 16 states that the right to life and security must be protected irrespective of the situations surrounding the country. Within the context of the protection of life and security, there is an explicit prohibition of torture and cruel, inhuman, and degrading treatment of everyone.¹⁰⁴ Furthermore, the equality to ensure free trial was established in article 12, that each individual will be trial before the court in hearing and therefore remains only a suspect until the trial is completed. Hence, the prohibition of extrajudicial

¹⁰³ Roger-Claude Liwanga, 'The Meaning of Gross Violation of Human Rights: A Focus on International Tribunals' Decisions over the DRC Conflicts' 44–67.

¹⁰⁴ Joseph Mutombo Wa Baya, 'Sexual Rights Violations During the Conflicts in the Democratic Republic of The Congo Between 2005 And 2015'.

judgment, such as shooting victims on sight or mob rule and jungle justice, is embedded in the constitution. Article 19 strengthens Article 12 by establishing that there shall be a legal defense for the individual facing trial so that they might have a voice in the courtroom.¹⁰⁵

Furthermore, Article 13 stipulates that there shall be no form of discriminatory practice among groups within the country that might jeopardize the rights of individuals.¹⁰⁶ Article 23 protects freedom of expression, information, and the press, especially in government misconduct cases, to ensure citizens can hold the government accountable. Lastly, within this thesis's focus, civil and political rights are provided by Article 5 and Article 22, allowing participation in all forms of political life through political parties and all necessary associations.¹⁰⁷

Aligning these rights with the ICCPR and CAT, Article 16 aligns with Articles 6 and 7 of the ICCPR and CAT on the protection of rights to life and prohibition of torture¹⁰⁸. The elaborations in the ICCPR and CAT neither invalidate the alignment nor excuse DRC; rather, they provide alternatives to the constitution's weakness. Articles 12 and 13 of the constitution align with articles 2 and 26 of the ICCPR and Article 1 of the CAT in the context of non-discrimination. Freedom of expression in Article 23 of the constitution aligns with Article 19 of the ICCPR; however not specific in the CAT since its focus is on torture. Article 19 ensures the right to a fair trial in the constitution and aligns with Articles 14 and 15 in the ICCPR, while the CAT contributes to a fair trial in torture.¹⁰⁹ For example, obtaining information through torture shall be deemed illegal and unstrained in a court of law. The establishment of political rights in the DRC constitutions in Article 5 and Article 22

¹⁰⁵ Ibid art 16

¹⁰⁶ Ibid art 23

¹⁰⁷ Ibid art 5, art, 2 alignment.

¹⁰⁸ International Covenant on Civil and Political Rights (16 December 1966)

¹⁰⁹ Ibid art 19

aligns with Article 25 of the ICCPR, and it is only in this context that CAT does not have an alignment with the previous two instruments.¹¹⁰

It therefore suffices to state that the DRC constitution of 2006 has sufficient mechanisms to protect the human rights violation in the context of DRC. They have been established to uphold legal rights also available in international legal instruments. However, since the government is the violator of individual rights through the misconduct of its personnel, the domestic instrument has been weakened through the refusal to enforce the rights. Hence, the theory of international legal positivism allows for seeking address through international instruments binding on the state. Therefore, the subsequent session establishes how the violations that have taken place violated the ICCPR and CAT.¹¹¹

4.2 Violation of Article 7 of ICCPR in D.R.C.

Article 7 of the ICCPR and Article 7 of C.A.T. Both address the prohibition of torture and cruel, inhuman, or degrading treatment or punishment.¹¹² Torture and other forms of cruel, inhuman, or degrading treatment or punishment are prohibited by Article 7 of the ICCPR. The term encompasses a wide variety of actions or treatments that cause persons to experience significant bodily or mental pain, regardless of whether state actors or private individuals cause the suffering. Torture is Inflicting substantial bodily or psychological pain or suffering on a person with the intent to obtain information, punish, intimidate, or discriminate against them. Article 7 of the C.A.T. primarily focuses on the prohibition of torture and defines torture as including

¹¹⁰ A common foundation on the applicability of the ICCPR. Nature of the General Legal Obligation on States Parties to the Covenant' (26 May 2004) CCPR/C/21/Rev.1/Add.13, 11 (21 November 2014) CCPR/C/DRC/CO/4, 5(a). 1

¹¹¹ Ibid art 7

¹¹² Eric Rosenthal, 'The International Covenant on Civil and Political Rights and the Rights of Research Subjects' [1996] Accountability in Research pp.253.

any act that causes severe pain or suffering.¹¹³ Within their respective jurisdictions, states that are parties to the ICCPR are required to take steps to prevent and prohibit torture as well as cruel, inhuman, or degrading treatment or punishment.¹¹⁴ They are also required to investigate allegations of such violations and hold perpetrators accountable. States parties to the C.A.T. are specifically obligated to take effective legislative, administrative, judicial, and other measures to prevent and prohibit torture within their jurisdiction. They are also required to ensure that acts of torture are punishable under their domestic laws and that victims have access to remedies and redress.

The HRC, established under the ICCPR, monitors states' acquiescence with their obligations under the covenant, including Article 7. It reviews state reports, considers individual complaints, and issues general comments and recommendations. The C.A.T., monitors states' compliance with their obligations under the Convention, including Article 7.¹¹⁵ It conducts periodic reviews of state parties' implementation, considers individual complaints, and issues concluding observations and recommendations. The D.R.C. is a signatory to these covenants and, therefore, is responsible for fulfilling these articles. However, there are violations of both articles by the government and security personnel of the D.R.C. without legal actions taken against them.¹¹⁶

¹¹³ Dietrich Schindler and Jiri Toman, 'Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment', *The Laws of Armed Conflicts* (Brill Nijhoff 2004) PP.85.

¹¹⁴ Ibid

¹¹⁵ 'The Right against Double Jeopardy (Non Bis in Idem) and the Drafting History of Article 14(7) of the International Covenant on Civil and Political Rights, 1966' (*Fundamina: A Journal of Legal History*) pp. 1–28.

¹¹⁶ Billy Holmes, 'Non-Universal Human Rights? How Article 6 (2) of the International Covenant on Civil and Political Rights Undermines Human Rights' (2020) 9 *International Human Rights Law Review* 99, pp. 99–117.

Violation of Article 7 in the D.R.C. is unfortunately not uncommon in D.R.C., and there have been numerous reported cases of torture and ill-treatment perpetrated by state actors, security forces, and non-state armed groups.

4.2.1 Torture and Jus Cogens Norms

By definition, peremptory norms, also known as jus cogens norms, are rules of international law that are acknowledged as essential and cannot be deviated from. Because these standards are considered the highest in international law, no state can deviate from them through treaties or customary practices. It is a jus cogens norm that the prohibition of torture is widely accepted, which is an indication of the fundamental importance of the prohibition as well as the absolute character of the prohibition.¹¹⁷ Several serious repercussions are associated with the adoption of torture as a jus cogens rule, including the following:

Even in times of war, public emergency, or other extraordinary circumstances, the prohibition of torture cannot be suspended or modified. This is true even if circumstances are unusual. By stating explicitly that no exceptional circumstances can be used to justify torture, Article 2(2) of the Convention on the International Criminal Tribunal (CAT) emphasizes the extreme nature of the situation of Sovereignty of the Universe: The concept of universal sovereignty is often associated with the rule of jus cogens. This doctrine allows states to prosecute other persons accused of torture, regardless of the state of origin of the perpetrators or victims where the crime occurred; the intent is represented in national legislation, such as the work of the United States Protection from Torture Act and the Constitutional Powers Act implemented by Belgium.¹¹⁸

Responsibility *erga omnes*: The prohibition of torture, a jus cogens norm, owes an obligation *erga omnes*, which is owed to the international community. This means

¹¹⁷ Ibid.

¹¹⁸ A common foundation on the applicability of the ICCPR. Nature of the General Legal Obligation on States Parties to the Covenant' (26 May 2004) CCPR/C/21/Rev.1/Add.13, 11 (21 November 2014) CCPR/C/DRC/CO/4, 5(a). 1

that each country has the right to sue another country for violating this restriction, and reflects the fact that there is a universal interest in maintaining the standard. Effects of treaties and agreements as well Any treaty or international treaty which violates the prohibition of torture applied outside of international law is considered null and void under Article 53 of the Vienna Convention on the Law of Treaties, which is international law the order declaring any contract void contradicts and void, reflects this view. Therefore, the social contract between government and its citizens will be termed null and void in the case of torture. Hence, government right to use violence of use of force does not translate to right to torture the citizens.¹¹⁹

4.2.2 Torture and ill-treatment by security forces and armed groups

There have been numerous reports of torture and ill-treatment by security forces in the D.R.C., including the police, military, and intelligence agencies. Human Rights Watch investigated and presented cases of torture that have not been tried in a court since 2018. These include the event of arbitrary arrests and degrading treatment by Congolese police and military of the D.R.C. during the uprising against President Joseph Kabila's refusal to leave power. Such cases are not brought to the domestic criminal court as the government abuses the rule of law. Civilians who were protesting were beaten, detained beyond the stipulated time by the law, and subjected to other forms of mistreatment.¹²⁰ In addition to a lack of fair trial or access to legal assistance, reports indicate that torture and ill-treatment are common in detention facilities across the D.R.C., irrespective of the reasons for arrest. Prisoners who have been arrested for political reasons and individuals arbitrarily detained as suspects are often subjected to torment that is prohibited by Article 7 of ICCPR and C.A.T.

¹¹⁹ Ibid.

¹²⁰ Justin Keyes, A Dark Colonial Past, Foreign Politics, and Ineffective Leadership: Who Is to Blame for Congo's Governing Struggles 60 Years After Independence? 6.

In cases in the Kinshasa, detainees have died as a result of torture and ill-treatment from security officers, i.e., police.¹²¹ Attempts to seek recourse through the legal system have led to attacks on human rights activists. Lawyers who have pursued the cases alongside Human rights defenders, activists, and journalists in the D.R.C. are frequently targeted for their work. They face harassment, intimidation, arbitrary arrests, and violence, including torture and ill-treatment, by state and non-state actors', in 2019, two environmental activists were reportedly abducted and tortured by unidentified individuals after they criticized the government's handling of natural resource exploitation in the country.¹²²

The D.R.C. has been plagued by armed conflict and violence for decades, particularly in the eastern provinces. In these conflict-affected areas, civilians are often subjected to widespread and systematic HR abuses, including torture and other forms of violence, by armed groups who are beyond the reach of the legal framework.¹²³ For instance, in 2017, the U.N. Joint HR Office documented cases of torture, including beatings, sexual violence, and mutilations, perpetrated by various armed groups in the Kasai region. The Kasai case is only of the cases of the spreading nature of violations of Article 7 of the ICCPR in the D.R.C and is subsequently discussed at large in this chapter.¹²⁴ The illegal detention and the torture that follows not only violate international human rights law but also undermine domestic law by perpetuating impunity of the political power and exacerbating cycles of violence in

¹²¹ Langa, Nduduzo. Investigating South Africa's foreign policy towards the SADC region: the case study of the Democratic Republic of Congo, 2009-2018. PhD diss., 2020.

¹²² Ibid.

¹²³ Laura Davis, 'Justice-Sensitive Security System Reform in the Democratic Republic of Congo'.

¹²⁴ Frans Viljoen, 'The Special Rapporteur on Prisons and Conditions of Detention in Africa: Achievements and Possibilities' (2005) 27 Human Rights Quarterly 125, 125–171.

the absence of the rule of law.¹²⁵ Hence, the weakness of domestic law results in the inability to implement international law in a State.

4.2.3 Right to life, liberty, and security of person

Civil rights such as the right to life, liberty, and security of person a fundamental human right enshrined in the UDHR with complementing details provided in Articles 6 and 7 of the ICCPR and C.A.T., to which the D.R.C. obliged to adhere. Arbitrary killings and extrajudicial executions are in numerous reports of arbitrary killings and extrajudicial executions perpetrated by state actors, security forces, and non-state armed groups in the D.R.C. These killings often target political opponents and members of minority groups who have the rights to vote in elections or participate in the political process. The legal framework through which elections take place is jeopardized by the inability to have a fair trial in the country.¹²⁶

Several concerns were expressed by the UNHC for Human Rights over the allegations from their credible sources on the killings of at least 890 individuals from 16 to 18 December 2018, which happened in four different villages in the Yumbi territory, located in the western part of the nation, because of the clashes between the Batende and Banunu communities. Similarly, at least 82 individuals were Injured in the clashes, as suggested by the reports, but the correct casualties figure was expected to be more than the figure given by the reports. Up to 465 buildings and houses were utterly pillaged or burnt, including the Independent National Electoral Commission office, a market, a health post, a health center, and two primary schools. In 2019, the U.N. Joint Human Rights Office documented over 1,300 extrajudicial killings in the

¹²⁵ Roger-Claude Liwanga, 'The Meaning of Gross Violation of Human Rights: A Focus on International Tribunals' Decisions over the DRC Conflicts' 67.

¹²⁶ Homann, Laura. "Conflict-Related Sexual Violence in the Democratic Republic of Congo: An Analysis of UN Rhetoric and Policy." PhD diss., University of Massachusetts Lowell, 2022.

D.R.C., many of which were committed by state security forces.¹²⁷ In Ituri, located in Djugu territory, intercommunal clashes between Lendu and Hema communities were also observed and reported around the middle of December 2017.¹²⁸ Not less than 270 individuals, including 94 women, were killed, 120 villages destroyed and looted, and 29 wounded on the two sides during the clashes, which led to massive Internal displacement of the people. The Congolese National Police and the Armed Forces of the D.R.C., which had fewer staff members, lacked the human power to respond to these clashes or secure the various villages adequately. The issues of sexual assault, domestic violence, and exploitation in the D.R.C. are most affected by women and children because they are susceptible to various forms of violence and abuse. Sex has been used as a violent tool to oppress women in regions because they are affected by conflict creating room for rape and sexual enslavement. Another vulnerable group is the children who are recruited as child soldiers and subjected to forced labor to generate revenue for their abusers.¹²⁹

4.3 Violation of Article 7 of C.A.T. in D.R.C.

Many cases of the use of torture and other forms of cruel, inhuman, or humiliating treatment or punishment are prohibited under Article 7 of the C.A.T. goes unreported for the necessary persecution to take place. In the case of *Kavula v. D R C* (2019), an International Court, the African Court on Human and Peoples' Rights, condemned the D.R.C. government after investigating and realizing that the government and its security officers were responsible for the arbitrary arrest, torture, and ill-treatment of human rights defenders. The domestic court has refused to acknowledge the violation

¹²⁷ Ibid pp. 58.

¹²⁸ Baaz, Maria Eriksson, and Maria Stern. *The Complexity of Violence: A critical analysis of sexual violence in the Democratic Republic of Congo (DRC)*. (No Title) (2010).

¹²⁹ Anna Stiliz, 'Decolonization and Self-Determination' (2015) 32 *Social Philosophy and Policy* 1, pp. 1–24.

of C.A.T. or refer to it in any case of violation. Hence, an international court, the African Court on Human and Peoples' Rights, is applying the C.A.T. In the case of *Tshibanda v. DRC* (2014), the U.N. (HRC) found the D.R.C. government responsible for the arbitrary detention, torture, and ill-treatment of a HR activist.

Similarly, in the case of *M.P. v. D R C* (2012), the U.N. C.A.T expressed concern about the prevalence of sexual violence and torture against women and girls in the D.R.C. One of the critical challenges in addressing torture in the D.R.C. is the widespread impunity enjoyed by perpetrators. Despite numerous reports of torture and ill-treatment, very few perpetrators are held accountable for their actions. In many cases, victims are afraid to report abuses due to fear of reprisals, lack of trust in the justice system, and other factors. As a result, perpetrators continue to operate with impunity, perpetuating a cycle of violence and abuse.¹³⁰

4.4 Individual Complaint Procedure in DRC

Many factors in the DRC constrain the Individual Complaint procedure. Beginning from the factors within the admissibility of cases to the issues in the DRC, the applicability of the procedure has been difficult, creating no implementation of the procedure.

Admissibility

Article 1 of the optional procedures on admissibility of ICCPR and CAT focuses on the violation that can be found within the treaty. While this is not a challenge because all violations in DRC are within the treaty, however, in cases of overlapping violations, the individual complaints procedures might term some violations

¹³⁰ Nubia Hernandez-Flórez and others, 'Human Rights in Women Victims of Sexual Violence in the Armed Conflict: A Systematic Review' (2022) 6 *Ciencia Latina Revista Científica Multidisciplinar* 2761.

inadmissible on the terms of the type of violations. The cases in DRC show how torture is carried out by police and security personnel of the DRC as part of the conducive prison environment. However, prison conditions are not admissible under the individual complaint procedure.

Domestic remedies

The burden of proof for the admissibility of the case is that the individual must have exhausted or sincerely tried to use all domestic means to get remedies. The individual must be able to present the substantial fact that remedies within the domestic legal system are unavailable or ineffective, unyielding, or taking too long and cannot be dependable. Since the application of individual complaint procedure makes the state and the applicant share responsibility for the violation, the individual must provide fundamental elements and evidence while filing the case that the domestic remedies and investigation by the state party are ineffective. The state party will respond to this; therefore, the burden of proof by the individual applicants must be strong enough to convince the committee to admit such individual complaints. The citizens of DRC experiencing violations by the state are unable to get sufficient evidence that the State remedies are unavailable, ineffective, futile, or unreasonably long despite overwhelming evidence of the violations. The individual procedure misses the dysfunctionality of the state and misconduct of states, such as observable in the DRC, to become part of the admissibility of cases. Considering the principle of *ratione personae*, States are accountable for the acts conducted by their agents, even in the case where the action of the military or police shows an abuse or acting beyond the authority given.

Nevertheless, the DRC has not taken responsibility to ensure that remedies are provided to the victims. The reports of the committee show gross violations, yet the requirements under the complaint procedures limit individuals. Therefore, weakens the possibility of the application of individual complaint procedures.

Application on behalf

The inability of citizens to fulfill the application requirement of the individual complaint procedure led other actors to act on behalf of the victims. For example, several victims are dead or incarcerated or incommunicado in the detention area; the need for a third party is therefore applicable. The aspect relieves the inability of the victims to fulfill the legal requirements. The consent of the complaint is, however, needed to establish an application. A close family relative is sufficient in this context, while non-family members are not eligible to file a complaint. In the case of *Mbenge v. DRC*, for example, the Committee upheld that the applicant can file a complaint for his relative being violated by government officials. However, the other victims, such as the driver and the personal assistants, have to file by their family members. In the *Mpandanjila et al. v. DRC*, the application of the complaint was submitted by a group of lawyers who received consent. A total number of 13 people detained incommunicado had sought to use the individual complaint procedure. The complaint and procedures continued for the 9 persons of the 13 people after they were released from detention because the other four people withdrew their consent after being released. The complaint was, therefore, discontinued. The problem is that the violations remain unaddressed, necessary remedies are not provided, and the fear of the government and its security personnel persist among victims. The admission of cases and the continued threat from the government collectively affect the work of the Committees.

4.5 Kasai as a case study of the violations by the law enforcement agency

Kasai's is a case study that affects the violation of Articles 2, 6, 7, 9, 12, and 27 of the ICCPR and Article 7 of the C.A.T. analyzes how the Committee admonished the D.R.C. in a specific region. In Kasai, there have been issues of torture followed by cases of extrajudicial killing.

Tensions between the government and customary chiefs in Kasai-Central Province ignited the first wave of violence in August 2016 in the DRC Kasai region.¹³¹ The

¹³¹ David Bakamana Bilungule, 'The Impact of Indigenous Manga Rituals on Political Leadership among the Luba People'.

violence escalated rapidly, beginning in early 2017. The battle included security forces, armed organizations, and militias across a territory and expanded from the existing conflicts between communities. Other than Kasai, the last year has seen a sharp decline in the humanitarian situation in the Democratic Republic of the Congo.¹³² Thousands of people fled their lives as violence broke out in 2016. Violence has forced women and children to escape to remote areas in search of safety, where they have lost access to basic amenities like clean water and sanitation, education, and health care.¹³³ Children have been utilized as human shields by the militias or as weapons in combat. As of right now, 2.3 million children and 3.8 million adults in the Kasai area need humanitarian aid.¹³⁴

Delivering essential goods and services is made possible by UNICEF's presence on the ground. Around 326,400 children have received access to water, sanitation, and hygiene services from UNICEF and its partners since January 2017. Additionally, since August 2017, the organization has vaccinated two million children against measles, treated 71,500 children suffering from severe acute malnutrition, and helped over 1,700 children freed from militias (Kirsch, Nagel, Iribagiza, Ecklu, Zawadi, Ntabaza & Thomas, 2023).

Hundreds of thousands of people fled for their lives in 2016 when horrifying violence broke out across the DRC Kasai area. Home, community, and sometimes even sick or elderly family members had to be abandoned. There were many youngsters among those who had to escape. For the most vulnerable children, especially those who are now in danger of dying from starvation, the present state of affairs in Kasai is a perfect storm of poverty, hardship, and violence. Indeed, a catastrophe affecting

¹³² Benjamin Coghlan and others, 'Mortality in the Democratic Republic of Congo: A Nationwide Survey' (2006) 367 *The Lancet* 44, pp. 44–51.

¹³³ Rosalind Raddatz and Matthew Kerby, 'Far from Home, Far from Safe: State Violence against Unaccompanied Refugee Children Seeking Asylum in Kenya' (2022) 35 *Journal of Refugee Studies* 16, pp. 16–35.

¹³⁴ Alexandra Cojocaru, 'Ongoing Humanitarian Crisis and Peace Process in The Democratic Republic of the Congo' (2022) *Euro-Atlantic Studies* 57, pp. 57–89.

children is unfolding in Kasai.¹³⁵ The case of Kasai has neither been examined in a domestic court nor an international court, signaling that the legal system of the country is not only poor, but the international legal system seems to have looked away from allowing continuous violation. Hence, humanitarian intervention has taken precedence in the absence of Legal intervention.

UNICEF and its partners have fulfilled critical support for children in the Kasai area. Four hundred thousand children, however, will be in danger of dying from severe acute malnutrition in 2018 if the humanitarian response is not increased. To successfully reintegrate into their families and communities, thousands of youngsters who were previously involved with militias will not get the assistance they need.¹³⁶ The right of children to an education will remain unfulfilled across the area. UNICEF urges the international community and all parties involved in the conflict to act immediately on three crucial fronts to save the lives and futures of children in Kasai: ending child abuse, guaranteeing that all children have access to necessary services, and supporting ongoing humanitarian aid.

The Committee, therefore, is one of UNICEF's partners in admonishing the D.R.C. government. The United Nations staff Micheal Sharp and Zaida Catalan, who were working in the region to implement U.N. support, were killed in the process of investigating the violations of HR in Central Kasai. This grave offense has brought more warning to the D.R.C. The state party was demanded to conduct an immediate, transparent investigation to produce evidence on all violations of H.R and the killing of the U.N. investigator.¹³⁷ The Committee noted that the government must pursue disengagement and disarmament of all antigovernment militia and the pro-

¹³⁵ Stuart A Reid, 'Congo's Slide into Chaos: How a State Fails' (2018) 97 Foreign Affairs 97, 97.

¹³⁶ World Bank Group, *Democratic Republic of Congo Systematic Country Diagnostic* (World Bank, Washington, DC 2018).

¹³⁷ TY Okosun and N Kibiswa, 'Human Rights Violations and Genocide in the Democratic Republic of the Congo' (2013) 16 Contemporary Justice Review 482, pp 482-493.

government militia that have been causing violations of human rights. The deployment of well-trained defense and security personnel can aid in controlling the circumstances of the regions, especially in protecting individual lives and properties. Lastly, due cooperation with the United Nations Joint Human Rights Office is highly demanded by the Committee and all International Organizations and experts passing a resolution 35-33 to ascertain the evidence of the circumstance of all atrocities committed in Kasai that are against HR and the international humanitarian law in the region.¹³⁸

4.6 Application of Covenant in Domestic Court

Despite the many years that have passed since the ratification of ICCPR, the judiciary arm of the government of the D R C has not been applying the articles of the ICCPR in the violation of cases that are taking place within the country, especially in the case of law enforcement agencies who have been violation citizens' rights (White, 2018). According to the Constitution of the DRC, article 215 states that the international treaties signed and ratified supersede and possess precedence over domestic law. Nevertheless, over the years, there has been no application of reference to the ICCPR in any court case by any judge in any ruling relating to the violation of civil and political rights by law enforcement agencies. Since the ICCPR has not been referred to by the D.R.C. domestic legal system, courts or any adjudicating mechanism, the shows that there is a absence of commitment to the legal obligation of protecting the rights of its citizens from government officials enjoying impunities.¹³⁹

The D.R.C. government has not implemented the individual complaint procedure to allow individuals to make claims of their rights under the covenant. Several reasons

¹³⁸ Ngoie Ngalingi Ngoto, 'Responding to Foreign Insurgencies in the Eastern DRC', *Boko Haram and International Law* (2018) pp. 67–82.

¹³⁹ Joseph Yav Katshung, 'Prosecution of Grave Violations of Human Rights in Light of Challenges of National Courts and the Intenational Criminal Court: The Congolese Dilemma' (2006) 7 Human Rights Review 5, pp. 5–25.

promote this unfair practice.¹⁴⁰ The citizens of D.R.C. are unaware of their rights in the ICCPR and C.A.T. to seek justice and protection under International Law. The violence in D.R.C. takes place in areas where people are disconnected from the opportunity to know the law and claim their rights.¹⁴¹ Therefore, those whose rights are being violated are not aware of the individual complaints of channels through which they are in a filing procedure. For individuals who are aware of the individual complaint procedures, the complicated legal procedures and the criteria weary the individual and discourage them from applying to the international court. Most of the time, the individual complaint procedures take time from submitting a complaint before it can be addressed. The requirement that all national remedies must have been exhausted is not feasible in the case of D.R.C. since domestic courts do not provide necessary legal assistance to victims. Furthermore, victims who have attempted to challenge the legal system face intimidation and threats from both perpetrators and the legal system.¹⁴²

This is because many people, particularly those living in poverty or rural locations, cannot access inexpensive legal aid and counsel. Without legal support, individuals in D.R.C. struggle to prepare and submit a complaint to the relevant treaty body, mainly if they are unfamiliar with the process or face language barriers. Victims of human rights violations, particularly those targeted by D.R.C. authorities or armed groups, fear reprisals or retaliation if they attempt to seek justice through

¹⁴⁰ Evelyn A Ankumah, *The African Commission on Human and Peoples' Rights: Practices and Procedures* (BRILL 2023).

¹⁴¹ Tshimpaka Kasongo, 'The Implementation of the Socio-Economic Rights Provisions of the African Charter on Human and Peoples' Rights at the National Level: A Case Study of Democratic Republic of Congo (DRC)' (Thesis, University of the Western Cape 2014).

¹⁴² Trésor Muhindo Makunya, 'Overcoming Challenges to the Adjudication of Election-Related Disputes at the African Commission on Human and Peoples' Rights: Perspectives from the Ngandu Case' (2023) 22 *African Human Rights Law Journal* 1, pp. 379–402.

international complaint mechanisms. This fear deters individuals from coming forward to report violations or pursue complaints, particularly in contexts where impunity is prevalent and the rule of law is weak.¹⁴³

Treaty bodies responsible for considering individual complaints in the case of D.R.C. face resource constraints and capacity limitations that hinder their ability to process and adjudicate cases promptly.¹⁴⁴ Delays in considering complaints undermine the complaint mechanism's effectiveness and erode confidence in the international human rights system. Because of the limited resources, evidence of the violations is complex, resulting in citizens not being protected. Even if a treaty body finds a violation of HR and issues recommendations or decisions in favour of the complainant, there may be limited mechanisms available for enforcing these decisions and ensuring that the victim receives redress or compensation. Without effective enforcement mechanisms, states may feel less compelled to comply with treaty body decisions, further undermining the effectiveness of the individual complaint procedure.¹⁴⁵

In order to overcome these obstacles, it is necessary for treaty bodies, civil society organizations, state parties to the covenants, and others to work together in the following ways: increase knowledge of the individual complaint mechanisms; simplify procedures; safeguard complainants from retaliation; provide sufficient funding to treaty bodies; and enhance enforcement mechanisms to guarantee adherence to treaty body decisions.

¹⁴³ William W Burke-White, 'Proactive Complementarity: The International Criminal Court and National Courts in the Rome System of International Justice' (2008) 49 *Harvard International Law Journal* 53.

¹⁴⁴ Milli Lake, 'Organizing Hypocrisy: Providing Legal Accountability for Human Rights Violations in Areas of Limited Statehood' (2014) 58 *International Studies Quarterly* 515, pp.515-526.

¹⁴⁵ Bonnie Campbell, *Mining in Africa: Regulation and Development* (IDRC 2009) 187–242.

4.7 Addressing Impunity and Providing Adequate Reparations

The human rights committees (Committees for the ICCPR and C.A.T.) continuous assessment over the years reflects that one of its main recommendations is that investigating human rights violations committed by law enforcement agencies must involve an international party. State parties, including the D.R.C. government, stated that commitment to allowing an investigation to be conducted in collaboration with the ICC must be upheld to avoid any form of impunity measures. Pursuing justice through the national court has limited to safeguard human rights violations that the government law enforcement arms have carried out.¹⁴⁶ The interaction between law enforcement, which forms part of the executive arm of government, and the judiciary has led to corruption in the government. A boomerang approach is therefore needed for an effective justice system. The introduction of the ICC by the D.R.C. government itself has been referred to by the committee to ensure no one goes unpunished, arguing that impunity allows for continuous violation of the rights of individuals by those holding power, the government agencies.¹⁴⁷

The committee's report consistently reflects a transitional justice system that will end impunity as all human rights violations will be resolved within the system, addressing previous and present violations.¹⁴⁸ The investigation will involve the International Criminal Court to allow for systematic, timely, and uncorrupt investigations to ensure perpetrators of crimes against individuals are brought to the international court in cases with limitations at the national court level.¹⁴⁹ The goals

¹⁴⁶ Jake Goodman, 'The Grease in the Gears: Impunity in the Democratic Republic of Congo and the Opportunity for Peace' 32 209.

¹⁴⁷ Cécile Aptel, 'Prosecutorial Discretion at the ICC and Victims' Right to Remedy: Narrowing the Impunity Gap' (2012) 10 *Journal of International Criminal Justice* 1357, 1357–1375.

¹⁴⁸ Godfrey M Musila, 'Freedoms Under Threat: The Spread of Anti-NGO Measures in Africa'.

¹⁴⁹ Dr Rebecca Brubaker, 'UN Security Council and Transitional Justice' pp 73-98.

are to impose the necessary penalties on the government agents who have caused harm to citizens and satisfy, through a justified system, that families of the victim have a good closure of the case whereby they can attest to the justice system's commitment to ICCPR.

The committee insists that the cooperation of the D.R.C. government and the International Criminal Court must regularly be reported, and cases that have been addressed publicized to ensure transparency of justice and commitment to promoting justice.¹⁵⁰

The Committee has investigated years of claims of police brutality and the State Security Service through instances of disproportionate use of force in the context of less obvious infractions. Such can be seen when protesters seek and make demands from the government and revolt against the government's brutality. The consequence of the excessive use of force is death and harm to unarmed civilians in police attempts to disperse the demonstrators in the events between 2015 and 2019. The legislation prohibits the excessive use of force.¹⁵¹

Article 6 of ICCPR, the right to life that is supposed to be protected by the law, and Article 7 of ICCPR, no one should be subject to torture or any form of inhuman treatment.

Article 19 of ICCPR states freedom of speech, which encompasses the dissemination and reception of information.

Article 21 of ICCPR focuses on the right to peaceful assembly, which is the right to gather and peacefully protest government actions unfavourable to the citizens.

¹⁵⁰ David A Kaye, *Justice Beyond the Hague: Supporting the Prosecution of International Crimes in National Courts* (Council on Foreign Relations 2011).

¹⁵¹ Alan Doss, 'In the Footsteps of Dr Bunche: The Congo, UN Peacekeeping and the Use of Force' (2014) 37 *Journal of Strategic Studies* pp. 703–735.

Article 25 of ICCPR is a civil right to vote and be voted or elected at regularly conducted elections, implementing universal and equal suffrage.¹⁵²

The committee mandated the star party, the D.R.C. government, to ensure that in instances of the uncontrolled use of force by its agent, the incident must be impartially reported on a timely basis. After a thorough investigation, the perpetrators must be reprimanded by the appropriate judicial mechanism.¹⁵³ Progressively, the state party D.R.C. government must take all necessary measures to avoid future violations of rights because of the excessive use of force by training police and military personnel. The committee mandated regular reports on the regular training of personnel on the extent and limits of the use of force while acknowledging the principle on the use of firearms by law enforcement officials. The Committee integrated the BPUFF into its admonition. According to the BPUFF, the state party must ensure the adoption and implementation of rules and regulations to determine government agencies' use of firearms against individuals.¹⁵⁴ All ethical issues must be accorded due attention and continuous review and development. The degree of the use of force should also be determined by the kind of weapons and ammunition given to government security agencies, especially the police, that have constant contact with individuals. For example, the use of non-lethal weapons is necessary in

¹⁵² Assembly, UN General. "International covenant on civil and political rights." United Nations, Treaty Series 999 (1966): 171.

¹⁵³ White, Nastassja Aimee. "Fighting Impunity for Sexually Violent Crimes Whilst Upholding the Right to a Fair Trial: 2018. What effect have international attention and NGO influence had on procedural rights in the Democratic Republic of Congo?" Master's thesis.

¹⁵⁴ Christopher E Bailey, 'A Normative Framework for Counterterrorism Law in the EAC', *Counterterrorism Law and Practice in the East African Community* (Brill Nijhoff 2019) 26–81.

situations where individuals are not armed, and only dispersion is needed to avoid causing death or injuries to the individuals.¹⁵⁵

Furthermore, the goal must be self-defence in the process of stabilizing the country rather than murdering or causing harm to humans. Therefore, helmets, shields, and bulletproof vests are more necessary than the guns and bullets provided to the law enforcement agency. Such has not been the case in the conduct of police and military in the D.R.C., and therefore, they have been reprimanded by the committee to only use force and firearms in situations where it is unavoidable; restraint to the use of reasonable proportion force to address severe and grievous offences, the protection of other human life and respect for dignity in the case of restraining suspected criminal.¹⁵⁶ In such cases, medical aid must be provided in the context of several casualties in the cause of conducting the duty. Otherwise, every state security office must be investigated when there are injuries and death casualties caused to the individuals they are supposed to be serving.

Conducting necessary trials on the committee evaluation in the past years has been a limitation of the mobile court system around D.R.C. Although several mobile courts are functioning and have been sponsored by international organizations, a limited number of judges across the country makes justice inaccessible in some areas.¹⁵⁷ Also, accessing the services of lawyers requires issuing a certificate of indigence before one can access fair trials. The challenge is that it delays justice and allows perpetrators to orchestrate more means of impunity.

¹⁵⁵ Chrystie F Swiney, 'Article the Counter-Associational Revolution. 399.

¹⁵⁶ Christopher J Le Mon and Rachel S Taylor, 'Security Council Action in the Name of Human Rights: From Rhodesia to the Congo' (2003) 10 U.C. Davis Journal of International Law & Policy 197, pp 197.

¹⁵⁷ Davis (n 125).

The Committees monitoring the covenant raised concerns on the observations that individuals who violate human rights are left unpunished.¹⁵⁸ It recommends the Government take every necessary action to put an end to impunity for human rights violations perpetrators, most especially the severe violations, through the establishment of a system of transitional justice for past abuses and persecution, as well as systematically conducting thorough, effective, impartial and prompt investigations to prosecute and identify those responsible, as well as ensuring the correct legal action is taken against the convicted violators while providing fully restored access and effective remedies of the victims' families. It further recommended that the nation cooperate with the ICC . The international experts' team on the Kasai situation urged the Government authorities to engage in an inclusive transitional justice process towards redressing the victims, identifying the clashes' root causes and establishing the truth, enforcing the existing laws, honoring their various international commitments, and ensuring reconciliation.¹⁵⁹

Lastly, the Committee demanded that the State party, D.R.C., begin a campaign within the judiciary arm of government and, more specifically, towards the judges, prosecutors, and lawyers to ensure they improve their knowledge about the covenant and the first optional protocol, which allows for individual complaints procedures whereby individuals can refer to the HRC in the case of human right violation.¹⁶⁰

The National Courts are mechanisms within which the international treaties can be mainly applied considering the proximity of cases within the domestic jurisdiction

¹⁵⁸ Jacob Udo-Udo Jacob, *Convincing Rebel Fighters to Disarm: UN Information Operations in the Democratic Republic of Congo* (Walter de Gruyter GmbH & Co KG 2016).

¹⁵⁹ Christian Cirhigiri, 'Youth on the Frontlines: Preventing Human Rights Abuses in Violent Contexts, A Case Study of LUCHA in the DR of Congo' (2022) 16 *International Journal of Transitional Justice* 133, pp.133-150.

¹⁶⁰ Claire Mahon, 'Progress at the Front: The Draft Optional Protocol to the International Covenant on Economic, Social and Cultural Rights' (2008) 8 *Human Rights Law Review* 617, pp. 617-646.

and by evidential proximity by which cases can be quickly verified and adjudicated. The integration of treaties into hearings of cases in D.R.C. is therefore highly demanded by the Committee waiting for the first reference to be made to the treaty in domestic court.¹⁶¹ For example, the case of S.A. versus the D.R.C. in 2000 shows a neglect of the covenant in the domestic ruling. S.A., a citizen of the D.R.C. who was attacked and raped by a soldier in the D.R.C. armed forces, was taken to the national court. The violation of the rights includes robbery, rape, torture, and threat to life of individual and family members. The act led to the conviction of the attacker in a national court. Against the soldier who committed the horrendous crime while acting as the agent of the D.R.C. government, against the armed forces of the D.R.C. and the government of D.R.C., compensation was awarded to the victim, and the court ordered the return of all the properties as reparations.

Nevertheless, neither the government of D.R.C. nor the armed forces has compensated the victim or the soldier. The emphasis of this case is that, while it reflects the grave offence committed by the law enforcement agencies, the highest mechanism of violation was not referred to that triggered a call for immediate action on the side of the government that has violated the ICCPR by not ensuring the safety or at least the reasonable compensation of individual violated by its agents.¹⁶² The HRC mandated that the details of these cases be reported in detail in subsequent reports with references to the covenant, reiterating the D.R.C. government's responsibility to the ICCPR.

¹⁶¹ Godfrey M Musila, 'Between Rhetoric and Action: The Politics, Processes and Practice of the ICC's Work in the DRC' (2009) 2009 Institute for Security Studies Monographs 148.

Arnold Ainory Gesase, 'Reparations in International Criminal Prosecutions: The Congo Situation at the International Criminal Court' (PhD, Freie Universitaet Berlin (Germany) 2019).

CHAPTER V

PATHWAY TO IMPROVEMENT OF INSTRUMENT TO IMPROVING HUMAN RIGHTS IN THE DEMOCRATIC REPUBLIC OF CONGO

Conclusion and Recommendations

Article 7 of the ICCPR and Article 7 of CAT and Other Cruel, Inhuman, or Degrading Treatment or Punishment were established with the understanding that respect for each person's intrinsic value and their inalienable civil and political rights is a prerequisite for the existence of freedom, justice, and peace. DRC, being a signatory to the covenants, has a responsibility under international law to fulfill its obligation to protect these rights towards its citizens. The ICCPR and CAT's provisions are strengthened and protected by the UNHRC. The DRC violations of these rights are examined alongside the committee's warning about violations of human rights in the DRC. Since the DRC is a signatory to the ICCPR and CAT and Other Cruel, Inhuman or Degrading Treatment or Punishment, this study examined the violation and the Committee's approach to resolving human rights violations in the midst of widespread abuses of human rights that are carried out by DRC security forces, like the police. This study draws attention to the violations and analyzes the DRC's national government's violations and the Human Rights Committee's findings. This explains and evaluates the Committee's admonition in terms of its efficacy using international legal positivism; the idea that the legitimacy of human rights is dependent on the established legal framework and procedures within the international legal system is known as international legal positivism in relation to human rights.

This approach argues that these ideals are authorized by acknowledged sources such as treaties, conventions, and customary international law. The Committee's warning, which emphasizes national consent, is a noteworthy deed of international legal positivism. According to positivism, the state has some responsibility for upholding human rights obligations, provided that the state expressly consents to them via agreements or treaties. This move emphasizes how beneficial formal legal rules are for the state's voluntary acceptance of its HR obligations. Critics of international

legal positivism argue that a strict dependence on national consent might lead to deficiencies in the defense of fundamental rights. They contended that by granting the state authority over fundamental rights, this idea may jeopardize their universality and inalienability. The capacity of people to assert their rights is also a source of worry because the state retains the authority to reject some human rights principles. First, extrajudicial executions that infringe on people's rights to life are one way that law enforcement authorities often violate human rights. If a citizen survives being tortured, they are not entitled to legal assistance in bringing charges against the security guard or other person responsible for violating their civil and human rights. Another trend is being held for extended periods beyond the allotted detention hours without being tried.

Furthermore, the voting process itself violates civil and political rights. Finally, violence against women and children is also reflected in this trend. There are documented instances of rape and the use of women as household helpers by security officers.

Does the D.R.C. act in accordance with the ICCPR and C.A.T.?

Firstly, although the DRC ratified the ICCPR and CAT, the major problem stems from the inapplicability of these covenants in domestic court reflecting the limitation of the International legal positivism as it demands the consent of the State to be implemented. No court in DRC has made references to these covenants in the context of the violations that have taken place by government officials. Therefore, the domestic legal system affects the functioning of international law, reflecting the primacy of domestic law over international law; legal positivism over International legal positivism. A deficiency in the domestic legal system is a threat to the fulfillment of international law, and therefore, international legal positivism is threatened. In the context of the committee responsible for monitoring these covenants, the reports show the government's lack of commitment to the covenants. Furthermore, because the DRC underreports or omits information of grave violations from its report to the UN, it is evident from the report that it does not respect, in good faith, its commitment to the ICCPR. In their report, a lot of human rights violations involving several fatalities are minimized. The focus has shifted from actual human

rights breaches by government personnel to those that are being politically decided by local courts using the flawed legal system. The use of the ICCPR in DRC courts for civil and political rights matters has been minimal or nonexistent, even in cases that have made it to trial. The Committee discovered additional data about human rights violators from other sources, which may account for the significant number of deaths that were unreported evidence. Since the occurrences often included government security agents, the government frequently chose not to publish them, once again reflect challenges to ICCPR and CAT through the lens of legal positivism. The Committee's report goes into further detail on the frequent transgressions committed by public servants, particularly when it comes to their use of physical force to quell public outcry and demands for improved governance.

Is the Individual Complaint Procedure, the first Optional Protocol of ICCPR and C.A.T., effective in the case of D.R.C.?

Although the DRC has approved individual complaint procedures, it has not been effective in the DRC. Regarding the individual complaint procedures, the citizens have not been granted the necessary capacity to exhaust domestic means of resolving violation that justifies the use of individual complaint procedures. The domestic legal system itself is a hindrance to the implementation of international legal mechanisms. DRC has, therefore, been limited in allowing its citizens to seek justice against the government when violations are carried out by security personnel or armed groups against which the government should protect the citizens. Evidence shows that there is no application of the individual complaint procedures as no case has been examined with the international courts. The legal positivism is therefore oppressed by the fact that citizens suffer under the domestic legal system and the international legal system seems incapable of rescuing them as a result of the need for domestic consent from the government.

To what extent has the H.R.C. admonished the D.R.C. through its jurisprudence within the optional protocol?

Recalling on soft law, within this context, it refers to the inability to enforcement the admonition of the Committee despite the binding nature of ICCPR and CAT. Hence,

the committee's admonition serves as soft law for DRC. The Committee cautioned that the lack of timely support suggests that evidence of human rights violations in the nation may have been tampered with and that it is unlawful to present false evidence before the committee in order to deceive the UN about ongoing violations, particularly with regard to impunities being granted to specific individuals in positions of political and administrative authority. As a result, the committee insisted on investigation with the high-level delegation in order to develop a fresh commitment to prompt and suitable reports that would result in prompt and appropriate evidence. Consequently, the Committee required that the State party, the Democratic Republic of the Congo, launch a campaign aimed at the judiciary branch of government and, more significantly, at judges, prosecutors, and attorneys to guarantee that they enhance their understanding of the covenant and the first optional protocol, which permits individual complaints procedures through which people can report human rights violations to the HR committee. It is also the expansion of the issues of violations to the International Criminal Court since it has the capacity to deal with human rights violations committed by individual leaders. The ICC will be involved in the inquiry to enable methodical, prompt, and impartial investigations to guarantee that those who commit crimes against people are prosecuted before an international court in situations when national court proceedings are limited.

This indicates that the UNHRC, which is responsible for monitoring and implementing treaties, is weak since it can only censure or advise a state to respect its obligations under the charter. The Committee lacks the authority to order the military or police who have violated human rights to be punished. The Committee's ability to protect civil and political rights is restricted since the reports do not include the names of the offenders. However, since it has the power to require court standards and the number of judges, the pressure it has on domestic courts may be more significant. Additionally, the international legal positivism theory emphasizes national consent; as a result, from a positivist viewpoint, the state is partially responsible for upholding human rights obligations, which they accept via express permission expressed in the form of accords or treaties. This makes the Committee's pursuit of justice weaker since the DRC's report and adherence do not reflect the

transparency in the report. As a result, this research supports the legal positivist theory, which holds that international legal tools are weaker when the state does not agree.

Recommendations

This thesis recommends that DRC should be pressed towards enforcing the first optional protocol that allows for individual complaints procedures in the case of the violation of civil and political rights. The optional protocol strengthens the Committee's role in seeking remedies to the violated rights. This will extend the jurisdiction of the Committee to pursuing cases of violations by security personnel in DRC in the ICC. The limitations in the admissibility of cases using the individual complaints procedures must be reviewed to allow for several exemptions as might be deemed necessary in the case of DRC. The victims are most poor citizens who have very limited power to pursue their rights through the complicated domestic and international legal framework and, therefore, should be granted exemption to seeking domestic measures. The case of DRC includes issues of war, in which case citizens might not be able to provide all necessary documentation of violations. International legal defense should be provided for victims whose rights are violated by the state using well well-established legal system such as can be found in the International Court of Justice and the International Criminal Court alongside European legal mechanisms to protect citizens.

Furthermore, the approach of naming individuals who have committed the crimes in the report also provides for other legal systems across the world to be on the outlook for such individuals and call them to justice to answer for the violations. This places the responsibility and extension of the jurisdiction of the advocacy for human rights to all countries. The HRC should also ensure to include other committees to increase the pressure on the DRC. For example, the violence against women and torture have another treaty that promotes them: CEDAW and CAT. The committees on these treaty mechanisms should be combined and form a significant force that would ensure an adequate response from the DRC.

This study's shortcoming stems from the fact that it looked several information about these violations are concealed in DRC, and only covenants and reports were

examined rather than directly gathering data from police officers and members of the Committee on DRC in order to include firsthand accounts into the analysis. Victims are also almost unavailable to communicate with due to government oppression. Since this research primarily focuses on the two sources' covenants and committee admonition, first-hand information might be reviewed in the future across DRC and be examined as a continuous to this study.

In the case when victims have capacity to pull through with the application, the lack of coercive power makes officials often to reject admonition and recommendations or implement them only partially without direct legal consequences. This is a characteristic of soft law nature of the ICCPR and CAT Committee admonition. The options associated with these agreements that allow private complaints and investigations do not identify legally binding elements but rather provide findings and recommendations that governments consider, and it happens. States can ratify the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Rights of the Child (CAT) to demonstrate their commitment to human rights and gain international legal legitimacy, even if they do not plan even if all the rules are strictly followed.

This pattern of recognition creates a situation where the formally binding nature of treaties is the fact that they are electively comply and compliant in different ways, comparable to voluntary regulation commonly found in soft law. Therefore, an interpretive and complex interactions characteristic of international law and human rights responsibility make the boundary between hard and soft law challenging.

As a result, although technically binding, the International Covenant on Civil and Political Rights (ICCPR) and the Catalan Charter (CAT) are operationally weak in their impact and application. These two characteristics emphasize the need for a legal framework and political will to implement global human rights protection.

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