

## Violation of the Convention on the Elimination of All Forms of Violence against Women: A case of flagrancy in Kisangani City (Tshopo province), DR Congo

Modeste Ndaba Modeawi <sup>1</sup>, JP Ndolete Geregbia <sup>2</sup>, Gédéon Ngembomba Bindo <sup>3</sup>, Jean-Paul Koto-Te-Nyiwa Ngbolua <sup>4\*</sup>, Monizi Mawunu <sup>5</sup>

<sup>1</sup> Faculté des Sciences Sociales, Administratives et Politiques, Université de Gbado-Lite, Gbado-Lite, République démocratique du Congo.

<sup>2</sup> Faculté des Sciences Economiques et de Gestion, Université de Gbado-Lite, Gbado-Lite, République démocratique du Congo.

<sup>3</sup> Faculté des Sciences Economiques et de Gestion, Université de Gbado-Lite, Gbado-Lite, République démocratique du Congo.

<sup>4</sup> Faculté des Sciences et Technologies, Université de Kinshasa, Kinshasa XI, République démocratique du Congo.

<sup>5</sup> Department of agronomy, Polytechnic Institute of Kimpa Vita University, Uíge, Angola.

\* Correspondence author: [jpngbolua@unikin.ac.cd](mailto:jpngbolua@unikin.ac.cd)

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### ABSTRACT

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) imposes on signatory States the obligation to implement and apply legal measures promoting equality and the elimination of gender discrimination. The General Assembly adopted it in 1979. Violence against women is, on the one hand, one of the most systematic and widespread forms of human rights violation in the world and, on the other, a socio-economic problem that impacts social harmony, economic growth and threatens overall development progress. The consequences include the deterioration of women's mental and physical health, disruption of communities, and a decrease in economic productivity. The manifestation of unequal power relations between women and men is one of the most extreme forms of gender-based discrimination and an attack on the dignity and fundamental rights of women and girls. Gender-based violence stems from structural causes linked to the norms and values of a society, culture, or community. These factors legitimize and perpetuate various gender inequalities based on a hierarchy of relationships between men and women, thus contributing to gender-based violence. Harmful stereotypes and traditional expectations further bolster these inequalities, restricting women's autonomy and frequently rationalizing acts of violence. At the beginning of October 2023, a woman was subjected to cruel and degrading treatment, tied up and beaten by law enforcement officers in Kisangani, the capital of Tshopo province, on the orders of her ex-husband; the latter, using his position as a public official, ordered the arrest and beating of his ex-wife by law enforcement officers; As a result, the person who gave the order and the officers who carried out the manifestly illegal order were prosecuted and convicted, in accordance with the Declaration on the Elimination of Violence against Women, which requires States to act with due diligence to prevent, investigate and punish acts of violence against women in accordance with national law, whether perpetrated

by the State or by private persons. Every woman has the right to respect for the inherent dignity of the human person and to recognition and protection of her human and legal rights. This article is timely and calls for the unfailing application of provisions on respect for the recognised rights of women and girls, in the interests of a fairer and more balanced society.

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## 1. Introduction

Violence against women is a major public health problem worldwide and a serious violation of fundamental rights. It often goes unnoticed and unobserved, partly because it is taboo. At least one in three women worldwide has been beaten, coerced into sex or otherwise abused, most often by her husband or another male family member, in defiance of Articles 1, 13 and 55 of the United Nations Charter, which encourage respect for human rights and fundamental freedoms for all, "without distinction as to race, sex, language or religion" (*Charte des Nations unies*, 1994). Every four days in France, a woman dies at the hands of her partner. A survey carried out in Santiago, Chile, showed that 80% of women admitted to having been abused, either by a male family member or by their partner. In a study conducted in Bangladesh, 18% of female deaths were the result of injuries, whether intentional or not, with 52% occurring during or immediately after pregnancy. The authors conclude that the underlying causes of these violent deaths are clearly social, and can be seen as the consequence of men's strict control of women's sexual and reproductive lives (*Recommandation générale 19 sur la violence à l'égard des femmes*, 1992).

In the Congolese context, given the constant wars and violence of all kinds, of which women and girls are the first victims, the DRC government has been working for just over a decade to protect women's rights. In addition to the new laws that have been enacted, a number of public and private initiatives to combat violence against women have been launched. In every province of the DRC, donors, churches and civil society have stepped up efforts to reduce discrimination against women (*Kamidi*, 2015).

The Committee on the Elimination of Discrimination against Women has stated that violence against women is "violence directed against a woman because she is a woman or disproportionately affects women" (*CEDEF*, 1979). This form of violence seriously inhibits women's ability to enjoy their rights and freedoms on an equal basis with men. Vulnerability to violence is understood as a condition created by the absence or denial of rights (*Secrétaire général ONU*, 2006).

In recent years, more and more programmes have focused on dealing with violence against women and its repercussions on their health and social life. However, progress on women's issues differs from one country to another, and the way in which violence against women is dealt with does not follow the same pattern. Depending on the law and the culture, there are real differences in the way violence is perceived and tolerated.

The aim of this study is to analyse the situation of violations of the Convention on the Elimination of All Forms of Violence against Women in Kisangani, DR Congo, focusing on cases of flagrante delicto. It aims to understand the causes, consequences and

institutional responses to this phenomenon, with a view to improving the protection of women's rights in the region.

### 1.1 Conceptual clarifications

Considering the scientific nature of the analysis of the case under examination, a precise understanding of the following concepts is necessary to accurately grasp their meaning in relation to the study subject:

- (i) **Women:** persons of the female sex, including girls (*Protocole à la charte africaine des droits de l'homme et des peuples, relatif aux droits de la femme en Afrique, 2003*);
- (ii) **Violence against women:** any act of gender-based violence that results in, or is likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, restrictions on or arbitrary deprivation of fundamental freedoms, whether occurring in private or public life, in times of peace, conflict or war (*Protocole à la charte africaine des droits de l'homme et des peuples, relatif aux droits de la femme en Afrique, 2003*);
- (iii) **Violence against women:** any act of violence based on the fact that a person is a woman, which causes or may cause physical, sexual or psychological harm or suffering to a woman, as well as threats of violence, harassment or arbitrary deprivation of liberty, whether occurring in the public or private sphere (*Résolution Assemblée générale ONU, 1993*); Heise believes that violence against women is defined as "any act of force or coercion which seriously endangers the life, body, psychological integrity or freedom of women, and which is committed in the name of perpetuating male power and control" (Magali, 2009);
- (iv) **Discrimination:** the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) defines discrimination as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field" (CEDEF, 1979);
- (v) **Discrimination against women:** any distinction, exclusion, restriction or differential treatment based on sex which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, of human rights and fundamental freedoms in all spheres of life (CEDEF, 1979);
- (vi) **Harmful practices:** any behaviour, attitude or practice that negatively affects women's fundamental rights, such as the right to life, health, education, dignity and physical integrity (*Protocole à la charte africaine des droits de l'homme et des peuples, relatif aux droits de la femme en Afrique, 2003*).

### 1.2. Some legal instruments protecting women's rights

The promotion of gender equality and the elimination of all forms of discrimination against women are the basic objectives of the United Nations and its human rights and values. Since its inception, the United Nations has made gender equality one of the fundamental guarantees of human rights. Countries around the world have ratified international human rights instruments, regional and sub-regional treaties that contain important provisions to promote and protect the rights of women. Similarly, countries such as the Democratic Republic of the Congo are not exceptions.

*a. At international level*

- United Nations Charter 1945, articles 1, 13 and 55;
- 1948 Universal Declaration of Human Rights;
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979);
- Declaration on the Elimination of Violence against Women, 1967;
- Beijing Declaration and Platform for Action focused on 12 areas for the realization of women's rights, 1995;
- UN Security Council Resolution 1325 on women.

*b. At regional and sub-regional level*

- African Charter on Human and Peoples' Rights (Banjul Charter) adopted in 1981;
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women, 2003;
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) adopted in 2003;
- Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention of Belém do Pará), 1994;
- European Convention for the Protection of Human Rights and Fundamental Freedoms, 1998;
- Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), 2011;
- SADC Memorandum of Understanding on Gender and Development, 2014.

*c. At national level*

- Decree-Law of 21 February 1965 on the protection of women's interests in the event of abuse by the husband;
- Constitution of 18 February 2006 (Articles 14 and 15); Law no. 06/018 of 20 July 2006 amending and supplementing the Decree of 30 January 1940 on the Congolese Criminal Code, incorrectly referred to as the "Sexual Violence Act";
- Law No. 08/005 of 10 June 2008 on the public funding of political parties (see Article 3(5) on taking parity into account when drawing up electoral lists and Article 6(6), which states that any subsidy paid by the State to a political party must contribute to the eligibility of women on equal terms with men);
- Law no. 08/011 on the protection of the rights of people living with HIV/AIDS and those affected, 14 July 2008;
- Law No 09/001 on child protection of 10 January 2009;
- Décret n° 09/37 portant création, organisation et fonctionnement d'un Etablissement public dénommé " Fonds National pour la Promotion de la Femme et la Protection de l'Enfant en sigle FONAFEN du 10 octobre 2009;
- Decree No 09/38 of 10 October 2009 on the creation, organisation and operation of the National Agency to Combat Violence against Women and Young Girls (AVIFEM);
- Loi organique relative à la création, à l'organisation et au fonctionnement de la Commission nationale de défense des droits de l'homme, dont l'une des attributions est de veiller au respect des droits de la femme et de l'enfant (article 6 alinéa 4) du 21 mars 2013;
- Law No. 15/013 on the modalities of application of women's rights and parity of 1 August 2015.





To everyone's surprise, a video circulated on social networks showing the woman sprawled on the ground, being tortured and beaten by law enforcement officers, thus complying with the order given by the Professor-Judge. He was summoned by the Judiciary and tried in flagrante delicto.

### *3.2. Conduct of the trial*

The Public Prosecutor at the Tshopo Court of Appeal, having taken up the case, signed a warrant for the Professor and Presiding Judge of the Tshopo Commercial Court to appear in flagrante delicto proceedings.

According to the Public Prosecutor's Office sitting in flagrante delicto, the accused is being prosecuted for instigating a breach of orders; inciting military personnel to commit acts contrary to duty and discipline, and breach of orders in accordance with articles 88 and 113 of the Military Penal Code; and arbitrary arrest.

### *3.3. Conclusion of the case*

After confronting the parties and considering the facts of the case, the Court handed down its judgment on 06 October 2023, sentencing the Professor to 12 years' imprisonment with principal penal servitude and payment of damages and interest in the order of 10,000 US dollars to be paid to the victim. As for the agents who had carried out the manifestly illegal order, they were respectively sentenced to 8 and 10 years' principal penal servitude with a fine of 500,000 Congolese francs each, amounts payable within the time limit, failing which they will be subject to physical restraint, adds the Court of Appeal's ruling (*Arrêt Cour d'Appel Tshopo sous RP 170, Octobre 2023*).

## **4. Discussion**

After World War II, international organizations were forced to strongly proclaim the universal foundational values of the new world order, and the United Nations Charter of Fundamental Rights (Preamble) solemnly proclaimed their "faith in human fundamental rights, human dignity and worth," and human equality (Equal Rights for Men and Women). Respect for human rights and fundamental freedoms for all people, regardless of race, was one of the objectives of the United Nations Charter and its member states' activities (Grosbon, 2018).

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), resolution 34/180 of the United Nations Convention on Discrimination against Women, 1979, document of the United Nations, A/20378, ratified by Lebanon and enacted on 1 August 1996, was passed by Law No. 572 of 24 July 1996. Article 2 stipulates that discrimination against women in all forms is prohibited, and the Parties commit, among other things, to incorporating the equality of men and women into their national constitutions, civil laws or other legislative provisions and to ensuring their application (Mirella, 1998). Article 5 of the Convention on the Rights of the Child under the Age of Women stipulates that the States parties must eliminate harmful and unjustified gender stereotypes (Forget, 2018).

At its 11th session in 1989, the United Nations Committee for the Elimination of Discrimination against Women recommended that States include information on the acts of violence and measures taken to eliminate them in their reports (A/47/38, 1993: Report of the United Nations Commission on the Elimination of Discrimination against Women).

The concept of discrimination in the International Convention on the Elimination of all forms of discrimination against women represents a positive step towards the first conventional law, and implies a universal non-discrimination right that applies equally to personal relations (Ofeila, 1995). Since 2006, the Government of Quebec, Canada, has amended several laws affecting women's rights and living conditions in order to combat discrimination against them (UNICEF's 42nd Conference Report, 2008). The African Charter of Human Rights and Persons Rights, adopted in 1981, do not address the specific issues facing women in Africa. It took more than ten years for African States to focus on women's rights (Mutoy, 2004).

In Morocco, all forms of violence against women are considered as the most shameful violation of human rights (Leila, 2022). In Niger, women, as humans, are protected by national legislation guaranteed by successive constitutions. The Penal Code of Nigerien deals with all offences committed against women. In 2003, the Nigeri Penal Code was revised and provisions enacted to punish acts of violence against women (such as intentional aggression and battery) (Articles 222 to 225, which protect women from infringement of physical integrity) (Hassimi et al., 2011). In the Democratic Republic of the Congo, violations of the Convention on the Elimination of all forms of violence against women (CEDAW) have serious implications for women's rights, including violations of their dignity. From a legal point of view, this could lead to criminal sanctions against the perpetrator in connection with the case analyzed in this study (Judge of the Tshopo Appeal Court in accordance with RP 170). To prevent such violations, it is vital to strengthen the enforcement of existing laws and improve access to justice for women. Increasing population awareness, training law enforcement and promoting gender equality can contribute to changing harmful cultural norms. Solution suggestions also include supporting victims, creating shelters and encouraging cooperation between governments, NGOs and civil society to create an environment conducive to the elimination of violence against women. Education and empowerment of women play a decisive role in these prevention efforts.

## **5. Conclusions and recommendations**

Violence against women persists in every country in the world, whether perpetrated by States and institutions, or within groups, families or communities. This violence against women is not a private matter, but a violation of human rights which implies the responsibility of the State.

The study carried out in the city of Kisangani consisted of a comparative analysis of the results obtained in Kisangani with other regions, both nationally and internationally, with regard to violations of the Convention on the Elimination of All Forms of Violence against Women (CEDAW); This comparison will make it possible to highlight similarities and differences, draw lessons from good practice elsewhere and identify recommendations for improving the situation in Kisangani and in other regions facing similar problems of violence against women. States have an obligation to respect, protect and fulfil women's right to a life free from violence. To this end, they must strengthen the mechanisms for punishing those who violate women's rights, so that women can regain their place in society and regain their rights on an equal footing with men.

Article 25 of Law No. 15/013 of 1 August 2015 on the modalities of application of women's rights and parity stipulates: "Every woman has the right to respect for her life,

her physical integrity and the security of her person. All forms of exploitation, punishment and inhuman or degrading treatment are prohibited".

The case examined in this article is so serious that it has undermined public morality and tarnished the image and functions of the public service. This should encourage both public and private institutions, non-governmental human rights and women's organisations, as well as women's organisations and feminist movements, to be doubly vigilant and to make the dissemination of all international, regional, sub-regional and national legal instruments a central concern, in order to effectively defend and apply the provisions relating to women's rights for a fairer and more balanced society. In fact, legal action against violent perpetrators must be rigorous. The implementation of the Declaration on the Elimination of Violence against Women is particularly important for the prevention, investigation and punishment of such acts. In order to achieve this, improved international cooperation is needed to ensure an effective and coherent global response. Respect for the dignity and human rights of women is essential. Therefore, a robust legal framework must be established to ensure the safety of women and encourage them to report violent incidents. In addition, society should be educated on these issues in order to promote lasting cultural change.

Finally, the fight against violence against women requires multi-faceted efforts including legal reforms, cultural changes, and an increase in the awareness of building a society that respects more equitably and human rights.

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