

PROTECTING WOMEN AND GIRLS FROM HUMAN TRAFFICKING IN THE DEMOCRATIC REPUBLIC OF CONGO: TOWARD JUSTICE FOR VICTIMS OF GENDER-BASED VIOLENCE

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INTRODUCTION	155
I. BACKGROUND: GENDER-BASED VIOLENCE IN THE CONGO CONFLICT	158
A. Conflict in the Congo	159
B. Gender-based violence against women and girls.....	160
II. HUMAN RIGHTS-BASED RESPONSES TO GBV IN THE CONGO	163
A. United Nations Interventions: Peacekeeping and Monitoring Initiatives.....	164
B. International Human Rights Laws addressing Sexual Violence...	166
1. <i>International Bill of Human Rights</i>	167
2. <i>Convention on the Elimination of all forms of Discrimination Against Women</i>	168
3. <i>Convention on the Rights of the Child</i>	171
III. RESPONDING TO SEXUAL SLAVERY IN THE DRC AS HUMAN TRAFFICKING.....	175
A. Prevalence of Human Trafficking in the DRC	176
1. <i>Trafficking in persons in DRC: Trafficking for sex and labor exploitation</i>	177
2. <i>Sexual Slavery as a form of human trafficking and GBV</i>	180
B. International Human Trafficking Laws	185
1. <i>The Trafficking Protocol</i>	186
2. <i>The United States Trafficking Victims Protection Act</i>	190
CONCLUSION: EFFECTIVELY COMBATting SEXUAL SLAVERY IN THE DRC	194

INTRODUCTION

The Democratic Republic of Congo (DRC)¹ is presently in a state of crisis.² The conflict began in 1996 and, in 2012, 1.7 million people were

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1. The Democratic Republic of Congo is located in central Africa. *See infra* map at Appendix II. On use of the term DRC, *see infra* Appendix I for a list of acronyms used in this Note.

still displaced due to armed conflict and human rights abuses.³ According to Human Rights Watch, government soldiers continue to rape and pillage civilians,⁴ often reducing them to forced labor or services.⁵ In November 2012, the conflict intensified as the eastern city of Goma fell to the Rwandan-backed M23 rebels, displacing an additional 80,000 civilians and increasing the threat of widespread human rights abuses.⁶ In addition to conflict, poverty has also worsened for the Congolese; the gross national income per capita plummeted more than 50% from 1990 to 2011.⁷ Last year, the United Nations Development Programme ranked the DRC number 187 out of 187 countries in its annual calculation of the United Nations Human Development Index (UNHDI).⁸ Poverty only increases the vulnerability of women and children to exploitation, such as trafficking in persons.⁹

2. Human Rights Watch, *Country Summary Democratic Republic of Congo 1* (January 2012), http://www.hrw.org/sites/default/files/related_material/drc_2012.pdf [hereinafter 2012 HRW Country Summary].

3. *Id.* at 2.

4. Throughout this Note, the term “civilians” will be used to include both unarmed, uninvolved persons caught in the cross fire of armed conflict and also persons forced to participate in armed conflict against their will through abduction, coercion, and other forms of exploitation, such as child soldiers and sex slaves. Discussion of sexual exploitation and human rights abuses is limited to these two categories of civilians, and does not cover abuses against willingly-conscripted armed soldiers by other armed individuals.

5. *Id.* Armed conflict between the government and the M23 rebels in eastern DRC led to concern about mass human rights abuses. See U. N. Human Rights Office of the High Commissioner (citing “Appalling” *Human Rights Record of Leaders of M23 Mutineers in DR Congo, Pillay Fears Further Abuses* (Jun. 19, 2012), www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12251&LangID=E).

6. Human Rights Watch, *DR Congo: US Should Urge Rwanda to End M23 Support* (November 20, 2012), <http://www.hrw.org/news/2012/11/20/dr-congo-us-should-urge-rwanda-end-m23-support>. See also Chair of the United Nations Group of Experts on the Democratic Republic of Congo, *Addendum to the interim report of the Group of Experts on the Democratic Republic of the Congo (S/2012/348) concerning violations of the arms embargo and sanctions regime by the Government of Rwanda*, ¶ 2, S/2012/348/Add.1 (Jun. 21, 2012) (suggesting that the Rwandan government provided material support to M23 armed forces) [hereinafter Group of Experts Interim Report].

7. U.N. Development Program, *infra* note 8, at 2 (Table A indicates gross national income per capita of \$542 in 1990 decreasing to \$280 per capita in 2011, a cumulative drop of more than 51%).

8. U.N. News Service, *U.N. Human Development Rankings Place Norway at the Top and DRC Last*, UNITED NATIONS NEWS SERVICE (Nov. 2, 2011), www.un.org/apps/news/printnewsAr.asp?nid=40290. The UNHDI is based on life expectancy, literacy, and gross national income per capita. According to the most recent data, the poverty line is \$1.25 per day, with 59.2% of Congolese living on less daily. See U.N. Development Program, *Democratic Republic of the Congo: HDI Values and Rank Changes in the 2011 Human Development Report*, 2, 5, available at <http://hdrstats.undp.org/images/explanations/COD.pdf> (last visited Feb. 18, 2012).

9. G.A. Res. 55/25, Convention on Transnational Organized Crime, Annex II Protocol to Prevent Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Crime, art.

In eastern DRC, gender-based violence (GBV) is an extreme affront to Congolese women and children, with more than 200,000 victims subjected to sexual violence since 1996.¹⁰ Even though the Congolese government, in 2006, ratified a new Constitution and passed a law criminalizing sexual violence offenses, perpetrators still exploit women and children with impunity, and victims remain largely unprotected.¹¹ The international community has condemned the sexual violence in the DRC and regional authorities call for “all the armed groups active in eastern DRC to *immediately* put a[n] end to the rape and all kinds of violence against women and children” and for “the DRC [G]overnment to take *all* necessary steps for the effective implementation of the 2006 laws on sexual abuse, including the pursuit and punishment of the perpetrators of rape and other acts of violence against women.”¹² Yet, the sexual violence still continues with relative impunity and women and children are unprotected.¹³

In addition to rape, the attacks on civilians have included “accompanying abduction, enforced prostitution and enslavement of victims.”¹⁴ The United States has recognized these abuses as trafficking in persons, specifically manifested through forced conscription of child soldiers, labor trafficking, forced prostitution, and sexual slavery.¹⁵ Due to the Congolese

9(4), U.N. Doc. A/Res/55/25 (adopted Nov. 15, 2000; signed Jan. 8, 2001; entered into force Dec. 25, 2003), *available at* http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf (listing poverty as a factor that makes women and children vulnerable to trafficking) [hereinafter Trafficking Protocol].

10. U.N. Secretary-General, *Report of the Secretary-General Pursuant to Security Council Resolution 1820*, ¶ 12, U.N. Doc. S/2009/362 (July 15, 2009) [hereinafter U.N. Doc. S/2009/362]. Some United Nations estimates from 2010 are as high as 500,000 victims, with an additional 1,100 women raped monthly. *See* discussion, *infra* at 6-8 for more details on GBV in the DRC.

11. *Id.* (“[S]exual violence continue[d] unabated in the Democratic Republic of Congo.”). *See also* Rashida Manjoo & Calleigh McRaith, *Gender-Based Violence and Justice in Conflict and Post-Conflict Areas*, 44 CORNELL INT’L L.J. 11, 26 (2011) (“[V]ery little has changed in the lives of most women, as both state and non-state actors continue to commit acts of GBV with impunity. In the [DRC] . . . GBV remains unchecked despite new national legislation.”).

12. African Commission on Human and Peoples’ Rights, Resolution on the Crimes Committed Against Women in the Democratic Republic of Congo, (Nov. 10-24, 2010) (emphasis added), *available at* <http://www.achpr.org/sessions/48th/resolutions/173/>. For the international response, see S.C. Res. 1960 (2010), ¶ 3, U.N. Doc. S/RES/1960 (2010) (Dec. 16, 2010) [hereinafter S.C. Res. 1960].

13. Human Rights Watch, *supra* note 2, at 2. *See generally* GLOBAL NETWORK OF WOMEN BUILDERS, SECURITY COUNCIL RESOLUTION 1325: CIVIL SOCIETY MONITORING REPORT 2011-DEMOCRATIC REPUBLIC OF CONGO 88, 91 (Annie Matundu Mbambi trans., 2011), *available at* <http://www.gnwp.org/wp-content/uploads/2010/02/DRC1.pdf>.

14. U.N. Doc. S/2009/362, *supra* note 9, at ¶ 13.

15. U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 2011 129-30 (June 2011), *available at* <http://www.state.gov/j/tip/rls/tiprpt/2011/> [hereinafter TIP REPORT 2011]. *See also* Rep. of the Preparatory Comm’n for the Int’l Criminal Courts, Preparatory Comm’n for the Int’l Crim. Court, Mar. 13-31, June 12-30, 2000, art. 7 (1) (g)-3, U.N. Doc. PCNICC/2000/1/Add.2 (Nov. 2, 2000) [hereinafter ICC Elements of Crimes]. For

government's failure to comply with the minimum standards to prevent trafficking, prosecute perpetrators, and protect victims, the United States Department of State Trafficking in Persons Report ranked the DRC as a Tier 3 country, the lowest level, in 2010, 2011, and 2012.¹⁶

This Note will analyze the current responses to gender-based violence in the conflict-ridden eastern DRC, and will show that incorporating efforts targeting gender-based violence as a form of human trafficking could lead to greater justice for victims by increasing prevention, prosecution, and protection as required by international human trafficking law. Part I summarizes the war in the DRC and demonstrates that conflict has led to rampant sexual violence. Part II discusses the existing international human rights-based laws designed to impose an obligation on the DRC to respond to sexual violence. Part III asserts the human rights-based approach is insufficient to protect victims and that international human trafficking laws should be utilized to help protect victims of a specific type of gender-based violence: sexual slavery. Part IV proposes that, in fulfillment of international obligations and with international support, victim-centered methods by the Congolese Government could help prevent further trafficking in persons, decrease impunity for perpetrators of sexual slavery, and protect victimized women and girls in the DRC.

I. BACKGROUND: GENDER-BASED VIOLENCE IN THE CONGO CONFLICT

The Congo Wars have been characterized by the highest death toll in a humanitarian crisis since World War II.¹⁷ Since 1998, between 3 million and 5.4 million Congolese have died because of the conflict in the DRC.¹⁸ This deadly violence has been accompanied by the rampant use of rape as a tool

information on the definition of forced prostitution under national law 06/018, see *infra* note 151 and accompanying text. In contrast, sexual slavery is characterized by (1) enslavement of another person (2) for one or more acts of a sexual nature. See ICC Elements of Crimes, art. 7 (1) (g)-2.

16. U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 2012 126 (June 2012) [hereinafter TIP REPORT 2012]. For background on Tier Rankings, see *Trafficking in Persons Report 2011 Tiers: Placement, Guide, and Penalties for Tier 3 Countries*, U.S. DEPT. OF STATE, www.state.gov/j/tip/rls/tiprpt/2011/164221.htm (last visited Dec. 27, 2012) (Tier 3 is the lowest ranking, reserved for countries who completely fail to comply with the minimum standards set by the U.S. government for preventing, prosecuting and, protecting people from human trafficking); see also Memorandum on Steps to Combat Violence Against Women and Trafficking in Women and Girls, *infra* note 186.

17. See INT'L RESCUE COMM., MORTALITY IN THE DEMOCRATIC REPUBLIC OF CONGO: AN ONGOING CRISIS I (2007), available at http://www.rescue.org/sites/default/files/migrated/resources/2007/2006-7_congomortalitysurvey.pdf [hereinafter MORTALITY IN THE DEMOCRATIC REPUBLIC OF CONGO] (an estimated 5.4 million deaths between 1998 and 2007, with 2.1 million since then end of the formal war in 2002).

18. MORTALITY IN THE DEMOCRATIC REPUBLIC OF CONGO, *supra* note 16, at ii. But see *DR Congo War Deaths 'Exaggerated'*, BBC NEWS, Jan. 20, 2010, available at <http://news.bbc.co.uk/2/hi/africa/8471147.stm>.

of war, which continues to deteriorate today throughout eastern DRC.¹⁹ Because of the need to protect civilians and stabilize the eastern part of the country, the mandate of U.N. Peacekeeping personnel on the ground has been extended to June 2013,²⁰ with the 19,154 total uniformed personnel presently on the ground.²¹

A. Conflict in the Congo

From the very inception of the war, international actors have played an integral role in escalating the conflict.²² In what is now known as the First

19. S.C. Res. 2053 (2012), pmb1, U.N. Doc. S/RES/2053(2012) (Jun. 27, 2012) [hereinafter S.C. Res. 2053] (“Expressing deep concern at the deteriorating security situation in the eastern provinces of the Democratic Republic of the Congo, including attacks by armed groups” and

Remaining greatly concerned by the humanitarian situation and the persistent high levels of violence and human rights abuses and violations against civilians, *condemning* in particular the targeted attacks against civilians, widespread sexual and gender-based violence, recruitment and use of children by parties to the conflict, in particular the mutineers of ex-Congrès National pour la Défense du Peuple (ex-CNDP) and the 23 March Movement (M23)).

20. *Id.* at ¶ 1. Since 2000, peacekeeping troops deployed in the DRC have had the mandate to “take the necessary action, in the areas of deployment of its infantry battalions and as it deems it within its capabilities, to . . . protect civilians under imminent threat of physical violence.” S.C. Res. 1291, ¶ 8, S/RES/1291 (2000) (Feb. 24, 2000). *See generally* S.C. Res. 1291, ¶7(g), S/RES/1291 (2010) (May 28, 2010) (discussing the comprehensive mandate of MONUC Phase II).

21. MONUSCO- UNITED NATIONS ORGANIZATION STABILIZATION MISSION IN THE DR CONGO, Facts and Figures, <http://www.un.org/en/peacekeeping/missions/monusco/facts.shtml> (last visited Dec. 27, 2012) [hereinafter MONUSCO](providing an accounting of initial and current mission deployments in the DRC). It must be noted that the initial mandate established the U.N. Organization Mission to the Democratic Republic of Congo (*see* S.C. Res. 1279 (1999), S/RES/1279 (Nov. 30, 1999)), but then name was changed to MONUSCO in 2010 (*see* S.C. Res. 1925 (2010), S/RES/ 1925 (Jul. 10, 2010)). *Id.* at MONUSCO Background, <http://www.un.org/en/peacekeeping/missions/monusco/background.shtml>.

22. The causes of the conflict in DRC are multitudinous, but many can be traced to the dynamics following the genocide of 800,000 Rwandan Tutsi and moderate Hutus in the bordering country of Rwanda. *See generally* JASON K. STEARNS, DANCING IN THE GLORY OF MONSTERS: THE COLLAPSE OF THE CONGO AND THE GREAT WAR OF AFRICA 13 (2011) (“The conflict in the Congo has many causes, but the most immediate ones came across the border from Rwanda . . . This genocide helped create the conditions for another cataclysm in neighboring Congo.”). After the genocide in Rwanda, the instability spread to the DRC. *See* MONUSCO, *supra* note 21, at MONUSCO Background. The beginning of the war in the DRC is a classic example of the principle that “[a] failed state’s civil wars may spark widespread human rights violations, starvation, and disease that prompt destabilizing refugee movements to neighboring countries.” John Yoo, *Fixing Failed States*, 99 CALIF. L. REV. 95, 106-07 (2011). “Failed states may lack the means to prevent ethnic groups from attacking each other; the violence may not only reach genocidal proportions - as it did in Rwanda - but may also spread to nearby countries with similar tribal, ethnic, or religious fault lines, for

Congo War, Rwanda and Uganda supported rebel leader Laurent Kabila as he launched an attack to topple the regime of Mobutu Sese Seko.²³ Mr. Kabila took power and founded the Democratic Republic of the Congo (formerly, Zaire) in May 1997, but soon fell out of favor with Rwanda for failing to exterminate the Hutu people, whom Rwanda considered to be enemy *genocidaires*, within the borders of the new DRC.²⁴ The Second Congo War began in 1998 when the Rwandan-led coalition of African powers launched an offensive raid to expel Laurent Kabila from power.²⁵ Five regional states and the DRC signed the Lusaka Peace Accords in 1999, and the U.N. Organization Mission to the DRC was established.²⁶ However, the conflict continued as Joseph Kabila took power after the death of his father in 2001, and the second war formally ended in 2002.²⁷

Even the recent national elections have been unable to bring stability to the region. After highly contested elections, President Joseph Kabila was elected for a second term in December 2011.²⁸ According to Jason Stearns, long-time political activist and journalist in the DRC, President Kabila “is wary about creating a strong rule of law that could tie his hands.”²⁹ Positing the president’s political motives for his actions, he states, “[e]ven the violence in the Kivus region, which continues until today, has not prompted major reforms in his army or police; he has preferred to co-opt dissent rather than to promote an impartial, disciplined security force.”³⁰ As indicated above, political motivations and the ongoing impact of international conflict has resulted in societal collapse and governmental failure to protect its citizens from violence.

B. Gender-based violence against women and girls

Since the beginning of the war in 1997, Gender-based violence (“GBV”) has been used as a tool of war in order to subjugate the local population and maintain power over them.³¹ Because females are more often displaced by

example, when the Rwandan genocide spilled over into the civil war in the Democratic Republic of Congo.” *Id.*

23. STEARNS, *supra* note 22, at 8. *See also* MONUSCO, *supra* note 20, at MONUSCO Background.

24. Stearns, *supra* note 22, at 8.

25. *Id.*

26. MONUSCO, *supra* note 21.

27. *Id.*

28. *DR Congo Election: Court Confirms Joseph Kabila Win*. BBC NEWS, Dec. 16, 2011, available at <http://www.bbc.co.uk/news/world-africa-16229372> (the elections were held in November, but were contested vehemently until December 16).

29. STEARNS *supra* note 22, at 331-32.

30. *Id.* at 332.

31. U.N. Office of the High Comm’r on Human Rights, Report of the Mapping Exercise Documenting the Most Serious Violations of Human Rights and International Humanitarian Law Committed Within the Territory of the Democratic Republic of the Congo

conflict and are responsible for collecting water, food, and firewood to ensure the family's survival, "women and girls are the main victims of rape, mutilation, abduction into sexual slavery, and sexual exploitation during times of conflict."³² The epic proportions of sexual violence have recently been exposed in South Kivu through a United Nations report mapping human rights violations in the DRC from 1997-2003.³³

The ongoing relationship between the Congo conflict and GBV is cyclical, with conflict leading to GBV and GBV, in turn, contributing to the destabilization of the region and its people.³⁴ According to MONUSCO, the mass perpetration of sexual violence in the DRC since 1996 has consequences that continue today: "physical, emotional and economic consequences continue to pervade and reinforce instability particularly in the East."³⁵ Acts of GBV continue to permanently traumatize victims' lives and destabilize the DRC.³⁶ According to Amnesty International, on June 11,

Between March 1993 and June 2003, ¶ 631 (2010) (unofficial translation from French original), available at http://www.ohchr.org/Documents/Countries/ZR/DRC_MAPPING_REPORT_FINAL_EN.pdf [hereinafter Mapping Exercise] ("Sexual violence was frequently used to terrorise (*sic*) and subjugate the population. The different armed groups committed acts of sexual violence that could be likened to veritable campaigns of terror.").

32. *Confronting Rape and Other Forms of Violence Against Women in Conflict Zones Spotlight: DRC and Sudan: Hearing Before the Subcomm. on Afr. Affairs, Subcomm. on Int'l Operations & Orgs., Human Rights, Democracy, & Global Women's Issues of the Comm. on Foreign Relations*, 111th Cong. 45 (2009) [hereinafter Hearing: Confronting Rape] (statement of Robert Warwick, Director, International Rescue Committee).

33. Mapping Exercise, *supra* note 31, ¶ 611 ("All [armed forces] had one thing in common, however: the use of sexual violence. This violence took place under cover of a climate of widespread impunity and insecurity, and the perpetrators were often difficult to identify. The cases are too numerous to mention and the level of violence unspeakable.").

34. The DRC Government explained in a recent report that conflict leads to large scale rape of women in the DRC, which causes "incalculable damage" in society. *See* Comm. on the Elimination of Discrimination Against Women, Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women Combined sixth and seventh periodic report of States Parties: Democratic Republic of the Congo, 23, U.N. Doc. CEDAW/C/COD/6-7 (Dec. 21, 2011) [hereinafter 2011 Periodic Report].

35. MONUSCO, *supra* note 21, at MONUSCO Background.

36. Rape as a tool of war destroys the lives of its victims. One Congolese mother wrote poetically about her feelings on the horror:

My bones are weak/ can't protect my daughter no more/my voice is gone/ can't scream any louder/ my eyes are getting weaker/ Tears easily flowing out/ . . . Sons that are turned into these monsters/ Joining armies of abusers and rapists/ Taught to destroy their mothers/ Kill their fathers/ Abuse their sisters with no remorse/ And that's why/ I would prefer a bullet in the head/ Over another gang rape/ a knife on my throat/ over another political instability/A trail of tears over another sexual violence[.]

2011, 100 women were raped by government forces in an attack on the village of Nyakiele near Fizi town.³⁷ This was the fourth incident of mass rapes by armed forces in eastern DRC in the last 18 months.³⁸

The scope of the continuing perpetration of GBV in eastern DRC is massive. In contrast to more conservative U.N. estimates, a 2011 international health study indicated the actual number of victims could be as high as 407,397 to 433,785 *in the preceding 12 months alone*, particularly in North Kivu in eastern DRC.³⁹ According to the report, there may be as many as 2 million victims of sexual violence throughout the DRC.⁴⁰ Congolese Government and civil society has long believed the perpetrators of these heinous rapes are foreign-armed militia.⁴¹ Yet, according to expert Margot Wallström,⁴² the Congolese government's lack of control over its own armed forces contributes heavily to the proliferation of GBV in the region.⁴³

FBM FIDEL MWENDAMBALI NSHOMBO, *ROUTE TO PEACE 2: A LIFE FOR LIVES* 36-37 (2011) (emphasis added). See *infra* Appendix III for a poetic rendition of the rape of a mother in the eastern DRC and her cry for the world to help her.

37. *New Mass Rapes in DRC are Result of Horrific Failure of Justice*, AMNESTY INTERNATIONAL (June 23, 2011), <http://www.amnesty.org/en/news-and-updates/new-mass-rapes-drc-are-result-horrific-failure-justice-2011-06-23>.

38. Mapping Exercise, *supra* note 31, at 318-24.

39. Amber Peterman et al., *Estimates and Determinants of Sexual Violence Against Women in the Democratic Republic of Congo*, 101 AM. J. PUB. HEALTH 1030, 1060-67 (2011).

40. *Id.*; see also Jeffrey Gettleman, *Rapes Total in Millions in Congo, Study Finds*, N. Y. TIMES, May 12, 2011, at A-4, available at <http://www.nytimes.com/2011/05/12/world/africa/12congo.html> (republished online as *Congo Study Sets Estimate for Rapes Much Higher*).

41. Hearing: Confronting Rape, *supra* note 32, at 40 (asserting that 500,000 women have been raped in the conflict and that “there will be security when the FDLR returns to Rwanda.”) (quoting Chouchou Namegabe Nabinto, Founder, South Kivu Women’s Media Association, Democratic Republic of the Congo). The foreign-armed groups that civil society believes perpetrate the most GBV include the Lord’s Resistance Army (LRA) of Uganda and the Democratic Forces for the Liberation of Rwanda (FDLR). Until June 2012, the extent of foreign involvement in arming militias was largely speculative, but an interim U.N. Report has shown that the Rwandan Defense Minister and Uganda government officials have directly armed and trained the M23 armed faction that recently took power in the eastern city of Goma. See Group of Experts Interim Report, *supra* note 6, at ¶ 2; see also Johnny Hogg, *Congo Demands Sanctions on Rwanda, Uganda*, Reuters (Oct. 17, 2012), www.reuters.com/assets/print?aid=USBRE89G1LQ20121017. Both foreign governments vehemently deny any involvement with the mutinous faction. See *Uganda and Rwanda Deny Supporting DRC Rebels*, Al-Jazeera English- Africa (Oct. 17, 2012), www.aljazeera.com/news/africa/2012/10/2012101714443887755.html.

42. U.N. Secretary-General’s Special Representative on Sexual Violence in Conflict since early 2010. Press Release, U.N. Secretary-General, *Secretary-General Appoints Margot Wallström of Sweden as Special Representative on Sexual Violence in Conflict*, U.N. Press Release SG/A/1220 (Feb. 2, 2012), <http://www.un.org/News/Press/docs/2010/sga1220.doc.htm>.

43. Margot Wallström, *When Protectors Turn Predators: Army Reforms Needed to Counter Sexual Violence in the Congo*, AFR. RENEWAL ONLINE (Jan. 16, 2012),

As explained above, the conflict in the DRC is characterized by extensive GBV, which continues to destabilize the eastern regions of the DRC and exacerbate the conflict. In the eastern DRC, an especially prevalent and destructive form of GBV is conflict-based sexual slavery of women and girls.⁴⁴ Accordingly, the subsequent sections will explore the strengths and weaknesses of the current international and national responses to this form of GBV in the DRC.

II. HUMAN RIGHTS-BASED RESPONSES TO GBV IN THE CONGO

As the following analysis will detail, under international law, the government of the DRC has the primary responsibility to create and enforce laws that protect its civilians.⁴⁵ As the United Nations Security Council has repeatedly stated in its resolutions regarding the crisis in the DRC, the State has a responsibility “to prevent sexual violence and to combat impunity and enforce accountability,” to prosecute perpetrators, and provide holistically for the protection and reintegration needs of victims of sexual violence.⁴⁶ Moreover, in conflicts, the United Nations has consistently affirmed that national governments have the primary obligation to protect the most vulnerable among their civilians: “*Stressing* the primary role of national Governments [*sic*] in providing effective protection and relief to all children affected by armed conflicts [and] *Recalling* the responsibilities of States to end impunity and to prosecute those responsible for genocide, crimes against humanity, war crimes, and other egregious crimes perpetrated against children[.]”⁴⁷

International law must impose obligations on national governments to combat impunity and protect victims.⁴⁸ Based on these obligations, and with

<http://www.un.org/africarenewal/web-features/when-protectors-turn-predators> (it is critical to note that through the U.N. disarmament and demobilization process, the majority of the former forces of the twenty rebel forces have been integrated into the national army, a fact which may account for the lack of governmental control over the national army).

44. 2011 Periodic Report, *supra* note 34, at 23 (“With regard to the recent causes of most of the occurrences of sexual violence, it has been established that rapes, mutilations, sexual slavery and forced pregnancies have been used as a military weapon and have mainly been linked with conflicts and uniformed combatants.”).

45. While the obligation exists, it must be noted that international compliance measures are limited both in the human rights-based and human trafficking laws. *See infra* Part II.

46. S.C. Res. 1960, *supra* note 12, at 1-2.

47. S.C. Res. 1612 (2005), U.N. Doc. S/RES/1612 (2005), at 1 (July 26, 2005).

48. While outside the scope of this Note, regional law may in some cases be more efficient, particularly in recently post-colonial societies within Africa. For instance, the International Conference on the Great Lakes Region recognized that, while national, regional, and international involvement is necessary to ending impunity for sexual violence perpetrators, the regional protocols and projects “provide efficient and adequate framework for the prevention and fight against [GBV], and the prosecution and punishment of the perpetrators” International Conference on the Great Lakes Region, June 16-18, 2008,

the support of external nongovernmental and intergovernmental agencies, national laws must be enacted and then, effectively implemented by local law enforcement and legal professionals.⁴⁹ Although obligations and relevant laws do exist, they do not appear to be enforced for the protection of individual victims.⁵⁰ If not effectively enforced, to what extent do these international human rights standards and obligations impact women and girl victims of sexual slavery and other GBV in the DRC? Part II will explore the international human rights-based responses and how they have impacted national efforts to protect victims of GBV in the DRC.

A. United Nations Interventions: Peacekeeping and Monitoring Initiatives

The United Nations, as the largest intergovernmental founded to protect peace and human rights, is the primary source for international obligations for national governments to protect their vulnerable populations.⁵¹ By passing Resolution 1325 in 2000, the United Nations Security Council for the first time acknowledged that “women and children account for the vast majority of those adversely affected by armed conflict”⁵² Moreover, Resolution 1325, entitled *The Resolution on Women, Peace, and Security*, “call[ed] on all parties to armed conflict to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse.”⁵³ Resolution 1325 led to numerous other Security Council actions, including Resolution 1960, which sought the to improve implementation of Resolution 1325 by (1) admonishing states to immediately cease the practice of impunity for perpetrators of sexual violence in conflict zones and (2) increasing international communication, support, and monitoring of sexual violence against women and children in conflict.⁵⁴ In particular, Resolution 1960 recognized the

The Goma Declaration on Eradicating Sexual Violence and Ending Impunity in the Great Lakes Region, at 1, 7-8 (June 18, 2008) (listing eleven actions to be executed on the regional level to promote stability, protect victims, and punish perpetrators).

49. Office of the Senior Sexual Violence Adviser and Coordinator, *Comprehensive Strategy on Combating Sexual Violence in DRC: Executive Summary*, at 1 (Mar. 18, 2009), <http://monusco.unmissions.org/Portals/MONUC/ACTIVITIES/Sexual%20Violence/KeyDocuments/Comprehensive%20Strategy%20Executive%20Summary.pdf> [hereinafter *MONUC Strategy*].

50. This conclusion is based on the continuing scourge of GBV, specifically sexual slavery, in the DRC despite the passage of laws and the existence of obligations to enforce the laws.

51. U.N. Charter pmbl.; see also official website of the United Nations, *U.N. at a glance* (last visited Dec. 27, 2012), <http://www.un.org/en/aboutun/index.shtml> (193 member states committed to achieving peace and human rights).

52. S.C. Res. 1325, at 2, U.N. Doc. S/RES/1325 (Oct. 31, 2000).

53. *Id.* ¶ 10.

54. U.N. Doc. S/2009/362, *supra* note 10, pmbl.

[r]esponsibilities of States to end impunity and to prosecute those responsible for genocide, crimes against humanity, war crimes, and other egregious crimes perpetrated against civilians and, in this regard, noting with concern that only limited numbers of perpetrators of sexual violence have been brought to justice, while recognizing that in conflict and in post-conflict situations national justice systems may be significantly weakened.⁵⁵

These Resolutions have led to increased pressure on the Congolese Government to develop a national action plan to combat sexual violence and have also shaped the specific efforts of MONUSCO to assist the national government in ending impunity.⁵⁶ Moreover, the Resolutions have been partly enforced by the creation of Special Rapporteur on Sexual Violence in Conflict, which monitors and advocates for greater state efforts to combat impunity and protect victims.⁵⁷

The United Nations has most directly intervened in the conflict in the DRC by deploying its peacekeeping mission through MONUSCO, which bears an “obligation to protect.”⁵⁸ The MONUSCO operation has also taken strides to support the national government in ending sexual violence and other exploitation against women and children.⁵⁹ Recently, the Security Council extended the MONUSCO mandate until June 30, 2013, with its stated primary focus to protect civilians using new and “innovative measures.”⁶⁰ These innovative measures include admonishing the government of the DRC to work toward security sector reform⁶¹ and expressing concern over “the promotion within the Congolese security forces of well-known individuals responsible for serious human rights

55. *Id.*

56. *See* MONUSCO, *supra* note 21.

57. S.C. Res. 1888, ¶¶ 4-7, U.N. Doc. S/RES/1888 (Sept. 30, 2009).

58. *See generally* SIOBHÁN WILLS, PROTECTING CIVILIAN: THE OBLIGATION OF PEACEKEEPERS 56-61 (2009) (providing an overview of the U.N. Mission to the DRC from inception to 2007). Sadly, in its early days, MONUC officers harmed civilians rather than protecting them when four U.N. peacekeepers raped 19 Congolese women in South Kivu by threatening their safety and then coercing their silence with food (bread, eggs, milk). *Id.* at 274-75. According to the international definition of human trafficking, these deplorable acts could be considered human trafficking for forced prostitution, since coercion allowed the soldiers to exploit the women sexually. In more recent years, the peacekeepers have been accused of standing by during massacres, rapes, and kidnappings. *See, e.g.*, Mungabo, *infra* note 175. “No one intervened to help the victims [of the massacre] despite their many appeals to FARDC soldiers present in the region. The same goes for the MONUC contingents, though there are plenty of them in Kaniola.” *Id.*

59. *See* MONUSCO, *supra* note 21.

60. S.C. Res. 2053, *supra* note 19, at ¶ 1 (“reaffirm[ing] that the protection of civilians must be given priority in decisions about the use of available capacity and resources and encourages further the use of innovative measures implemented by MONUSCO in the protection of civilians.”).

61. *Id.* ¶ 6.

abuses.”⁶² Most significantly, the innovative measures have led to the formulation of the Comprehensive Strategy for Combatting Sexual Violence in Conflict (“Strategy”), including the provision of assistance and monitoring of the National Action Plan to Combat Sexual Violence.⁶³ The overall goal of the strategy is to “strengthen prevention, protection and the response to sexual violence.”⁶⁴ The four objectives are: (1) combating impunity for cases of sexual violence, (2) preventing and protecting victims of sexual violence, (3) reforming of the security sector and sexual violence, and (4) providing multi-sectoral response for survivors of sexual violence.⁶⁵ However, the major actors in the Strategy are U.N. institutions and committees, with the DRC government arguably taking on the role of beneficiary rather than lead participant.

United Nations charter-based resolutions and interventions have helped promote peace in the region and have urged the protection of vulnerable populations. Significantly, the U.N. field offices have created a model holistic approach to respond GBV in the DRC. Yet, implementation has been limited thus far. The next section examines the international treaty-based human rights responses to GBV and whether they actually protect victims of sexual slavery in the DRC.

B. International Human Rights Laws addressing Sexual Violence

Particularly when vulnerable victims’ voices are not being heard by nations, “international law is ultimately a tool for change: It seeks to positively influence the behavior of States.”⁶⁶ Collaboration is required between intergovernmental and national institutions to end sexual violence, particularly in light of ongoing instability. The international community has recognized this need: “Deputy Secretary-General Asha-Rose Migiro [today] stressed that efforts to restore peace and stability in Africa’s Great Lakes region will not come to fruition unless the scourge of sexual violence is completely eradicated and justice systems are strengthened to end impunity.”⁶⁷ Given the vulnerability of victims, the multitude of causes, and the long-term impact of the crimes, international human rights law

62. *Id.* ¶ 11.

63. MONUC Strategy, *supra* note 49.

64. *Id.*

65. *Id.* at 2-3.

66. ANNE T. GALLAGHER, THE INTERNATIONAL LAW OF HUMAN TRAFFICKING 11 (2010) [hereinafter THE INTERNATIONAL LAW OF HUMAN TRAFFICKING].

67. *UN officials Urge Eradication of Sexual Violence in Africa’s Great Lakes Region*, UN NEWS CENTRE (Dec. 15, 2011), <http://www.un.org/apps/news/story.asp?NewsID=40748&Cr=&Cr1=#.UG71GZg0WSo>.

significantly contributes to keeping the focus on the victims' rights and rehabilitation.⁶⁸

As will be shown below, the relevant international human rights treaties and resolutions prohibiting gender-based discrimination and sexual violence neither extend protections to all victims, nor do they cover enslavement as a tool of war such as sexual slavery. International human rights laws, thus, fall short of imposing obligations to provide full protection for victims of sexual slavery.

1. *International Bill of Human Rights*

Each of the foundational documents within international human rights law not only claim the "inherent dignity" and "right to liberty" of all persons, but also prohibit slavery.⁶⁹ These foundational documents include the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social, and Cultural Rights. The Universal Declaration is an unenforceable non-treaty document, and the Covenant on Economic, Social, and Cultural Rights possesses no expressly enforceable provision related to slavery. In contrast, Article 8 of the ICCPR, prohibiting slavery,⁷⁰ is enforceable on States Parties through the individual complaint mechanism. Unfortunately, the Human Rights Commission has not issued a single view

68. In addition to international human rights law, in the DRC, where sexual exploitation occurs throughout post-conflict and active conflict zones, international humanitarian law, like the Geneva Convention and its Protocols I and II, plays a role in defining the obligations on armed combatants. However, while prohibiting inhumane treatment, including rape, international humanitarian law contains no overt reference to enslavement as a crime of war. *See* Protocol Additional to the Geneva Conventions of Aug. 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), Dec. 7, 1978, 1125 U.N.T.S. 3, art. 75. *See also* Protocol Additional to the Geneva Conventions of Aug. 12, 1949 and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), Dec. 7, 1978, 1125 U.N.T.S.609 art. 4. *See also*, THE INTERNATIONAL LAW OF HUMAN TRAFFICKING, *supra* note 66, at 209-10.

69. Universal Declaration of Human Rights, G.A. Res. 217A (III), art. 1, 4, U.N. Doc. A/810 at 71 (1948) [hereinafter Universal Declaration of Human Rights] (borrowing terms from the International Slavery Convention of 1926, *infra* note 178: "No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms"); International Covenant on Social, Economic, and Cultural Rights, G.A. Res. 2200A (XXI), art.7, U.N. Doc. A/6316 (1966) (entered into force Jan. 3, 1976) ("right of everyone to enjoy just and favorable conditions of work."); International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), art. 8, U.N. Doc. A/6316 (1966) (entered into force Jan. 3, 1976) ("(1) No one shall be held in slavery; slavery and the slave trade in all their forms shall be prohibited. (2) No one shall be held in servitude. (3)(a) No one shall be required to perform forced or compulsory labor.").

70. "No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited." ICCPR, *supra* note 69, art. 8.

on state compliance with Article 8 based on an individual complaint (known as a communication).⁷¹

The government of the DRC evinces a desire to abide by international human rights law. For instance, the DRC incorporated the Universal Declaration of Human Rights and all international human rights law into its 2005 Constitution.⁷² Furthermore, the DRC has ratified the ICCPR and its optional protocol.⁷³ Even if an individual in the DRC were to file a communication, which is authorized under the Optional Protocol, the likelihood of a prompt remedy for the violation is miniscule given the final outcome of such complaints: consent from the offending nation for the committee to review the complaint and present its views thereon.⁷⁴

While the founding documents of international human rights law principally establish the general dignity and rights of people, two additional human rights treaties have been particularly influential in shaping international responses to GBV, including sexual slavery, in conflict zones such as the eastern DRC. The subsequent sections will analyze effects of the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC) and its two optional protocols, on the situation in the DRC.

2. *Convention on the Elimination of all forms of Discrimination Against Women*

The Convention on the Elimination of all forms of Discrimination Against Women (“CEDAW”), an international human rights treaty, condemns violence against women as an aspect of discrimination against women.⁷⁵ Significantly, the General Recommendation, a statement of how

71. U.N. General Assembly Rep. of the Human Rights Committee, Mar. 17, 2008 – Apr. 4, 2008, U.N. Doc. A/63/40; GAOR, 92nd Sess., Supp. No. 40 (2008).

72. THE CONSTITUTION OF THE DEMOCRATIC REPUBLIC OF THE CONGO 2005, pmb1. [hereinafter CONSTITUTION OF THE DEMOCRATIC REPUBLIC OF THE CONGO] (reaffirming its adherence to the Universal Declaration of Human Rights and “to the international instruments relating to the protection and promotion of human rights.”).

73. International Covenant on Civil and Political Rights, Dec. 16, 1966, *available at* http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en; Optional Protocol to the International Covenant on Civil and Political Rights, Dec. 16, 1966, *available at* http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-5&chapter=4&lang=en.

74. Optional Protocol to the International Covenant on Civil and Political Rights, arts. 4, 5 (entered into force Mar. 23, 1976), 999 U.N.T.S. 302 (requiring the Council to alert the offending State and give opportunity for State response to the complaint, followed by the Council’s consideration and submission of its “view” on the alleged violation).

75. Convention on the Elimination of Discrimination Against Women, art. 6, G.A. Res. 34/180 (Dec. 18, 1979; entered into force Sept. 3, 1981), *available at* <http://www.unhcr.org/refworld/docid/3ae6b3970.html> [hereinafter CEDAW]. *See also* Comm. on the Elimination of Discrimination Against Women, General Recommendation No. 19, ¶¶ 1-7, Jan. 29, 1992, U.N. Doc. A/47/38 [hereinafter CEDAW General

the treaty should be interpreted, states that “[a]rmed conflicts and the occupation of territories often lead to increased prostitution, trafficking in women and sexual assault of women, which require specific protective and punitive measures.”⁷⁶ Moreover, all parties to the agreement (“States Parties”) have expressly condemned all discrimination that harms women, including the trafficking of women, in CEDAW.⁷⁷ The General Recommendation expounds on Article 6, which condemns trafficking in women by confirming that trafficking is a form of gender-based violence and discrimination against women.⁷⁸ When the article prohibiting trafficking is combined with Article 24, all States Parties are obligated to work toward the fulfillment of women’s right to be free from trafficking within their borders.⁷⁹ As interpreted, the Convention requires States Parties to: (1) condemn discrimination against women, (2) adopt a policy against discrimination, (3) enforce equal protection of the law, and (4) “[t]ake action to prevent private as well as public acts of discrimination.”⁸⁰

The DRC government ratified CEDAW in 1986, prior to the onset of the war and the change in government.⁸¹ In 2006, the DRC submitted its Fourth and Fifth Periodic Reports on the implementation of CEDAW and, in response, the Committee on the Discrimination Against Women recognized the ongoing existence of sexual violence against women and admonished the government to protect women immediately:

The Committee is deeply concerned about the continuing occurrence of rapes and other forms of *sexual violence against women and the ingrained culture of impunity for such crimes*, which constitute grave and systematic violations of women’s human rights. It is concerned about the insufficient efforts to conduct thorough investigations, the absence of protection measures for witnesses, victims and victims’ families. The Committee

Recommendation] (“Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention”).

76. *Id.* art. 6 (interpreting ¶ 6 of CEDAW).

77. CEDAW, *supra* note 75, at art. 6 (“State parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.”). It is important to note that, according to expert Anne Gallagher, “[o]f all the human rights bodies, the CEDAW Committee has been most explicit in identifying trafficking as a form of gender-based violence and therefore as unlawful discrimination.” *THE INTERNATIONAL LAW OF HUMAN TRAFFICKING*, *supra* note 66, at 195.

78. CEDAW General Recommendation, *supra* note 75, ¶¶ 13-16 (interpreting Article 6 of CEDAW).

79. CEDAW, *supra* note 75, at art. 24 (“States parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Covenant.” The right includes protection from trafficking from, to, or through the country where the woman resides.).

80. *THE INTERNATIONAL LAW OF HUMAN TRAFFICKING*, *supra* note 66, at 191-92.

81. Convention on the Elimination of All Forms of Discrimination Against Women, *supra* note 75. (DRC signed Jul. 17, 1980, and ratified Oct. 17, 1986 with no reservations.).

urges the State party to *take without delay all necessary measures to put an end to all forms of violence against women and the impunity of perpetrators*. The State party *should draft and adopt a law on violence against women*. The Committee requests the State party to provide in its next periodic report detailed information on the causes, scope and extent of all forms of violence against women and on the impact of measures taken to prevent such violence, to investigate occurrences, to prosecute and punish perpetrators and to provide protection, relief and remedies, including appropriate compensation, to victims and their families.⁸²

Only months after that report, and more than twenty years after ratification, the CEDAW provisions were directly incorporated into the Congolese Law 06/018, which criminalized sexual violence, including sexual slavery.⁸³ Since then, the Congolese Government has demonstrated its intention to protect women from sexual violence in compliance with its obligations under CEDAW.⁸⁴ However, the most recent report elucidates the position of the DRC Government that sexual slavery is not a form of trafficking in women covered under Article 6 of CEDAW.⁸⁵

Thus, CEDAW has positively influenced the creation of law in the DRC and has opened the door to a degree of international monitoring of the national implementation of protections against GBV and trafficking in women. Unfortunately, Law 06/018, condemning sexual slavery and other GBV, has remained unenforced in the national courts.⁸⁶ Moreover, since the 2006 committee review of the DRC's report, follow up monitoring has been mixed.⁸⁷ There is hope for greater implementation of governmental

82. Comm. on the Elimination of Discrimination Against Women, Concluding Comments of the Committee on the Elimination of Discrimination Against Women: Democratic Republic of the Congo, ¶¶ 13-14, U.N. Doc. CEDAW/C/COD/CO/5 (Aug. 25, 2006) (emphasis added).

83. CODE CIVIL [C. CIV.] art. 06/018 pmbl. (Dem. Rep. Congo).

84. The Congolese government submitted its combined sixth and seventh periodic report to the Committee, with a focus on sexual violence is the "Problem of the Moment." See 2011 Periodic Report, *supra* note 34, at 21.

85. Compare 2011 Periodic Report, *supra* note 84, at 11 (reporting on implementation of art. 6, claiming "Trafficking in women is not a widespread phenomenon in the Democratic Republic of the Congo") with *id.* at 21-22 (more than one million cases of sexual violence reported in 2009, including "[v]iolence linked to armed conflict (inter alia, rape, [and] sexual slavery)").

86. TIP REPORT 2011, *supra* note 15, at 130-31 ("Law 06/018 specifically prohibits sexual slavery, sex trafficking, child and forced prostitution The government has not applied this law to suspected trafficking cases.") (listing numerous cases where investigation ensued but the defendants escaped before trial). See *infra* Part IV for a detailed discussion of causes of impunity for perpetrators of sexual slavery in the DRC.

87. As evidenced by DRC's lack of submission of a follow up report or review at the 2008 session. See Office of the U.N. High Comm'r for Human Rights, Comm. on the Elimination of Discrimination Against Women, Follow up Report (last visited Dec. 28, 2012), <http://www2.ohchr.org/english/bodies/cedaw/followup.htm>. Yet, the DRC has submitted its 2011 Periodic Report, *supra* note 84, which will be reviewed at the 55th Session, July 2013. See Office of the U.N. High Comm'r for Human Rights, Comm. on the

protection of victims because of the CEDAW Committee, which has repeatedly requested that the DRC “submit an exceptional report on alleged rape and other forms of sexual violence perpetrated against women in the context of the conflict.”⁸⁸ The CEDAW Committee specifically request information about the Government’s actions to stop violence, provide remedies, and prosecute perpetrators, especially by State security forces.⁸⁹ Finally, a study on the impact of trafficking in women has also been requested.⁹⁰

3. *Convention on the Rights of the Child*

Providing more specific protections for children than CEDAW provided for women, the Convention on the Rights of the Child (CRC) expressly admonishes States Parties to protect children from sexual exploitation.⁹¹ The CRC also protects children from economic exploitation,⁹² all other forms of exploitation of children,⁹³ and engagement in armed conflicts as soldiers or civilians.⁹⁴ Article 19 makes sweeping requirements of States Parties, asserting that members

Elimination of Discrimination Against Women, 55th Session (July 2013) (last visited Dec. 28, 2012), <http://www2.ohchr.org/english/bodies/cedaw/cedaws55.htm>.

88. Comm. on the Elimination of Discrimination Against Women, List of Issues and Questions with regard to the Consideration of Periodic Reports, ¶ 2, U.N. Doc. CEDAW/C/COD/Q/6-7 (Nov. 2, 2012) (to be discussed at the 55th Session in July 2013).

89. *Id.* ¶¶ 1, 2, 3.

90. *Id.* ¶ 10 (“a study to investigate the scope, extent, and causes of human trafficking and forced prostitution, particularly women and girls” and also requiring development of a “comprehensive national strategy to address trafficking in women.”) It is the author’s hope that such a study will reveal to the Congolese Government the nature of conflict-based sexual slavery and other conflict-based exploitative GBV as forms of human trafficking.

91. Convention on the Rights of the Child, G.A. Res. 44/25, art. 34, U.N. Doc. A/RES/44/25 (Nov. 20, 1989)

(States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.)

[hereinafter Convention on the Rights of the Child].

92. *Id.* art. 32.

93. *Id.* art. 36.

94. *Id.* art. 38(3).

shall take *all* appropriate legislative, administrative, social and educational measures to protect the child from *all* forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or *exploitation*, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.⁹⁵

Similarly, the CRC contains an article requiring state action to prevent child trafficking: “States Parties *shall take* all appropriate national, bilateral, and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.”⁹⁶ By their express language, both of these latter provisions have significant potential to increase the level of obligation upon states to protect children from sexual exploitation.

Supplementing the Convention, two optional protocols have been passed addressing the issue of trafficking in children, first for conscription into armed forces and, second, for sexual exploitation.⁹⁷ The first optional protocol to the CRC recognizes the unique vulnerabilities of children in armed conflict⁹⁸ and includes reporting, monitoring, and implementing provisions overseen by the Committee on the Rights of the Child.⁹⁹ The Preamble of the second optional protocol seemingly draws all three treaties together:

Believing that the elimination of the sale of children, child prostitution and child pornography will be facilitated by adopting a holistic approach, addressing the contributing factors, including underdevelopment, poverty, economic disparities, inequitable socio-economic structure, dysfunctioning families, lack of education, urban-rural migration, gender discrimination, irresponsible adult sexual behaviour (*sic*), harmful traditional practices, *armed conflicts* and *trafficking in children*.¹⁰⁰

95. *Id.* art. 19 (emphasis added).

96. *Id.* art. 35 (emphasis added).

97. Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts, G.A. Res. 54/263, U.N. Doc. A/RES/54/263 (Feb. 12, 2002) [hereinafter Conflict Protocol]; Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, G.A. Res. 54/263, U.N. Doc. A/54/263 (Jan. 18, 2002) [hereinafter Sale of Children Protocol].

98. Conflict Protocol, *supra* note 97, pmb. (“Disturbed by the harmful and widespread impact of armed conflict on children and the long-term consequences it has for durable peace, security and development . . .”).

99. *Id.* art. 8 (requiring state report on implementation within two years of state entry and ongoing reports at the request of the committee).

100. Sale of Children Protocol, *supra* note 97, pmb. (emphasis added). *See also id.* art. 2 (defining three varieties of child trafficking as: “(a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration; (b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration; (c) Child pornography means any representation, by whatever means, of a child engaged in real or simulated

While the second optional protocol clearly addresses only trafficking in children, as opposed to women and children, for sexual exploitation, this protocol may benefit all victims because of the detailed standards it sets for criminal investigation, prosecution, and protection of victims through national legal systems with support from the international community.¹⁰¹ This protocol includes nearly an identical provision as the CRC regarding reporting and monitoring by the Committee.¹⁰²

The DRC has actively participated in the drafting of the CRC and has signed and ratified the Convention and the two optional protocols, although it lessened the impact of the first protocol by the terms of its declaration upon its accession to the CRC.¹⁰³ The DRC has submitted its initial and second reports on implementation of the Convention to the Committee, with the latter being submitted ten years after the deadline.¹⁰⁴ In its second report, the Congolese government acknowledged the link made in the second optional protocol¹⁰⁵ between violence against children and all forms of sexual exploitation of women and children in times of war. It alleged that that Congolese Law 06/018, prohibiting sexual slavery, was

explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.”).

101. *Id.* art. 3-10 (covering procedural and substantive issues such as legislation for criminalization, jurisdiction, extradition, multilateral assistance in international investigations, restitution, protection of interests of the child in prosecution, evidentiary concerns, confidentiality, financial reparation for damages caused, and “international cooperation to assist child victims in their physical and psychological recovery, social reintegration and repatriation.”).

102. *Id.* art. 12.

103. U.N. Treaty Document Sys., Convention on the Rights of the Child (status as of Oct. 26, 2012) (signed May 20, 1990; ratified Sept. 27, 1990, without reservations), available at http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en [hereinafter Country Declarations of the Convention on the Rights of the Child]; U.N. Treaty Document Sys., Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (status as of Oct. 26, 2012) (stating that the DRC joined by accession Nov. 11, 2001 without reservations)

(“[p]ursuant to article 3, paragraph 2, of the Protocol, the Democratic Republic of the Congo undertakes to implement the principle of prohibiting the recruitment of children into the armed forces, in accordance with Decree-Law No. 066 of 9 June 2000 on the *demobilization and rehabilitation of vulnerable groups on active service in the armed forces*, and to take all *feasible* measures to ensure that persons who have not yet attained the age of 18 years are not recruited in any way into the Congolese armed forces or into any other public or private armed group throughout the territory of the Democratic Republic of the Congo.”) (emphasis added); U.N. Treaty Document Sys., Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography (status as of Oct. 26, 2012), available at http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-c&chapter=4&lang=en.

104. Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Second Periodic Report of States Parties due in 1997: Democratic Republic of the Congo, U.N. Doc. CRC/C/COD/2 (July 24, 2008) (showing report due in 1997, submitted Oct. 23, 2007).

105. *See id.*

passed in response to more than 30,000 female victims of sexual violence reported in eastern DRC between mid-2005 and mid-2006.¹⁰⁶ The government expressly stated the definitions and interpretations of offenses were directly drawn from international law sources, including the Convention on the Rights of the Child and its two optional protocols.¹⁰⁷ The report also details the passage of both new laws related to sexual violence in the DRC: (1) Law 06/018, which defines the offenses of sexual violence, and (2) Law 06/019, which proscribes expedited and improved legal responses to sexual offenses under 06/018.¹⁰⁸ Finally, the Congolese government explained the joint objectives of the national and international response to sexual violence, one of which is “[l]egal aid, by establishing legal clinics (orienting victims to judicial organs and providing legal assistance), including reform of the judicial system (*combating impunity, strengthening capacities among magistrates*).”¹⁰⁹

Therefore, the CRC and its two optional protocols have been effective tools in influencing the Congolese laws against sexual violence and monitoring implementation of those laws to protect child victims.¹¹⁰ Further, the CRC is an influential international law due to the almost universal national ratification of the treaties.¹¹¹ Finally, the monitoring committee has been active in overseeing country conditions and works closely with relevant U.N. agencies to increase the effective implementation of programs that help keep children safe from exploitation and violence.¹¹² The biggest drawback to this international tool is the narrowness of its express scope: females over age 18 are not protected.¹¹³

In summary, international human rights laws and rights-based responses have achieved some positive results in the DRC. Specifically, they have influenced the national constitution and the sexual violence laws. As demonstrated above, the U.N. peacekeeping mission has helped to monitor and draw attention to the abuses. The CEDAW and CRC Committees have

106. *Id.* ¶ 157-58.

107. *Id.* ¶ 160 (“Thus, the definition of rape now encompasses several situations which had heretofore been characterized simply as indecent assault. Mention should be made of the following new offenses: . . . forced prostitution . . . *sexual slavery* . . . sexual trafficking and exploitation of children . . .”) (emphasis added).

108. *Id.* ¶ 159-69 (explaining the broad awareness-raising and advocacy by coalitions of local, national, regional, and international bodies to curb sexual violence in eastern DRC).

109. *Id.* ¶ 164(e) (emphasis added).

110. *Id.* ¶ 160.

111. Country Declarations of the Convention on the Rights of the Child, *supra* note 103 (showing only the United States and Somalia have not ratified the CRC).

112. See Comm. on the Rights of the Child, *Consideration of Reports Submitted by States Parties under Article 44 of the Convention: Concluding Observations: Democratic Republic of Congo*, ¶¶ 41, 42, CRC/C/COD/CO/2 (Feb. 10, 2009) (urging regional and national partnership in complying with U.N. study on violence against children).

113. Conflict Protocol, *supra* note 97, pmb. (“promotion and protection of the rights of the *child*.”) (emphasis added).

also increased monitoring and reporting on GBV in eastern DRC. However, these responses are insufficient to confront the scope of the exploitation and GBV perpetrated in the eastern DRC.¹¹⁴ As an example, human rights treaties apply only to member states, thus, their impact is limited. Moreover, the impact is substantially inhibited, even within member states, by the narrow scope of the two most relevant treaties, with one focusing on women, while the other focuses on children. These gaps in coverage illustrate that a more comprehensive and holistic approach is needed in the DRC.

Analyzing the offenses in the DRC as part of a broader scheme of trafficking will allow for an improved response bearing greater justice for victims. The “[c]omposite nature of the trafficking phenomenon guarantees that it does not sit comfortably within existing categories and boundaries of international law.”¹¹⁵

Thus, a multi-pronged approach, drawing on various branches of international law, such as human rights, humanitarian, human trafficking, and criminal law will enable a more effective response to sexual slavery in the DRC.

III. RESPONDING TO SEXUAL SLAVERY IN THE DRC AS HUMAN TRAFFICKING

While there has been expansive study of the GBV perpetrated throughout the DRC,¹¹⁶ relatively few reports or scholarly works analyze the scope of human trafficking in the context of the DRC conflict.¹¹⁷ Similarly, according

114. This in no way suggests that the human rights-based responses are not necessary or should be altogether avoided. In fact, they seem to play an important role in shaping national actions and enforcement. In other words, they are necessary but not sufficient. Many scholars believe that the human rights-based response and the human trafficking-based response are complementary. See Anne T. Gallagher, *Human Rights and Human Trafficking: Quagmire or Firm Ground? A Response to James Hathaway*, 49 VA. J. INT'L L. 789 (2009). Not all scholars believe that the approaches are compatible. See, e.g., James C. Hathaway, *The Human Rights Quagmire of “Human Trafficking,”* 49 VA. J. INT'L L. 1, 4 (2008) (“My own view, in contrast, is that the fight against human trafficking is more fundamentally in tension with core human rights goals than has generally been recognized.”).

115. THE INTERNATIONAL LAW OF HUMAN TRAFFICKING, *supra* note 66, at 8-9 (“[I]nternational criminal law, international humanitarian law, labor law, migration law, and refugee law are all relevant.”).

116. Gaëlle Breton-Le Goff, *Ending Sexual Violence in the Democratic Republic of the Congo*, 34 FLETCHER F. WORLD. AFF. 13 (2010) [hereinafter *Ending Sexual Violence in the Democratic Republic of the Congo*]; Hearing: *Confronting Rape*, *supra* note 32 (describing U.S. Senate hearing on combatting rape as a tool of war in the DRC and Darfur, Sudan); Manjoo & McRath, *supra* note 11, at 30 (“The reality of GBV in conflict and post-conflict situations demands that the focus now shift toward the effective implementation of legal instruments that exist to combat violence against women.”); Navanethem Pillay, *Sexual Violence: Standing by the Victim*, 42 CASE W. RES. J. INT'L L. 459 (2009).

117. *But see* Manjoo & McRath, *supra* note 11, at 12-13 (preliminarily suggesting that GBV could include trafficking, abduction, and slavery in conflict zones). Further, several

to the author of the first legal treatise on human trafficking, little research exists to show that trafficking in the context of armed conflict is prohibited by international law.¹¹⁸

Yet, according to emerging international and Congolese national standards, much of the GBV occurring in the DRC is also human trafficking;¹¹⁹ as such, the response to GBV in the DRC should employ the methods and tools of international trafficking in persons laws to prevent violations, prosecute the perpetrators, and protect the victims. Acknowledging that trafficking in persons is related to human rights and that national governments must combat the crime, the Human Rights Council appointed a Special Rapporteur on Trafficking in Persons. The Special Rapporteur has stated that “[u]nless Governments and law enforcement agencies take the necessary steps to address trafficking in persons from both a human rights as well as a law enforcement perspective, the majority of trafficking cases will continue to go uncounted, the victims uncared for, and the traffickers unpunished.”¹²⁰ The Trafficking Protocol expressly acknowledges the deficiencies of international human rights instruments in responding to crimes of trafficking: “*taking into account* the fact that, despite the existence of ‘a variety of’ international instruments containing rules and practical measures to combat exploitation of persons, especially women and children, there is no universal instrument that addresses all aspects of trafficking in persons.”¹²¹

A. Prevalence of Human Trafficking in the DRC

Based on the history of the abolition of the slave trade, the global community has affirmed its commitment to end trafficking in persons and has dedicated the resources to sustain the commitment.¹²² Since 2000, international law has defined human trafficking as:

nongovernmental reports describe human trafficking in the context of the Congo conflict. See, e.g., *The Congo Report: Slavery in Conflict Minerals*, FREE THE SLAVES (June 2011), www.freetheslaves.net [hereinafter FREE THE SLAVES].

118. See THE INTERNATIONAL LAW OF HUMAN TRAFFICKING, *supra* note 66, at 209-10; “A consideration of trafficking in international humanitarian law (IHL) and international criminal law (addressing individual criminal responsibility for the most serious of all crimes often, but not always, associated with situations of armed conflict) must therefore proceed indirectly via an examination of related prohibitions including those that cover practices such as enslavement and sexual violence.” *Id.*

119. See DONJA DE RUITER, SEXUAL OFFENSES IN INTERNATIONAL CRIMINAL LAW 7 (2011); “GBV not only involves rape, but also other forms of violence, such as . . . sex trafficking” and “[s]exual violence may also evidence the ownership and control necessary to establish the crime against humanity of slavery.” *Id.*

120. U.N. Doc. A/HRC/10/16, *infra* note 137, at 7, ¶ 13.

121. Trafficking Protocol, *supra* note 9, at pmb1.

122. See generally 1926 Slavery Convention, *infra* note 178 and text at 40.

[t]he recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour (*sic*) or services, slavery or practices similar to slavery, servitude or the removal of organs.¹²³

The United States has narrowed the international definition of human trafficking to specify the kinds of exploitation of human beings using the means of “force, fraud or coercion.”¹²⁴

Human trafficking often occurs during and after conflicts, and international laws were developed to confront this sad reality. For instance, in 2005, the U.S. government recognized that during and after armed conflict, “indigenous populations face increased security challenges . . . which result in myriad forms of violence, including trafficking for sexual and labor exploitation.”¹²⁵ This recognition conforms with scholarly works that demonstrate the connection between conflict-driven instability and criminal enterprises like human trafficking.¹²⁶ Because the international human trafficking laws took into account enforcement in conflict zones when developed, these laws may be aptly applied to protect victims suffering in situations of conflict. Moreover, the tools go beyond only protection for victims of sexual slavery; rather, they comprehensively apply to all forms and stages of human trafficking in every country.¹²⁷

1. Trafficking in persons in DRC: Trafficking for sex and labor exploitation

Before turning to sexual slavery, the primary type of human trafficking examined in this article, it is important to note that many other forms of human trafficking are also prevalent in the DRC today. Some of these types

123. Trafficking Protocol, *supra* note 9, at art. 3(a).

124. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000).

125. Unless the victim is a minor and the exploitation is sexual, then no proof of force fraud or coercion is required. Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, 119 Stat. 3558 (2006).

126. *See, e.g.,* Yoo, *supra* note 22, at 107 (“The lack of central control can also allow criminal organizations to flourish, leading to the spread of drug smuggling, small arms trade, and human trafficking.”); *see also* Manjoo & McRaith, *supra* note 11, at 12-13 (suggesting that GBV after conflicts include “slavery, rape, forced impregnation/miscarriages, [and] kidnapping/trafficking.”).

127. Trafficking Protocol, *supra* note 9, at pmb. (“[E]ffective action to prevent and combat trafficking in persons, especially women and children, requires a *comprehensive international approach* in the countries of origin, transit, and destination”) (emphasis added).

of trafficking include labor trafficking in illicit mining projects, forced conscription into armed forces, and forced prostitution.¹²⁸ Furthermore, human trafficking assumes a wide range of forms, as evidenced by the international definition of human trafficking. This definition indicates that both sexual and labor services can constitute human trafficking when the trafficker has an exploitative purpose.¹²⁹ These forms of human trafficking are, in fact, interrelated: “individuals may be enslaved within more than one type [of trafficking] simultaneously. It is not uncommon, for example, for members of armed groups to force an individual to work in the mines during the day and sexually exploit the same person at night.”¹³⁰

Labor trafficking of civilians by armed groups for the production and transportation of minerals is rife in eastern DRC.¹³¹ In the mining regions of the Kivus and Katanga Provinces, for example, a 2010 report found that of 742 persons working in and around the mines, more than 40 per cent were enslaved, with some victims being as young as five years old.¹³² According to the United Nations, in the Rwandan-held mines, civilians are “conscripted by Rwandan forces to carry out mining under forced labour conditions.”¹³³ Nongovernmental research studies indicate, however, that even after the government declared mining illegal in DRC, in the Kivus, “FARDC soldiers reportedly initiated forced recruitment of miners in nighttime raids on the town of Ndjingala.”¹³⁴ The penalties for slaves unwilling or unable to work for the Congolese Army in the mines ranges from torture

128. TIP REPORT 2011, *supra* note 15, at 129-30. Compare TIP REPORT 2012, *supra* note 16, at 125-27 (showing substantial similarity to 2011 country narrative), available at <http://www.state.gov/documents/organization/192594.pdf>.

129. See Trafficking Protocol, *supra* note 9, at art. 3 (stating the international definition of human trafficking).

130. FREE THE SLAVES, *supra* note 117, at 11.

131. See generally U.N. S.C. Panel of Experts on the Democratic Republic of the Congo, Final Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo, 18-19, S/2002/1146 (Oct. 16, 2002) [hereinafter Illegal Exploitation Report].

132. Even children are forced to work in the mines and to militarily defend the territory of the Rwandan forces. See, e.g., Free the Slaves, *supra* note 117, at 10-12 (reporting that two thirds of the children interviewed near the mines were enslaved).

133. Illegal Exploitation Report, *supra* note 131; see also Group of Experts Interim Report, *supra* note 6, at ¶ 2. The rebellion is led by General Ntaganda, who is wanted by the ICC for crimes against humanity, including enslavement and sexual slavery. See *Rwanda Defence [sic] Chief Leads DR Congo rebels, UN Report Says*, BBC NEWS (Oct. 17, 2012), <http://www.bbc.co.uk/news/world-africa-19973366>; see also TIP REPORT 2011, *supra* note 15, at 125 (armed forces in eastern DRC “routinely used threats and coercion to force men and children to mine for minerals [and] turn over their mineral production”).

134. FREE THE SLAVES, *supra* note 117, at 12-13. Note: FARDC are the national Congolese Army.

to steep fines, which often lead to prolonged slavery through debt-bondage.¹³⁵

According to the U.S. State Department's 2011 Trafficking in Persons (TIP) Report and nongovernmental sources, additional forms of internal human trafficking exist in the DRC, such as child slavery to repay family debts,¹³⁶ forced prostitution near mines and internally displaced persons camps,¹³⁷ forced labor for armed forces,¹³⁸ and forced conscription of men, women, and children into the armed forces.¹³⁹ The State Department repeatedly emphasized in its 2011 TIP Report that "[e]lements of the national army increasingly perpetrated severe human trafficking abuses during the year . . ." ¹⁴⁰ The offenses perpetrated by the national army in 2010 included labor trafficking, forced conscription of child soldiers, and sex trafficking, *i.e.*, sexual slavery, in the wake of massacres.¹⁴¹

The issue of labor trafficking in the "conflict minerals" industry is a good example of the strong political will and public awareness about trafficking in persons. The exertion of political will resulted in legislative and financial interventions by the United Nations and the U.S. government to stop labor trafficking in mining to fund the conflict in the DRC.¹⁴²

135. *Id.*; see also TIP REPORT 2011, *supra* note 15, at 129: "miners . . . are exploited in situations of debt bondage... forced to continue to work to repay constantly accumulating debts that are virtually impossible to repay."

136. TIP REPORT 2011, *supra* note 15, at 129.

137. See, *e.g.*, *id.* ("Congolese girls are forcibly prostituted in tent- or hut- based brothels or informal camps- including in markets and mining areas.").

138. See *id.* ("between July 30 and August 2010, a coalition of [armed militias] and FARDC abducted 116 civilians from 13 villages in the Walikale area and subjected them to forced labor.").

139. See *id.* ("In 2010, the FARDC actively recruited, at time through force, men and children for use as combatants... [f]rom September to December 2010... there were 121 confirmed cases of unlawful child soldier recruitment . . .").

140. *Id.* at 130.

141. TIP REPORT 2011, *supra* note 15, at 129-32.

142. See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010). The Act states:

It is the sense of Congress that the exploitation and trade of conflict minerals originating in the Democratic Republic of the Congo is helping to finance conflict characterized by extreme levels of violence in the eastern Democratic Republic of the Congo, particularly sexual- and gender-based violence, and contributing to an emergency humanitarian situation therein, warranting the provisions of section 13(p) of the Securities Exchange Act of 1934, as added by subsection (b).

Id. sec. 1502(a). On the United Nations response, see S.C. Res. 1457, ¶ 2, U.N. Doc. S/RES/1457(2003) (Jan. 24, 2003) ("Strongly condemn[ing] the illegal exploitation of natural resources of the Democratic Republic of the Congo"). This resolution was based on a report by a panel of experts, commissioned by the U.N. Secretary-General, to study and report on the degree and consequences of exploitation of mineral resources in the DRC. *Id.* ¶ 1. See Illegal Exploitation Report, *supra* note 131.

Significant public pressure precipitated these responses,¹⁴³ and the result was greater enforcement of existing laws and development of new international responses.¹⁴⁴ Public pressure of this level could also lead to greater enforcement of laws condemning other forms of human trafficking, such as sexual slavery.

2. *Sexual Slavery as a form of human trafficking and GBV*

Since the beginning of the war in 1996, sexual slavery has been prevalent in the DRC.¹⁴⁵ Often, young children are raped before being conscripted into the armed forces only to be forced into ongoing sexual violence after conscription.¹⁴⁶ The United Nations Commission on Human Rights established the existence of sex slavery during armed conflict in the Special Rapporteur's 1998 report.¹⁴⁷ In 2003, the Commission reported the high

143. *Conflict Minerals: Overview*, ENOUGH PROJECT, <http://www.enoughproject.org/conflict-minerals> (last visited Apr. 22, 2012); *Conflict Minerals*, RAISE HOPE FOR CONGO, <http://www.raisehopeforcongo.org/content/initiatives/conflict-minerals> (last visited Apr. 22, 2012); *Congo Week Showcases Conflict Minerals Debate*, CONFLICT MINERALS (Nov. 7, 2012), <http://conflictminerals.org/>; *Conflict Minerals*, GLOBAL WITNESS, <http://www.globalwitness.org/campaigns/conflict/conflict-minerals> (last visited Apr. 22, 2012); Mary Beth Sheridan, *U.S. Financial Reform Bill Also Targets 'Conflict Minerals' From Congo*, THE WASHINGTON POST, Jul. 21, 2010, available at <http://www.washingtonpost.com/wp-dyn/content/article/2010/07/20/AR2010072006212.html>. Enough: The project to end genocide and crimes against humanity, *Conflict minerals*, official website at <http://www.enoughproject.org/conflict-minerals> (last visited April 22, 2012); Raise Hope for Congo, official website at <http://www.raisehopeforcongo.org/content/initiatives/conflict-minerals> (last visited April 22, 2012); Conflict Minerals: The Truth Underlying the Systematic Looting of Congo's Minerals, official website at <http://conflictminerals.org/> (published Nov. 7, 2011) (last visited April 22, 2012); Global Witness: Conflict Minerals, official website at <http://www.globalwitness.org/campaigns/conflict/conflict-minerals> (last visited April 22, 2012); Mary Beth Sheridan, "U.S. financial reform bill also targets 'conflict minerals' from Congo," in THE WASHINGTON POST (Jul. 21, 2010), available at <http://www.washingtonpost.com/wp-dyn/content/article/2010/07/20/AR2010072006212.html> (last visited April 22, 2012).

144. It must be noted that many critique the response of the United States to the issue of conflict minerals. See, e.g., David Aronson, *How Congress Devastated Congo*, N.Y. TIMES, Aug. 7, 2011, available at www.nytimes.com/2011/08/08/opinion/how-congress-devastated-congo.html?_r=2&pagewanted=print (asserting that "[t]he provision came about in no small part because of the work of high-profile advocacy groups like the Enough Project and Global Witness, which have been working for an end to what they call 'conflict minerals.' Unfortunately, the Dodd-Frank law has had unintended and devastating consequences . . .").

145. See *Ending Sexual Violence in the Democratic Republic of the Congo*, *supra* note 116, at 16-17.

146. *Id.* ("Sexual slaves were very badly treated; they were often tied up, locked in huts or holes in the ground filled with water, and frequently punished.").

147. Special Rapporteur, U.N. Comm'n on Human Rights. *Contemporary Forms of Slavery, Systematic Rape, Sexual Slavery and Slavery-Like Practices During Armed Conflict: Final Report submitted by Ms. Gay J. McDougall*, Special Rapporteur, Sub-Comm'n on

incidence and destabilizing impact of sexual slavery in the armed conflict in DRC.¹⁴⁸

While all forms of GBV ravage society and subjugate its victims,¹⁴⁹ sexual slavery has the ultimate destabilizing impact by displacing victims from their communities, depriving them of their liberty, and then repeatedly degrading them with sexual violence. Sexual slavery has imposed years of bondage on many women and young girls¹⁵⁰ throughout the conflict. In eastern DRC, virtually all armed factions in the region have perpetrated sexual slavery.¹⁵¹

One poignant example of sexual slavery in the DRC is the story of Sophie, a child abducted at the age of thirteen. A group of soldiers held her at gunpoint during a village massacre forced her to become their “wife,” raping her each night and forcing her into daily labor servitude.¹⁵² Under the international definition of human trafficking, it is clear that Sophie was (a) recruited, transported, and harbored, (b) by use of force, (c) for the purpose of exploitation, including sexual slavery and forced labor. Thus, through her subjugation to sexual and labor slavery, Sophie became a victim of human trafficking.

The international community has declared sexual slavery to be a manifestation of trafficking in persons¹⁵³ and an international crime.¹⁵⁴ Upon the founding of the International Criminal Court (ICC) with the ratification of the Rome Statute, a clear definition of sexual slavery emerged as both a crime against humanity and a war crime.¹⁵⁵ The ICC Elements of Crimes—like an international penal code exclusively governing genocide, crimes of war, and crimes against humanity—defines the elements of sexual slavery as:

Prevention of Discrimination and Protection of Minorities, U.N. Doc. E/CN. 4/Sub. 2/1998/13 (June 22, 1998).

148. Special Rapporteur, *Rep. on the Situation of Human Rights in the Democratic Republic of the Congo, Submitted by the Special Rapporteur Ms. Iulia Motoc, in Accordance with Comm’n on Human Rights Res.*, U.N. Comm’n on Human Rights, U.N. Doc. E/CN.4/2003/43 (Apr. 14, 2003).

149. Mapping Exercise, *supra* note 31, at 318, 329.

150. “Used as an instrument of terror, on the basis of ethnicity or to torture and humiliate, sexual violence often targeted young girls and children, some no more than five years old.” *Id.* at 331, ¶ 669.

151. *Id.* at 321-22, ¶¶ 641-42 (“Children were particularly affected by slavery and sexual slavery, a practice allegedly widespread among the Mayi-Mayi, ex-FAR/Interahamwe/ALiR/FDLR, UPC, and armed Ugandan (ADF/NALU) and Burundian (CNDD-FDD and FNL) groups.”). In recent years, the Congolese Army has increasingly perpetrated sexual violence in eastern DRC. *See* Wallström, *supra* note 34.

152. FREE THE SLAVES, *supra* note 117, at 19.

153. Trafficking in persons is also known by the name “human trafficking.”

154. *See* Rome Statute of the International Criminal Court, A/CONF.183/9, 1998, arts. 7(1)(g), 8(2)(b)(xxii), 8(2)(e)(vi), (July 1, 2002) [hereinafter Rome Statute].

155. *Id.*; *see also* ICC Elements of Crimes, *supra* note 15, Add. Pt. II.

(1) the perpetrator exercised any or all powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering a persons or persons, or *by imposing on them a similar deprivation of liberty* [and] (2) The perpetrator caused such person or persons to engage in one or more acts of a sexual nature.¹⁵⁶

Due to the contentions of the drafters about the seeming requirement of commercial transaction in order to constitute sexual slavery, a footnote was added to the first element, stating:

It is understood that such deprivation of liberty may, in some circumstances, include exacting forced labour or otherwise reducing a person to servile status as defined in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices similar to Slavery of 1956. It is also understood that the conduct described in this element *includes trafficking in persons, particularly women and children*.¹⁵⁷

Under international criminal law, the elements of sexual slavery may be simplified to: (1) the enslavement of a person, (2) which caused the victim to engage in sexual acts.¹⁵⁸ Furthermore, the U.N. Human Rights Council's definition of the scope of human trafficking includes sexual slavery of women and children in armed conflict.¹⁵⁹

In 2005, the newly ratified Constitution of the DRC incorporated the international legal understandings about sexual slavery, stating: "sexual violence committed against any person *with the intention to destabilize* or to displace a family and to make a whole people disappear is established as a crime against humanity."¹⁶⁰ Moreover, Article 16 prohibits all types of slavery: "No one may be held in slavery or in a similar condition."¹⁶¹ The Constitution, thus, appears to forbid slavery and adopt the international definitions contained in the treaties that it has ratified.

156. ICC Elements of Crimes, *supra* note 15, art. 7(1)(g)-2 (emphasis added).

157. *Id.* art. 7(1)(g)-2 n. 18 (emphasis added); *see also* Valerie Oosterveld, *Sexual Slavery and the International Criminal Court: Advancing International Law*, 25 MICH. J. INT'L L. 605, 642 (2004).

158. DE RUITER, *supra* note 119, at 14. It should be noted, however, that under the Rome Statute, there is a distinction between "enslavement," categorized as a crime against humanity, and "sexual slavery," categorized as both a crime against humanity and a war crime. *See* THE INTERNATIONAL LAW OF HUMAN TRAFFICKING, *supra* note 66, at 213-14.

159. Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development*, ¶ 16(1), U.N. Doc. A/HRC/10/16 (Feb. 20, 2009) (Joy Ngozi Ezeilo) [hereinafter U.N. Doc. A/HRC/10/16] (defining human trafficking to include "participation in armed conflict- mercenaries/ child soldiers, sex slaves").

160. CONSTITUTION OF THE DEMOCRATIC REPUBLIC OF THE CONGO, *supra* note 72, art. 15 (emphasis added).

161. *Id.* art. 16.

Similarly, Law 06/018¹⁶² integrates the international definitions from the ICC Elements of Crimes, and expressly criminalizes forced prostitution,¹⁶³ sexual slavery,¹⁶⁴ forced marriage,¹⁶⁵ sex trafficking and exploitation of children,¹⁶⁶ and child prostitution.¹⁶⁷ Each crime in Law 06/018 has a unique definition under national and international law, although all are crimes of sexual violence that also are acts of human trafficking. Congolese law provides harsh criminal sanctions for commission of sex trafficking, including sexual slavery.¹⁶⁸

162. *Loi no. 06/018 Modifiant et Complétant le Décret du 30 Janvier 1940 Portant Code Penal Congolais*, 15 Journal Officiel de la République Démocratique du Congo (Jul. 20, 2006) [hereinafter Law 06/018].

163. *Id.* art.3, ¶ 3. Forced prostitution is defined as:

Quiconque aura amené une ou plusieurs personnes à accomplir un acte ou plusieurs actes de nature sexuelle, par la force, par la menace de la force ou de la coercition ou encore en profitant de l'incapacité desdites personnes à donner librement leur consentement en vue d'obtenir un avantage pécuniaire ou autre.

Id. (paraphrased translation: Whoever uses force, threat of force, coercion, or exploitation of a position of vulnerability to cause one or more persons to commit one or more acts of a sexual nature against such person or persons will and for the pecuniary gain of another person.) *Compare*, with ICC Elements of Crimes, *supra* note 15, art. 7(1)(g)-3:

1. The perpetrator caused one or more persons to engage in one or more acts of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent.

2. The perpetrator or another person obtained or expected to obtain pecuniary or other advantage in exchange for or in connection with the acts of a sexual nature.

164. Law 06/018, *supra* note 162, art. 3, ¶ 5. Sexual slavery is defined under national law as:

[Q]uiconque aura exercé un ou l'ensemble des pouvoirs associés au droit de propriété sur une personne, notamment en détenant ou en imposant une privation similaire de liberté ou en achetant, vendant, prêtant, troquant ladite personne pour des fins sexuelles, et l'aura contrainte à accomplir un ou plusieurs actes de nature sexuelle.

Id. (paraphrased translation of the definition is: Whoever exercises independently or in association with others the right of property over a person, namely detention or a similar deprivation of liberty, such as by purchasing, selling, lending or trading a person for sexual ends, and who caused the person to carry out one or more sexual acts); *contra* ICC Elements of Crimes, *supra* note 15 and text at page 30. It is clear from this comparison that the DRC adopted the definition of the ICC almost verbatim in Law 06/018 defining sexual slavery.

165. Law 06/018, *supra* note 162, art. 3, ¶ 6.

166. *Id.* art. 3, ¶ 10.

167. *Id.* art. 3, ¶ 14.

168. TIP REPORT 2011, *supra* note 15, at 130-31.

Yet, in 2007, after the passage of the new constitution and sexual violence laws, sexual slavery continued unabated in the eastern DRC.¹⁶⁹ In the village of Kaniola, located in the South Kivu province of the DRC, a group of Rwandan soldiers came from the neighboring forest to attack a family, looting their home and abducting three teenaged girls, including one named Nadine.¹⁷⁰ The three girls were bound and hauled into the forest, forced to carry the possessions stolen from their home and told that they will soon become the soldiers' "wives."¹⁷¹ Congolese soldiers, in the company of the girls' brother and father, burst in and rescued them from rape and servitude.¹⁷² Sadly, the Rwandan soldiers returned for Nadine in six months. She never returned home after that time.¹⁷³ One month later, the soldiers massacred eighteen people in Kaniola; that day, "twenty-five [were] tied up and taken into the forest," some as young as twelve years old.¹⁷⁴ However, that time, surviving civilians said that the perpetrators of murder and abduction were soldiers from the Congolese Army.¹⁷⁵

In addition to the continuing perpetration of abuses by the army, governmental barriers to justice still exist. The International Federation for Human Rights, represented by various Congolese civil society organizations, asserts that the government barriers to accessing justice remain high: "legal costs are often very high; arrest warrants are often not executed; especially those against high-ranking soldiers in the national army; and the freedom of the accused can be bought or negotiated throughout the justice process, from the police station, to the courts, to the prisons."¹⁷⁶ Furthermore, this civil society association asserts that, in order to bring justice and reconciliation to victims of sexual violence in the DRC,

169. 2012 HRW Country Summary, *supra* note 2, at 2-3.

170. LISA J. SHANNON, *A THOUSAND SISTERS: MY JOURNEY TO THE WORST PLACE ON EARTH TO BE A WOMAN* 261-62 (2011).

171. *Id.*

172. *Id.*

173. *Id.*

174. *Id.* at 302-03.

175. *Id.*; see also Magellan Luanda Mungabo, *DR Congo: A Detailed Report of a Visit to the Site of the Kaniola Massacre*, AFRICA FILES (Marie Dowler, trans., June 7, 2007), <http://www.africafiles.org/printableversion.asp?id=15323> ("The sight is sickening and revolting: skulls smashed, throats cut, bellies cut open, women raped with knives, mutilated bodies soaked in blood, the atrocity of men, women, and children forced into perverse sexual acts or carried off into the Mugaba forest towards Ninja in the Kabare region."). According to human rights personnel on the ground in Kaniola, there is "an obvious complicity between the Congolese authorities and these foreign troops operating in South Kivu." *Id.* Shortly after the massacre, evidence emerged that the Congolese Army had been collaborating with the FDLR and other militia to accomplish local objectives in the Kivus. See *DR Congo Hutu Front 'Helps' Army*, BBC NEWS, Oct. 2, 2007, available at <http://news.bbc.co.uk/2/hi/africa/7023708.stm>.

176. INTERNATIONAL FEDERATION FOR HUMAN RIGHTS [FIDH], *DEMOCRATIC REPUBLIC OF THE CONGO: BREAKING THE CYCLE OF IMPUNITY* 10 (2008).

“the international community [must] call[] upon and support[] the Congolese authorities to fight impunity for the most serious crimes.”¹⁷⁷

As shown above, sexual slavery is a form of human trafficking and laws criminalizing it exist in the DRC, but are not currently being enforced. The next section will demonstrate that greater enforcement of laws, monitoring, and support could be provided through international human trafficking laws to enable national and local governments to achieve justice and protection for all victims of sexual slavery.

B. International Human Trafficking Laws

Beginning with the Slavery Convention of 1926, the world has acknowledged the need to abolish slavery as a pressing international issue. Early on, the international community so valued the purpose of “prevent[ing] and suppress[ing] the slave trade” and “bring[ing] about, progressively and as soon as possible, the complete abolition of slavery in all its forms”¹⁷⁸ that all signatories undertook the commitment to provide assistance to all other nations in abolishing slavery and the slave trade.¹⁷⁹ In 1957, the Supplementary Slavery Convention came into force “to intensify national as well as international efforts towards the abolition of slavery, the slave trade and institutions and practices similar to slavery.”¹⁸⁰ While modern definitions of slavery have evolved, the spirit of abolishing slavery and the slave trade, in all its forms, is equally clear in the modern international law against human trafficking: The Trafficking Protocol supplementing the Convention on Transnational Organized Crime (COTC).¹⁸¹

177. *Id.* at 12.

178. 1926 Slavery Convention, art. 2, Sept. 25, 1926, available at <http://www2.ohchr.org/english/law/slavery.htm> (entered into force Mar. 9, 1927) [hereinafter 1926 Slavery Convention].

179. *Id.* art. 4 (“The High Contracting Parties shall give to one another *every assistance* with the object of securing the abolition of slavery and the slave trade.”) (emphasis added).

180. Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery pmb., Sept. 7, 1956, 3822 U.N.T.S. 40 (entered into force Apr. 30, 1957).

181. Trafficking Protocol, *supra* note 9, at pmb. To date, there are 124 parties to the Trafficking Protocol, committing that “State parties shall take or strengthen measures . . . to alleviate the factors that make persons, especially women and children, vulnerable to trafficking.” *Id.* at Art. 9(4); see U.N. Office on Drugs and Crime, Signatories to the CTOC Trafficking Protocol: Status as at Sept. 26, 2008 at 11:45 A.M., <http://www.unodc.org/unodc/en/treaties/CTOC/countrylist-traffickingprotocol.html> (last visited Dec. 27, 2012) [hereinafter Signatories to the Trafficking Protocol].

1. *The Trafficking Protocol*

The Trafficking Protocol is an international convention that has become the preeminent tool in international law that defines and addresses human trafficking holistically.¹⁸² Indeed, the Trafficking Protocol developed out of “the need for a holistic approach where the crime control aspects of trafficking were addressed along with traditional human rights concerns.”¹⁸³ The threefold purpose of the Trafficking Protocol is to (1) “prevent and combat trafficking in persons, paying particular attention to the protection of women and children”; (2) “protect and assist victims of [] trafficking”; and (3) facilitate cooperation among the States.¹⁸⁴ To implement these purposes, it specifically requires all States Parties to criminalize all forms of human trafficking;¹⁸⁵ protect victims under domestic law;¹⁸⁶ prevent vulnerability and revictimization through trafficking;¹⁸⁷ and “provide or strengthen training for law enforcement, immigration, and other relevant personnel aimed at preventing trafficking as well as prosecuting traffickers and protecting the rights of victims.”¹⁸⁸ Thus, the primary responsibility to enforce the protocol rests upon the member states.

The Trafficking Protocol imposes obligations on States Parties to take positive steps, including “legislative reform, *provision of remedies*, and *protection*” to actually reduce the incidents of trafficking in persons within state borders.¹⁸⁹ Specifically pertinent to decreasing legal impunity for GBV trafficking offenses, under international law, states must provide reparation or redress to individual victims where the State has been “directly or

182. THE INTERNATIONAL LAW OF HUMAN TRAFFICKING, *supra* note 66, at 78.

183. *Id.*

184. Trafficking Protocol, *supra* note 9, art. 2; *see also* THE INTERNATIONAL LAW OF HUMAN TRAFFICKING, *supra* note 66, at 79. The Trafficking Protocol’s approach is often referred to as the Three P’s: Prevention, Prosecution, and Protection.

185. Trafficking Protocol, *supra* note 9, art. 5 (including commission of trafficking, as well as attempt, conspiracy and accomplice to commit crimes of trafficking).

186. *Id.* art. 6 (including physical safety and “ensur[ing] that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damages suffered.”).

187. *Id.* art. 9(1).

188. THE INTERNATIONAL LAW OF HUMAN TRAFFICKING, *supra* note 66, at 88. *See also* Trafficking Protocol, *supra* note 9, art. 10(2).

189. THE INTERNATIONAL LAW OF HUMAN TRAFFICKING, *supra* note 66, at 273 (emphasis added); *see also* Anne T. Gallagher, *Commentary to the Recommended Principles and Guidelines on Human Rights and Human Trafficking*, 75-79, SELECTEDWORKS, Dec. 2010, available at http://works.bepress.com/anne_gallagher/15 [hereinafter *Commentary*] (commentary on Principle 2). These obligations differ from the international human rights-based obligations on states to “take all appropriate . . . measures” to, for example, “protect the child from all forms of . . . exploitation.” Convention on the Rights of the Child, *supra* note 91, art. 19(2) (requiring states to “provide necessary support for the child,” but criminal punishment is not a component of the obligations imposed).

indirectly involved” in committing the crime.¹⁹⁰ Significantly, under the international Trafficking Protocol, this could involve either the state ensuring compensation from the offender or “requir[ing] the State itself to provide compensation, particularly in situations where the state has fallen short of the due diligence standard when it comes to preventing trafficking, investigating and prosecuting traffickers, and protecting victims.”¹⁹¹ In summary, international human trafficking law defines wrongful acts for which States are accountable, including failure to prevent and protect victims, and also obligates cessation and reparation.¹⁹²

Enforcement of the Trafficking Protocol among member states remains somewhat weak, but is rapidly improving. For instance, the initial member state compliance mechanisms contained in the Trafficking Protocol included only negotiation and arbitration of disputes between states within six months of a request for arbitration of the dispute.¹⁹³ However, the Protocol supplements the COTC, which established a Conference of Parties (COP) to “improve the capacity of States to combat transnational organized crime and to promote and review the implementation of the Convention.”¹⁹⁴ The COP, which is overseen by the U.N. Office on Drugs and Crime (UNODC), may increase implementation of the COTC by reviewing state actions and providing recommendations; facilitating trainings and providing technical assistance; and overseeing the interpretation of the COTC and its protocols.¹⁹⁵ Thus, the COP may request reports from States Parties, hold regular meetings of member states, and compile a Global Report on trafficking.¹⁹⁶ Since the first session of the COP, the compliance measures contained in the Convention have also been applied to all of its supplemental protocols, including the Trafficking Protocol.¹⁹⁷ Even given

190. THE INTERNATIONAL LAW OF HUMAN TRAFFICKING, *supra* note 66, at 369 (“if a State is directly or indirectly involved in the violation of an individual’s right then that same State must make a genuine attempt to provide the injured person with some measure of reparation or redress.”).

191. *Id.*; *see also id.* at 223-31 (commentary on Principle 17).

192. *See* THE INTERNATIONAL LAW OF HUMAN TRAFFICKING, *supra* note 66, at 222-23. The reparation required by the Trafficking Protocol would only apply to states to whom the trafficking can be attributed and who breached their due diligence requirement to protect. *Id.* at 223.

193. Trafficking Protocol, *supra* note 9, art. 15(1)-(2).

194. Convention on Transnational Crime, G.A. Res. 55/25, art. 32(1) (Jan. 8, 2001), A/RES/55/25 [hereinafter COTC].

195. *Id.* art. 32(3); *see also* THE INTERNATIONAL LAW OF HUMAN TRAFFICKING, *supra* note 66, at 467-73 (analyzing compliance measures within the Convention and its Protocols).

196. *See id.* at 467. One edition of the Global Report on Trafficking has been issued thus far. *See* U.N. Office on Drugs and Crime, Global Report on Trafficking in Persons, at 122 (2009) [hereinafter U.N. Global Report on Trafficking].

197. Conference of Parties to the United Nations Convention on Transnational Organized Crime, Vienna, Austria, June 28 – 8 July, 2004, *Report of the Conference of Parties to the United Nations Convention Against Transnational Organized Crime on its*

the application of these compliance measures to the Trafficking Protocol, experts assert that enforcement is weak because “the reporting procedure is a relatively crude mechanism for promoting or measuring compliance.”¹⁹⁸

In an effort to improve implementation of the Trafficking Protocol by member states, the UNODC commissioned a working group on trafficking in persons in 2009. The working group has met twice and issued a report with its recommendations following its January 2010 meeting.¹⁹⁹ The recommendations included admonitions to all States Parties to respect the human rights of victims and to “increase their efforts to investigate and prosecute cases involving trafficking in persons.”²⁰⁰ Although the Trafficking Protocol has only been in force for less than a decade the efforts at implementation have increased rapidly through monitoring by the COP and the working group’s interpretation of the States Parties’ obligations.²⁰¹

In 2005, the DRC became a party to the CTOC and Trafficking Protocol through accession, making no reservations to either instrument.²⁰² The DRC submitted its initial state report to the COP in 2008, answering the trafficking questionnaire regarding appropriate legislation criminalizing trafficking in persons.²⁰³ The DRC government’s responses at that time indicated the existence of domestic legislation criminalizing all actions under the protocol, except for recruiting for exploitation.²⁰⁴ While the 2009

First Session, Held in Vienna from Jun. 28 to Jul. 8, 2004, 5, U.N. Doc. CTOC/COP/2004/6 (Sept. 23, 2004).

198. THE INTERNATIONAL LAW OF HUMAN TRAFFICKING, *supra* note 66, at 469 (using an assessment based on lack of opportunity to dialogue about state reports between states parties and COP). Furthermore, there is no individualized complaint mechanism under the CTOC and the “prospect of States Parties to the [CTOC] and its Trafficking Protocol being made subject to a rigorous oversight mechanism- or even a procedure capable of evaluating their performance of key obligations- appears to be remote.” *Id.* at 472.

199. See Conference of the Parties to the United Nations Convention on Transnational Organized Crime, Vienna, Austria, Jan. 27-29, 2010, *Report on the meeting of the Working Group on Trafficking in Persons held in Vienna, January 27 to January 29, 2010*, U.N. Doc. COTC/COP/WG.4/2010/6 (Feb. 17, 2010).

200. *Id.* ¶¶ 12-13.

201. See THE INTERNATIONAL LAW OF HUMAN TRAFFICKING, *supra* note 66, at 470.

202. Signatories to the Trafficking Protocol, *supra* note 181 (showing that the DRC became a state party on Oct. 28, 2005, by accession, making no reservations).

203. Report of the Secretariat, Conference of the Parties to the Convention Against Transnational Organized Crime, *Implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime: Consolidated Information Received from States for the First Reporting Cycle*, Annex, U.N. Doc. CTOC/COP/2005/3/Rev.2 (Aug. 28, 2008) [hereinafter *Implementation of the Protocol 2008*]; see also Note by the Secretariat, Conference of the Parties to the U.N. Convention Against Transnational Organized Crime, *Information Submitted by States in Their Responses to the Checklist/Questionnaire on the Implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime for the First Reporting Cycle*, U.N. Doc. CTOC/COP/2008/CRP.8 (Oct. 6, 2008).

204. Implementation of the Protocol 2008, *supra* note 203, ¶ 6.

joint UNODC and U.N. Global Initiative to Fight Trafficking in Persons (UNGIFT) Global Report contains a page on trafficking in DRC, there has been minimal interaction between the COP, or its trafficking in persons working group, and the DRC in furtherance of implementing the Trafficking Protocol.²⁰⁵

Semantic differences could account for varying conceptions of whether or not DRC has a law criminalizing human trafficking. In contrast to the state report submitted by the DRC, which indicated the existence of a law criminalizing human trafficking, the Global Report's independent research through UNGIFT and UNODC asserts that there is no law explicitly criminalizing "human trafficking," although the sexual violence statute prohibits pimping, sexual exploitation of minors, and forced prostitution.²⁰⁶ The Global Report does note, however, that arrests and convictions have been made for sexual slavery under the jurisdiction of the ICC.²⁰⁷

Part of the reason cases have been brought before the ICC, as opposed to Congolese courts, is not due to the lack of laws, but rather because of the significant barriers to enforcing laws in the DRC.²⁰⁸ While not directly referring to the enforcement of the Trafficking Protocol, another UNODC report on instability in Central Africa found that the current instability in the DRC makes the investigation and prosecution of rape and trafficking challenging.²⁰⁹ As that report points out, governmental instability and low technical capacity, characterized by rampant impunity for violent crimes, inhibits state action in Central Africa and fosters impunity.²¹⁰

Combined with concerted efforts to end the conflict in eastern DRC, the recent inception of new tools to increase enforcement of the Trafficking Protocol could lead to improved protection of victims of sexual slavery in the DRC. To help low capacity governments improve their enforcement

205. U.N. Global Report on Trafficking, *supra* note 196, at 122.

206. *Id.*

207. *Id.* ("Arrests and convictions related to trafficking in persons were recorded for 'unlawful recruitment of child soldiers' and for war crimes and crimes against humanity in connection with the recruitment of child soldiers and sexual slavery. In the latter case, these episodes are under the jurisdiction of the International Criminal Court."). This statement may refer to the arrest and trial of Thomas Lubanga for crimes against humanity and war crimes including sexual slavery, conscription of child soldiers, and other crimes.

208. The question of whether the ICC is an appropriate venue for certain cases of war crimes and crimes against humanity, such as slavery, is outside the scope of this Note. The author intends, rather, to improve the ability of the national government to protect its people.

209. U.N. Office on Drugs and Crime, *Organized Crime and Instability in Central Africa: A Threat Assessment*, 9, Oct. 2011, available at http://www.unodc.org/documents/data-and-analysis/Studies/Central_Africa_Report_2011_web.pdf ("The remaining instability and violence, which predominantly affect the Eastern DRC, seem to be increasingly the result of criminal acts in a context of persistent lawlessness and weak state institutions, rather than the product of war. This context makes it difficult to provide the criminal justice response that crimes such as murder, rape and trafficking in children require.").

210. *Id.*

ability, the UNODC has recently elaborated the International Framework for Action to Implement the Trafficking in Persons Protocol.²¹¹ The DRC would likely be included in the vast number of states with limited “capacity . . . to fully implement existing or future measures in the areas under discussion,” which led to this effort to help “States to develop effective and multidisciplinary anti-trafficking strategies and build dedicated and sustainable resources to implement such strategies.”²¹² While compliance with the Trafficking Protocol has thus far been limited by ongoing instability and low capacity in the DRC, the Framework for Action and the COP’s trafficking in person working group will enable increasing monitoring of compliance within the DRC.

In the same way that international human rights law has influenced national laws in the DRC, the Trafficking Protocol has the potential to positively influence the drafting of new laws. In addition, it is the author’s opinion that the criminal provisions and obligations imposed on the DRC by its membership in the Trafficking Protocol provide the most comprehensive potential remedies for victims of GBV forms of human trafficking, as well as all other forms of human trafficking in the DRC.²¹³

In addition to the international Trafficking Protocol, a second law supplements its advances by tightly monitoring human trafficking in every nation. The United States Trafficking Victims Protection Act, a U.S. law that established global support for efforts to combat trafficking in persons, unilaterally monitors and provides for enforcement of the same model as the Trafficking Protocol: Prevention, Prosecution, and Protection.²¹⁴

2. *The United States Trafficking Victims Protection Act*

Due to high political will to combat modern-day slavery, the United States was instrumental in the development of the international Trafficking Protocol.²¹⁵ Furthermore, in the United States, the Trafficking Victims

211. U.N. Office on Drugs and Crime, *International Framework for Action to Implement the Trafficking in Persons Protocol*, 3 (2009) (“The Framework for Action is a technical assistance tool that assists United Nations Member States in the effective implementation of the Protocol . . . [by] identifying gaps and putting in place additional measures they may need, in conformity with international standards.”).

212. *Id.* at 4 (citing U.N. Doc. CTOC/COP/2006/6/Rev.1).

213. This opinion is based on the more comprehensive scope of coverage of the Trafficking Protocol (including all ages and genders, and all exploitation of both sexual and labor services), as well as the holistic criminal and rights-based protections for victims.

214. Trafficking Victims Protection Act of 2000, 22 U.S.C. § 7101 (2000) [hereinafter TVPA 2000].

215. THE INTERNATIONAL LAW OF HUMAN TRAFFICKING, *supra* note 66, at 78: “A general awareness was also developing among an influential group of States of the need for a holistic approach where the crime control aspects of trafficking were addressed along with traditional human rights concerns.” In 1998, upon commending CEDAW to the Senate for ratification, President Bill Clinton declared the importance of passing a law criminalizing human trafficking and protecting victims internationally. *See* Administration of William J.

Protection Act (TVPA) was passed on October 28, 2000, and aimed to be a comprehensive approach to human trafficking domestically and internationally by preventing human trafficking, prosecuting perpetrators, and protecting victims.²¹⁶ On the international level, the law begins by stating findings on the international scope and particularities of human trafficking.²¹⁷ These findings contributed to the swelling knowledge of the scope of human trafficking internationally.²¹⁸

The TVPA also identified the multitude of factors that make individuals vulnerable to becoming victims of human trafficking, such as armed conflict. The Trafficking Victims Protection Reauthorization Act of 2005 (“TVPRA 2005”) amended the TVPA to include subsection (h): “PREVENTION OF TRAFFICKING IN CONJUNCTION WITH POST-CONFLICT AND HUMANITARIAN EMERGENCY ASSISTANCE,” which required a joint study of vulnerabilities to trafficking caused by conflict within 180 days.²¹⁹ However, the study has yet to be published. More importantly, the amendment required the U.S. Agency for International Development, Department of State, and Department of Defense to “incorporate anti-trafficking and protection measures for vulnerable populations, particularly women and children, into their post-conflict and humanitarian emergency assistance and program activities.”²²⁰ Significantly, the amendment added to the findings sections (7) and (8), which explain the high risk of vulnerability to trafficking in conflict zones.²²¹

The TVPA²²² has done more than define and clarify the particular nature and vulnerabilities to human trafficking. The TVPA authorized the annual Trafficking in Persons Report (TIP Report) to provide global monitoring of

Clinton, *Memorandum from President W.J. Clinton on Steps to Combat Violence Against Women and Trafficking in Women and Girls*, U.S. GOV. PRINTING OFFICE, Mar. 11, 1998, available at <http://www.gpo.gov/fdsys/pkg/WCPD-1998-03-16/pdf/WCPD-1998-03-16-Pg412.pdf>.

216. TVPA 2000, *supra* note 214, § 7101 (stating that the purposes of the act are to “combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims.”).

217. *Id.* § 7101(b). See Appendix IV for a reproduction of the relevant congressional findings on global trafficking in persons.

218. See *id.* § 7101(b)(1) (for an example of the concrete contribution of knowledge about the scope of human trafficking, see finding (1): “As the 21st century begins, the degrading institution of slavery continues throughout the world. Trafficking in persons is a modern form of slavery, and it is the largest manifestation of slavery today. At least 700,000 persons annually, primarily women and children, are trafficked within or across international borders.”).

219. Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, § 101(a) (2006) (amending 22 U.S.C. § 7104(h)) [hereinafter Trafficking Victims Protection Reauthorization Act of 2005].

220. *Id.*

221. *Id.*

222. The author also includes within the term “TVPA” all of the subsequent reauthorizations: 2003, 2005, 2008, 2011.

the implementation of the prevention, prosecution, and protection model.²²³ In 2010, the current head of the congressionally-mandated Office to Monitor Combat Global Trafficking in Persons stated:

The annual trafficking report remains the United States' principal diplomatic tool to engage foreign governments on the issue of modern slavery, and we feel that it is the world's most comprehensive resource on anti-trafficking efforts by governments. It has prompted legislation, national action plans, and the implementation of policies and programs.²²⁴

To accomplish these important diplomatic purposes, the TIP Report provides a comprehensive summary of human trafficking in every country during the preceding year. The Report unilaterally assigns rankings from Tier 1 to Tier 3 to each country based on their compliance with indicia dictated by the TVPA to measure governmental efforts to prevent, prosecute, and protect. The tiers reflect compliance with the minimum standards for the prevention, prosecution, and protection for victims of human trafficking, as required by international law. Tier 3 is the worst ranking and is reserved for “[c]ountries whose governments do not fully comply with the minimum standards and are not making significant efforts to do so.”²²⁵ According to the leading expert on international human trafficking, “there can be no doubt that the TIP reports have radically altered the terms of any discussion on compliance with the international law of human trafficking.”²²⁶

223. Trafficking Victims Protection Reauthorization Act of 2005, *supra* note 219, § 2151(n); Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, §104(a)-(b) (authorizing annual reports and rankings based on human trafficking within all countries receiving foreign aid from the United States). It must be noted that international and American scholars differ as to their opinions on the United States State Department's unilateral global monitoring. *See, e.g.*, Janie Chuang, *The United States as Global Sheriff: Using Unilateral Sanctions to Combat Human Trafficking*, 27 MICH. J. OF INT'L L. 437, 449 (2006) (asserting that the U.S. approach in the TVPA is comparable with many other unilateral sanctions that the U.S. has utilized in order to “reinvent and unilaterally define a set of anti-trafficking standards with international purchase.”). Chuang bases her argument largely on differences between the U.S. norms and the international norms set by the Trafficking Protocol. *Id.* at 466-70.

224. *Out of the Shadows: The Global Fight Against Human Trafficking Hearing Before the Comm. on Foreign Affairs*, 111th Cong., 10-11 (2010) (statement of Luis CdeBaca, Ambassador-At-Large, Office to Monitor and Combat Trafficking in Persons, U.S. Department of State).

225. *Trafficking in Persons Report 2011 Tiers: Placement, Guide, and Penalties for Tier 3 Countries*, U.S. DEPT. OF STATE, www.state.gov/j/tip/rls/tiprpt/2011/164221.htm (last visited Feb. 2, 2012) (stating that tier 3 ranking may result in economic sanctions for the country, which may be waived by Presidential declaration only).

226. THE INTERNATIONAL LAW OF HUMAN TRAFFICKING, *supra* note 66, at 486. Gallagher also acknowledges that the “U.S. mechanism explicitly recognizes that governments bear a responsibility to prevent trafficking, to prosecute traffickers, and to protect victims.” *Id.*

Indicating its failure to comply with the minimum standards to prevent trafficking, prosecute traffickers, and protect victims within its borders, the DRC has been ranked as Tier 3 in the 2010, 2011, and 2012 TIP reports.²²⁷ In 2010, President Obama waived the sanctions for the DRC, both for its Tier 3 ranking and for its use of child soldiers.²²⁸ After three years ranked as Tier 3, there may be sanctions for the DRC in 2012. In 2010, the United States funded programs in the DRC to fight trafficking by increasing the rule of law in eastern DRC, including through projects that identify and reintegrate women and child survivors of sex trafficking and abduction.²²⁹ The U.S. Agency for International Development asserted that “impunity for gender-based violence crimes is still pervasive,” but also reported that the U.S. government has sought to decrease it by providing funding for a rule of law anti-trafficking initiative through the International Organization for Migration.²³⁰ All of these efforts have evolved from the passage of the TVPA.

The TVPA has resulted in positive change in the DRC by increasing the awareness, public will, and professional involvement in preventing, prosecuting, and protecting global victims. Due in part to the awareness raised by the TVPA, the American Bar Association’s (ABA) Rule of Law Initiative, in 2008, began programs to prevent trafficking and to end impunity for GBV crimes in the DRC through criminal law reform, training within the legal community, and other mechanisms to decrease impunity and increase access to justice for victims of sexual violence.²³¹ In particular, the Mobile Courts Program has led to convictions of four Congolese Army officers for raping fifty women and girls and abducting several into sexual slavery in 2010.²³² These convictions occurred through collaboration with the national and local governments in the DRC, as well as through

227. See TIP REPORT 2011, *supra* note 15, at 129-33.

228. ALISON SISKIN & LIANA SUN WYLER, TRAFFICKING IN PERSONS: U.S. POLICY AND ISSUES FOR CONGRESS 14-15 (2010), available at <http://www.fas.org/sgp/crs/misc/RL34317.pdf>.

229. *The Democratic Republic of the Congo: Securing Peace in the Midst of Tragedy: Hearing Before the Subcomm. on Africa, Global Health, and Human Rights of the H. Comm. on Foreign Affairs*, 112th Cong. 4 (2011) (statement of Rajakumari Jandhyala, U.S. Agency for International Development Deputy Assistant Administrator for Africa).

230. *Id.* at 3-4.

231. Michael Maya, *Reflections on ABA ROLI’s Efforts to Combat the Rape Crisis in War-Torn Eastern Congo*, AMERICANBAR.ORG (June 2011), http://www.americanbar.org/advocacy/rule_of_law/where_we_work/africa/democratic_republic_congo/news/news_dr_c_reflections_aba_rol_i_efforts_to_combat_the_rape_crisis_0611.html.

232. *Id.* (“[F]our high level officers, including Lt. Colonel Kibibi Mutware, were among those convicted. They received 20 year sentences, while soldiers who reported to them received 10–15 year sentences.”). The convictions of Congolese national army officers were not carried out under the sexual violence law, but rather under military law and through mobile military tribunals. *Id.*

international support and assistance.²³³ Based on these advances in combating impunity, and counting on the continued dedication of Congo Special Representative to the U.N. and the U.S. government, the American Bar Association boldly asserts, there is reason to be hopeful that the tide is turning with regard to impunity for rape in eastern Congo.²³⁴ The work of the ABA Rule of Law Initiative demonstrates the vast impact of public awareness and will to stop trafficking in persons.

In summary, because the international laws against human trafficking encompass criminal sanctions and victim vulnerabilities, like conflict and gender, these laws may be most appropriate to impose comprehensive obligations on states. Specifically, the TVPA monitors the global enforcement of the prevention, prosecution, protection model, and contributes to the creation of public awareness, political will, and resources to combat human trafficking.

CONCLUSION: EFFECTIVELY COMBATTING SEXUAL SLAVERY IN THE DRC

Because the sexual slavery perpetrated in the DRC is both a form of human trafficking and GBV, it is prohibited by international and national laws that address either crime. By labeling these offenses as both human trafficking and GBV, the number of available protections and remedies for victims increases.

International human trafficking law is a more appropriate tool than human rights law to encourage the protection of women and girls from sexual slavery in the DRC because the advantages of the three-pronged approach found in the international human trafficking laws.²³⁵ Specifically, the international human trafficking law, the Trafficking Protocol, includes criminal sanctions and responds to the offenses as part of a broader scheme of criminal violations and infringement of rights.²³⁶ The Trafficking Protocol is more appropriate because it applies to *all* victims of trafficking regardless of age or gender, and, with the monitoring

233. See Tessa Khan & Jim Wormington, *Mobile Courts in the DRC: Lessons From Development for International Criminal Justice* 2-3 (Oxford Transitional Justice Research Working Papers Series) available at <http://www.csls.ox.ac.uk/documents/OTJR-KhanandWormington-MOBILECOURTSINTHE DRC-LESSONSFROMDEVELOPMENTFORINTERNATIONALCRIMINALJU.pdf> (last accessed Dec. 28, 2012) (cited as a working paper with permission from the authors).

234. *Id.* (noting that funding for these initiatives was provided in part by the U.S. Agency for International Development and the U.S. Department of State).

235. See Trafficking Protocol, *supra* note 9 (discussing the three-fold purpose of the Protocol).

236. *Id.* arts. 6, 9(1).

through the TVPA, can be applied to all nations regardless of membership in international treaties.²³⁷

Indeed, the DRC's Constitution and recent laws have been positively influenced by international human rights-based laws and by human rights monitoring. International human trafficking laws and their enforcement mechanisms²³⁸ should use these positive gains as a model to influence laws and increase monitoring. Moreover, collaborative progress toward protecting victims is possible because the DRC has recognized its obligation to respond to GBV crimes like sexual slavery, particularly in conflict zones where the rule of law is relatively weak.²³⁹

It is the opinion of the author that the best way to "stand by the victims" of GBV in the DRC is to help the government implement its obligations under international human trafficking law.²⁴⁰ There are three principal means for the DRC to fulfill its obligations to prevent, prosecute, and protect under international human trafficking law: (1) improve enforcement of the existing law, (2) draft new laws that fully comply with international human trafficking standards, and (3) provide for greater training and capacity to enact and support programs that provide protection for victims and prevent vulnerable populations from being trafficked. International pressure, improved monitoring,²⁴¹ and increased technical assistance and support will allow the DRC accomplish these goals.

First, by improving the enforcement of existing national laws that criminalize GBV and human trafficking, the DRC government will take a major step toward fulfilling its international obligations with integrity. As explained above, Law 06/018 defines various forms of GBV in a way that meets the international definition of human trafficking. This law, thus, can be used to implement human trafficking criminal obligations on states.

The DRC could accomplish the second means by introducing new provisions in the national penal code with the help of international pressure

237. TIP Report 2012, *supra* note 16, at 33-36 (describing the scope of victims and types of trafficking covered by "trafficking in persons," as defined by the Palermo Protocol and the TVPA). The Trafficking Protocol is also known as the Palermo Protocol. *See id.* at 7.

238. *See* TIP REPORT 2011, *supra* note 15.

239. The Constitution of the DRC states: "public authorities are responsible for the elimination of sexual violence used as an instrument in the destabilization and displacement of families. International treaties and agreements notwithstanding, any sexual violence committed against any person with the intention to destabilize or to displace a family and to make a whole people disappear is *established as a crime against humanity punishable by law.*" CONSTITUTION OF THE DEMOCRATIC REPUBLIC OF THE CONGO, *supra* note 72, art. 15 (emphasis added).

240. Pillay, *supra* note 116, at 459 (suggesting that as a global community we must stand by the victims of sexual violence in conflict by incorporating all existing forms of international law to protect them).

241. In particular, monitoring of compliance with the Trafficking Protocol's obligations on states to prevent, prosecute, and protect. While the TIP Report has increased monitoring, global accountability, recommendations, and consequences must be brought to bear upon the DRC.

and assistance.²⁴² Law 06/018 is a suitable starting point to draft national laws that also provide for prevention and protection services for victims, as well as increased law enforcement and judicial personnel.

The third principal means for the DRC to implement international human trafficking law is to increase the institutional capacity and support for protection of victims and prevention of trafficking. In 2010, there was a governmental police division in charge of violence against women; however, this Special Victims Unit in South Kivu province has but one officer, Major Honorine Munyole.²⁴³ A soldier, who had raped more women in South Kivu than he could count, admitted in an interview that even if there were a law to put him in jail for raping the women, it would not stop him. In his words, there are “no police here, so the law does not matter.”²⁴⁴ The international community has recognized the dire need for improved law enforcement and control of national armed forces in conflict zones. The U.N. Security Council in 2010 urged security sector reform, admonishing

parties to armed conflict to make and implement specific and time-bound commitments to combat sexual violence, which should include, inter alia, issuance of clear orders through chains of command prohibiting sexual violence and the prohibition of sexual violence in Codes of Conduct, military field manuals, or equivalent; and *further calls upon* those parties to make and implement specific commitments on timely investigation of alleged abuses in order to hold perpetrators accountable.²⁴⁵

In conclusion, without a determined national effort to implement the existing laws, create new laws, and provide greater support to victims, the international recommendations will perform only a pedagogical function in the doctrine of international human rights law. The fulfillment of all three means mentioned above is primarily the responsibility of the government of the DRC; yet, the international community has a role to play. Protecting victims will require continued international involvement through financial support, technical assistance, monitoring, and international pressure. International human trafficking-based approaches come with high global political will and financial resources, which must be channeled to increase national and local commitments to end human trafficking in eastern DRC. Notwithstanding its current crisis, in order to fulfill its international obligations, the DRC must stand by the victims of sexual slavery within its borders.

242. Regional bodies and laws also have a substantial role to play in exerting pressure on the DRC to improve its laws and enforcement mechanisms.

243. Lisa F. Jackson, *The Greatest Silence: Rape in the Congo* (Women Who Make Movies, 2007), available at <http://thegreatestsilence.org/about>.

244. *Id.* (translated in the source from the original Kiswahili).

245. S.C. Res. 1960, *supra* note 12, ¶ 5.

APPENDIX I: Terminology

DRC: Democratic Republic of the Congo (formerly Zaire)

UNHDI: United Nations Human Development Index

MONUC: French acronym for the United Nations Mission in the Democratic Republic of Congo

MONUSCO: new name of MONUC, effective August 2010; French acronym meaning United Nations Mission for Organization Stabilization in the Democratic Republic of the Congo

TIP Report: Trafficking in Persons report of the U.S. State Department

GBV: Gender-based Violence

LRA: Lord's Resistance Army (Uganda)

FDLR: Democratic Forces for the Liberation of Rwanda

Interhamwe: Rwandan militia that carried out the 1994 genocide and currently control regions of the DRC

FARDC: Congolese Army

ICC: International Criminal Court

ICCPR: International Covenant on Civil and Political Rights

ICESCR: International Covenant on Economic, Social, and Cultural Rights

CEDAW: Convention on the Elimination of all forms of Discrimination Against Women

CRC: Convention on the Rights of the Child

COTC: Convention on Transnational Organized Crime

COP: Conference of Parties (to the COTC)

UNODC: United Nations Office on Drugs and Crime

UNGIFT: United Nations Global Initiative to Fight Trafficking

TVPA: United States law- Trafficking Victims Protection Act (with reauthorizations called TVPRA's)

APPENDIX II: Map of the Democratic Republic of the Congo



Image by Wars in the World, (last visited Dec. 28, 2012), <http://www.warsintheworld.com/index.php/2012/07/12/democratic-republic-of-congo-un-and-government-troops-have-shelled-m23-rebel-positions/>.

APPENDIX III: "Make Rape a War Crime"

<i>With her heart beating three times faster than normal Tears dripping but this time from the inside She bleeds from the inside as well Before she is even touched</i>	<i>After ten men had wounded and raped her As her kids com[e] down from hiding Trying their best to console her Tears in her eyes Shame covering her face No room for love Beside that of her kids</i>
<i>Poor woman is pushing kids up in the roof Before the door can get broke As it's being kicked hard by men in camouflage</i>	<i>She asks: "Why, Why, Why" to God But even God cannot justify her pain She feels like she lives in sin city Congo has turned into a ghost town</i>
<i>Her mind has gone blank Her body is fighting to get free From the man that's on top of her</i>	<i>Since rape is not recognized as a war crime Poor mother has no other dream Than her daughters to stay at large from these villains Until God restores this part of the world</i>
<i>She gets so weak It's the third time this week That she's been raped</i>	
<i>Her body's abused her mind's misused The first time she got raped Her husband called her a disgrace Abandoned her with four kids</i>	
<i>She screamed in agony But not as loud as the screech of her neighbor That's undergoing the same abuse With her daughters next to her Her husband bleeding in the corner Shot in the head eyes open</i>	<i>As she regains consciousness Looking with shame in the eyes of her kids And then looking up in the sky And says a prayer: "Thank you God for what has just happened You have protected my kids once again Let me die a victim of rape As long as my daughters do not go through it after I am gone for"</i>
<i>No reason to fight No one to help No place to hide No other choice But concede</i>	

Poor mother went unconscious

*The world has forsaken us
By not condemning rape as a
crime of war.²⁴⁶*

246. FIDEL NSHOMBO, ROUTE TO PEACE 2 A LIFE FOR LIVES 47-49 (2011). The author grew up in the eastern DRC and witnessed his mother raped by the armed forces for years until he and his siblings were sent away to a refugee camp in a neighboring country. *Id.* at Preface.

APPENDIX IV: TVPA Relevant Congressional Findings on Trafficking
in Persons

*** Current through PL 112-60, approved 11/23/11 ***

22 USCS § 7101

§ 7101. Purposes and findings

(b) Findings. Congress finds that:

(1) As the 21st century begins, the degrading institution of slavery continues throughout the world. Trafficking in persons is a modern form of slavery, and it is the largest manifestation of slavery today. At least 700,000 persons annually, primarily women and children, are trafficked within or across international borders. Approximately 50,000 women and children are trafficked into the United States each year.

(2) Many of these persons are trafficked into the international sex trade, often by force, fraud, or coercion. The sex industry has rapidly expanded over the past several decades. It involves sexual exploitation of persons, predominantly women and girls, involving activities related to prostitution, pornography, sex tourism, and other commercial sexual services. The low status of women in many parts of the world has contributed to a burgeoning of the trafficking industry.

(3) Trafficking in persons is not limited to the sex industry. This growing transnational crime also includes forced labor and involves significant violations of labor, public health, and human rights standards worldwide.

(4) Traffickers primarily target women and girls, who are disproportionately affected by poverty, the lack of access to education, chronic unemployment, discrimination, and the lack of economic opportunities in countries of origin. Traffickers lure women and girls into their networks through false promises of decent working conditions at relatively good pay as nannies, maids, dancers, factory workers, restaurant workers, sales clerks, or models. Traffickers also buy children from poor families and sell them into prostitution or into various types of forced or bonded labor.

(5) Traffickers often transport victims from their home communities to unfamiliar destinations, including foreign countries away from family and friends, religious institutions, and other sources of protection and support, leaving the victims defenseless and vulnerable.

(6) Victims are often forced through physical violence to engage in sex acts or perform slavery-like labor. Such force includes rape and other forms of sexual abuse, torture, starvation, imprisonment, threats, psychological abuse, and coercion.

(7) Traffickers often make representations to their victims that physical harm may occur to them or others should the victim escape or attempt to escape. Such representations can have the same coercive effects on victims as direct threats to inflict such harm.

(8) Trafficking in persons is increasingly perpetrated by organized, sophisticated criminal enterprises. Such trafficking is the fastest growing source of profits for organized criminal enterprises worldwide. Profits from the trafficking industry contribute to the expansion of organized crime in the United States and worldwide. Trafficking in persons is often aided by official corruption in countries of origin, transit, and destination, thereby threatening the rule of law.

(9) Trafficking includes all the elements of the crime of forcible rape when it involves the involuntary participation of another person in sex acts by means of fraud, force, or coercion.

(10) Trafficking also involves violations of other laws, including labor and immigration codes and laws against kidnapping, slavery, false imprisonment, assault, battery, pandering, fraud, and extortion.

(11) Trafficking exposes victims to serious health risks. Women and children trafficked in the sex industry are exposed to deadly diseases, including HIV and AIDS. Trafficking victims are sometimes worked or physically brutalized to death.

(12) Trafficking in persons substantially affects interstate and foreign commerce. Trafficking for such purposes as involuntary servitude, peonage, and other forms of forced labor has an impact on the nationwide employment network and labor market. Within the context of slavery, servitude, and labor or services which are obtained or maintained through coercive conduct that amounts to a condition of servitude, victims are subjected to a range of violations.

...

(14) *Existing legislation and law enforcement in the United States and other countries are inadequate to deter trafficking and bring traffickers to justice, failing to reflect the gravity of the offenses involved. No comprehensive law exists in the United States that penalizes the range of*

offenses involved in the trafficking scheme. Instead, even the most brutal instances of trafficking in the sex industry are often punished under laws that also apply to lesser offenses, so that traffickers typically escape deserved punishment.

...

(16) In some countries, enforcement against traffickers is also hindered by official indifference, by corruption, and sometimes even by official participation in trafficking.

(17) Existing laws often fail to protect victims of trafficking, and because victims are often illegal immigrants in the destination country, they are repeatedly punished more harshly than the traffickers themselves.

...

(19) Victims of severe forms of trafficking should not be inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts committed as a direct result of being trafficked, such as using false documents, entering the country without documentation, or working without documentation.

(20) Because victims of trafficking are frequently unfamiliar with the laws, cultures, and languages of the countries into which they have been trafficked, because they are often subjected to coercion and intimidation including physical detention and debt bondage, and because they often fear retribution and forcible removal to countries in which they will face retribution or other hardship, these victims often find it difficult or impossible to report the crimes committed against them or to assist in the investigation and prosecution of such crimes.

(21) Trafficking in persons is an evil requiring concerted and vigorous action by countries of origin, transit or destination, and by international organizations.

(22) One of the founding documents of the United States, the Declaration of Independence, recognizes the inherent dignity and worth of all people. It states that all men are created equal and that they are endowed by their Creator with certain unalienable rights. The right to be free from slavery and involuntary servitude is among those unalienable rights. Acknowledging this fact, the United States outlawed slavery and involuntary servitude in 1865, recognizing them as evil institutions that must be abolished. Current practices of sexual slavery and trafficking of women and children are

similarly abhorrent to the principles upon which the United States was founded.

(23) The United States and the international community agree that trafficking in persons involves grave violations of human rights and is a matter of pressing international concern. The international community has repeatedly condemned slavery and involuntary servitude, violence against women, and other elements of trafficking, through declarations, treaties, and United Nations resolutions and reports, including the Universal Declaration of Human Rights; the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; the 1948 American Declaration on the Rights and Duties of Man; the 1957 Abolition of Forced Labor Convention; the *International Covenant on Civil and Political Rights*; the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*; United Nations General Assembly Resolutions 50/167, 51/66, and 52/98; the Final Report of the World Congress against Sexual Exploitation of Children (Stockholm, 1996); the Fourth World Conference on Women (Beijing, 1995); and the 1991 Moscow Document of the Organization for Security and Cooperation in Europe.

(24) Trafficking in persons is a transnational crime with national implications. To deter international trafficking and bring its perpetrators to justice, nations including the United States must recognize that trafficking is a serious offense. This is done by prescribing appropriate punishment, giving priority to the prosecution of trafficking offenses, and protecting rather than punishing the victims of such offenses. The United States must work bilaterally and multilaterally to abolish the trafficking industry by taking steps to promote cooperation among countries linked together by international trafficking routes. The United States must also urge the international community to take strong action in multilateral fora to engage recalcitrant countries in serious and sustained efforts to eliminate trafficking and protect trafficking victims.²⁴⁷

247. Trafficking Victims Protection Reauthorization Act of 2005, *supra* note 219, § 7101(b) (emphasis added) (findings irrelevant to international scope omitted).