

# **MASS RAPES IN WALIKALE**

**STILL A NEED FOR  
PROTECTION AND  
JUSTICE IN  
EASTERN CONGO**

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# INTRODUCTION

During four terrible days in July and August 2010, more than 300 women, girls, men and boys were raped by armed men in Walikale Territory, North Kivu. The assailants were armed with guns, grenades and machetes. The survivors were left in pain, without their belongings and in a state of shock. They were stripped of absolutely everything: their physical and mental health, their means of livelihood and their sense of security. The mass rapes took place within 30km of a UN peacekeepers' base, where a company of 80 blue helmet troops was stationed.

For years, the civilian population of North Kivu has suffered as Congolese and foreign armed groups and armies fight for control of the area's mineral wealth, land and resources. Grave human rights violations, including war crimes and crimes against humanity, have been committed by armed groups and in some cases, by members of the national army (*Forces Armées en République Démocratique du Congo*, FARDC).

The mass rapes committed in July and August were planned and organized. Women, men and children were rounded up and prevented from fleeing before being raped by armed group fighters acting under the orders of their commanding officers. The armed groups sought to impose their authority over villages through terror and humiliation, to maintain control over territory and to advance their political agendas. While the responsibility for the attack in Walikale lies primarily with the armed groups, the national army failed to prevent the attacks and protect the population.

The shocking crimes committed in Walikale highlight the abject failure of both the government of the DRC and the UN to protect Congolese civilians from violence, in particular sexual violence. According to the UN, at least 15,000 cases of rape were reported in 2009<sup>1</sup> and every day, crimes of sexual violence continue to be committed with almost total impunity.

The suffering endured by the survivors of mass rape in Walikale is, tragically, only one example of what Congolese people have to endure. Sexual violence in the DRC has sometimes been referred as the war within the war, and there appears to be a link between discrimination practised against Congolese women in general and the violence inflicted on them in the conflict. Since the beginning of the armed conflict in eastern DRC, tens of thousands of women and girls have been victims of systematic, as well as widespread, rape and sexual assault committed by combatants.

Every day, women and girls, from the very young to the very old, continue to be attacked in their homes, in the fields, on their way to school or as they go about their daily activities. Some are raped in front of their families or fellow villagers for maximum humiliation. Men

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<sup>1</sup> Briefing of Roger Meece, UN Special Representative of the Secretary-General in the DRC, to the UN Security Council on 15 October 2010. UN Doc. SC/10058. This figure is very approximate as many victims do not report crimes of sexual violence for fear of being rejected by their family.

and boys are also being raped, but because of the enormous stigma associated with male rape, very few survivors come forward to report attacks.

## SHIFTING ALLIANCES, CONTINUING CONFLICT

Following two wars that engulfed the DRC in 1996 and 1998, the eastern part of the country continues to be ravaged by conflict due to the continued presence of national and foreign armed groups struggling for power and access to resources. The FARDC was created in 2003 following a 2002 peace agreement -- the Global and All Inclusive Agreement of Pretoria. It brought together the former Army of DRC (Forces Armées Zairoises) and the main armed groups that had fought against each other during the war. Today, the army lacks resources, training and the professionalism needed to tackle opposition armed groups and protect civilians in conflict zones.<sup>2</sup>

A central issue in North and South Kivu is the continued presence of an armed group named the Democratic Forces for the Liberation of Rwanda (*Forces Démocratiques pour la Libération du Rwanda*, FDLR), largely composed of Rwandan Hutu, some of whom were directly involved in the 1994 genocide in Rwanda. Like most parties to the conflict, the FDLR relies on the exploitation of mineral resources to finance its activities. In 2009, the DRC government started offensive military operations against the FDLR, jointly with the Rwandan army, later assisted by UN peacekeepers.

With a view to regaining control over the region and fighting the FDLR, the DRC government started in March 2009 to integrate combatants from other local armed groups into the national army.<sup>3</sup> The main target group was the National Congress for the Defence of the People (*Congrès National pour la Défense du Peuple*, CNDP), a Rwandan-backed armed

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<sup>2</sup> During the transition (2003-2006), the demobilization and army reform programmes took place in a context characterized by serious human rights violations, an apparent lack of political will and ineffective control of troops. Since the beginning of the 1998 conflict, the country experienced unprecedented militarization, an increased illegal flow of arms and the mushrooming of armed groups, ethnic and sometimes community militias, almost all of which included thousands of children in their ranks. By June 2003, when a transitional power-sharing government was established and marked the official end of the conflict, it was estimated that there were between 300,000 and 330,000 fighters in the DRC. The integration of the various fighting forces into a unified national army, the FARDC, with a single uniform and accountable chain of command, started after the 2006 elections, along with the disarmament, demobilization and reintegration (DDR) into civilians of an estimated 150,000 former fighters. Since then, progress on both processes has been limited

<sup>3</sup> Peace Agreement between the Government of DRC and the Congrès National pour la Défense du Peuple, CNDP of 23 March 2009.

group whose political and military wings claimed to protect and promote the Congolese Tutsi community. The CNDP had been fighting the DRC government since 2006, when it was created in North Kivu by General Laurent Nkunda, a former high-ranking officer in the national army<sup>4</sup>. The integration of the CNDP and other armed groups into the army followed an accelerated procedure and failed to screen out children and perpetrators of serious human rights violations. It also failed to carry out an effective disarmament process, and quantities of weapons have been hidden for possible future use. In exchange for integration, the Congolese government promised a regular salary, and some key positions within the national army and public administration. The CNDP has since changed leadership and become a registered political party. General Laurent Nkunda has been arrested on 22 January 2009 and replaced by Bosco Ntaganda, who has been indicted by the International Criminal Court for the conscription of children under the age of 15 and for using them to actively participate in hostilities. The reality is that the integration agreement has enabled the CNDP to expand its presence and gain control over the mines of South and North Kivu while keeping its own chain of command and allegiance.

A number of local Mayi-Mayi militias refused to join the integration process. Others were integrated into the army but left after a few months and rejoined armed opposition groups. A number of Mayi-Mayi groups left complaining about the government's failure to pay salaries or to appoint some of their leaders to high ranking military and administrative positions. On several occasions, the CNDP has also raised criticism against the government for the same concerns. Some Mayi-Mayi groups also protested against the integration of the CNDP into the national army, seeing the CNDP as "the hand of Rwanda" in the DRC.

In an effort to support a stabilization opportunity in the region and the unprecedented rapprochement between Rwanda and DRC at the end of 2008, the UN Security Council mandated the peacekeeping mission in the DRC (MONUC)<sup>5</sup> to support the national army's operations against the FDLR.<sup>6</sup> From March to December 2009, MONUC was tasked with advising on strategic planning and logistical support to operation Kimia II, including air lifts, food rations and ammunition to all national army battalions involved. In practice, MONUC had very little influence over the conduct of the operations, as FARDC Kimia II commanders acted unilaterally for the most part. There was an international outcry over the disastrous humanitarian and human rights consequences of the Kimia II operation on the local population, which included mass displacement, killings by members of the FARDC, retaliatory attacks by the FDLR and sexual violence.<sup>7</sup>

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<sup>4</sup> For more information on the human rights situation during that period, see Amnesty International, North Kivu: No end to war on women and children, 2008 index: AFR 62/005/2008

<sup>5</sup> The UN Peacekeeping Mission in the DRC, known as its French acronym MONUC, Mission de l'Organisation des Nations Unies en République démocratique du Congo, was first created by Security Council resolution 1279 in November 1999.

<sup>6</sup> See UN Security Council resolution 1856 (2008) paragraph 3(g).

<sup>7</sup> See OXFAM, 13 October 2009, "Civilian cost of military operation unacceptable". <http://www.oxfam.org/en/pressroom/pressrelease/2009-10-13/dr-congo-civilian-cost-military-operation-unacceptable> and Press Statement by Professor Philip Alston, UN Special Rapporteur on extrajudicial

MONUC subsequently redefined its support to the Amani Leo operation started by the government in January 2010. It introduced a conditionality policy, according to which MONUC would only support those battalions which were behaving in a manner respectful of international humanitarian and human rights law. In practice, the conditionality policy has proved difficult to implement. The policy requires a laborious screening process, it creates tensions between the government and the UN, and it sows confusion among local populations who are left wondering whether the UN is there to protect civilians or to support abusive troops. Tensions also reportedly emerged within the national army between battalions receiving support from both the government and the UN and the rest of the troops.

On 28 May 2010, the UN Security Council adopted a resolution creating the UN Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) to take over the activities of the UN Peacekeeping Mission in the DRC, known as MONUC, from 1 July 2010<sup>8</sup>.

Many foreign and local armed groups in the DRC claim that their struggle is justified by a cause. For instance, the CNDP claims that it acts to protect Tutsi populations; the FDLR wants to return to Rwanda and defend the rights of Rwandan Hutus; and the Mayi-Mayi argue that they exist to protect native Congolese people against foreign forces. In reality, they are all profiting from the rich resources of the Kivus and seek to maintain their influence over this area in the economic interests of their leaders. This explains the constant shift of alliances between armed groups. The government forces, which are also involved in illegal mining in the area, are also suspected by the local population to act in complicity with some armed groups.

## WHAT EXACTLY HAPPENED IN WALIKALE?

The armed groups accused of being responsible for the mass rapes have operated jointly since June 2010 in Walikale territory and have reportedly been attacking civilians since July. The coalition, estimated at around 200 combatants, is composed of a faction of the FDLR, a Mayi-Mayi group led by “Colonel” Cheka Ntabo Taberi, and some former CNDP combatants led by “Colonel” Emmanuel Nsengiyumva who deserted the national army earlier in the year.

Walikale, an area rich in tin deposits and gold mines,<sup>9</sup> is mostly composed of deep forest and

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executions. Mission to the DRC, 5-15 October 2009.

<sup>8</sup> In this document, both terms are used, depending on the date.

<sup>9</sup> “In particular, the Bisie mine is supposed to account for somewhere between 50 and 80% of tin exports from North Kivu. The control of the Bisie mine is a main source of contention within the Congolese army, as it provides for upwards \$100,000 a month in taxes for local soldiers, which does not

a few inhabited areas alongside roads. Communications are difficult, and the area that was attacked, the Mpopi-Kibua axis, had only a handful of policemen to ensure law enforcement in the area. Administrative staff officially working for the government have little or no oversight from their supervisors in Walikale or Goma, about at least 80 kilometres away with no passable road.

Benefiting from this weak state presence in remote rural areas of Walikale territory, armed groups control several mining sites and joined forces in part to increase their profits. The mass rapes show the armed groups' determination to impose their authority over the area.

Because they are based and operate in the area, many of the perpetrators were well known to the population. According to a preliminary UN investigation,<sup>10</sup> from 30 July until 2 August, the perpetrators moved through 13 villages from Mpopi towards the east in Kibua, looting, raping and abducting the local population. The majority of the attacks took place after dark. Several villages were besieged to cut off communication and to prevent people from leaving. In three of the 13 villages, each household was systematically looted and women found there were raped in front of their children. Some assailants posted at the edge of the forest abducted and raped villagers who tried to flee. The attackers operated in groups of two to six, each of whom would rape the victim in turn, while the others held the victim immobile.

UN investigators report that over 303 people were raped and 946 homes were looted, leaving people with nothing but the clothes they were wearing when were attacked. An additional 116 people were reportedly abducted and forced to transport the looted goods; some of them were beaten or whipped.

## WHY DID THE ATTACKS HAPPEN?

While it is difficult to assess the exact reasons why this coalition of armed groups took the decision to attack the villages, several factors can be highlighted.

First, the attacks are part of a pattern of retaliatory attacks by the FDLR against the civilian population which emerged after the start of military operations against the FDLR by the national army in January 2009. Following a rapprochement between the DRC and Rwanda in December 2008, the DRC has led several military operations aimed at disrupting the military capabilities of the FDLR.<sup>11</sup> Umoja Wetu, jointly led with the Rwandan army, and Kimia II

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include the individual pits that some commanders control and kickbacks they get from trading houses". Taken from "Mass rape in Walikale: what happened?" 24 August 2010, Jason Stearns.

<sup>10</sup> *Rapport préliminaire de la mission d'enquête du Bureau Conjoint des Nations Unies aux Droits de l'Homme sur les viols massifs et autres violations des droits de l'homme commis par une coalition de groupes armés sur l'axe Kibua-Mpopi, en territoire de Walikale, Province du Nord Kivu, du 30 juillet au 2 août 2010*, 24 September 2010, pp. 8-9.

<sup>11</sup> Before 2009, the FDLR was a major source of tension between the DRC and Rwanda, as the government of Rwanda continues to see the FDLR as a major threat to its internal security and accused the DRC government of hosting and collaborating with the FDLR, notably in the illegal exploitation of minerals.

operations took place in 2009 and Amani Leo operation in 2010. MONUC and its successor MONUSCO provided support. These military operations have led to an escalation of violence. The FDLR has responded by using systematic killings, rapes, abductions and looting before or after FARDC offensive operations against villagers they perceive as supporting government forces. The local population believes the Walikale attacks were a punitive expedition with the aim of subjugating them through humiliation and pain, because they are considered traitors by the FDLR.<sup>12</sup> It also may be the case that these extremely large scale and internationally condemned attacks could be part of a deliberate strategy by the FDLR to force Rwanda to negotiate over repatriation.

A second factor is the security void left by the failure of the national army and UN peacekeepers to exercise effective control over the territory.

At the time of the attack, no FARDC troops were deployed on the Mpopi-Kibua axis, leaving the armed groups free to operate. In July, the FARDC 212<sup>th</sup> brigade, which had responsibility over the highly profitable Bisie mining site and Kilambo airstrip from which minerals are transported towards Goma, had reportedly received instructions to redeploy its troops to the Mpopi-Kibua axis. Lieutenant Colonel Yusuf Mboneza, the FARDC 212<sup>th</sup> Brigade commander, reportedly ignored the order of redeployment for unknown reasons. Some sources have claimed he deemed the FDLR threat to be low, others that the actual reason for the non-redeployment of the 212<sup>th</sup> Brigade was to maintain control over the rich mining site of Bisie. As highlighted by the UN Joint Human Rights Office's preliminary investigation report, this decision cost the local population dearly. If it is confirmed that the 212<sup>th</sup> brigade ignored a redeployment order to the area in order to mine elsewhere, it would serve as a clear illustration of the behaviour of certain FARDC commanders who are believed to further their own economic interests instead of protecting the population<sup>13</sup>. At the time of the Walikale attacks, there was a warrant for Lieutenant Colonel Mboneza's arrest as a result of another act of negligence committed during an attack on 24 July by the same coalition of Mayi-Mayi and FDLR. When he was finally intercepted and arrested in Goma on 12 August, he was forcibly released from the detention facility a few hours later by members of the national army from the ex-CNDP faction. The climate of impunity and the absence of an effective chain of command within the army undermine the protection of the civilian population. The lack of accountability of the FARDC forces when they fail to protect civilians or commit crimes themselves serves to encourage further crimes.

The UN peacekeeping base was located in Kibua at the time of the attack. The 80-strong troop contingent from India had been in place for just a few days when the attack occurred as the regular rotation of Indian Brigade troops had just taken place. Villagers reportedly informed the peacekeepers about looting when the violence began, but the peacekeepers failed to intervene. According to the UN Special Representative of the Secretary-General in the DRC (UN SRSG), Roger Meece, the peacekeepers did not hear about the mass rapes until

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<sup>12</sup> See *Rapport Préliminaire du Bureau Conjoint des Nations Unies pour les droits de l'Homme* p.9, para.22.

<sup>13</sup> See *Rapport Préliminaire du Bureau Conjoint des Nations Unies pour les droits de l'Homme* p.6, para.14.

12 August, two weeks after the attacks began, and learned about them through the NGO International Medical Corps (IMC).<sup>14</sup> Even if this is the case, the peacekeepers were slow in recording the crimes, in conducting the necessary verification patrols and in assessing the scale of the events happening within their area of responsibility. The newly arrived Indian peacekeepers appeared unprepared and possibly unwilling to look into the series of attacks that took place within a radius of less than 30km around their base in Kibua. It is a concern that in such a tense environment, the North Kivu UN peacekeeping brigade did not ensure proper patrolling, monitoring and protection of the civilian population, despite the information which filtered through to them of possible attacks in the area. UN officials have explained that MONUSCO troops might have misunderstood or underestimated the risks faced by the civilian population because of the language difficulties and lack of interpreters. In addition, and most worrying, according to the UN preliminary report the newly deployed company had not received specific training on civilian protection.

The Walikale attacks also underscore the need for the MONUSCO leadership – and for that matter the UN leadership as a whole – to insist that the mandate to protect civilians is understood and prioritized by all peacekeeping forces. The priority given to protection of civilians in MONUSCO's mandate and in the discourse of its leadership has to be taken on board and translated into action by all components of the mission. Amnesty International welcomes the announcement by the SRSR Roger Meece that MONUSCO would reassess its civilian protection activities, and that new initiatives were taken to address deficiencies and improve MONUSCO's effectiveness in this regard.<sup>15</sup> It is also essential that additional support is provided to MONUSCO so as to ensure that lack of resources is not an obstacle to effective protection against this kind of attack.

In response to the attacks, MONUSCO launched "Operation Shop Window" from 1 to 18 September, which deployed an additional 750 peacekeepers in the area of attack to reinforce the protection of civilians. Its aim was to put pressure on the armed groups, improve protection of local populations and support the Congolese government's efforts to capture the perpetrators of the Walikale attacks. In his briefing to the UN Security Council on 15 October 2010, UN SRSR Roger Meece highlighted the need for the UN to begin reassessing its civilian protection activities, and pointed to key initiatives aimed at addressing security issues, including increasing the number of interpreters<sup>16</sup> and equipping them with reliable means of communication. The SRSR also added that the mission was augmenting military patrol activities, and was adding radios and telephones, in order to increase communication and outreach activities.

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<sup>14</sup> MONUSCO featured news: 25 August 2010, Roger Meece on Kibua, "We are shocked by this large scale tragedy",

<http://monuc.unmissions.org/Default.aspx?ctl=Details&tabid=1042&mid=1096&ItemID=10376>

<sup>15</sup> SC/10058, 15 October 2010.

<sup>16</sup> The Congolese interpreters employed by MONUSCO to ensure communication between English-speaking UN peacekeepers and local communities are called Community Liaison Interpreters (CLI).

# HARROWING CONSEQUENCES

## PHYSICAL AND PSYCHOLOGICAL HARM

The mass rapes, mostly gang-rapes, left the Walikale survivors with physical injuries and psychological damage that require sometimes long-term and complex treatment. Very few survivors received immediate care following the attack: the under-resourced and understaffed local health centres were rapidly overwhelmed and the two hospitals lacked appropriate drugs, supplies and trained personnel. During the attack, the hospitals and health-centres were pillaged by the armed groups.

The NGOs Heal Africa and International Medical Corps and coordinated their response to provide medicine and psycho-social care to the survivors. However, humanitarian NGOs faced challenges in delivering health care and medicines to survivors in time as the transport infrastructure in the Walikale territory is in a state of decay and it proved to be extremely difficult to bring in medical equipment by road or air. Hardly any of the rape survivors had access to Post Exposure Prophylaxis (PEP) which offers protection against HIV/AIDS if taken within 72 hours. Many victims chose not to seek any treatment for fear of rejection by their families or abandonment by their husbands. The trauma suffered by the women Walikale survivors seems to be aggravated by their fear of rejection, of sexually transmitted diseases, including HIV/AIDS, and of unwanted pregnancy.

Many women rape survivors typically suffer uterine prolapse, vesico-vaginal or recto-vaginal fistulas and other injuries to the reproductive system, accompanied by internal bleeding. The treatment and surgical reconstruction take a long time and involve costly operations.<sup>17</sup> However, after many years of conflict, the health care infrastructure is severely under-resourced and unable to offer even basic treatment. International medical and humanitarian NGOs in North Kivu, who run their own health care programmes, also support state facilities to enable them to provide at least a minimum service. For the survivors of sexual violence, the near impossibility of receiving decent medical treatment for the illnesses or injuries brought on by rape represents yet a further violation of their rights. Restoring the healthcare infrastructure and responding to the health needs of rape survivors and of the civilian population of the country needs to become a priority. Rebuilding state provision of basic health care is an essential base and springboard for the future social and economic development of this ravaged society.

The psychological consequences for victims of sexual violence often include depression, shock, intense feeling of terror, rage and shame, loss of self-esteem, self-blame, memory loss and nightmares. Therapeutic support and treatment is virtually non-existent in the DRC, except for the informal counselling provided by local NGOs and a small number of international NGO, such as Heal Africa, providing psychological support.<sup>18</sup>

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<sup>17</sup> Amnesty International, *Mass rape – Time for remedies*, Index: AFR 62/028/2004, October 2004, p.29.

<sup>18</sup> Amnesty International, *Mass rape – Time for remedies*, Index: AFR 62/028/2004, October 2004, p.31.

## SOCIAL AND ECONOMIC HARM

To add to the physical and psychological trauma, rape survivors typically encounter widespread discrimination and rejection by their communities, while a large number have been abandoned by their husbands and are left as sole carers for their children. Social and familial rejection carries enormous economic consequences for the victims, who are excluded from their homes and cut off from their means of livelihood. The widespread fear of HIV/AIDS in eastern DRC also contributes to the stigmatization of rape survivors and their children. When women are raped, this affects their own sense of self-respect, but also their status and their place in the community. They have often lost their livelihood and their capacity to provide for their children. In rural DRC, women are generally responsible for feeding the family through growing crops, conducting local trade in consumer products and other basic goods, collecting wood and water and looking after children.

For the women who were attacked in Walikale, the survival of their children has become a daily struggle. As nearly all their houses and shops were looted, most rape survivors have lost their means of subsistence and their utensils to work or cook with. Most have been left with no clothes but those they were wearing.

Several months later, most Walikale survivors' families still lack farming and cooking utensils and clothes. They struggle to continue their income generating activities because the attackers stole their work tools and because they have been physically and psychologically weakened by the rape and the violence.

In a country like the DRC, where even attending primary school has to be paid for by children's parents, the Walikale attack also has a significant impact on future generations. Walikale survivors have lost everything and are not able to afford education for their children. For parents whose households were pillaged during the mass rape, it has not been possible to afford to pay school fees since August.

Primary education in the DRC is officially free of charge, according to the DRC's Constitution, but the failure to provide state funding to pay teachers and to furnish schools means that this state commitment is not honoured. Both primary and secondary schools levy a charge on parents, payable monthly, to cover teachers' salaries, examination fees and administrative and other costs.

The desperate circumstances in which tens of thousands of victims of sexual violence in the DRC find themselves and the number and diversity of their needs present immediate and long-term challenges which should be addressed by all levels of Congolese society as well as the international donor community. However, to date, only NGOs and a handful of Congolese doctors and nurses have provided rape survivors with care and support. This response is woefully inadequate. A number of Congolese women's organizations, human rights groups, church bodies and development organizations have mobilized themselves to respond to the needs of survivors. In Amnesty International's view, these initiatives – most of which have proved successful at the local level – provide models which could and should be supported, adopted and implemented by the DRC government and international donors in a systematic national response to the crisis.

The UN and DRC government launched a Comprehensive Strategy on Combating Sexual Violence in the DRC in 2009. The strategy has five pillars: combating impunity; prevention and protection; security sector reform; multi-sectoral assistance for survivors; and data collection and mapping. It has been supported and financed by donors through the Stabilization Programme for the East (STAREC). This platform for a coordinated and comprehensive response is a welcome step, but more efforts are needed to ensure that all actors, including humanitarian NGOs, have the capacity and means to respond adequately.

## NOBODY TO TURN TO FOR SECURITY

The population of North Kivu and the humanitarian personnel working there live in constant fear of further attacks, not only by armed groups but also by the FARDC. The lack of protection provided by the FARDC and MONUSCO during the four days of mass rapes has only reinforced this fear. For several weeks, Walikale survivors hid in the forest, in dread of being attacked again by their assailants.

The Walikale attacks have starkly revealed the limits of the process to integrate armed groups into the Congolese army. The patchwork army, composed of untrained, unvetted former rebels who often keep separate chain of commands, commits human rights violations on an almost daily basis. As a result, the army does not enjoy the support and trust of the local population they are supposed to protect. The FARDC elements in charge in the Kibua and Mpopi area are former CNDP fighters. Although integrated in the army, they continue to pursue their own agenda, which does not include the protection of civilians as a priority. Not only do they fail to fulfil their duty to provide security for the civilian population, but they also perpetrate violations themselves. Amnesty International continues to receive allegations of killings, rape, abduction, forced labour, illegal detention and cruel and inhuman treatment.

On 19 September 2010, for example, a FARDC special commando unit of 450 soldiers reportedly looted many villages situated on the Pinga-Kibua axis, a few kilometres away from the Mpopi-Kibua axis, perpetrating killings and sexual violence<sup>19</sup>.

Only if the government establishes a properly vetted, properly trained and accountable army and police force can the Congolese population hope to be protected from human rights abuses in North Kivu. The international community's current approach to the financing of security sector reform is based on bilateral agreements,<sup>20</sup> rather than coordinated, multilateral programmes. This has enabled the DRC government to take advantage of the situation by selectively embracing certain reforms while delaying or avoiding others, in particular the reforms enhancing accountability of the FARDC. There is a proliferation of

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<sup>19</sup> Report of the Secretary general on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo, 8 October 2010 ( S/2010/512) para.11

<sup>20</sup> Key donors to security sector reform in the DRC are Angola, Belgium, China, The Netherlands, United Kingdom, USA, EUSEC and MONUSCO.

bilateral programmes focussing primarily on the government's need for training and equipment, rather than on reforming the vetting system and judicial sector. MONUSCO's role is to "harmonize" a process that has failed to produce tangible results. The lack of coordination between donors and the reliance on the government to undertake this task may result in the continuation of a culture of impunity in the armed forces.

## ACCESS TO JUSTICE AND REDRESS

Impunity for human rights violations, including crimes of sexual violence, is pervasive in the DRC. The justice system has been significantly weakened by the conflict. In addition to under-staffing and inadequate resourcing, the lack of security generated largely by the instability of the national army (including the involvement of its members in human rights violations), makes it almost impossible for judges and lawyers to conduct their work without interference, including threats, intimidation and attacks. Furthermore, survivors of sexual violence often fear reporting the crimes because of the social stigma attached to rape.

The widespread international attention that the mass rapes in Walikale received promises some level of justice for the survivors. <sup>21</sup> Since news of the crimes emerged, numerous UN and Congolese officials have spoken of the need for justice for the survivors. Various steps have been taken.

- The military prosecutor of the *Cour Opérationnelle Militaire* (Operational military court)<sup>22</sup> opened a judicial inquiry on 30 August 2010 into crimes against humanity of rape and looting. This exceptional court has jurisdiction to try any violations perpetrated in the context of the current military operation Amani Leo in North and South Kivu.
- At least one arrest has been made by MONUSCO in response to the crimes. On 5 October 2010, Lieutenant "Lieutenant Colonel" Sadoke Kokunda Mayele, chief of staff of the Cheka Mayi-Mayi group, was arrested and transferred to the *Auditorat Militaire* (military prosecutor). Two other Cheka Mayi-Mayi combatants and one member of the FDLR have reportedly surrendered to MONUSCO North Kivu Brigade. However, it is not clear whether they have been charged with any offence.
- A national investigation team composed of military prosecutors and investigating police

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<sup>21</sup> The attacks received wide international coverage and prompted visits to the victims by Atul Khare, Assistant Secretary-General in UN Department of Peacekeeping Operations, in August and of Margot Wallström, UN Special Representative of the Secretary-General on Sexual Violence in Conflict, in October. The UN Security Council condemned the attacks in a press statement on 26 August 2010 (SC/10016 AFR 2030).

<sup>22</sup> The Operational military court was especially created by a Presidential decree in January 2008 to try soldiers involved in military operations in North and South Kivu.

officers was to be deployed to Walikale in October 2010, after receiving a two-week training session on investigations techniques and protection of victims and witnesses.

Many survivors have also courageously spoken out about what happened to them, including in meetings with Margot Wallström, the UN Special Representative on Sexual Violence in Conflict, during her recent visit to Walikale.

Although these developments in the investigation and prosecution of crimes committed in Walikale are generally steps in the right direction, Amnesty International has a number of concerns about the approach currently being taken.

First, Amnesty International is concerned that current efforts may result in suspected perpetrators being prosecuted before the *Cour Operationelle Militaire* – a military court. Amnesty International, other NGOs, the UN Special Rapporteur on the independence of judges and lawyers and the UN Office of the High Commissioner of Human Rights, among others, have all documented numerous flaws in the military courts in the DRC.<sup>23</sup> Although the *Cour Opérationelle Militaire* is currently more dynamic than the civil courts, serious fair trial concerns arise. In particular, the court does not provide for the right of appeal.

Crimes of rape and sexual violence amounting to crimes against humanity and war crimes should be tried not by military courts but by competent, independent and impartial civilian courts established by law in proceedings that fully respect internationally recognized guarantees of fair trial and do not impose the death penalty. However, civilian courts in the DRC do not have jurisdiction over crimes under international law. It is imperative that the DRC enact without delay effective implementing legislation for the Rome Statute of the International Criminal Court, incorporating recommendations made by Amnesty International and other civil society organizations.<sup>24</sup> Of course, enactment of legislation defining these crimes as crimes under national law is not sufficient. It is essential to begin the long-term process of rebuilding the DRC's criminal and civil justice system to ensure that criminal trials and judicial proceedings seeking reparations are effective and fair.

Second, the strategy for investigating and prosecuting crimes committed in Walikale is unclear. The arrest so far of just one senior official indicates that the focus may be on prosecuting only a few of the military commanders accused of commanding the forces that committed the crimes. Such a limited approach would be insufficient, especially taking into

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<sup>23</sup> The Operational military court was especially created by a Presidential decree in January 2008 to try soldiers involved in military operations in North and South Kivu

<sup>24</sup> See, for example, Amnesty International, *Democratic Republic of Congo: Parliament must reform and enact International Criminal Court bill*, Index: AFR 62/002/2006, 3 February 2006; *Amnesty International's comments and recommendations on the July 2003 draft law implementing the Rome Statute of the International Criminal Court*, Index: AFR 62/008/2004, 27 May 2004, (<http://www.amnesty.org/en/library/info/AFR62/008/2004/en>); *Democratic Republic of Congo: Open letter to the Minister of Foreign Affairs in the DRC on the implementation of the ICC*, Index: AFR 62/031/2003, 28 September 2003, (<http://www.amnesty.org/en/library/info/AFR62/031/2003>).

account that lower ranking combatants who committed sexual violence are likely to be promoted to positions of command. Instead, a comprehensive approach is required to ensure that all those who committed or oversaw rape and other crimes in Walikale are arrested and prosecuted. In addition, it is essential to investigate their civilian superiors whenever there are reasonable grounds for suspecting that they may have higher responsibility for these crimes. Taking a comprehensive approach to deliver justice in this high profile case has the potential to send a clear message to all combatants in the DRC that sexual violence will no longer be tolerated.

Third, although Amnesty International acknowledges that training has been provided to military investigators, it is not clear whether continued support will be provided to the investigations and prosecutions. The DRC enacted progressive laws on the prosecution of crimes of sexual violence in 2006. However, these laws have been enforced by Congolese courts only in a very small number of cases. All necessary assistance must be made available, including where appropriate from international experts, to ensure that investigations and prosecutions meet international standards and ensure the dignity of survivors throughout the process. Furthermore, it is essential that effective systems are put in place both to protect those involved in the justice process from interference and to ensure that survivors and witnesses are supported and protected, informed about proceedings and able to participate in those proceedings. Survivors must be enabled to obtain full reparations, either in the criminal proceedings or in civil proceedings.

Fourth, interference by the army in the arrest of Lieutenant Colonel Yusuf Mboneza and the DRC government's refusal to arrest Bosco Ntanga demonstrate the challenges in arresting suspects. Both the government and MONUSCO will need to commit themselves fully to tracking and arresting those charged with the crimes.

Finally, it is not enough to pursue justice for crimes committed in Walikale. To focus efforts on one high profile situation and ignore the broader causes of impunity would do little towards protecting civilians against sexual violence and other human rights violations. In October, following the release of the UN Mapping Report highlighting crimes committed in the DRC between 1993 and 2003, Amnesty International called on the DRC government and the UN to establish a Task Force to develop a long-term, comprehensive action plan to end impunity for crimes committed in the country. Such a plan will require: resources both from the DRC government (which, in marked contrast to other countries in Africa and around the world, currently devotes only 0.6 per cent of its annual budget to justice) and donors; vetting and training of the security forces to ensure that the justice system can operate without threats and interference; and assistance from international experts to support the national justice system during a period of transition.

Amnesty International notes that consideration is being given to establishing a "mixed tribunal" made up of international and Congolese staff to investigate and prosecute serious human rights violations. If this initiative goes ahead, it is essential that such a mechanism forms part of a comprehensive plan of action to address crimes committed in the country and does not divert resources from developing and implementing such a plan. Lessons need to be learned from the failures of models implemented in Bosnia and Herzegovina, Kosovo, Sierra Leone, Timor Leste and Cambodia. In all these cases, a small numbers of suspects were prosecuted at massive cost, while making little or no contribution to rebuilding the national

justice system. If human rights are ever to prosper in the DRC, the DRC has to have in place a fair and effective criminal and civil justice system able to try all crimes and hear all civil suits promptly, whose judgments are effectively enforced.

## RECOMMENDATIONS

### **To the government of the DRC:**

The government of the DRC should:

- Fulfil its fundamental responsibility to protect its civilian population through the deployment of disciplined security forces that are well-trained on the rights of civilians to protection, including the prohibition of sexual violence.
- Suspend from duty and exclude from positions in the FARDC anyone implicated in human rights violations, including rape, pending investigations.
- Ensure, with the cooperation of donor countries and the UN, that the crimes committed in Walikale and all crimes under international law committed in the DRC are fully investigated and those responsible prosecuted in proceedings that meet international standards of fair trial and respect the dignity of survivors.
- Ensure full cooperation between national authorities (including the FARDC) and national and international investigations and prosecutions of crimes under international law, including ensuring the arrest of all individuals charged with crimes under international law.
- Ensure the protection and support of survivors and witnesses and all those involved in the justice process.
- Ensure that survivors receive full and effective reparations.
- Convene at an early date an international conference in the DRC, with the technical assistance of the UN, to which all interested states, intergovernmental organizations, civil society and victims' representatives are invited, to mobilize the international community to follow up on the options set out in the UN Mapping report and support the DRC in developing a long-term, comprehensive action plan to end impunity for crimes committed in the country.
- Establish with the input of international and national experts and civil society a long-term, comprehensive action plan to end impunity for crimes committed in the country.
- Enact legislation to implement the Rome Statute of the International Criminal Court, in accordance with Amnesty International's recommendations, ensuring the jurisdiction of civilian courts over crimes under international law.
- Ensure, with the cooperation of donor countries and the UN, that the national health care system is rehabilitated and that health centres, including rural health centres, are provided with an adequate supply of essential drugs, technical aid and materials; support the

professional training of medical staff.

- Ensure that survivors can access a full range of medical and psycho-social services and information, including in particular relating to post-exposure prophylaxis, emergency contraception, safe abortion and antenatal and delivery care.
- Use political influence, as well as human and material resources to support programmes to promote the activities and reinforce the capacities of local NGOs assisting victims in the DRC, and provide support and protection for local human rights defenders.

**To foreign and Congolese armed groups:**

Armed groups must:

- Immediately end crimes under international law against the civilian population, including killings, torture, rape and other sexual violence, looting and the recruitment and use of child soldiers.
- Cooperate with national and international investigations and prosecutions of crimes under international law, including the arrest and surrender of any person charged with crimes under international law.

**To the United Nations:**

The United Nations should:

- Ensure that peacekeeping troops have a clear obligation to provide effective protection to civilians under the MONUSCO Chapter VII mandate; this obligation must be backed up by strong leadership.
- Train the peacekeeping troops, in particular on their duties with regard to protection of civilians; and provide them with the necessary resources to actively patrol areas, by day and by night, where violence against women is most likely, for example in areas where armed groups are known to operate, roads and major footpaths on market days, major trade routes and agricultural land bordering hills.
- Provide full support to investigations, including by: providing protection to the teams investigating the facts and national authorities prosecuting cases; and protecting and supporting survivors and witnesses. The UN should assist in the recruitment of international experts as necessary to ensure that investigations and prosecutions of crimes committed in Walikale and other crimes under international law committed in the DRC meet international standards of fair trial and respect the dignity of survivors.
- Support the organisation of an international conference in the DRC to which all interested states, intergovernmental organizations, civil society and victims' representatives are invited, to mobilize the international community to follow up on the option set out in the UN Mapping report and support the DRC in developing a long-term, comprehensive action plan to end impunity for crimes committed in the country
- Establish a law enforcement unit in MONUSCO with a clear mandate to implement UN

Security Council Resolution 1925 to “[s]upport the efforts of the Government of the Democratic Republic of the Congo . . . to promote and protect human rights and to fight impunity” and to “[s]upport national and international efforts to bring perpetrators to justice”, by arresting individuals suspected of crimes under international law; provide this law enforcement unit with sufficient financial, material and personnel resources and state-of-the-art intelligence gathering capacity so that it is not dependent upon individual states.

**To the international community:**

The international community should:

- Ensure a more concerted and comprehensive approach between donors to the reform of the security sector in order to develop together, in collaboration with the DRC authorities, a realistic and sustainable strategy which integrates reform of the justice system and the fight for accountability.
- Provide the necessary funding for the reform of justice system in the DRC in order to ensure an effective follow-up of the UN mapping report so that justice is rendered to victims of past and present crimes.
- Reinforce its efforts to tackle the medical, psycho-social and economic consequences of sexual violence, in collaboration with the DRC authorities; assistance for the socio-economic reintegration of victims should be included in the aid programmes to be funded.
- Provide long-term and sustained resources to local organizations supporting victims and defending human rights, to enable them to plan their work over the longer term and to spread information about good practices across the DRC.
- Prioritize the views and concerns of women and girls when granting funding and when identifying priorities for investment and reconstruction; enable women and girls to participate politically in reconstruction efforts, as required by Security Council Resolution 1325.



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