**Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity**

**Submission: Report on Peace, Security, Sexual Orientation and Gender Identity**

**Submission by:**

**Southern Africa Litigation Centre**

**March 2022**

**Contact Information:**

**SALC**

1 Hood Ave, Rosebank, 2196, Johannesburg, South Africa

PO Box 52250 Saxonwold 2132 South Africa

T: +27 (0) 10 596 8538

E: [ Anna Mmolai-Chalmers: annam@salc.org.za]

Thabo Buthelezi: thabob@salc.org.za

NPO 138-655

[www.southernafricalitigationcentre.org](http://www.southernafricalitigationcentre.org)

**Introduction**

This report is intended to support the work of the Independent Expert on protection against violence and discrimination on sexual orientation and gender identity in addressing sexual and gender violence in relation to LGBTI and GD during armed conflict. The report focuses on the Democratic Republic of Congo (DRC) armed conflict and makes an effort to identify LGBTI and GD inclusion and participation in in peace talks and identify SOGI-specific considerations national plans. The sources consulted to inform the report were reports to the Human Rights Council, NGO shadow reports and anecdotal evidence from CSO’s working with LGBTIQ+ in the DRC.

**Armed Conflict in the Democratic Republic of Congo (DRC).**

1. SALC’s submission focuses on the First and Second Congo wars of (1996-1997) and (1998 - 2003), including the Kivu conflicts that started in 2004 to are currently still ongoing (hereinafter: Congo wars).
2. The conflicts are categorised as International Armed Conflict, that first involved 3 African countries - Rwanda, Uganda, and DRC. Later in the second war, 9 African countries got involved and 20 Militia armed groups[[1]](#footnote-1).

**Overall characteristics of conflict**

1. The Congo wars were caused by ethnic tensions between various ethnic groups in the country and in part due to the genocide in the neighbouring country of Rwanda, which also involved ethnic tensions and the country's economic decay. Human Rights Watch reports that more than 5.2 million people were displaced, and an estimated 120 active armed groups still exist in the eastern part of the country, where massacres, kidnappings, sexual violence, and recruitment of children are a daily occurrence. There is also repression of civil society organisations targeting activists, journalists, politicians[[2]](#footnote-2).
2. Even though homosexuality is not illegal in the DRC, members of the LGBTI community experience violence, kidnapping, ex-communication by members of the society[[3]](#footnote-3). Activists in Bukavu report numerous incidences of abuse, violence, beating and being disowned by families and rejected in public transport and employment.[[4]](#footnote-4) According to an organisation working with LGBTIQ+ issues in Goma, Congolese League for the Protection of Vulnerable and Marginalized Persons (LiCoProma), there is a link between the DRC war and the violence against LGBTI[[5]](#footnote-5). In a 2021 report, the organisation shared that local people in Goma have threatened to kill all those identifying as LGBTI once the war reaches their area. LGBTI individuals were profiled in the so-called “The Wall of Shame” - where pictures of individuals who are openly queer were publicised and broadcasted on a local radio station.

**International Human Rights Law Ratification** - **Treaties addressing causes and consequences of armed conflict in the DRC**

1. The DRC is a state party to the International Covenant on Economic, Social, and Cultural Rights. This treaty commits state parties to granting economic, social, cultural rights of the state parties citizens, including the right to freely determine their political status, pursue their social, cultural and economic goals. This treaty may have addressed the causes of the congo wars as these were influenced by ethnic and cultural tensions, and the economic situation in the DRC.
2. The DRC is a party to the Convention on the Elimination of all Forms of Discrimination against women, These treaties protect women from discrimination and in the context of conflict, requires that policies be non-discriminatory and efforts to mitigate or prevent conflict do not harm women or create or reinforce gender inequality
3. and to the Convention against torture and other cruel, inhuman or degrading treatment or punishment, which it ratified in 1996, and it’s a subsequent optional protocol which it ratified in 2010. This convention commits party states to prohibit and prevent torture, punishment, cruel, inhumane and degrading treatment, which often occur as a consequence of conflict
4. The DRC has also ratified the Convention of the right of the child in 1990, the optional protocol to the Convention on the rights of the child on the involvement of children in armed conflict ratified in 2001. The DRC even went a step further and made a declaration to implement the principle of prohibiting the recruitment of children into armed forces, and take feasible steps to ensure that persons under 18 are not recruited into the country's armed forces, public or private armed group throughout the DRC.
5. The DRC is also a state party to the International Covenant on Civil and Political Rights and its optional protocol, which it both ratified in 1976, which aims to protect all individual political and civil rights. In the context of conflict and due to the nature of armed conflicts , these rights are bound to be violated.
6. There is no data available on DRC’s domestic courts and legislation. Therefore, it is difficult to ascertain whether these instruments have been utilized in a gender-specific perspective. It is also difficult to ascertain whether the DRC has any National Action Plans, specifically those that aim to implement the recommendations of the Women, Peace and Security agenda.[[6]](#footnote-6)

**Peace Building Efforts**

1. The DRC has undergone three peacebuilding talks in the form of the **Lusaka Ceasefire agreement** in 1999, **the Sun City Agreement** in 2002, and **the Pretoria agreement** in 2002. All these agreements were not overly successful due to the number of parties involved and their different interests in the conflict.[[7]](#footnote-7)
2. **The Lusaka Ceasefire agreement** was aimed at ending the conflict, cessation of hostilities, and release of prisoners. It does not mention individual human rights nor those of the LGBTI and Gender Diverse (GD) persons.[[8]](#footnote-8) It is also unlikely that the LGBTI and GD community participated in the process, whether through civil society or appointed officials. The agreement was highly political and looked at issues such as the sovereignty of the DRC, peace enforcement and the creation of a new political dispensation in the DRC.
3. **The Sun City agreement** was aimed at ensuring that the Lusaka agreement was adhered to by the parties that were participants to it and to continue with peace and stability in the DRC.[[9]](#footnote-9) It focused on creating and implementing democratic processes in the DRC, such as creating a national independent electoral commission, rehabilitation of arbitrarily dismissed workers, the free movement of persons within the DRC, the signing of a peace agreement by countries involved in the conflict, and sanctions against parties acting in bad faith amongst other issues. The Sun City agreement did not look at issues specifically affecting SOGI and GD persons that were caused by the conflict. It addressed issues relating to women, children, and other vulnerable persons, including elderly persons and youth. It is highly unlikely that SOGI and GD persons participated in the agreement as there is no mention of the LGBTI community in the agreement in the sections where it dealt with the rights of citizens who were affected by the conflicts
4. **The Pretoria agreement** focused on transitional mechanisms, the president and the role of the president, the presidency including vice presidents and their role, the legislature and its role and the judiciary and its role.[[10]](#footnote-10) The agreement does not mention individual rights and the effects that the conflicts had on these rights or remedies for these rights. From the available information, it is difficult to state that there was participation from LGBTI and GD persons during the three peace talk processes directly or indirectly.
5. **LGBTI Involvement** - The rights of LGBTI in the DRC are hindered by cultural and social issues. In terms of the law, homosexuality is legal, even though in 2010 the Congolese parliament introduced the Sexual Practices Against Nature Bill, which would criminalise homosexual as acts against nature. The Constitution also does not recognise same sex marriages, and the law does not recognise changing genders, and there is no protection from discrimination or employment discrimination. Socially, the society of DRC is against homosexuality as it is considered taboo, with LGBTI persons experiencing discrimination, rejection, social exclusion, harassment and threats. Due to these, the DRC has a poor record on the human rights protection for LGBTI persons. This makes it difficult for LGBTI persons to participate in any public peacekeeping, negotiations or any other forum dealing with the impact of conflict or any other forum in the DRC. Civil society organisations in the DRC have noted that the Government has taken steps to prosecute the military and police involved in rape, torture and killings, but has not taken any action regarding crimes committed on the basis of sexual orientation and gender identity.
6. **Transitional justice-related measures** - The DRC established the Truth and Reconciliation Commission in 2003, to ensure peace, which was pushed by civil society groups. The commission was not overly successful due to ongoing violence in the country, limited time given to the commission to function as it was only instituted for the period of transition, and it was forced to compete for resources with other transitional mechanisms. The commission’s work was limited to the political struggles of the parties involved in the conflicts, and thus the commission was too politicized. From the available information, it does not seem there was any form of acknowledgment of SOGI specific conflict-related violence, whether through criminal procedures or reparation and non-reoccurrence measures.
7. **Adoption of relevant domestic policies or legislation addressing the causes and consequences of armed conflict** - The state has not adopted any other relevant domestic policies or legislation addressing causes and consequences of armed conflict, because LGBTI rights in the DRC are not particularly respected or protected. Thus, in the context of LGBTI and conflict, they are overlooked.
8. LGBTI persons in the DRC are still fighting to protect and promote their rights holistically due to the social, political, and cultural stance of persons in the DRC regarding homosexuality. Thus, it makes it difficult for any person or organisation to publicly participate in public forums under the guise of LGBTI rights

**Conclusion/Recommendations**

Although the armed conflict has been ongoing for over a decade, and several peace-talks have been undertaken, there is no evidence available to us that shows LGBTI and GD participation and involvement in the process.armed conflict. Research around this issue is limited and there is very little documented on the extent to which LGBTI activists and CSOs were consulted. There is however need to do deeper analysis and consultations with in-country activists explore specific-SOGI related violence during

1. [DRC conflict: Facts, FAQs, and how to help | World Vision](https://www.worldvision.org/disaster-relief-news-stories/drc-conflict-facts) [↑](#footnote-ref-1)
2. D[emocratic Republic of Congo | Country Page | World | Human Rights Watch (hrw.org)](https://www.hrw.org/africa/democratic-republic-congo) [↑](#footnote-ref-2)
3. [Members of the LGBT Community in DRC Face Violence and Excommunication (globalpressjournal.com)](https://globalpressjournal.com/africa/democratic-republic-of-congo/members-lgbt-community-drc-face-violence-excommunication/) [↑](#footnote-ref-3)
4. [Members of the LGBT Community in DRC Face Violence and Excommunication (globalpressjournal.com)](https://globalpressjournal.com/africa/democratic-republic-of-congo/members-lgbt-community-drc-face-violence-excommunication/) [↑](#footnote-ref-4)
5. [» LGBTI IN GOMA, DRC | The Advocacy Project (advocacynet.org)](https://www.advocacynet.org/lgbti-in-goma-drc/) [↑](#footnote-ref-5)
6. https://www.undp.org/content/dam/undp/library/peace/conflict-prevention-peacebuilding/Parliament\_as\_partners\_supporting\_the\_Women\_Peace\_and\_Security\_Agenda\_-\_A\_Global\_Handbook.pdf [↑](#footnote-ref-6)
7. [↑](#footnote-ref-7)
8. <https://peacemaker.un.org/sites/peacemaker.un.org/files/CD_990710_LusakaAgreement.pdf> [↑](#footnote-ref-8)
9. <https://peacemaker.un.org/sites/peacemaker.un.org/files/CD_030402_SunCityAgreement.pdf> [↑](#footnote-ref-9)
10. <https://peacemaker.un.org/sites/peacemaker.un.org/files/CD_030402_SunCityAgreement.pdf> [↑](#footnote-ref-10)