

**“IF YOU RESIST,
WE’LL SHOOT YOU”**

THE DEMOCRATIC REPUBLIC
OF THE CONGO AND THE CASE
FOR AN EFFECTIVE ARMS TRADE
TREATY

**AMNESTY
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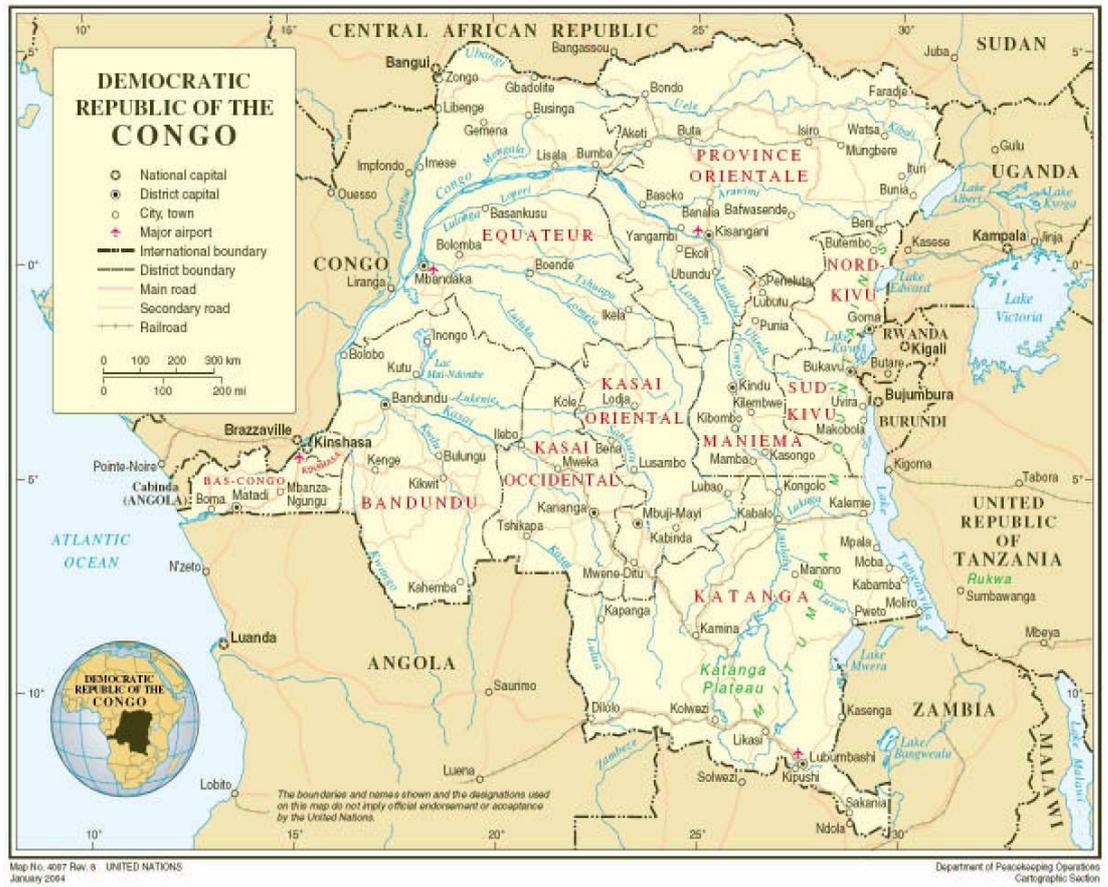
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MAP OF THE DRC



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GLOSSARY

ADF/NALU - Allied Democratic Forces/National Army for the Liberation of Uganda (Forces démocratiques alliées/Armée nationale de libération de l'Ouganda)

ATT - Arms Trade Treaty

CNC - National Commission on the Control of Small Arms and Light Weapons and Armed Violence Reduction (Commission nationale de contrôle des armes légères et de petit calibre et de réduction de la violence armée)

CNDP - National Congress for the Defence of the People (Congrès national pour la défense du Peuple).

DRC – Democratic Republic of the Congo

EU – European Union

FARDC – Armed Forces of the Democratic Republic of the Congo (Forces armées de la République démocratique du Congo).

GoE – UN Group of Experts on the Democratic Republic of the Congo

ICC – International Criminal Court

IHL – International Humanitarian Law

FDLR - Democratic Forces for the Liberation of Rwanda (Forces Démocratiques de Libération du Rwanda)

FNL - Burundian National Forces of Liberation (Forces nationales de libération)

LRA – Lord's Resistance Army (Armée de résistance du Seigneur)

LENI - National Intervention Legion (Légion nationale d'intervention), unit of the Congolese National Police

MONUC - United Nations Organization Mission in the Democratic Republic of the Congo (Mission de l'Organisation des Nations unies en République démocratique du Congo).

MONUSCO - United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (Mission de l'Organisation des Nations unies pour la stabilisation en République démocratique du Congo).

OCHA – United Nations Office for the Coordination of Humanitarian Affairs

OSCE – Organization for Security and Co-operation in Europe

RCD - Congolese Democratic Rally (Rassemblement congolais pour la démocratie)

RG – The Republican Guard (Garde républicaine)

RPG - Rocket-propelled grenade

SALW - Small Arms and Lights Weapons

UN – United Nations

UDPS - Union for Democracy and Social Progress (Union pour la Démocratie et le Progrès Social)

UNSC – United Nations Security Council

UNJHRO – United Nations Joint Human Rights Office

1 INTRODUCTION

The Democratic Republic of the Congo (DRC) has been plagued by almost two decades of conflict that has resulted in the suffering of millions of men, women and children. Crimes under international law including unlawful killings, enforced disappearance, torture and sexual violence have been committed on a large scale by national and foreign armies, armed groups and militias. A UN Mapping Report published in October 2010 documented over 600 serious violations of international human rights and humanitarian law committed between March 1993 and June 2003, including crimes against humanity and war crimes. The Congolese security forces¹ and armed groups continue to commit violations of international human rights and humanitarian law.

This is particularly the case in eastern DRC, where armed groups and government forces have been responsible for unlawful killings of civilians. Rape and other forms of sexual violence are widely reported, committed by government forces, including the armed forces of the DRC (*Forces Armées de la République démocratique du Congo, FARDC*), and armed groups. Children have continued to be recruited as soldiers for armed groups including the Lord's Resistance Army (*Armée de Résistance du Seigneur, LRA*) and the Democratic Forces for the Liberation of Rwanda (*Forces Démocratiques de Libération du Rwanda, FDLR*).² These armed groups have abducted children and used them as fighters or as cooks, spies and messengers, or subjected them to sexual violence and cruel and inhumane treatment. Following violent clashes between the FARDC and deserters and armed groups in North and South Kivu province in April and May 2012, the number of internally displaced people increased to over 2 million.³

Past and current violations of international human rights and humanitarian law committed by all parties to the conflict have been sustained by the easy availability of arms, including ammunition. In an attempt to address this issue, on 28 July 2003, the UN Security Council (UNSC) imposed a mandatory arms embargo against all armed groups operating in the provinces of North and South Kivu and the Ituri region of eastern DRC. The embargo also included groups not party to the December 2002 peace agreement. On 18 May 2005, the embargo was strengthened and applied to the entire country, with certain exceptions, for example on arms supplies to units formally integrated into the DRC's national army and police forces. These measures, however, have failed to adequately prevent the flow of conventional arms used to commit or facilitate serious human rights violations. Moreover, in 2008, the UNSC removed the restrictions on supplies to non-integrated units in the armed forces and those still going through the process, thereby giving the government complete freedom to import weapons and munitions for its security forces. The UNSC hereby disregarded persistent reports that such weapons and munitions, especially small arms and ammunition, are diverted from official holdings to armed groups and also used by soldiers to commit and facilitate violations of human rights.

Amnesty International and other local and international organizations, including the UN have documented the dire human rights situation in the DRC. This report focuses on several cases that illustrate the scale of crimes under international law committed by Congolese security forces and armed groups using a range of weaponry, munitions and other equipment. It will examine fundamental flaws in the national security apparatus, which exacerbate violations and abuses. These flaws include serious shortcomings in stockpile management and the deployment and use of military equipment, lack of control and transparency and corruption among security forces. The failure to hold to account those responsible for such violations further entrenches a culture of impunity which remains pervasive in the country and fosters cycles of violence and violations.

In spite of the substantial risk of arms transfers being used to commit or facilitate serious violations of international human rights and humanitarian law, states such as China, France, the Ukraine and the USA have supplied arms to the Congolese security forces. This supply of weaponry and munitions to government forces has also become the main source of arms for armed groups operating in eastern DRC, in spite of the UNSC arms embargo.⁴

The proliferation and misuse of arms in the DRC is the result of many years of irresponsible deliveries to government forces, unlawful trafficking to armed groups and the failure to achieve sustained security sector reform in the context of wider efforts to bring peace and respect for human rights to the country. This report describes some of the horrific attacks on civilians by security forces and armed groups using various types of arms, and identifies the main suppliers of arms to the DRC. It does not address in detail the wider problems of security sector reform.

The continued transfer of arms into abusive hands in the DRC underscores the urgent need for the UN arms embargo system to be strengthened and complimented by an effective Arms Trade Treaty (ATT) to ensure that all governments adopt rules to prevent the transfer of arms internationally where there is a substantial risk that the arms will be used to commit or facilitate serious violations of international human rights law or international humanitarian law. A UN arms embargo is a measure applied by the Security Council to entities once they are already using arms to threaten international peace and security, and once a human rights and humanitarian crisis is already affecting a population. As such a UN arms embargo is often imposed too late to prevent serious violations of international human rights and humanitarian law.

In contrast, the ATT would be a tool for the international community to constantly act to prevent irresponsible and illegal arms transfers. To achieve this, the Treaty should include a requirement for States to undertake a rigorous risk assessment that examines whether in each case there is likely to be a substantial risk of the arms transfer under consideration being used to commit or facilitate serious violations of international human rights law or international humanitarian law. Where that risk is substantial the supplying State must deny the authorization until that risk is totally removed. Thus, the report highlights some of the key human rights safeguards that must be examined as part of undertaking such a rigorous risk

assessment.

In July 2012 all UN Member States are invited to negotiate and agree the final text of a comprehensive ATT. Facing up to the experience of arms proliferation and abuse in the DRC and the long suffering of its people, as well as other similar cases, should help to persuade States to establish strict rules consistent with State's existing responsibilities under international law. This will go a long way to prevent serious violations of international human rights and humanitarian law.

2 A WEAKENED UN ARMS EMBARGO

The UN Security Council (SC) decided to weaken its arms embargo on the DRC in 2008 and this has had major consequences for the proliferation of arms in the country. Amnesty International reported in July 2005 on international arms flows to Central Africa. It raised concerns about large scale deliveries to countries neighbouring the DRC, including Rwanda and Uganda, after the 28 July 2003 UNSC arms embargo had been imposed.⁵ The UN Panel of Experts on the Illegal Exploitation of Natural Resources in the DRC provided the UNSC with evidence in October 2003 of how all three states – the DRC, Rwanda and Uganda - had provided military support to armed groups in eastern DRC. On 18 April 2005, the UNSC decided to extend the arms embargo to cover the whole country and apply to any recipient within the DRC's territory, with certain exceptions (Resolution 1596). Those exceptions included arms for use by the UN Organization Mission in the DRC (MONUC)⁶, or arms and training for the armed forces and police, provided that the units had completed their integration process, or operated under the command, respectively, of the integrated general staff (*état-major intégré*) of the armed forces or of the national police, or were in the process of their integration in the DRC outside the provinces of North and South Kivu and the Ituri district. Arms shipments could only be received at a limited number of sites as designated by “the Government of National Unity and Transition, in coordination with MONUC, and notified in advance to the Committee.”⁷

On 31 March 2008, these restrictions, including the designated import sites, were removed by the UNSC through Resolution 1807, which states that the previous measures “shall no longer apply to the supply, sale or transfer of arms and related materiel, and the provision of any assistance, advice or training related to military activities to the Government of the [DRC].”⁸ However, the resolution stipulated that supplier states should notify the Sanctions Committee in advance of any arms shipment or provision of military training or assistance supplied to the DRC. At the time, Amnesty International warned that it was inappropriate to ease the UNSC arms embargo while the integration of armed groups into the regular army in the eastern Kivu provinces was unresolved since this would lead to the diversion of weapons and ammunition to armed groups.⁹ There were also confirmed reports that armed groups, particularly the National Congress for the Defence of the People (*Congrès national pour la défense du Peuple, CNDP*)¹⁰, were obtaining arms and ammunition in abundance from the DRC armed forces (FARDC) by capturing, stealing and buying them. This problem persists four years on.

3 PATTERNS OF HUMAN RIGHTS AND HUMANITARIAN LAW VIOLATIONS

Serious violations of international human rights and humanitarian law, including crimes against humanity and war crimes have been committed by Congolese security forces and armed groups throughout the DRC over the last two decades and continue to be committed.

Amnesty International and other organizations have on numerous occasions documented the scale and gravity of the violations committed in the DRC and the almost total impunity that prevails. These include torture, enforced disappearances, and sexual violence committed on a systematic or widespread basis by all forces,¹¹ the widespread use and recruitment of children into the armed conflicts,¹² countless acts of extrajudicial executions and other unlawful killings, unlawful arrest and detention, as well as violations in the context of exploitation of mineral resources.¹³

A significant proportion of these violations have been committed in the context of armed conflict. The country was engulfed in two wars between 1996-1997 and 1998-2003, during which the forces of at least six governments and many more armed groups fought for political, economic and military control of the country, notably in the east.

The UN Mapping Report, which documented the most serious violations of international human rights and humanitarian law committed between March 1993 and June 2003, noted that the vast majority of crimes it covered could be defined as crimes against humanity and war crimes.¹⁴ It also indicated that the question of whether the numerous serious acts of violence committed against members of the Hutu ethnic group by the Rwandan army and the Alliance of Democratic Forces for the Liberation of Congo (*Alliance des Forces Démocratiques pour la Libération du Congo, AFDL*) armed group constituted crimes of genocide remains unresolved and could only be decided by a competent court following a full judicial investigation.

The DRC, Rwanda and Uganda reached peace agreements in 2002 and the main Congolese political parties signed a Global and All-Inclusive Agreement in December 2002.¹⁵ These have brought about a reduction in fighting, but have not ended the conflict and mass violations.

Serious violations of international human rights and humanitarian law continue to be committed on a regular basis, notably in eastern DRC. The struggle for power and access to resources between Congolese and foreign armed groups, along with constant shifts in alliances, has kept the region in a state of conflict.

Armed groups, including the LRA, the FDLR, Burundian National Forces of

Liberation (*Forces nationales de libération, FNL*), the ADF/NALU and various Mayi-Mayi groups, have committed numerous human rights abuses against civilians using weaponry and munitions. This includes rapes, killings, looting and abduction, notably in Orientale, North and South Kivu provinces.¹⁶ The CNDP armed group, which was integrated into the national army in 2009 while retaining its autonomy, committed human rights violations including unlawful killings and arbitrary arrests before integration and its elements continued committing abuses as part of the FARDC.

Congolese security forces, notably the FARDC, also continue to commit violations of international human rights and humanitarian law using a range of weaponry, armaments and munitions, including in the context of military operations conducted in the east of the country.

Violations by Congolese security forces have also been committed that are not directly related to the armed conflict. Amnesty International and other organizations have documented widespread and politically motivated extrajudicial killings, arbitrary detentions and torture and other ill-treatment committed against alleged supporters of the opposition to President Joseph Kabila and his ruling party, in the aftermath of the 2006 elections¹⁷ and during the electoral process in 2011.¹⁸

Chapters four and five focus on specific cases that illustrate these patterns of violations committed and facilitated by Congolese security forces and armed groups using weapons, munitions and related equipment as well as the structural issues characterizing the national security apparatus.

4 FLAWED SECURITY APPARATUS – THEFT, DIVERSION AND LACK OF CONTROLS

Congolese security institutions are characterized by a marked lack of control and transparency over weapons, munitions and related equipment. This, in a climate of widespread corruption and impunity, makes theft and diversion of weapons and ammunition easier. Such a situation results in the persistent misuse of such arms by soldiers, police and armed groups to commit and facilitate serious violations of international human rights and humanitarian law.

While crimes under international law have been and continue to be committed on a large scale by the Congolese security forces and armed groups, Amnesty international has focused in this report on specific cases of serious violations and abuses that illustrate the structural issues pertaining to military, security and police institutional failures, over the control of weapons, munitions and related equipment, in the DRC. These examples demonstrate the urgent need for security sector reform and for specific safeguards to ensure the lawful use of conventional arms in the DRC; safeguards which foreign states must examine carefully when deciding whether to authorize further transfers of arms to the DRC.

THE LACK OF CONTROL AND TRANSPARENCY ON MILITARY EQUIPMENT

A major weakness of the current framework for management of weapons, munitions and related equipment in the DRC is the lack of institutional controls especially on FARDC military equipment – a problem reported in a number of public documents, including UN reports. Indeed, the security forces, particularly the army, have been plagued by various problems that encourage diversion, theft, and corruption. Some of these problems remain unsolved precisely because of opposition from senior army officers, who profit from the status quo. Lack of political will to challenge those senior army officers and to reform the security sector institutions is a key obstacle to progress, particularly in the field of security sector reform.¹⁹

To date in the DRC, no accurate record is available of FARDC's weapons, munitions and related equipment. Most FARDC weapons remain unmarked (and unregistered) and consequently there is no database that could link a specific army unit to a specific stock of weapons, munitions or related equipment.²⁰ No attempts have been made at the level of the Amani Leo military operation structure for eastern DRC and that of the military regions²¹ to archive serial numbers, markings and other relevant data collected from weapons, munitions and related equipment identified as being used to commit human rights violations. This is a problem acknowledged in UN resolutions, including in November 2010, a month before the attacks in Bushani, when FARDC soldiers committed violations, including mass rapes, in the

province of North Kivu.²²

Current legislation on small arms in the DRC is outdated and does not require small arms and its ammunition to be marked on import, export or transfer. The falsification, illicit removal or alteration of markings has not been criminalized.²³

The process to initiate weapons marking illustrates the inadequacy of the systems currently in place. When the DRC requested assistance to mark all FARDC and police weapons, it received in September 2010 a donation of three US marking machines to cover the entire country.²⁴ This work was undertaken by the Regional Centre of Small Arms (RECSA) which launched an operation to mark state-owned Small Arms and Light Weapons (SALW).²⁵ According to the National Commission on the Control of Small Arms and Light Weapons and Armed Violence Reduction (*Commission nationale de contrôle des armes légères et de petit calibre et de réduction de la violence armée, CNC*), 250,000 weapons out of the existing state arsenal of two million weapons should be marked over the next five years.²⁶ However, as of March 2012, the DRC government still needed to validate the ISO standard codes to use for marking purposes.²⁷ According to the CNC, the three machines are now being used for training in Kinshasa.

The FARDC has become increasingly opaque in its workings during the last few years, especially with regard to its handling of the integration of armed groups. Following the rapid integration of CNDP forces into the FARDC in early 2009, reportedly only a limited number of weapons were handed in: “seven PKM machine guns, one MAG machine gun, seven RPG-7 rockets, four 60mm mortars, one 82mm mortar, six 75mm recoilless guns, two SPG-9 recoilless guns and four multiple rocket launchers”.²⁸

During the whole process, less than half of the CNDP forces undergoing integration declared weapons.²⁹ Some other militia units who were integrated without weapons claimed they had already surrendered them to their former commanders.³⁰ As a result, many weapons stockpiles remained in the hands of commanders, stored in secret caches. In May 2009, the Congolese intelligence services conducted a raid on one cache in North Kivu and recovered “34,000 rounds of 7.62 x 39mm ammunition, 1,100 rounds of 12.7mm ammunition, 77 RPG-7 rockets and three boxes of anti-tank mines”.³¹ According to the UN Group of Experts on the DRC (GoE), first appointed in 2004 as part of the mechanism to monitor the arms embargo, this represented a fraction of what remains hidden away.³² According to MONUSCO personnel, many former CNDP soldiers who kept their weapons on integration consider them to be their personal property.

In 2011, the GoE reported that, during a government stock take of all armaments in its possession, some FARDC commanders, including ex-CNDP, refused to have their arms and ammunition evaluated, arguing that those armaments did not belong to the government.³³ One MONUSCO staff member described it as a “don’t ask me about what you didn’t give me” attitude.

The lack of stockpile management and a culture within the FARDC of privatizing

weapons caches have made possible the deployment and diversion of equipment which is now untraceable. The GoE reported in 2008 that “the [Congolese] government does not know how many of its arms are stored at which depots and with which units. There are accordingly few safeguards in place to prevent the illegal sale of weapons and ammunition to non-governmental armed groups”.³⁴ The GoE illustrated this in its 2009 report on “an internal investigation into the state of the South Kivu military region’s stockpile conducted on 2 February 2009, concerning significant stocks of arms and ammunition that had either disappeared or were not being accounted for. The results show that two boxes of 40mm grenades, six boxes of 14.5mm ammunition and the equivalent of 7.5 cases of 7.62 x 39mm ammunition had gone missing and that there was a recorded surplus of seven boxes of 12.7mm ammunition, 25 boxes of 82mm mortar bombs, five boxes of 60mm mortar bombs, and 10 boxes of 7.62 x 54mm ammunition.”³⁵ This is accentuated by the fact that in certain places in the DRC, soldiers are allowed to take their weapons home instead of handing them back at the end of their period of duty.

A high-ranking FARDC officer told Amnesty International that use of ammunition by individual soldiers is also uncontrolled; there is no respect for “basic load”: previously spent ammunition is not recorded before further ammunition is distributed, which allows for diversion.

Lack of accountability extends to the lack of information about the identity of individual soldiers. The issue of identification is currently being tackled only partially. Since an European Union (EU) programme of biometric identification of soldiers started in 2008/2009, most soldiers have now been issued with an ID card – although some ex-CNDP have refused it.³⁶ However, the card does not record the weapon used by the soldier.

The urgent recommendation made in October 2009 by the UN Special Rapporteur on extrajudicial, summary or arbitrary executions for soldiers’ uniforms to display their name and unit has been largely ignored.³⁷ Although new uniforms had been distributed as of 30 June 2010, many of the soldiers that Amnesty International met in the Kivus during 2011 and 2012 still did not have uniforms bearing their names. While this relates to the broader issue of security sector reform, the continuing failure to ensure all soldiers are readily identifiable contributes to the incidence of violations of international human rights and humanitarian law. Those who commit violations know they are less likely to be held to account if they cannot be identified with certainty. Apart from other considerations, the continuing problem of impunity of the army and security forces in the DRC, discussed at greater length below, must be taken into account by foreign states when evaluating whether a particular arms supply proposal poses a substantial risk that the arms are likely to be used to commit or facilitate serious violations of international human rights law or international humanitarian law.

THEFT AND DIVERSION

For years, FARDC military equipment has been leaked to armed groups, both to FARDC-supported militia and armed opposition groups. In December 2011, the GoE concluded that “[a]rmed groups continue to obtain most of their arms, ammunition and uniforms from FARDC. Leakage from FARDC stocks, whether through small-scale barter, larger transactions, abandonment or seizure on the battlefield, is widespread and largely uncontrolled.”³⁸

Theft and corruption within the military have also contributed to the breakdown of security and increase in the flow of arms from FARDC ranks to armed groups and criminals. Corruption among high-ranking commanders has resulted in the diversion of soldiers’ pay. Low or non-existent wages have led many soldiers – who are often already sympathizers of armed groups³⁹ – to prey on the civilian population to survive.

Diversions take several forms. FARDC elements, notably high-ranking soldiers, often sell or give weapons and munitions to armed groups, including groups they are conducting military operations against. Armed groups have often obtained weapons and munitions left behind by FARDC units fleeing combat zones.

In its 2005 report, *Arming the East*, Amnesty International documented arms deliveries by the DRC government to armed groups and militia before and after the imposition of the UN arms embargo in 2003.⁴⁰ The report stressed that “(...) both the DRC government and the international community, (...) need urgently to address the shortcomings in the DRC’s army reform and demobilization programmes. This will certainly help control the transfer of arms and help prevent the diversion of arms to unaccountable weapons-bearers who commit human rights abuses in the region.”

In its 2007 report, during the attempted integration of Laurent Nkunda’s CNDP forces into the national army, the GoE pointed out that, “considering the limited command and control by the eighth Military Region of forces loyal to Nkunda, it is difficult to see how supplying these forces with arms and related materiel ... can be done within the terms of the UNSC arms embargo in its current form.” The report concluded that “the sale of arms and ammunition by individual FARDC soldiers to supplement their income, poor stockpile control combined with endemic corruption within the security services, acquisition of embargoed material on the battlefield and transfers to armed groups by sympathetic individuals are all means of supply”⁴¹

In its February 2008 report, the GoE pointed out that “CNDP military wing has often obtained armaments by collecting weapons abandoned by FARDC troops during combat.”⁴² This is precisely what took place in the case of the raids on Rumangabo less than a year after the publication of the UN GoE’s report. The GoE was also informed of “individual FARDC elements providing arms to the Democratic Forces for the Liberation of Rwanda / Combating Forces Abacunguzi (*Forces*

*Démocratiques de Libération du Rwanda/Forces Combattantes Abacunguzi, FDLR-FOCA) fighters”.*⁴³

While there are finally plans by the UN and EU to tackle the issue, diversion remains a considerable institutional problem within the FARDC. The integration of the CNDP into the Congolese army and the FARDC military operations against the FDLR did not contribute to solve that issue. On the contrary, recent defections within the FARDC of ex-CNDP soldiers and high-ranking officials loyal to former CNDP Chief of Staff Bosco Ntaganda illustrate the pitfalls of the hasty and inadequate integration process. Credible sources indicated to Amnesty International in May 2012 that the Congolese army had given a truck full of ammunition, and tens of thousands of dollars for supplies, to a FARDC Colonel who then deserted with the arms and joined Ntaganda's forces. In addition, the attacks in Shabunda territory at the beginning of 2012, as described later in this report, show that commercial incentives still drive the sale of FARDC military equipment, especially ammunition, to armed groups.

In 2011, Amnesty International received information suggesting that a FARDC Colonel at the military base of Biruwe, in Walikale territory, supplied weapons, ammunition and military uniforms to the Mayi-Mayi Sheka armed group purely for commercial reasons. This case has been documented by the GoE in 2011, where it stated that Mayi-Mayi Sheka “has also established close collaboration with FARDC officers in charge of the FARDC base of Biruwe”, and that a FARDC commander “has consistently provided arms and ammunition from its own stock to Sheka's rebels.”⁴⁴

THE RUMANGABO RAIDS

The Rumangabo raids illustrate how theft and diversion of arms facilitated attacks on civilians between October and November 2008, when scores of civilians were killed during CNDP attacks just days after they looted a FARDC arms depot.

CNDP military capacity stemmed mainly from FARDC equipment that had either been handed over to the CNDP by the government during an attempt at integration between January and September 2007, or been captured by the CNDP after they withdrew from the process. Before the January 2008 Goma peace agreement signed between the Congolese government and 22 armed groups, including the CNDP, in which parties committed to an immediate ceasefire and to respect international human rights law, the CNDP had already captured stocks of weapons and munitions from FARDC troops. There were allegations that these diversions took place with the complicity of FARDC brigade officers.⁴⁵

Following the renewal of the hostilities in August 2008, the CNDP looted the Katsiro weapons depot in September.⁴⁶ On 7 October 2008, the CNDP targeted Rumangabo, located south of Kiwanja, on the road between Goma and Rutshuru town, reportedly entering the military camp wearing FARDC uniforms.⁴⁷ A CNDP spokesperson later that day confirmed to the press that the camp and all its equipment had fallen into their hands.⁴⁸ When the CNDP left the military camp on 9 October, after negotiations with MONUC, it removed several heavy weapons, including two multiple rocket launchers.⁴⁹ Later in October, foreign photojournalists documented CNDP troops parading their new weapons, including pieces of artillery,

mortar launch tubes, small arms and ammunition as well as a truck mounted with guns.⁵⁰



© James Akena/ Reuters

A fighter from the National Congress for the Defence of the People (CNDP) rebel group looks at weapons captured during fighting with the Congolese army in Rumangabo, 17 October 2008.



© AFP PHOTO/Roberto Schmidt

Fighters from the CNDP man a twin barrel 37mm automatic anti-aircraft gun during a parade on 17 October 2008. (The weapon is either a Russian M1939 or a Chinese Type 65, which is a direct copy of the Russian one).

On 26 October, in a simultaneous push towards Rutshuru and Goma, the CNDP launched a new, successful attack on Rumangabo.⁵¹ Tens of tons of arms had been reportedly delivered to Rumangabo camp only a few days before the attack and once again, as they had done only a few weeks earlier, the

CNDP stole them. Laurent Nkunda, CNDP leader at the time, gloated about it to foreign journalists, saying his weapons came from the FARDC and China:

“I’ve taken Rumangabo two times. We can’t even count the number of weapons we captured at Rumangabo, there were so many. After the first time, the FARDC filled it up again, with arms of all calibres: anti-aircraft, anti-tank guns. It’s the government that gave them to me. I would like to say thank you to China, for giving the FARDC all these weapons”.⁵²

A subsequent UN report in 2008, as well as testimony of MONUSCO staff interviewed by Amnesty International in 2011, stated that the FARDC should be blamed for the careless delivery and subsequent looting at the camp, and suggested that FARDC had been complicit in the planning of the attacks of Rumangabo.⁵³

CNDP units used FARDC military equipment regularly during this time. The capture of stock from Rumangabo increased the CNDP military advantage and accelerated its offensive. Foreign journalists observed CNDP troops in FARDC jeeps in Rutshuru territory the day before the massacre at Kiwanja.⁵⁴

During the major offensive between October and November 2008, the CNDP captured large areas of North Kivu province and almost took the provincial capital, Goma, killing scores of civilians in the process. One of the most atrocious examples of abuses committed by the CNDP took place in the town of Kiwanja, in Rutshuru territory, where at least 150 civilians were killed a few days after the CNDP had looted Rumangabo camp for the second time.⁵⁵

The build-up to the massacre started on 28-29 October, when the CNDP overcame government forces and took control of Kiwanja, followed by an attack on 4 November 2008 by pro-government Mayi Mayi militia. The CNDP regrouped and counter-attacked without giving prior warning to civilians. At around 5am on 5 November, the CNDP started its offensive and, by around 2pm, had retaken Kiwanja while the Mayi Mayi fled to positions nearby. The CNDP reportedly used weapons such as mortars and rockets during the offensive.⁵⁶ Once in control of Kiwanja, the CNDP undertook a systematic reprisal operation against civilians, going from house to house through the Buturande (majority Nande) and Mabungo (majority Hutu) districts in the centre of the town from late afternoon until the following morning. By 6 November, some 150 people had been killed – most of them Nande and Hutu victims of unlawful killings by the CNDP.⁵⁷

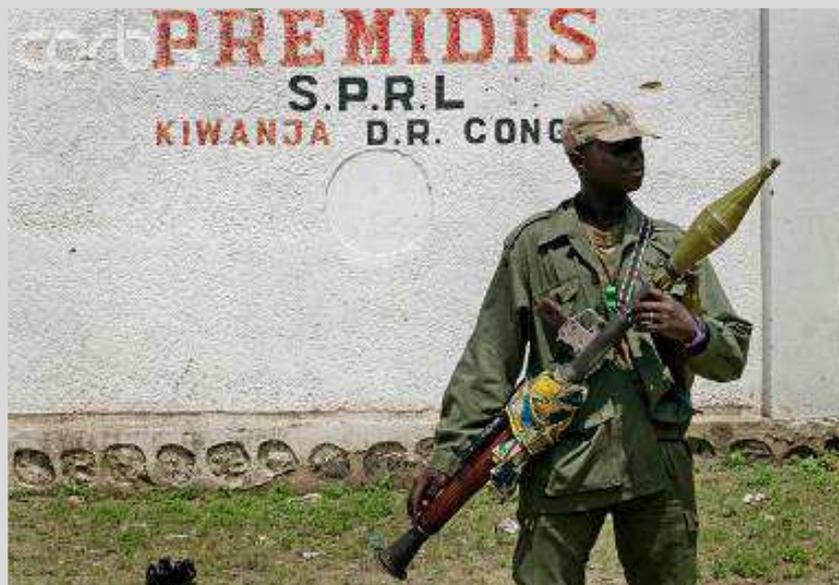
Eyewitnesses, describing most of the victims as “young fathers and newly-weds”, said they were pulled from their homes and shot in the head or upper chest, or stabbed to death. A UN investigation at the time found that “CNDP elements conducted targeted and reprisal killings of the villagers, mainly young men whom they suspected of being either members or collaborators of the Mayi Mayi”. According to information gathered by the GoE, the toll of civilian deaths amounted to 89, among them two children, three women and 84 men. Sometimes entire families were killed. One survivor, Peter, told Amnesty International in 2008:

“When the CNDP attacked my father, they told all of us to get inside. I was there with my father, my mother and my younger brother. I was hiding in the ceiling [space under the roof]. I saw six CNDP enter the house. It was around 5pm. They said nothing. They had something like a hoe (*houe*) and they used this to beat my father and younger brother to death. Then they shot my mother. They looted our belongings. After they left, I could hear them going into other houses. I stayed hidden until the next

morning, when I fled the town.”

According to the victims, abuses, including murders and rapes by suspected CNDP members, took place in nearby fields at the time of the massacre as well as afterwards. People were desperate for food and anxious that their harvest would be looted by armed groups who could subject them to intimidation and violence on the farmlands. In 2011, Amnesty International interviewed victims and documented how CNDP troops ambushed villagers around Kiwanja in their fields and executed young men, and raped and killed women. Sarah went to the family field near Kahunga, after 5 November with her younger brother, Patient:

”I went to our field with Patient. We were leaving the field and he was carrying a load of wood on his head, when some Tutsi/CNDP soldiers with pagnes wrapped around their weapons, attacked us. They grabbed Patient and just shot him in the chest. Then, they took away our harvest and chased me away. I couldn’t do anything about my brother’s body. We were able to get the body back only four days later. I still don’t know why they killed Patient.”⁵⁸



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A soldier, loyal to rebel General Laurent Nkunda, stands guard in Kiwanja after a night of fighting with the pro-government Mayi-Mayi militia near the city of Goma, eastern Congo, 6 November 2008.

The CNDP acknowledged that a massacre took place in Kiwanja but claimed the Mayi Mayi were responsible. They also claimed that many of the dead had been killed in crossfire – while UN and human rights organizations’ investigations stated most of the killings were in fact extrajudicial executions.

5 IMPUNITY AND CORRUPTION – FUELLING ABUSES

Impunity for crimes under international law committed by security forces along with corruption within the FARDC, fuel human rights violations and facilitate the diversion of weapons to armed groups that also commit abuses.

IMPUNITY WITHIN FARDC

At present in the DRC, military courts have exclusive jurisdiction over crimes of genocide, crimes against humanity and war crimes. No one can be prosecuted for such crimes in civilian courts under current law.

The UN Mapping Report, which was mandated to assess the capacity of the Congolese justice system to deal with these crimes, pointed to a series of limitations in the military justice system that made it incapable of addressing the scores of crimes under international law committed in the DRC. Considering the number of these crimes committed in the past, the UN Mapping Report highlighted that only a dozen or more cases were dealt with by Congolese jurisdictions, and only two of those related to crimes committed between March 1993 and June 2003 - the period covered by the Mapping Exercise.⁵⁹ Furthermore, even in the few cases tried by the military courts, no awards of compensation for victims were implemented.⁶⁰

While progress was made in terms of new cases being prosecuted following the Mapping Report's publication, the current state of military tribunals, which are obstructed by military interference, lack of resources and prison escapes, mean that impunity remains pervasive among FARDC soldiers suspected of violations.⁶¹ Almost all those convicted and sentenced for war crimes or other crimes under international law have escaped from prison.⁶²

Numerous crimes under international law committed by Congolese armed forces failed to give rise to any investigation and no proper vetting mechanism was established to ensure suspected perpetrators were removed from official positions.

Impunity has become further entrenched within FARDC since commanders of armed groups who allegedly were directly responsible for serious crimes under international law have been integrated into the FARDC without being subjected to criminal investigation. They have continued to be implicated in new human rights violations.

Bosco Ntaganda is a prime example. In 2008, he was among the CNDP commanders reportedly responsible for the Kiwanja operations which led to the unlawful killings of scores of civilians. CNDP chief of staff at the time, Ntaganda had been issued with an International Criminal Court (ICC) arrest warrant since

2006 for war crimes he is alleged to have committed in Ituri between 2002 and 2003.

On 5 November 2008, the day of the killings, Bosco Ntaganda was filmed in Kiwanja and the UN has said that it considers him to have direct and command responsibility for this massacre.⁶³ In spite of his status as the leader of an armed group responsible for attacks on civilians and others, Ntaganda has since been integrated into the FARDC and promoted to the post of general where he continued to be Deputy Commander of Amani Leo operations. However, the DRC authorities have given contradictory statements with regard to whether he had a formal position within the armed forces.⁶⁴

In December 2011, the GoE reported that Ntaganda admitted planning every operation carried out in North and South Kivu since the 2009 integration, including in Bushani where rape, and other acts of sexual violence as well as torture were committed by FARDC troops at the end of 2010.⁶⁵ The government, in spite of its 2009 stated policy of “zero tolerance” for human rights violations committed by its forces, still refuses to hand him over to the ICC, arguing it is doing so for the sake of peace and stability.⁶⁶ While President Kabila suggested in Goma in April 2012 that Ntaganda may be arrested, he remains at large at the time of writing this report.

For several years, there have been clear patterns of attacks against civilians by Congolese armed forces, particularly during military operations. One of the most shocking massacres took place during the anti-FDLR military operations when, between 27 and 30 April 2009, reportedly at least 100 people were unlawfully killed by FARDC troops in Shalio, in North Kivu. Most of the victims were women and children.⁶⁷ While some were shot in the neck, others were killed by machete or clubbed to death. Dozens of women and girls were raped, and some were kept as sexual slaves and then killed.⁶⁸ Following their findings on the killings and other abuses by the FARDC and FDLR from March to October, including in Shalio, the GoE called “for the urgent establishment of a vetting mechanism and the strengthening of accountability and the justice system”.⁶⁹ However, Amnesty International is not aware of any national or international investigations into the Shalio massacre; perpetrators have not been brought to justice and comprehensive vetting mechanisms have not been established.

Impunity and a climate of lawlessness may also foster retaliation attacks. In apparent retaliation for the massacre in Shalio, the FDLR unlawfully killed at least 96 civilians in Busurungi, Walikale territory, on 10 May 2009. Some of the victims were burned alive in their homes.

RAPE, AND OTHER FORMS OF SEXUAL VIOLENCE AND TORTURE COMMITTED BY FARDC TROOPS IN BUSHANI

Weapons and ammunition either facilitated or were used to commit serious violations of international human rights and international humanitarian law in Bushani. Since 2008, there have been three major FARDC offensives against the Rwandan Hutu FDLR rebel group in eastern DRC.⁷⁰ These offensives were described as “catastrophic” from a human rights perspective by the UN Special Rapporteur on

extrajudicial, summary or arbitrary executions in October 2009, due to the killing, rape and mutilation of scores of civilians.⁷¹

Between 31 December 2010 and 1 January 2011, at least 100 FARDC soldiers attacked Kalambahiro and Bushani villages in North Kivu province, reportedly accusing the villagers of siding with the enemy.⁷² In Bushani, the troops surrounded the village and shot several times in the air, forcing villagers to flee into the forest. The soldiers also looted at least 100 houses and three buildings, and set on fire or destroyed at least four houses in both villages. Villagers who did not flee Bushani were detained by their attackers and some women were raped.⁷³ In the forest, many of the fleeing villagers encountered more soldiers who either ambushed them or continued to hunt them down over the course of the following day. Captured women were then also raped:

“It was around 3pm when we suddenly saw the military in the village. I fled like everyone else. The following morning, when I was looking for the children in the forest, I got suddenly surrounded by the soldiers. Personally I wasn’t raped, but I heard the cries of other women who had been caught by the military and were shouting, screaming.” Marie, a resident of Bushani.

According to a UN investigation, at least 47 women, between the ages of 16 and 65, were subjected to sexual violence, including single or multiple rapes. According to statements collected by local NGOs, several women said that the military fired on the ground or in the air to intimidate them before raping or subjecting them to other types of sexual violence, and even threatened to execute some of them if they resisted. One woman was told: “If you resist, we’ll shoot you.”

Some of them were beaten up further after being sexually abused, sometimes by several soldiers, and robbed of any money they had on them. According to a confidential report seen by Amnesty International, most women who were attacked claimed their attackers were young men, wearing green uniforms commonly worn by the FARDC, and spoke Kinyarwanda, a language used by CNDP troops integrated into the FARDC.⁷⁴ Victims interviewed by the UN also claimed that the uniforms bore the FARDC tag.⁷⁵ Suspected perpetrators of these violations remain at large.⁷⁶

The use of weapons or the threat of their use by FARDC in Bushani was instrumental in the perpetration of violations. A UN investigation counted a total of 82 cartridge cases in several places in the village of Bushani corresponding to ammunition for AK47 and 7.62x51mm calibre weaponry.⁷⁷ According to UN investigators, the 7.62x51mm calibre is also used by the FARDC.⁷⁸ The investigation concluded that the men in uniforms were indeed FARDC.⁷⁹ Based on credible information, Amnesty International concluded that some of the cartridges found at the scene were of Chinese origin.

It remains unclear which specific battalion within the FARDC attacked the villages, largely because of difficulties in identifying precisely specific units within the FARDC. The UN team tasked with investigating the incident reported that used-rations for MONUSCO-screened FARDC troops were found at Bushani. Several hypotheses were made in this regard, including that “that the rations intended for the 2222 battalion [one of the two screened battalions] were received by Major Eustache Ntambara, who introduced himself as the representative of the 2222 battalion, although at that point he was actually the commander of the 2223 battalion, an unscreened battalion which was not intended to take part in Operation

“Hatua Yamana”.⁸⁰

The North Kivu military prosecutor was powerless to investigate this further, given the prominence in the overall FARDC hierarchy of Bosco Ntaganda, who the UN concluded was continuing to exert de facto control over ex-CNDP units within the FARDC, and to enjoy protection against his ICC arrest warrant, at least prior to his defection in April 2012.⁸¹ In addition to the lack of co-operation from commanders during investigations, the Bushani case also illustrates the difficulty in identifying suspected perpetrators within the FARDC when soldiers do not wear tags with name and unit information.

IMPUNITY FOR THE REPUBLICAN GUARD

The UN and Amnesty International, among others, have also documented numerous human rights violations perpetrated by the Republican Guard (*Garde républicaine, RG*) since its creation in 1997, including before and after the 2006 presidential elections. In July 2007, the UN Office for Human Rights concluded that “the political instrumentalization of the RG, its vague mandate and its undisciplined soldiers represent a threat to all Congolese (...)”.⁸² The violations committed by the RG around the 2011 elections are a direct consequence of the impunity it enjoyed for earlier crimes.

According to Congolese law, the mission of the RG is to ensure the protection of the president and presidential premises and facilities, and to provide escorts and “honours” at the presidential level. However, there have been numerous instances of intervention by the RG in the past, which had little relevance to their mandate.⁸³ According to several sources, while exports of military equipment to the DRC usually lack transparency, transfers of equipment to the RG are particularly opaque. The RG has reportedly the best equipment at its disposal.

Some, including local human rights NGOs, have conceded an improvement in the general behaviour of the National Intervention Legion (*Légion nationale d'intervention, LENI*) including as a result of the MONUSCO United Nations Joint Human Rights Office (UNJHRO) training all battalions and commanders of the LENI in 2011 in Kinshasa on human rights related to the elections. However, the consensus among human rights NGOs is that the police, along with the rest of the security services, is politicized and used by the government to crack down on the opposition.

The UN report on serious human rights violations committed by the members of the defence and security forces between November and December 2011 in Kinshasa illustrates how these forces were used to crack down on the opposition during the electoral process.⁸⁴

THE 26 NOVEMBER N'DJILI AIRPORT INCIDENT

On 28 November 2011, presidential and parliamentary elections were held in the DRC. The electoral process was marred, however, by serious human rights violations both before and after the elections.⁸⁵ In Kinshasa alone, at least 33 people were killed and several injured - mainly by the RG and riot police forces - in a number of incidents between 26 November and 25 December.⁸⁶ There were also reports of arbitrary arrests, illegal detention in secret locations, and unlawful killings.

One of the most serious human rights violations in Kinshasa took place on 26 November, the last day of the election campaign. The RG used excessive force against civilians at N'djili airport and in town. According to Human Rights Watch, at least 12 opposition supporters and bystanders were fatally shot and 41 others suffered gunshot wounds.⁸⁷

Early on 26 November, vast crowds of supporters of Etienne Tshisekedi, president Kabila's main opponent, congregated along with Kabila supporters at the gates of Kinshasa's N'djili airport. Both candidates were scheduled to land there and hold their last electoral meetings before election day. About 20 personnel of the RG were reportedly securing N'djili's two entrances, as usual.



© REUTERS/Finbarr O'Reilly

A member of the presidential guard fires into a crowd of opposition UDPS supporters outside N'Djili airport in Kinshasa, 26 November 2011. (The guard on the left is holding a French-manufactured, Cougar, grenade launcher, and the guard on the right is holding an AK-type rifle.)



© Jerome Delay, AP

Congolese riot police in an armoured vehicles drive the streets of Kinshasa, DRC, 7 December 2011. (This anti-riot armoured vehicle is Chinese-manufactured, by Poly Technologies, and is equipped with an open roof turret armed with a 7.62mm machine gun.)

According to local sources, there was also a significant deployment of Congolese riot police, the LENI. The LENI patrolled outside the airport gates on foot and in their armoured vehicles. These included Chinese-manufactured Poly Technology anti-riot armoured vehicles (as pictured above), which were used along with intermittent tear gas to keep the crowds away from the gates. Tensions rose just after midday, when the presidential convoy arrived at N'djili airport to pick up President Kabila. According to witnesses, some Tshisekedi's supporters threw rocks at the armoured cars. In response, the RG rushed out of the airport enclosure and started firing. Videos, pictures and testimonies clearly show how some elements of the RG fired in the air while others aimed their weapons at demonstrators and shot at them repeatedly with live ammunition, even though there was no imminent threat of death or serious injury.⁸⁸ Meanwhile, the LENI started firing tear gas again at demonstrators.

Amnesty International interviewed a relative of a victim who went out to do some shopping. The relative was near Liberty Market (*Marché de la Liberté*) in Masina commune, and saw a member of the RG, who was in the Presidential convoy on 26 November, shoot and hit the victim in the chest. Still alive, the man was taken to the hospital but died later.

Other incidents leading to the death of several people took place on 9 and 10 December 2011 following the publication of the provisional results for the presidential election, when members of the RG and the Congolese national fired live ammunition at demonstrators and passers-by. Amnesty international is especially concerned by credible information about the existence of mass graves, notably at Kinsuka cemetery, as well as many allegations of enforced disappearances and the concealment of bodies.⁸⁹

Amnesty International has also received allegations of acts of torture, ill-treatment and arbitrary and illegal arrests by the defence and security forces. These violations were reportedly carried out with the intention of intimidating members of opposition parties, notably the Union for Democracy and Social

Progress (*Union pour la Démocratie et le Progrès Social, UDPS*), and their actual and perceived supporters as well as journalists, military personnel and police officers.

Although the DRC's Minister of Justice and Human Rights asked the competent civil and military judicial authorities to open investigations into allegations of electoral violence in December 2011 and February 2012, the results of such investigations have been limited so far. Many serious human rights violations committed by the defence and security forces and documented by Amnesty International and other institutions have not been the subject of proper investigations or criminal trials.

France and South Africa provided the government of the DRC with weapons, munitions and related equipment including tear gas and other "less-lethal" weaponry, for law enforcement operations during the elections.

No markings were found on two AK-47 cartridge casings collected by a witness at the airport on 26 November. However, Lugansk Cartridge Works in Ukraine was identified as the manufacturer of an AK-47 cartridge case reportedly collected on 26 November on Boulevard Lumumba, the road leading to the airport.⁹⁰ It is unclear when this ammunition would have entered the DRC.⁹¹ There is no data available for arms supplies including ammunition from the Ukraine or Russia to the DRC between 1988 and 2010. The ammunition originating from Ukraine could have come in before 1988 via another country.⁹²

A journalist present during another incident on 23 December reported the RG was being transported around Kinshasa in Ukrainian KrAZ military trucks.

SALES OF ARMS BY FARDC TO ARMED GROUPS

While impunity fuels further violations of international human rights and humanitarian law, the ready availability of weapons and ammunition also contributes to such violations. This is particularly the case in eastern DRC. In several cases, the capacity of armed groups to conduct attacks against civilians was heightened by the groups' purchases of military equipment from corrupt FARDC networks. Widespread corruption, armed-group sympathisers within the army, combined with poor to non-existent wages within the FARDC contribute to the steady flow of military equipment, in particular ammunition, from FARDC ranks to armed groups and criminals.⁹³ FARDC elements or their family members often sell ammunition to armed groups, including groups they are conducting military operations against. Abuses committed in 2010 and 2011 in Shabunda territory are a stark example of this phenomenon.

At the time of the Raia Mutomboki (described below) and the FDLR attacks, both groups were reportedly sourcing ammunition from the FARDC. If the reports are accurate, such ammunition transfers would have facilitated the repeated attacks against civilians by both groups throughout 2011. In the fall-out from the January 2012 attacks, the FARDC authorities did crack down on the groups' activities, but seemingly failed to take action against corrupt FARDC soldiers implicated in supplying them with ammunition.

A high-ranking FARDC officer told Amnesty International that, while ammunition is indeed difficult to control and the armed groups' supply network hard to eradicate, the groups obtain only 'small quantities of ammunition' from the FARDC.⁹⁴ Other credible sources, including with the UN, however, are adamant that a large quantity of ammunition around the Kivu provinces comes from FARDC stockpiles. In late 2011, the GoE concluded that 'armed groups continue to obtain most of their arms, ammunition and uniforms from FARDC'.⁹⁵ This is unsurprising given the lack of control and the failure to discipline FARDC soldiers who transfer arms or ammunition to armed groups.⁹⁶

THE CYCLE OF VIOLATIONS AND REPRISALS IN THE SHABUNDA TERRITORY

From January 2011, FARDC brigades in North and South Kivu underwent a reorganization process called regimentation, leaving entire territories previously regained from the FDLR and other armed groups in a security void. Only one FARDC regiment remained in Shabunda town to protect the whole of the territory.⁹⁷ No longer under pressure from the FARDC, the FDLR came out of hiding in the forests and started attacking the civilian population.

Victims interviewed by Amnesty International, as well as other sources, state that the FDLR killed, raped and pillaged, and also threatened civilians with violence to extort 'protection' money from them. They also carried out kidnappings in mining areas.⁹⁸ One Shabunda villager told Amnesty International: "*The FDLR live in the forest around the territory; it's in their habit to attack our villages. They had already attacked several times, they usually loot and rape, we keep silent and stay in our houses.*" The frequent attacks on civilians by the FDLR spurred several waves of internal displacement in the territory.⁹⁹

Villagers in Shabunda territory reactivated an old self-defence group called the Raia Mutomboki, literally "the citizens are revolting" to fight the FDLR and to retrieve the land for Shabunda's main ethnic group, the Barega. The Raia soon started attacking the FDLR in their forest hide-outs. Originally equipped with spears and machetes, the Raia Mutomboki soon obtained FDLR AK-47s. The self-defence group also received financial support from the local population and politicians, though they sometimes used coercion.¹⁰⁰

Diversion of FARDC ammunition facilitated fighting between the two armed groups and made their attacks against civilians more lethal. According to various sources, prior to the January 2012 attacks in Shabunda territory, the Raia and the FDLR reportedly purchased ammunition from the FARDC.¹⁰¹

Throughout October 2011, the Raia and the FDLR confronted each other in several incidents in north-east Shabunda. More internal displacement ensued. An FARDC intelligence source reported to Amnesty International that, between the middle and end of October, two Raia commanders led offensives against at least three villages that killed at least 100 people – including members of the FDLR and many of their family members. A local politician told Amnesty International that 20 FDLR fighters had been killed during these operations, but mentioned no civilians.¹⁰² Amnesty International has not been able to determine the actual facts of these incidents, but by the end of 2011, the Raia Mutomboki had garnered more local support as a result of the attacks.

The FDLR responded to these attacks by deliberately targeting villages perceived as siding with the Raia Mutomboki, including against individuals where there was no reason to believe they were actually part of the fighting force of the self-defence group.¹⁰³ Between the end of December 2011 and early January

2012, the FDLR committed violations of international humanitarian law against civilians not involved in fighting, including murder, attempted murder and pillage in at least seven villages in the Baliga and Bamuguba Sud groupements in Shabunda.

The attacks followed similar patterns. Villages were surrounded and then fired upon. Men, women and children were killed inside their homes – either by being shot or hit with machetes. Attackers also locked up villagers in their houses before setting them on fire.¹⁰⁴ A UN investigation was able to confirm that at least 33 people, including six women and nine children were killed in some of the villages attacked, but the figure could be as high as 53 killed in all villages.¹⁰⁵ Thirty seven people, including eight children, suffered such severe firearms or machete injuries they were evacuated by the International Committee of the Red Cross (ICRC) to Bukavu hospital.¹⁰⁶ The FDLR reportedly kidnapped villagers and forced them to carry away looted goods.¹⁰⁷

Amnesty International received several testimonies on how weapons were used during the attacks on villages by the FDLR between 31 December 2011 and 9 January 2012. In Lokolia village, a witness recalled how a group of about 35 armed FDLR men wearing military fatigues, arrived in the village, singing in Kinyarwanda. The men started shooting and broke into houses with the intention to kill. At least one five-month-old baby was shot dead and two older children were injured –despite their parents begging for them to be spared.

Another villager from Luyuyu told Amnesty International how the FDLR arrived at around 6am: “They started shooting, we do not know which weapon they had, but we heard the burst of shots. There were many people but I can’t tell how many. It was the Interahamwe, because of their dialect. I was at home, with my children and my wife, we and the whole village fled in the forest. I was shot (in the knee) but the rest of my family wasn’t injured. Family members later carried me to Nzovu. There were people shot or injured by machetes.”

The January 2012 attacks triggered massive internal displacement, including from villages that had not been targeted by the armed group.¹⁰⁸ Further displacement took place in late January due to battles between the FARDC and the Raia, and in February, when the FARDC launched ‘Amani Kamilifu’, a 90-day joint operation against the FDLR.¹⁰⁹ According to recent reports, the cycle of attacks and reprisals against civilians by the Raia and the FDLR continue with a series of attacks in South and North Kivu over the last three months during which many civilians were killed.

The FDLR arsenal is composed of AK-47, general purpose machine guns, and, mortars (60 and 82). This is the result of a combination of weapons brought in from Rwanda after the 1994 genocide, alleged deliveries from Laurent Kabila before 2000, purchases from the RCD-Goma armed group after the 2003 peace agreement, purchases and gifts from FARDC officers and ongoing purchases from neighbouring countries, including Burundi and Tanzania.¹¹⁰ Their equipment is thus very similar to the FARDC’s and makes ammunition purchases from the FARDC logical.¹¹¹ One UN source told Amnesty International that “the FARDC authorities cannot acknowledge it but all the FDLR ammunition comes from the FARDC. Everyone knows this”.

6 THE MAIN ARMS SUPPLIERS

The main arms suppliers to the DRC since 2000 have been China, France, the Ukraine and the USA.¹¹²

CHINESE-MANUFACTURED WEAPONRY

A considerable part of the FARDC armed forces' stockpile is made up of Chinese-manufactured weaponry, munitions and other equipment. Almost half of the army's tanks, such as the Type-59 and the Type-62, were produced in China. A considerable part of its artillery, too, such as the towed 122mm Type-60, the 130mm Type 59 and multiple rocket launchers such as the Type-63¹¹³ and the 85mm Type-56 anti-tank guns, are of Chinese origin.¹¹⁴

SMALL ARMS AND LIGHT WEAPONS AND AMMUNITION

On 18 May 2009, a vessel called An Xin Jiang carrying a Chinese flag and operated by the China Ocean Shipping Company, docked at the port of Matadi, in western DRC. Strangely, sixteen containers were unloaded, but the cargo manifests noted that eight contained ammunition and 11 contained "equipment" (although three of these also contained ammunition). The containers were then transported from the port by FARDC military trucks.¹¹⁵

On 16 April 2009, the Permanent Mission of the People's Republic of China to the United Nations sent a notification to the UN Security Council SC Sanctions Committee outlining a proposed delivery of small arms, light weapons and ammunition. The delivery was to be made at the end of May 2009 for use in China's training programme for the FADRC. This included 5,000 Type 56-2 sub machine guns, 2 million rounds each of Type 56 and Type 53 7.62mm ammunition, and 4,000 rounds of high explosive Type 69 shells.¹¹⁶ The UN Group of Experts (GoE) reported that it was unable to determine with certainty whether the cargo delivered to Matadi was the same cargo declared in the notification to the UN.¹¹⁷ Amnesty International wrote to the Permanent Representative of the People's Republic of China requesting information about what measures had been put in place to ensure adequate stockpile management and security of the arms shipment. The letter also asked if strict systems of registration, storage and accountability had been set up for the use of the above ammunition. As of 28 May 2012, Amnesty International had received no reply.

On 13 June 2008, China notified the UNSC Sanctions Committee that it was despatching a 16-person team of experts to the DRC for a one-year training programme.¹¹⁸ The notice failed to specify any training-related military or security equipment that would be supplied, and only mentioned the "subsistence materials including electrical appliances, beddings, kitchenware and seasoning."

In 2008, the UN reported that military supplies were flown to the FARDC from Khartoum, in Sudan, without notification to the UNSC Sanctions Committee. The GoE received credible information that the transported weapons were originated in

China.¹¹⁹

Head-stamps of cartridge casings collected by the MONUCSCO in Goma from the FDLR included some that bore Chinese markings, for example: 61 07. The '61' indicates that it was produced by the Chinese company Norinco and '07' indicates the year of manufacture as 2007.



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A cardboard box of cartridges. The cartridge casings encircled are: 1) 61 07 copper (Chinese, Norinco) date 2007; 2) 71 98 copper (Chinese, Norinco) date 1998; and, 3) 61 07 copper, brass primer (Chinese, Norinco) date 2007. Amnesty International visited the UN Demobilization, Disarmament, Repatriation, Resettlement and Reintegration storage in Goma on 29 November 2011 where weapons and ammunition collected from the FDLR are held until they are destroyed.

On 29 August 2006, according to the GoE, a delivery of 10,000 AK-47 magazines arrived at N'djili airport, Kinshasa, from China North Industries Corporation – that is Norinco as mentioned above. Paperwork relating to this transaction stated that \$1,125,000 had been paid to an agent authorized by the Minister of Defence for the delivery of 100,000 magazines for FARDC, via the designated entry point of Matadi port. Approximately 10,000 magazines were discovered at N'djili airport but no information was provided concerning further possible deliveries.

The GoE requested clarification from the Chinese government of this delivery since it could not confirm notification had been given to the UNSC Sanction Committee. The Chinese authorities confirmed that “this transaction had been examined and approved under strict process with all necessary documents, and is in conformity

with the requirements of relevant Security Council resolutions”.¹²⁰

MILITARY AND POLICE VEHICLES

China has supplied several types of military trucks and armoured vehicles to the DRC. It is not known exactly when the distinctive blue anti-riot armoured vehicles photographed in use by riot-police during the election violence in December 2011 were delivered to the DRC. This type of armoured vehicle is designed and manufactured by Poly Technologies, a subsidiary of the China Poly Group Corporation, a defence manufacturing and trading company with headquarters in Beijing, China.¹²¹ The vehicle was presented for the first time at the IDEX 2009 Defense Exhibition in Abu Dhabi, United Arab Emirates.¹²²



© Amnesty International.

Anti-riot armoured vehicles photographed at the riot police headquarters in Kinshasa on 23 February 2012

Chinese-manufactured water cannons were also used during the election violence in December 2011.¹²³



© Amnesty International.

The company logos on the front of the water cannon vehicles are those of Steyr (Austria) and the Shaanxi Automobile Group, manufactured in China. Note also the shield on the door of the vehicles, which reads: *Légion nationale d'intervention*, referring to LENI. Kinshasa, 23 February 2012.

UKRAINIAN ARMS DELIVERIES

Since 2000, the bulk of arms deliveries to the DRC have been from Ukraine which has exported Ukrainian-origin weapons, munitions, and armaments to the DRC, according to the UN Register on Conventional Arms and the Swedish International Peace Research Institute (SIPRI) - as the table below shows:¹²⁴

2010

- 36 2S11 120mm mortar
- 12 BM-21 Grad 122mm Self-propelled multiple rocket launchers
- 100 T-72M1 tanks¹²⁵
- 30 T-55 tanks
- 12 BM-21 multiple rocket launcher
- 12 122mm self-propelled towed artillery gun
- 12 152mm self-propelled towed artillery gun
- 36 D-30 howitzer
- 3 82mm mortar

- 4 Mi-24 B helicopters

2006

- 20 BMP-1 infantry fighting vehicles
- 20 T-55 tanks

2005

- 1 Mi-helicopter

2000

- six self-propelled guns
- 30 BTR-60PB armoured personnel carriers
- six MT-LB armoured personnel carriers
- four Mi-24 combat helicopters in 2000

In 2006, according to a report by the GoE, Ukraine shipped significant quantities of ammunition and armoured vehicles to the DRC's Ministry of Defence, ordered by the Ministry from the Ukrainian State enterprise, Ukroboronservice. The cargo arrived on the 26 July 2006 at Matadi port.¹²⁶ The Government of Ukraine had informed the UNSC Sanctions Committee of its export of this material in advance of delivery, in accordance with the requirements of the arms embargo at the time (Resolution 1596, 2005), although MONUC was only informed of the delivery after the cargo had been unloaded.¹²⁷

Amnesty International wrote to the State Service of Export Control in the Ukraine, requesting information about what measures had been put in place to ensure the adequate stockpile management and security of the arms transfers. It also requested information about the systems of registration, storage and accountability that had been set up for the use of the above weaponry, munitions, and other equipment. As of 28 May 2012, Amnesty International had received no reply.

FRENCH "CROWD CONTROL" SUPPLIES

On 3 November 2011, the government of France notified the UNSC Sanctions Committee of a delivery of 31 Flash-Ball F120SP (Super-Pro model) 44mm anti-riot grenade launchers and 2,200 Flash-Ball F201 cartridges for the 1st and 7th battalions of the Rapid Deployment Police of the Congolese National Police. The notification stated that these were for "the maintenance of order during elections".¹²⁸ The grenade launchers and cartridges – manufactured by the French company Verney Carron - were due to be shipped to the DRC on 15 November 2011.



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A Verney Carron 'Super-Pro' model Flash-Ball Gun photographed at the police station in Kinshasa, February 2012.



© Private

On the left of the photo is an empty Flash-B-all cartridge case that was fired into the compound of a human rights defender in Kinshasa on 23 December 2011 along with tear gas, and on the right a remnant of a distinctive 56mm French-manufactured tear gas grenade (grey with red band).

The 44mm Flash-Ball cartridges contain a large, soft rubber ball projectile which, according to the company's brochure, "has the stoppage power of a .38 Special"¹²⁹ - equivalent to a cartridge fired from a revolver, but without penetrating the body. In France, Amnesty International has criticized the lack of adequate training¹³⁰ of French police officers in the use of these types of "less lethal" weapons, which will be widely deployed in 2013.¹³¹ In a 2010 report, the French National Commission of Security Ethics recommended that the use of these weapons be reviewed because of several serious accidents resulting from their use in recent years. In the opinion of the Commission, shots fired by the "Superpro" Flash-Ball pose a problem with regard to "both the seriousness and the irreversibility of the manifestly inevitable collateral damage they cause"¹³²; it said it was concerned by the "totally disproportionate level of danger in terms of the purposes for which it was conceived".¹³³

The French government also notified the UNSC Sanctions Committee of another shipment to the same end-users in the DRC – the 1st and 7th battalions of the Congolese Rapid Deployment Police. This shipment was due to be delivered on 10 September 2011 in order to provide "security for elections", and was reported to include the following weaponry and munitions manufactured by Alsetex:

- 72 56mm Cougar Multi-light grenade launchers
- 900 GM2L tear gas grenades (stun and tear)
- 80 FAR smoke grenades
- 720 GENL stinger grenades
- 800 BDBE 40mm low velocity kinetic defence rounds

Amnesty International wrote to the French government, requesting information about what measures had been put in place to ensure the adequate stockpile management and security of the arms transfers. It also requested information about the systems of registration, storage and accountability that had been set up for the use of the above weaponry, munitions, and other equipment. As of 28 May 2012, Amnesty International had received no reply.

US AMMUNITION SUPPLIES

On 18 February 2010, the US government notified the UNSC Sanctions Committee that it would deliver military equipment including over 5 million rounds of ammunition (2.5 million rounds for AK type 7.62 x 39mm and 2.5 million rounds for AK-47 7.62 x 39mm) and 300,000 rounds for light machine gun type 7.62 x 39mm. The US government stated that this would be for the purposes of basic training for the FADRC armed forces. The ammunition was delivered to Kisangani on 6 September 2010. The origin of the ammunition is unknown but is unlikely to be of US-origin, as previous US government arms shipments of AK-type ammunition to other countries, for example Afghanistan or Iraq, by the USA of AK-type ammunition have been sourced from eastern and central Europe.¹³⁴

The US stated that the objective of the training was to:

“[...] enhance the capacity of [...] FARDC military personnel by providing basic military training. This will include training in light infantry tactics ranging from individual tasks to battalion collective tasks. Training components include battalion and company staff training, unit tactics training, communications training, medical training, weapons training and validation exercises.”¹³⁵

Amnesty International asked the US State Department, in a letter on 1 May 2012, for more information concerning the designated end-user, purpose and nature of the training involving the use of the ammunition shipment, as well as generally weaponry, munitions and other equipment. Amnesty International also requested information on what measures had been put in place to ensure the adequate stockpile management and security of the above arms shipment. It also requested information about the systems of registration, storage and accountability that had been set up for the use of the above weaponry, munitions, and other equipment. The US State Department replied stating that “ammunition was provided as a training aid. Secure storage for the ammunition was established prior to the arrival of the ammunition” and “to ensure that the ammunitions are used solely for training purposes, U.S-funded trainers control access to the ammunition and follow a strict system of accountability”. The US State Department also stated that the

training covers “law of land warfare, human rights, and civil-military operations.”¹³⁶

On 10 July 2009, the USA notified the UNSC Sanctions Committee of training it was providing to the DRC authorities in relation to security sector reform. It referred to the Rapid Reaction Force and the provision of training and equipment to support a light infantry battalion.¹³⁷ The training would be conducted by US military officers and contractors and the “purposewould be to develop a model unit that is well-trained, led, equipped, and supported by the Government of the DRC.” It was reported in July 2011 that Dyncorp had been awarded a minimum one-year contract by the US State Department to train the military in the DRC.¹³⁸

OTHER ARMS SUPPLIES

On 9 December 2011, the South African government notified the UNSC Sanctions Committee that the South African company, Nobleteq Arms and Ammunition (Pty) Ltd “intends to deliver” 3,300 40mm cartridges to the Congolese National Police on 30 November 2011.¹³⁹ The consigner of the munitions was the Swiss company Brugger and Thomet AG. The notification to the UNSC Sanctions Committee referred to the canisters as the SAPS Version, the version used by the South Africa Police Service. It is not clear from the notification why the arms transfer was to be shipped via South Africa and not directly from Switzerland. According to the notification, the port of entry for the arms transfer was D.R. Tambo International Airport, in South Africa. Amnesty International wrote to the Permanent Representative of South Africa to the United Nations and the Swiss government requesting information about the shipment of the arms transfer. As of 28 May 2012, Amnesty International had received no reply from the South Africa government. However, the Swiss government replied in a letter dated 24 May 2012 stating that “Switzerland has never issued any authorization for the export of war material to the [DRC]” and that “a possible re-export from the Republic of South Africa to the [DRC] would be carried out under the exclusive responsibility of the authorities of the Republic of South Africa”.

According to the GoE report published in 2011, Egypt twice notified the UNSC Sanctions Committee of shipments of “military material” to the DRC.¹⁴⁰ According to a cargo manifest obtained by SIPRI, “thousands of grenades, 7,000 mortar bombs, more than four million rounds of ammunition, and 700 rockets” were shipped by the Egyptian Ministry of Defence to the DRC government.¹⁴¹ The arms were delivered aboard the MV Chariot ship in August 2011, which is alleged to have shipped arms from Russia to Syria in December 2011.¹⁴²

In 2005 and 2006, Zimbabwe delivered arms to the DRC totalling \$900,000 worth of items under the UN customs category of military weapons.

7 HUMAN RIGHTS IN NATIONAL ARMS EXPORT CONTROLS

Amnesty International wrote to each of the main arms supplying states named in the report - China¹⁴³, France¹⁴⁴, South Africa¹⁴⁵, the Ukraine¹⁴⁶ and the USA¹⁴⁷ – to ask how each government had assessed the appropriateness of each arms transfer when it was proposed (as described in the previous chapter). Specifically, was there a rigorous assessment of the risk of the arms in each case being used by the proposed DRC end-user for human rights violations, or was there a risk of diversion.

An analysis of the arms export control laws and regulations of these five main supplier states to the DRC shows under what circumstances an arms transfer should be prohibited or prevented. The nature of the risk assessment procedures by these exporting states can be gleaned where the relevant information was publicly available.

CHINA

China's arms export regulations¹⁴⁸ state that the following broad principles shall be observed in exporting arms: (1) conduciveness to the capability for just self-defence of the recipient country; (2) no injury to the peace, security and stability of the region concerned and the world as a whole; (3) no interference in the internal affairs of the recipient country.¹⁴⁹ The regulations do not specify any criteria that should be part of a risk assessment process (such as the risk of serious violations of international human rights law) to determine whether an authorization should proceed. Because the regulations contain only general principles to take into consideration, they allow for a great deal of discretion on the part of individual license administrators to approve or deny an arms export licence. The lack of transparency in Chinese reporting means that it is impossible to know how that discretion is applied in practice.

The 2002 regulations give primacy to international treaties that China has signed or ratified over its domestic legislation.¹⁵⁰ However, there is no elaboration in Chinese arms export controls of what constitutes a breach of the regulations or the guiding principles, which international treaties are considered or how they should be applied and will be monitored.

FRANCE

France's controls governing international arms transfers are primarily set out in the 2004 Order No 1374¹⁵¹, which was amended in 2011.¹⁵² France relies on assessing licence applications against the criteria set out in Article 2 of the EU Common Position on Arms Export Controls:¹⁵³

“Member States shall deny an export licence if there is a clear risk that the military technology or equipment to be exported might be used for internal

repression; [and] exercise special caution and vigilance in issuing licences, on a case-by-case basis and taking account of the nature of the military technology or equipment, to countries where serious violations of human rights have been established by the competent bodies of the United Nations, by the European Union or by the Council of Europe.”¹⁵⁴

There are instances where the French authorities have agreed to send arms which in Amnesty International’s view are inconsistent with the application of criterion two of the EU Common Position.¹⁵⁵

The EU has also developed a best practice guide to assist states in implementing the Common Position, and “to achieve greater consistency in the application of the criteria set out in Article 2 of Council Common Position 2008/944/CFSP by identifying factors to be considered when assessing export licence applications.”¹⁵⁶ One of the shortcomings of the EU Common Position; it requires states to “assess” a potential transfer but does not indicate what sort of assessment is required to ensure that states meet a due diligence standard of meaningful and responsible enquiry into the level of existing risk.

SOUTH AFRICA

South Africa’s arms exports are guided by its National Conventional Arms Act which states that South Africa “will not trade in conventional arms with states engaged in repression, aggression and terrorism.”¹⁵⁷

The Act requires the government to “avoid contributing to internal repression” and “avoid transfers of conventional arms to governments that systematically violate or suppress human rights”.¹⁵⁸ However, the National Conventional Arms Control Committee (NCACC), chaired by the Minister of Justice, now appears to be routinely authorizing conventional arms sales to governments without the required oversight.¹⁵⁹

UKRAINE

The main principles of Ukraine’s state export control policy include: the Ukraine’s national interests including political, economic and defence; mandatory implementation of its international obligations on non-proliferation of weapons of mass destruction; and harmonization of these state export control procedures and regulations with international standards and practise.¹⁶⁰ The process for export control includes a consideration of issues for the approval of the export, although it is not known what these issues are, as well as verification that the export “is being used according to its declared purpose”.¹⁶¹

Ukraine as a participating state in the Organization for Security and Co-operation in Europe committed itself to the 1993 Principles Governing Conventional Arms Exports in which “Each participating State will avoid transfers which would be likely to, *inter alia*: (i) be used for the violation or suppression of human rights and fundamental freedoms;...” However, Ukraine has frequently exported arms to countries that are likely to be used for such violations.¹⁶²

As part of its authorization process, Ukraine obtains an import certificate from the recipient state that it will not re-export the arms without obtaining the permission of Ukraine, and Ukraine issues an end-user certificate stipulating that the arms will not be used for any other purpose than that designated in the certificate.

USA

US law contains precautionary human rights principles intended to be considered in an arms transfer decision.¹⁶³ Under the Foreign Assistance Act, which applies to exports of defence articles or defence services to government end-users:

“[Export licences] will generally be considered favourably on a case-by-case basis unless... there is evidence that the government of the importing country may have violated internationally recognized human rights”.¹⁶⁴

Foreign military or security assistance may not be provided to “any unit of the security forces of a foreign country if the Secretary of State has credible evidence that such unit has committed gross violations of human rights”.¹⁶⁵

Concerning the export of policing and security equipment, which is governed by the Export Administration Act:

“[L]icenses may not be issued under the Export Administration Act of 1979 for the export of crime control and detection instruments and equipment to a country, the government of which engages in a consistent pattern of gross violations of internationally recognized human rights”.¹⁶⁶

The US laws either take human rights into account in an arms-licensing decision or prohibit all arms transfers to a government that systematically commits gross human rights violations. However, there are other considerations in US law, including national security and foreign policy concerns, which appear to trump human rights concerns in the decision-making process, as is evident from the arms transfers that have been allowed.¹⁶⁷

As shown above national arms export controls vary considerably. The absence of strict national controls across the globe underscores the urgent need for an effective global Arms Trade Treaty based on the highest common standards.

8 HUMAN RIGHTS SAFEGUARDS IN RISK ASSESSMENT

To ensure a consistent and rigorous risk assessment by importing and exporting states of the potential risks of serious human rights violations, the Arms Trade Treaty (ATT) should include a due diligence standard which would require each state party, before issuing an export, import or transfer licence or authorization, to undertake an effective inquiry and meaningful assessment of each authorization application on a case-by-case basis, consistent with the assessment criteria in the Treaty.

Where there is a substantial risk that an international transfer of arms is likely to be used to commit or facilitate serious violations of international human rights law or international humanitarian law, the ATT should require states not to authorize that arms transfer. The criteria of an effective ATT should also require states not to transfer arms internationally where there is a substantial risk that they are likely to be used to perpetrate or facilitate a pattern of gender-based violence, including rape and other forms of sexual violence.

Including a concept of “serious violations” within the parameters of the ATT text would acknowledge that, while all human rights violations (and violations of international humanitarian law) are unlawful, only those of greatest concern to the international community will engage the special treaty machinery of the ATT: that is, where a proposed end-user of an export, import or international transfer of conventional arms under consideration is engaging in violations of an especially harmful nature or in persistent or pervasive violations of particular gravity through the use of arms.

Amnesty International has developed a practical methodology to assist states and regional organizations in respecting international human rights law in their arms transfer decisions.¹⁶⁸ It offers assessment guidelines to determine whether a proposed transfer presents a substantial risk and sets out a number of elements to consider in reaching a judgment.¹⁶⁹ This methodology details key risk assessment questions and how to make an assessment.

Any examination of substantial risk by arms export authorities should consider the proposed end-user’s current and past record in meeting their human rights obligations, and the particular nature of the arms or equipment under consideration. Assessing trends and patterns is necessary to determine the recipient’s systematic practise of human rights violations. To be effective, a risk analysis should also examine the likelihood of any foreseeable events as a means to prevent future violations. Has the recipient state taken appropriate steps to end violations and prevent their recurrence (such as through investigation and prosecution of those responsible for human rights violations, as well as reform and training to improve

adherence to the international human rights standards at the operational level, etc)?

Another important aspect of a responsible risk assessment should be an analysis of the capacity and ability of an end-user to use weapons, munitions, armaments and related equipment deployed for military or law enforcement operations in accordance with international law.¹⁷⁰ Of particular concern is the need to properly examine the following: accountability of the perpetrators of violations; accountability for the use of arms, including command systems and adequate training in accordance with international human rights and humanitarian law; and adequate arms management systems, including safe and secure stockpiles to prevent theft or diversion of any arms.

ACCOUNTABILITY FOR PERPETRATORS OF VIOLATIONS

The level of impunity that exists in a state, especially across the security apparatus, is a critical factor in considering whether or not to license the transfer of arms. In assessing risk in such situations there are a number of potential questions a licensing official could consider. These questions include: is there evidence of the suspension from duty of any member of the security forces reasonably suspected of serious violations, pending an independent and effective investigation? Are there prompt, independent and impartial investigations into all serious violations, including unlawful killings and torture and other ill-treatment? Are those responsible brought to justice in fair trials without the application of the death penalty? An assessment of independent accountability and security sector oversight mechanisms should be also undertaken.

ACCOUNTABILITY FOR THE USE OF ARMS

The level of accountability for the use of weapons, munitions, armaments and related equipment is a key consideration. Is there a strict system in place for the use of arms by soldiers and law enforcement officers? This should also cover the issuing of weapons and ammunition, to record who exactly is authorized to carry and use them (also see below under arms management).

To ensure that conventional arms are used in a manner that is consistent with international human rights and humanitarian law, it is necessary to examine to what extent the relevant standards have been integrated in doctrines, policy, manuals, instructions and training. International standards governing the use of weapons by security forces include the UN Basic Principles on the Use of Force and Firearms, the UN Code of Conduct for Law Enforcement, the Geneva Conventions and their Additional Protocols.

The international provision of military, security and police training from foreign governments must ensure that it is consistent with IHL and international human rights standards, including on the use of force and firearms. Training and assistance must go beyond simply describing military, security and police forces' obligations under international law; there should be adequate time for rigorous practical training exercises for all personnel which reflect operational reality, and emphasize best practices that respect international human rights and humanitarian law

standards.

Is each discharge of a weapon recorded? Does the recipient state investigate when the use of a firearm or police action has resulted in serious injury or death? Has the recipient state properly accounted for the storage, registration and use of any arms and ammunition, including through record keeping and reporting procedures (see below)?

ADEQUATE ARMS MANAGEMENT SYSTEMS

Finally, adequate arms management systems including effective marking and tracing of arms, safe and secure storage and stockpiles, and adequate record keeping of stocks, suppliers, storage, possession, use and disposal are also factors to assess. Accurate record keeping is essential to facilitate the effective tracing of weapons, munitions and other equipment – vital for investigating violations and effective in stemming diversion.

International standards and best practices already exist for adequate arms management systems, including for ammunition – many of which have developed as part of the UN process on implementing the 2001 UN Small Arms and Light Weapons (SALW) Programme of Action (PoA) to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects. This political instrument has provided a framework for international, regional and national initiatives, including the development of best practice guidelines for arms management systems.¹⁷¹ While the focus of the PoA is on SALW and the accompanying ammunition, similar systems could be developed for heavy weapons, armaments and munitions. These systems are often considered the responsibility of the recipient state. However, Amnesty International recommends that supplying states consider their assessment an integral part of the risk assessment to decide whether or not to authorize an arms transfer. Such systems should include adequate record keeping, auditing of those records, safe and secure storage facilities in appropriate locations, and an adequate transport and storage security plan.¹⁷²

In order to provide maximum guarantees for the accountable use and storage of weapons, supplying states should ensure that an arms transfer includes adequate manufacturing markings that can be recorded, even for those weapons that are sourced from a third country. Therefore, all SALWs should be uniquely marked in compliance with the International Tracing Instrument adopted by the UN General Assembly in 2005. To help improve traceability for weapons, supplying states should ensure that an arms transfer will be marked to designate the user of the weapon, for example those designated for the armed forces or for the security forces. The Organization for Security and Co-operation in Europe recommends that registration and record keeping should be conducted at least during: manufacture, testing, time of shipment, storage and possession, in case of loss or theft, consumption, use or disposal/destruction, and during any transport and handling.¹⁷³

Records should be kept by relevant government departments and agencies, and also by commercial entities involved in arms transfers, for at least 20 years. This is necessary to uncover and curb illicit trafficking given the longevity and durability of

weapons and related equipment.

Often, states regard ammunition marking and record keeping to be an unwieldy undertaking. However, the marking of ammunition is necessary to allow for traceability. The registration and record keeping of ammunition stocks is necessary to facilitate its identification, its storage locations, and who is in possession of it. Furthermore,

“Dedicated logistic support offices should be established to document and manage the stockpiles and transfers of ammunition for a specific supply area, provide effective support in storage space planning and management, and conduct ammunition surveillance operations. The offices can also provide lot-specific ammunition control and other ammunition management processes and also furnish information for logistic control purposes.”¹⁷⁴

Arms-supplying states must ensure that the safeguards described above are adequate in the proposed receiving country before any decision is taken to approve an arms export, and ensuring these safeguards must be part of any steps taken to remove a substantial risk of an arms transfer being used to commit or facilitate serious human rights violations.¹⁷⁵ If these safeguards are not yet adequately in place, then at the very least the supplying state should ensure that, for its particular arms shipment, it will guarantee that these safeguards are adequately in place for each transfer, and implemented and monitored, otherwise the transfer should not be authorized.

MAKING AN ASSESSMENT

The risk assessment, therefore, should not only entail examining the role or involvement of the intended end-user in past violations, and whether there is a record of the type of weapons, munitions and related equipment being used for such violations, but also to determine the end-user's propensity for human rights abuse and violations and/or their capacity to use the arms lawfully. Such an examination should take place at the pre-assessment stage, before an end-user certificate is issued.

A national licensing authority should consider whether there is a substantial risk that further violations under international law will be facilitated by the transfer of conventional arms. Where this is the case, the transfer authorization should be denied until there is clear evidence that the substantial risk has been removed.

In cases where uncertainty persists, the supplier state should seek further information and clarification from the recipient state or other sources. Simple promises of better behaviour by governments with a history of serious human rights violations cannot displace concerns where a substantial risk of serious human rights violations is suspected: in all such situations, the arms transfer should not be authorized until such risks are demonstrably eliminated by the proposed end-user.

The final decision to authorize an international arms transfer is in the hands of the exporting state. However, they should notify states through which the arms will

transit or be transhipped. In addition, importing states are ultimately responsible for the arms being received by the consignee and end-user who must be required to manage and use them strictly for lawful purposes in the importer's jurisdiction. Thus, an importing state should also ensure it has a robust legal framework consistent with its international obligations and possess sufficient capacity to strictly regulate lawful management and use of the imported arms. An importing state may need to undertake a thorough risk assessment to assess whether there is a substantial risk that the arms transfer in question are likely to be used by the end-user to commit or facilitate serious violations of international human rights law or international humanitarian law. The importing state should also present the export state with a delivery verification certificate and end-use guarantee that confirms that the arms supplied have been received by the designated end-user and will not be re-exported without the appropriate authorization. Import controls can have the benefit of building confidence between the exporter and the importer by involving them in a decision that is based on shared responsibilities.

9 CONCLUSION AND RECOMMENDATIONS

Arms supplying states must seriously re-consider the scale, severity and pervasive nature of the serious violations of international human rights and humanitarian law committed by Congolese security forces and armed groups before deciding whether or not to transfer conventional arms to the DRC, and act with extreme caution. Such transfers to armed units in the DRC whose commanders continue to act with impunity for crimes under international law, committed during the course of almost two decades of armed conflict in the DRC, and whose operational systems of accountability and training are inconsistent with international legal and other standards, will continue to fuel more violations and abuses. The other structural weaknesses that plague the security apparatus in the DRC, notably insecure stockpiling and lack of effective management, as well as diversion, theft, and corruption amplify the risk that weapons, munitions, armaments and related equipment will be used to commit or facilitate such violations.

The current weak UN arms embargo on the DRC, which applies only to “non-governmental entities and individuals” is not a sufficient substitute for a robust reform of the DRC systems of arms import, management and user controls to bring them up to international standards. Nor should efforts by States to ensure respect for the UN arms embargo be treated as an alternative to the responsibility of all exporting states to carry out rigorous risk assessments before deciding whether or not to permit or halt an arms transfer.

It is therefore disturbing that arms supplying states are failing to properly notify the UNSC Sanctions Committee in advance of international arms transfers to the DRC. Not enough information is being provided on the itinerary of the arms shipment, the designated end-user or end-use, or on the monitoring and verification of the arms transfer by the supplier state to ensure that the arms are being used for the purposes authorized, and in a manner that conforms with obligations under international law.

All UN member states will have an historic opportunity to strengthen the international system of conventional arms transfer controls in July 2012 when they will negotiate the final text of a comprehensive Arms Trade Treaty (ATT). The Treaty should require states to establish strict risk assessment procedures before making a decision to authorize or deny an arms export and delivery to an end-user in another state. As is demonstrated by the tragic and prolonged suffering of people from human rights violations and abuse in the DRC, such risk assessment procedures are particularly important when arms are destined for states where poor stockpile management and security, regular theft and diversion, and the persistent misuse of weapons, munitions, armaments and related equipment.

Above all, a golden rule is essential in the ATT and in all national laws – an export or other transfer or delivery of conventional arms shall not be authorized until substantial risks that the arms would be used to commit or facilitate serious violations of international human rights and humanitarian law are removed. Preventive action to remove such a risk may include assistance (by the supplying states and others) to restructure the systems of accountability and training of prospective end-users, assistance to secure robust stockpile management; ensuring the physical security of the arms delivery; and, regularly auditing records on the storage, registration, and possession of the arms transferred. As highlighted in this report, in the current situation, the lack of adequate human rights safeguards for an effective ATT would prevent transferring conventional arms including ammunition to the DRC.

The continued proliferation and abuse of arms in the DRC is thus one of many cases worldwide why Amnesty International is campaigning for an ATT that has strong rules to help ensure respect for international human rights at the core of its normative framework.

In light of the findings in this report, Amnesty International makes the following recommendations:

To arms supplying states:

- Immediately end those transfers of weapons, munitions, armaments and related equipment to end-users in the DRC where there is a substantial risk that the arms are likely to be used or diverted to commit or facilitate serious violations of international human rights law or international humanitarian law – maintain this cessation in each case until effective human rights and other safeguards are put in place to remove the substantial risk of such violations.
- Before deciding whether or not to resume supplies and authorize an arms transfer to a lawful end-user in the DRC, a supplying state must undertake a rigorous risk assessment of whether there is a substantial risk that the unit are likely to use those arms to commit or facilitate serious violations of international human rights law or international humanitarian law. As part of the risk assessment process, states should in each case examine meaningfully to what extent:
 - thorough, independent and impartial investigations into all serious violations of international human rights and humanitarian law are conducted and suspected perpetrators are held accountable by the authorities;
 - security forces and law enforcement agencies' policies, procedures and practices comply with international law and standards, including the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;
 - policies, procedures and practices for the armed forces comply with states' obligations under international law;

- an effective system is being implemented for the physical security and lawful management of the storage and stockpiles of conventional arms in the recipient country;
- a strict system is being implemented to thoroughly account for the storage, registration, possession and use of weapons, munitions, armaments and related equipment by armed forces and law enforcement officials.

If deficiencies in the above exist, a prospective exporting state should examine whether adequate reforms are underway that can reasonably be expected to address the deficiencies before any of the arms in question are sent to the particular end-user. States should act nevertheless with extreme caution until the effectiveness of the reforms can be clearly demonstrated.

- Where a substantial risk exists that the arms are likely to be used to commit or facilitate serious violations of international human rights law or international humanitarian law, the supplying state must deny the authorization to export or transfer the arms.
- In addition, where the substantial risk exists because of the absence of adequate stockpile security and arms management systems across the country, the supplying state must deny authorization until such a risk is removed.
- Any state considering the supply of arms or provision of military and security assistance to the DRC “shall notify in advance” the UNSC Sanctions Committee of any shipment of arms and related materiel, in accordance with paragraph 8 of UNSC Resolution 1807, and should co-operate fully with the GoE. States should include information on the end-user, the proposed date of delivery and the itinerary of shipments.
- Any state considering an arms transfer of military or security assistance to the DRC should first ensure and verify with the DRC authorities that all systems of accountability; rules of engagement; monitoring and training support to military, security and police forces are in accordance with international human rights and humanitarian law.
- Ensure that all exported weapons and munitions, including small arms and light weapons arsenals, are uniquely marked in compliance with the International Tracing Instrument adopted by the UN General Assembly in 2005; Ammunition crates and consignments should also be uniquely marked with batch numbers and other identifying features, and records kept of the unique markings of both arms and ammunition;
- States should support the negotiation of an effective ATT that includes:
 - the denial of an international arms transfer authorization wherever there is a substantial risk that the arms under consideration are likely to be used to commit or facilitate serious violations of international human rights law or

international humanitarian law, or where there is a substantial risk that they arms could be used to perpetrate or facilitate a pattern of armed violence or gender-based violence, including rape and other forms of sexual violence;

- a requirement to conduct an effective inquiry and meaningful assessment of each application or proposal for authorization of an arms transfer on a case-by-case basis, consistent with Treaty criteria;
- a comprehensive scope that encompasses all forms of international trade and transfers, and all types of weapons, munitions, armaments and other equipment, parts and technologies used for military and law enforcement operations, as well as arms brokering, transport, and financial services to enable such trade and transfer; and,
- robust standards and procedures for implementation and enforcement, including comprehensive national authorization and licensing systems, transparent reporting, strict and end-use controls, adequate penalties for illegal acts and effective dispute resolution and treaty review mechanisms.

To the UN Security Council (SC):

- Strengthen the arms embargo on the DRC by requiring that all proposed transfers of conventional arms are only licensed *after* a rigorous risk assessment in each case, to determine whether there is a substantial risk of the proposed arms transfer being used to commit or facilitate serious violations of international human rights law or international humanitarian law.
- Strengthen the arms embargo on the DRC by requiring supplying states to undertake rigorous monitoring and verification of the end-use of the arms transfer over a period sufficient to enable objective verification that international human rights and humanitarian law and standards are not violated by the use of the arms.
- Demand and obtain guarantees from the DRC authorities regarding the accountable and lawful use of any arms imported or otherwise received.
- Call on the DRC government to investigate all allegations of violations of international human rights and humanitarian law and where there is sufficient admissible evidence, bring suspected perpetrators to justice in proceedings that conform to international fair trial standards without recourse to the death penalty.
- Mandate the UN mission in the DRC to provide assistance and facilitate international cooperation to ensure an effective system is being implemented for the physical security and lawful management of the storage and stockpiles of conventional arms in the recipient country, and a strict system is being implemented to thoroughly account for the storage, registration, possession and use of weapons, munitions, armaments and related equipment by the armed forces and law enforcement agencies in the DRC.

- Reinstate in the mandate of the UN arms embargo the requirement for a restricted number of designated entry points for the import of all conventional arms to the Government of the DRC. These designated sites should be manned and monitored by the UN mission in the DRC.
- Insist that, in accordance with UNSC Resolution 1807, any state considering the supply of arms or provision of military and security assistance to the DRC notifies the UNSC Sanctions Committee in advance and provides sufficient details of those arms or related transfers to assess the risks, including information on the end-user, proposed date of delivery and the itinerary of shipments and co-operates fully with the GoE.

To the DRC authorities:

- Immediately cease all violations of international human rights and humanitarian law; and, instruct security forces to comply with international law and standards.
- Ensure all allegations of violations of international human rights and humanitarian law, both past and present, are promptly, independently and thoroughly investigated and, where there is sufficient admissible evidence, bring suspected perpetrators to justice in proceedings that conform to international fair trial standards without recourse to the death penalty, and ensure that victims receive full and effective reparations.
- Establish adequate stockpile management and monitoring systems including record keeping across the country, to ensure proper recording of all weapons, munitions, armaments and related equipment to prevent issues of diversion and theft, in accordance with the International Tracing Instrument adopted by the UN General Assembly in 2005, the Best Practice Guidelines for the Implementation of the Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa, which the DRC signed and ratified on 21 April 2004.
- Prioritize and implement comprehensive security sector reform in the DRC consistent with obligations under international human rights law and IHL that includes a vetting mechanism to remove individuals who may reasonably be suspected of having committed crimes under international law or other human rights violations, until allegations concerning that person can be independently and impartially investigated.

To the Armed Opposition Groups:

- Immediately cease all human rights abuses and violations of international humanitarian law.
- Make sure that those under their command understand that violations of international humanitarian law, including attacks on civilians or civilian objects,

rape and sexual violence, will not be tolerated;

- Investigate allegations of violations of international humanitarian law and remove from their ranks anyone suspected of violations.

ENDNOTES

¹ The term “security forces” is used in this report to refer to the armed forces, the Congolese National Police and the Republican Guard. When necessary the specific forces have been specified.

² The FDLR is an armed opposition group operating in eastern DRC mainly composed of Rwandan Hutu. It contains remnants of the Interahamwe and former Rwandan soldiers responsible for the 1994 Rwandan genocide, as well as fighters not involved in the genocide, including many too young to have participated in the genocide.

³ UN press conference, OCHA, Goma, 2 May 2012.

<http://monusco.unmissions.org/Default.aspx?tabid=11192&ctl=Details&mid=14505&ItemID=19097&language=fr-FR>

⁴ See S/2011/738, *Final report of the Group of Experts on the Democratic Republic of the Congo*, 2 December 2011, summary section.

⁵ Amnesty International, *Democratic Republic of the Congo: Arming the East*, July 2005 (AFR 62/006/2005).

⁶ Following the UN Security Council resolution 1925 of 28 May 2010, MONUC was renamed as of 1 July the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo.

⁷ Security Council resolution 1596 (2005) S/RES/1596, 3 May 2005, paragraph 4.

⁸ Security Council resolution 1807 (2008) “Decides that the measures on arms, previously imposed by paragraph 20 of resolution 1493 and paragraph 1 of resolution 1596, as renewed in paragraph 1 above, shall no longer apply to the supply, sale or transfer of arms and related materiel, and the provision of any assistance, advice or training related to military activities to the Government of the Democratic Republic of the Congo.” S/RES/1807, 31 March 2008, paragraph 2. This measure was renewed until 30 November 2012 through SC resolution S/RES/2021 (2011).

⁹ Letter to all members of the UN Security Council, Amnesty International, 11 December 2008 (TIGO IOR/2008.250).

¹⁰ The CNDP, a Congolese armed group, was created in 2006 by Laurent Nkunda. In 2009, the group was integrated in the army, registered as a political party and changed leadership: General Nkunda was arrested on 22 January 2009 and replaced by Bosco Ntaganda, against whom the ICC issued an arrest warrant in 2006 on charges of war crimes. In spite of its integration in the national army, the CNDP remained very powerful in the north Kivu province and it had retained a distinct chain of command. The CNDP is perceived by many in the local population as the continuation of the Congolese Democratic Rally (Rassemblement Congolais pour la Démocratie, RCD), the armed group which controlled part of eastern DRC during the second Congolese War (1998-2003). Following growing rumours of Ntaganda’s possible arrest in April 2012, ex-CNDP soldiers and high ranking officials integrated in the FARDC deserted and joined Ntaganda’s forces in Masisi territory, North Kivu. Violent clashes between deserters and FARDC troops erupted at the end of April. In the meantime reports of a recent alliance between the Mayi Mayi Sheka leader Ntabo Ntaberi, particularly active in Walikale territory, and Bosco Ntaganda emerged.

¹¹ See for example, Amnesty International, *Democratic Republic of the Congo: Mass Rape: Time for remedies*, October 2004 (AFR 62/018/2004).

¹² See for example, Amnesty International, *Democratic Republic of the Congo: Children at War*, September 2003 (AFR 62/034/2003); Amnesty International, *Democratic Republic of the Congo: Children at war - Creating hope for their future*, October 2006 (AFR 62/017/2006).

¹³ See for example, Amnesty International, *Making a Killing. The diamond trade in government-controlled DRC*, October 2002 (AFR 62/017/2002).

¹⁴ UN Mapping Report, p. 11-12.

¹⁵ The Global and Inclusive Agreement on Transition in the DRC signed in Pretoria, Republic of South Africa, on 16 December 2002 between the Government of the Democratic Republic of the Congo and various armed renewed the commitment of all parties to cease hostilities as contained in previous agreements and to the process of creating a restructured, integrated national army.

¹⁶ See for example, *Final Report of the Fact-Finding Missions of the United Nations Joint Human Rights Office into the Mass Rapes and Other Human Rights Violations Committed by a Coalition of Armed Groups along the Kibua-Mpofi Axis in Walikale Territory, North Kivu, from 30 July to 2 August 2010*. See also Amnesty International, *Democratic Republic of the Congo: Mass rapes in Walikale: Still a need for protection and justice in eastern Congo*, 20 December 2010 (AFR 62/011/2010).

¹⁷ See for example Amnesty International, *Democratic Republic of the Congo: Torture and Killings by state security agents endemic*, October 2007 (AFR 62/012/2007).

¹⁸ See for example, *Report of The United Nations Joint Human Rights Office on Human Rights And Fundamental Freedoms During The Pre-Electoral Period In the Democratic Republic of the Congo, November 2011 and Report of The United Nations Joint Human Rights Office on Serious Human Rights Violations Committed by Members Of The Congolese Defense and Security Forces In Kinshasa in the Democratic Republic of The Congo Between 26 November and 25 December 2011*, March 2012; and Amnesty International, "Democratic Republic of the Congo: Post-election intimidation through arrests must end", Press Release, 19 December 2011 and Amnesty International, "Democratic Republic of the Congo: The Congolese government must put an end to impunity for serious human rights violations committed by the defence and security forces during the electoral process", Public Statement, 23 March 2012.

¹⁹ See Report by 13 international and Congolese organisations, *The Democratic Republic of the Congo: Taking a stand in security sector reform*, 2012, p. 8.

²⁰ See S/2011/738, *Final report of the Group of Experts on the Democratic Republic of the Congo*, 2 December 2011, para 568. AI interviews with NGO, FARDC and MONUSCO in the DRC, 2011 and 2012.

²¹ While the FARDC structure is divided into military regions, since the beginning of military operations launched against various armed groups in the two Kivu provinces, an additional structure was created whereby military units related to the military regions are put at the disposal of the command structure mandated to conduct military operations. "Amani Leo" is the code name for the military operation, officially launched on 1 January 2010, led by the FARDC, with MONUSCO support, against armed groups including the FDLR in North and South Kivu provinces. It follows two earlier military operations carried out in 2009: "Umoja Wetu", a Congolese operation jointly led with the Rwandan army and "Kimia 2", an operation conducted by the Congolese army, with the support of MONUC. The latest military operation, with MONUSCO support began mid February in South Kivu is named "Amani Kamilifu". However, the DRC President announced in April 2012 the suspension of Amani Leo operations and the dismantlement of the related military structure to have all the military units falling under the relevant military regions. The concrete implications of such decisions are yet to be seen.

²² See for example Security Council resolution 1952 (2010).

²³ See UN website <http://www.poa-iss.org/CountryProfiles/CountryProfileInfo.aspx?Col=46&pos=1000>

²⁴ See Interim report of the Group of Experts on the DRC submitted in accordance with paragraph 5 of Security Council resolution 1952 (2010), 7 June 2011, paragraph 63.

²⁵ See UN website <http://www.poa-iss.org/CountryProfiles/CountryProfileInfo.aspx?Col=46&pos=1000>

²⁶ Meeting with CNC Representative, January 2012

²⁷ See S/2011/345, 7 June 2011.

²⁸ See S/2009/603, *Final report of the Group of Experts on the Democratic Republic of the Congo*, 23 November 2009, paragraph 180. Efforts aimed at the integration of various fighting forces into a unified national army, the FARDC, with a single chain of command, started after presidential and legislative elections in 2006. This process went along with the disarmament, demobilization and reintegration of former fighters. Progress on these two fronts has been disappointing. The signing of a peace accord in March 2009 between the DRC government and local armed groups in the east, notably the CNDP was accompanied by an accelerated integration process that has further undermined security sector reform efforts, with no vetting conducted to exclude suspected perpetrators of serious human rights violations.

²⁹ See S/2009/603, *Final report of the Group of Experts on the Democratic Republic of the Congo*, 23 November 2009, paragraph 180.

³⁰ See S/2011/738, *Final report of the Group of Experts on the Democratic Republic of the Congo*, 2 December 2011, paragraph 571.

³¹ See S/2009/603, paragraph 187.

³² See S/2009/603, paragraph 187 and S/2011/738, paragraphs 569 and 571.

³³ See S/2011/738, paragraph 591.

³⁴ See S/2008/773, *Final report of the Group of Experts on the Democratic Republic of the Congo*, 12 December 2008, paragraph 138.

³⁵ See S/2009/603, paragraph 28.

³⁶ This process over the whole country, as well as the restructuring of the FARDC brigades into regiments in the provinces of North and South Kivus aimed at tackling the issue of “ghost soldiers”, resulting in a significant drop in the number of troops from 370,000 soldiers to approximately 120,000 soldiers for the FARDC.

³⁷ According to the UN Special Rapporteur, “All FARDC soldiers should be provided, and be required to wear, uniforms that identify their name and relevant unit”. See Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Addendum - Mission to the Democratic Republic of the Congo, 2009, A/HRC/14/24/Add.3, para. 109, at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/143/71/PDF/G1014371.pdf?OpenElement>

³⁸ See S/2011/738, summary section.

³⁹ According to EUSEC, a recruit currently gets 55,000 Congolese Franc (US\$60); 70.000 for a Colonel (\$77/month). In 2005, the recruits were getting only \$10.

⁴⁰ Amnesty International, *Democratic Republic of the Congo: Arming the East*, 4 July 2005 (AFR 62/006/2005).

⁴¹ See S/2007/423, *Final report of the Group of Experts on the Democratic Republic of the Congo*, 18 July 2007, paragraph 98 and paragraph 177.

⁴² See S/2008/43, *Final report of the Group of Experts on the Democratic Republic of the Congo*, 13 February 2008,

paragraph 55.

⁴³ GOE Report, 13 February 2008, p.9; S/2008/43.

⁴⁴ See S/2011/738, paragraph 205. Also see S/2010/596 paragraph 34-37.

⁴⁵ See S/2008/772, *Interim report of the Group of Experts on the Democratic Republic of the Congo*, paragraph 27 - distributed to Sanctions Committee in August 2008 but published on 12 December 2008 for confidential reasons.

⁴⁶ See S/2008/773, paragraph 25.

⁴⁷ Meeting with UN investigator, November 2011; also see <http://www.societecivile.cd/node/3926>

⁴⁸ AFP La rebellion de Nkunda s'empare d'un camp militaire, 8 October 2008.

⁴⁹ Confidential MONUC document seen by Amnesty International; See S/2008/773, ,paragraph 25.

⁵⁰ For example, see http://www.boston.com/bigpicture/2008/11/conflict_in_congo_refugees_on.html; and http://en.scanpix.no/spWebApp/preview.action?search.offset=19&search.rid=1884460&search.rbase=SF_03&search.searchString=rumangabo&search.searchId=2011064522&search.previewNumResults=31&search.tabId=editorial

⁵¹ <http://reliefweb.int/node/284730> RD Congo : Nord-Kivu - le CNDP reprend Rumangabo; <http://news.bbc.co.uk/1/hi/world/africa/7691736.stm>; Confidential MONUC document seen by Amnesty International.

⁵² Amnesty International interview with Laurent Nkunda, 2008.

⁵³ Meeting with UN staff, November 2011; GoE 2008.

⁵⁴ 'In Congo, a steep price for Laurent Nkunda's growing power', Edmund Sanders, LA Times, November 4 2008.

⁵⁵ Human Rights Watch report, *Killings in Kiwanja*, December 2008.

⁵⁶ Human Rights Watch report, *Killings in Kiwanja*, December 2008.

⁵⁷ Human Rights Watch gave an estimation of 150 victims who were killed. While an early UN investigation found that 67 were extra-judicially executed, its report admitted the number was probably higher. Local lists give the number of dead at 172, although some estimates are higher. The number of people killed may never be known, especially as some of the killings took place outside the town and bodies never found or buried hastily by by-passers.

⁵⁸ Amnesty International interview with Sarah (not her real name), North Kivu, December 2011.

⁵⁹ UN Mapping Report, para. 893, note 1555.

⁶⁰ UN Mapping Report, para. 551.

⁶¹ This was documented in depth by Amnesty International in the report *The Time for justice is now: New strategy needed in the Democratic Republic of the Congo*, August 2011 (AFR 62/006/2011).

⁶² UN Mapping report p. 422.

⁶³ Consolidated report on investigations conducted by the United Nations join Human Rights Office (UNJHRO) into grave human rights abuses committed in Kiwanja, North Kivu, in November 2008, 7 September 2009. According to this report, 'On 5 November, General Bosco Ntaganda was the commander with responsibility over the operations in Kiwanja, not only due to his overall position as CNDP Chief of Staff but also in his capacity as regional commander

of CNDP in Rutshuru territory.’

⁶⁴ While the DRC authorities claimed at times that Ntaganda never had any position in the FARDC, following the recent defections in April 2012 from the Congolese armed forces, statements were made by the FARDC spokesperson that he was still part of the FARDC. With the outbreak of fighting at the end of April and in May 2012 in Masisi and Rutshuru territories between FARDC and deserters loyal to Ntaganda, it is uncertain at this point what is current status is.

⁶⁵ See S/2011/738, paragraphs 634-638. For the case of Bushani, see the box below.

⁶⁶ Amnesty International 2010 annual report and latest Press Conference by President Joseph Kabila, Kinshasa, 19 December 2011.

⁶⁷ According to Human Rights Watch, “At Shalio Hill, Congolese army soldiers killed at least 50 refugees as they tried to flee. After the attack, one group of soldiers took 50 refugees from Shalio to Biriko, where the soldiers beat them to death with wooden clubs and shot three refugees who tried to escape. Only one person survived. A second group of soldiers took 40 refugees, all women and girls, from Shalio to a nearby Congolese army position where they were kept as sexual slaves, gangraped and mutilated by the soldiers. Ten of the women managed to escape, but the fate of the others is unknown. One who was later interviewed by Human Rights Watch bore the marks of her mutilation: her attackers had cut off chunks from her breast and stomach.” See ‘you will be punished’ report, p.118.

⁶⁸ Human Rights Watch, *You will be punished*, 13 December 2009.

⁶⁹ See S/2009/603, summary section.

⁷⁰ In January 2009, Congolese and Rwandan government forces launched a joint military offensive against the FDLR in North-Kivu province. After the withdrawal of Rwandan troops in February, operation Kimia II was launched by the FARDC in March, deploying newly integrated ex-CNDP forces. These operations were supported by the UN peacekeeping mission to the DRC, MONUC. Kimia II was extended to South-Kivu province in July 2009 and continued in both provinces until the end of the year. In January 2010, operation Amani Leo was launched. This operation was effectively a rebranding of Kimia II, with FARDC units continuing to enjoy the support of MONUC, and later on, in June 2010, of the UN stabilization mission, MONUSCO. During the course of these operations, the FDLR, FARDC and allied armed groups have committed serious violations of international humanitarian and human rights law against thousands of civilians and forced hundreds of thousands of civilians to flee their homes. In most cases, impunity for these crimes remains. Recently, President Kabila has officially ended the Amani Leo military operation.

⁷¹ “Human rights expert calls joint UN-Congolese army action ‘catastrophic’”, UN News Centre, 15 October 2009. <http://www.un.org/apps/news/story.asp?NewsID=32560&Cr=drc&Cr1=> Last Accessed 25 March 2012.

⁷² The attacks on Bushani and Kalambahiro occurred in the context of the operation Hatua Yamana, a joint MONUSCO-FARDC operation that formed part of the wider Amani Leo offensive and that took place between 31 December 2010 and 7 January 2011, with the aim of removing the FDLR from a specific area of Masisi territory, in the province of North Kivu. Other human rights violations were also perpetrated during Hatua Yamana. See, Report on the investigation missions of the United Nations Joint Human Rights Office into the mass rapes and other human rights violations committed in the villages of Bushani and Kalambahiro, in Masisi territory, North Kivu, on 31 December and 1 January 2011, July 2011

⁷³ *Report on the investigation missions of the United Nations Joint Human Rights Office into the mass rapes and other human rights violations committed in the villages of Bushani and Kalambahiro, in Masisi territory, North Kivu, on 31 December and 1 January 2011*, July 2011.

⁷⁴ People from these villages know Kinyarwanda, due in part to the fact that they lived for several years in areas

controlled by FDLR who speak this language.

⁷⁵ *Report on the investigation missions of the United Nations Joint Human Rights Office into the mass rapes and other human rights violations committed in the villages of Bushani and Kalambahiro, in Masisi territory, North Kivu, on 31 December and 1 January 2011*, July 2011.

⁷⁶ UN SG report on conflict-related sexual violence, February 2012.

⁷⁷ *Report on the investigation missions of the United Nations Joint Human Rights Office into the mass rapes and other human rights violations committed in the villages of Bushani and Kalambahiro, in Masisi territory, North Kivu, on 31 December and 1 January 2011*, July 2011.

⁷⁸ Meeting with UN source, 17 November 2011.

⁷⁹ *Report on the investigation missions of the United Nations Joint Human Rights Office into the mass rapes and other human rights violations committed in the villages of Bushani and Kalambahiro, in Masisi territory, North Kivu, on 31 December and 1 January 2011*, July 2011.

⁸⁰ See, *Report on the investigation missions of the United Nations Joint Human Rights Office into the mass rapes and other human rights violations committed in the villages of Bushani and Kalambahiro, in Masisi territory, North Kivu, on 31 December and 1 January 2011*, July 2011, para. 31.

⁸¹ *Report on the investigation missions of the United Nations Joint Human Rights Office into the mass rapes and other human rights violations committed in the villages of Bushani and Kalambahiro, in Masisi territory, North Kivu, on 31 December and 1 January 2011*, July 2011; Meeting with a UN source, 17 November 2011.

⁸² The Human Rights Situation in the Democratic Republic of the Congo during the period of July to December 2006. <http://monusco.unmissions.org/LinkClick.aspx?fileticket=fqfUJQ1vR%2BA%3D&tabid=4135&mid=3999>

⁸³ Pursuant to Article 136 of the Law on General Organisation of the Defence and Armed Forces.

⁸⁴ See *Report Of The United Nations Joint Human Rights Office on Serious Human Rights Violations Committed by Members of The Congolese Defense and Security Forces in Kinshasa in The Democratic Republic of the Congo Between 26 November And 25 December 2011*.

⁸⁵ See for example, *Report of the United Nations Joint Human Rights Office On Human Rights and Fundamental Freedoms During the Pre-Electoral Period in The Democratic Republic Of the Congo*, November 2011 and *Report of the United Nations Joint Human Rights Office on Serious Human Rights Violations Committed by Members Of The Congolese Defense And Security Forces in Kinshasa in the Democratic Republic of the Congo Between 26 November And 25 December 2011*, March 2012.

⁸⁶ See UNJHRO Report of March 2012 and Secretary General report on the UN stabilisation mission in the DRC, 26 January 2012 at:

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N12/206/29/PDF/N1220629.pdf?OpenElement>

The number of victims in Kinshasa could even be higher, but governmental measures seriously impeded public scrutiny into the incidents. Congolese NGOs in Kinshasa were unable to obtain the names of those killed from hospitals, even though they claim to have seen lists with hundreds injured and up to fifty killed.

⁸⁷ Human Rights Watch, *Democratic Republic of the Congo: Rein in Security Forces*, 2 December 2011. The UN investigation reported that 9 persons were killed, shot by members of the defence and security forces. See *Report of the United Nations Joint Human Rights Office on Serious Human Rights Violations Committed by Members of the Congolese Defense and Security Forces in Kinshasa in the Democratic Republic of the Congo between 26 November*

and 25 December 2011, paragraph 14.

⁸⁸ Video: <http://www.youtube.com/watch?v=vpM3ugIE714>; Reuters pictures etc; <http://www.ctpost.com/news/article/Polls-open-in-Congo-election-2293620.php#photo-1798055> Meeting with local journalist, Kinshasa, 2012.

⁸⁹ See *Report of the United Nations Joint Human Rights Office on Serious Human Rights Violations Committed by Members of the Congolese Defense and Security Forces in Kinshasa in the Democratic Republic of the Congo between 26 November and 25 December 2011*, for example paragraphs 6, 16 and 18.

⁹⁰ AK-cartridge bearing '270 r' markings. This ammunition appears to have been manufactured in 1952 which does demonstrate the longevity of ammunition.

⁹¹ The UN trade database, Comtrade, which features arms and ammunition exports to the DRC between 1988 and 2010 did not report any figure for Ukraine/USSR during that period.

⁹² The lack of full reporting by states to the UN Comtrade database can be illustrated by Chinese supplies of ammunition to the DRC. For instance, the UN Comtrade figures for arms and ammunition exports between 1988 and 2010 report only one export figure for China in 1998 for 29.3 million dollar while there were in fact several deliveries of ammunition from China during this period. See UN group of experts reports S/2007/40, S/2008/773, §145, S/2009/603, §259-263.

⁹³ According to EUSEC, a recruit currently gets 55,000 Congolese Franc (US\$60); 70.000 for a Colonel (\$77/month). In 2005, the recruits were getting only \$10.

⁹⁴ Meeting with Amani Leo officers, Bukavu, February 2012.

⁹⁵ See S/2011/738, summary section.

⁹⁶ Meeting with UN sources, Bukavu, February 2012.

⁹⁷ Meetings with UN source and with local NGO, Bukavu, February 2012.

⁹⁸ Meeting with UN (OCHA) source/ OCHA weekly May 2011; Local NGO (Arche) monitoring of HR violations/abuses; ASOVUG report, 19 October 2011; OCHA weekly, 3 November 2011.

⁹⁹ OCHA weekly May 2011

¹⁰⁰ ASOVUG report, 19 October 2011; OCHA weekly report, 4 October 2011.

¹⁰¹ Meetings with UN and NGOs sources, February 2012.

¹⁰² Meeting with local politician, Bukavu, February 2012.

¹⁰³ Meetings with Amani Leo and with UN source, Bukavu, February 2012

¹⁰⁴ Meetings with UN source and with local NGO, Bukavu, February 2012.

¹⁰⁵ UN confidential report seen by Amnesty International, April 2012.

¹⁰⁶ Meetings with victims, Bukavu hospital and UN confidential report seen by Amnesty International, April 2012.

¹⁰⁷ OCHA weekly 10 January 2012.

¹⁰⁸ OCHA monthly report, January 2012.

¹⁰⁹ OCHA bulletin d'information, 7 février 2012.

¹¹⁰ Meeting with DDRRR [in full], December 2011; 10eme region document seen by Amnesty International delegate; Meeting with Amani Leo officers, Bukavu, February 2012; See S/2008/773, Final report of the Group of Experts on the Democratic Republic of the Congo, 12 December 2008, paragraph 102 and S/2009/603, Final report of the Group of Experts on the Democratic Republic of the Congo, 23 November 2009, paragraphs 24-27, 30-33, 69-79, 87-89 and annex 14.

¹¹¹ 10eme region document seen by Amnesty International delegate; Meeting with Amani Leo officers, February 2012

¹¹² Amnesty International would like to express its gratitude to the international Peace and Information Service vzw and the Omega Research Foundation for its contribution to the research on arms transfers in this report.

¹¹³ For example, Chinese 107mm (12-round) Type 63 Multiple Rocket System. See, video footage of the Independence Day military parade on 30 June 2010 uploaded onto You Tube.
<http://www.youtube.com/watch?v=ue3HW6uhGPQ&feature=related>
Last Accessed 26 March 2012. Amnesty International can not verify the video but the contents indicate the place and time is accurate.

¹¹⁴ *The Military Balance 2010*, The International Institute for Strategic Studies, , pp. 303-304; Sino-defense.com; and *Jane's Armour and Artillery 1982-1983*.

¹¹⁵ S/2009/603, paragraphs 259-264.

¹¹⁶ Note Verbale dated 15 April 2009 from the Permanent Mission of the People's Republic of China to the United Nations addressed to the Chairman of the Committee.

¹¹⁷ S/2009/603, paragraph 261.

¹¹⁸ Note verbale dated 13 June 2008 from the Permanent Mission of the People's Republic of China.

¹¹⁹ S/2008/773, paragraph 145. The flights were performed by Hewa Bora Airways, registered in the Democratic Republic of the Congo. According to the Group of Experts, the Hewa Bora invoice N° 042/DG/HBA/FIH/2008 records that a Hewa Bora Boeing-707 with registration number 9Q-CKR performed five flights between Khartoum and Kisangani for the Forces Armées de la République du Congo.

¹²⁰ S/2007/40, *Interim report of the Group of Experts on the Democratic Republic of the Congo, pursuant to Security Council resolution 1698 (2006)*, para 58, p.17. This cargo was carried by Ethiopian Airlines using airway bill No. 071-13271241 on flight number ET3825 from Beijing, via Addis Ababa to Kinshasa.

¹²¹ The company deals in a wide range of products including small arms and ammunition and vehicles and missiles, as well as non-military goods. The company was founded by the Chinese People's Liberation Army in order to provide competition for China North Industries Corporation (Norinco). Poly Technologies is a subsidiary of China Poly Group Corporation, is a defence manufacturing company with headquarters in Beijing, China.

¹²² "Security forces of Democratic Republic of the Congo use a new Chinese made armoured vehicle", Army Recognition, 9 December 2011.

¹²³ See for example, Video Exclusif De L'ambiance Le Jour De L'investiture De Tshisekedi A Kinshasa
<http://www.youtube.com/watch?v=anGueckbl7Q&feature=youtu.be>; and

<http://www.youtube.com/watch?v=pur2nhlnHJo>

Amnesty International can not verify that this footage was taken during the December 2011 elections in Kinshasa, in the DRC, but the content appears to show the place and time as accurate.

¹²⁴ *Transfers of major conventional weapons: sorted by supplier. Deals with deliveries or orders made for year range 1981 to 2010*, SIPRI Arms Transfer Database, 17 February 2012.

¹²⁵ UN Register on Conventional Arms. "Records of notifications sent to the [UNSC sanctions] Committee in 2010 by Ukraine shows the country's intention to ship a total of 120 battle tanks, in categories of T-72 tanks (20 units), T-72 tanks (30 units), T-72 tanks (20 units) and T-55 tanks (50 units). However, according to the report of Ukraine to the United Nations Register of Conventional Arms dated 23 June 2011, detailing the country's arms transfers to the Democratic Republic of the Congo in 2010, Ukraine exported 130 battle tanks. The Group [of Experts], through the Committee, sent a formal communication to Ukraine seeking clarification regarding the discrepancy of 10 battle tanks. At the time of reporting, the Group had yet to receive a response from Ukraine." S/2011/738, [Final report of the Group of Experts on the DRC submitted in accordance with paragraph 5 of Security Council resolution 1952 \(2010\)](#), 2 December 2011, paragraph 589.

¹²⁶ S/2007/40, paragraph 58.

¹²⁷ MONUC subsequently carried out two successful verification missions to the port of Matadi cooperation and assistance of relevant Congolese authorities. See S/2007/40.

¹²⁸ Notification from the Permanent Mission of France to the United Nations, 3 November 2011. The final end-user certificate was signed General Benjamin Alongabony, Deputy Commissioner-General of the Congolese National Police.

¹²⁹ Company brochure, "Flashball: the less lethal weapon", http://www.flash-ball.com/pages-us/i_fb_tech.htm Last Accessed 11 May 2012.

¹³⁰ According to the version of the Interior Ministry instructions on the use of Flash-Ball dated 31 August 2009, in order to retain authorization to use it, users must undergo an initial training course followed by ongoing annual training. According to reports, there is an initial half-day training session, including a theoretical part and a practical part (consisting of firing five bullets at stationary targets), but the ongoing training provided is in practice far from adequate owing to a shortage of resources.

¹³¹ "Recommendations with regard to Flash-Ball", Amnesty International – France, 5 March 2012, SF12REG56.

¹³² The National Commission of Security Ethics (CNDS) 2010 Report, pp. 45-46.

¹³³ Opinion N° 2009-133 of 15 February 2010.

¹³⁴ See for example, Amnesty International, *Blood at the Crossroads: Making the Case for an Arms Trade Treaty*, 17 September 2008 (ACT 30/011/2008).

¹³⁵ Communication dated 18 February 2010 from the United States Mission to the United Nations addressed to the Chairman of the Committee.

¹³⁶ Letter from Ambassador Jonnie Carson, received 14 May 2012 addressed to the Deputy Executive Director of Amnesty International USA.

¹³⁷ Communication dated 9 July 2009 from the United States Mission to the United Nations addressed to the Chairman of the Committee.

¹³⁸ According to an article published on 19 July 2011, on DefenceWeb, DynCorp International has been awarded a contract as part of the US Africa Peacekeeping Programme (Africap) to train the military of the Democratic Republic of the Congo (DRC). "The contract, awarded by the US Department of State's Bureau of African Affairs and announced by DynCorp on June 1, is for one year but has two option years. The total potential revenue is US\$17.1 million if both option years are exercised, DynCorp said in a statement."

http://www.defenceweb.co.za/index.php?option=com_content&view=article&id=17311:dyncorp-to-train-democratic-republic-of-congo-army&catid=50:Land&Itemid=105

The International Peace Information Service has previously tried on two occasions to obtain the DynCorp contract for military training in South Sudan from the US State Department through the Freedom of Information Act. In both instances the FOIA case was closed by the State Department. FOIA Request 27 June 2007; FOIA 26 September 2007. Letter State Department 17 August 2007; Letter State Department 17 December 2007.

¹³⁹ According to the company website, "The B&T Ballistic CS cartridge is most widely used as a public order tool for the rapid and broad deployment of chemical agent from a LL-06 40 mm Launcher or other compatible 40 mm launchers by a single operator. Once the round is discharged in the direction of the crowd the two submunitions will scatter in different directions and the effect provides wide area of CS coverage at a very fast rate. The cartridge can be direct fired, skip fired or held at a 30° angle for maximum range of 75 meter." http://www.bt-ag.ch/en/manufacturing/leslethalsystem/ballistic_cs.php?navanchor=2110060 Last Accessed 16 May 2012.

¹⁴⁰ S/2011/738, paragraph 588.

¹⁴¹ See "Russia's Chariot Calls at Iran", Forbes, Claudia Rosett, 6 March 2012, <http://www.forbes.com/sites/claudiarosett/2012/03/06/russias-chariot-calls-at-iran/2/>

¹⁴² See, Amnesty international, *Ships of Shame*, June 2012 for a case study on this shipment to Syria.

¹⁴³ On 3 May, Amnesty International wrote to the Permanent Representative of the People's Republic of China to the United Nations enquiring about the shipment of military material to the Congolese Ministry of Defence for training purposes as outlined in a notification to the UN Security Council Sanctions Committee dated 15 April 2009.

¹⁴⁴ On 9 May, Amnesty International wrote to the French Ministry of Foreign Affairs and Ministry of Defence enquiring about the transfer of "crowd control" equipment in September and November 2011 to the Government of the Democratic of the Congo for the 1st and 7th battalions of the Rapid Deployment Police of the Congolese National Police.

¹⁴⁵ On 3 May, Amnesty International wrote to the Permanent Representative of South Africa to the United Nations enquiring about the delivery of ammunition to the Congolese National Police in November 2011 as outlined in a notification to the UN Security Council Sanctions Committee dated 11 December 2011.

¹⁴⁶ On 4 May, Amnesty International wrote to the Head of the State Export Control Service in Ukraine enquiring about Ukrainian arms transfers to the DRC since 2000.

¹⁴⁷ On 1 May, Amnesty International wrote to the Honourable Ambassador of the Bureau of Africa Affairs at the US State Department enquiring about the shipment of ammunition to the Government of the Democratic Republic of the Congo's Armed Forces for the purposes of training as outlined in a notification to the UN Security Council Sanctions Committee dated 18 February 2010.

¹⁴⁸ Regulations of the People's Republic of China on Administration of Arms Exports 2002 (Article 5). Available at: http://www.gov.cn/english/laws/2005-07/25/content_16975.htm.

¹⁴⁹ Amnesty International is concerned that the requirement of non-interference in the internal affairs of other states is interpreted by the Chinese government in its arms control decisions in a manner that is not consistent with

states' existing obligations under international law so as to exempt the Chinese authorities from taking into account the substantial risk of an arms transfer being used for serious human rights violations in the would-be recipient state.

¹⁵⁰ "Where an international treaty concluded or acceded to by the People's Republic of China contains provisions different from these Regulations, the provisions of the international treaty shall prevail, except for the provisions on which reservations are made by the People's Republic of China."

Regulations of the People's Republic of China on Administration of Arms Exports 2002 (Article 6).

¹⁵¹ Le régime de contrôle des matériels de guerre, armes et munitions se fonde sur des dispositions législatives et réglementaires. Les dispositions de valeur législative sont dorénavant insérées dans le code de la défense, l'ordonnance n°2004-1374 du 20 décembre 2004 relative à la partie législative du code de la défense ayant abrogé le décret-loi du 18 avril 1939 fixant le régime des matériels de guerre, armes et munitions. Les articles traitant des exportations sont les articles 2335-1, 2335-2 et 2335-3. Disponible sur : http://www.legifrance.gouv.fr/affichTexte.do;jsessionid=07D0A9CB247E35F66286A73B78F1F2FA.tpdjo14v_3?cidTexte=LEGITEXT000005935955&dateTexte=20120511

¹⁵² Le régime de contrôle fixé par l'ordonnance de 2004 a été profondément remanié avec l'entrée en vigueur de la Loi relative au contrôle des importations et des exportations de matériels de guerre et de matériels assimilés, à la simplification des transferts des produits liés à la défense dans l'Union européenne et aux marchés de défense et de sécurité : Loi n° 2011-702 du 22 juin 2011 parue au JO n° 0144 du 23 juin 2011 <http://www.legifrance.gouv.fr/affichTexte.do;jsessionid=?cidTexte=JORFTEXT000024228630&dateTexte=&oldAction=rechJO&categorieLien=id>

¹⁵³ Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment.

¹⁵⁴ Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment, Article 2 <http://consilium.europa.eu/eeas/foreign-policy/non-proliferation,-disarmament-and-export-control-/security-related-export-controls-ii.aspx?lang=en>, accessed 20 August 2011.

¹⁵⁵ Amnesty International has documented irresponsible French arms supplies, for example see: Amnesty International, *Arms transfers to the Middle East and North Africa: Lessons for an effective Arms Trade Treaty*, 19 October 2012; Amnesty International, *Guinea: Call for suspension of military and police weapons transfers*, 8 October 2009; and Amnesty International, *Blood at the Crossroads: Making the Case for an Arms Trade Treaty*, 17 September 2008.

¹⁵⁶ User's Guide to Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment, 29 April 2009. Such factors include respect for international obligations, human rights, and IHL by the recipient country, the internal situation, preservation of regional peace, security and stability, potential impact on sustainable development and the risk of diversion. It is not, however, compulsory for EU member states to abide by this best practice approach.

¹⁵⁷ See for example South African arms transfers in Amnesty International, *Blood at the Crossroads: Making the Case for an Arms Trade Treaty*, 17 September 2008 (ACT 30/011/2008); Amnesty International, *Dead on Time - arms transportation, brokering and the threat to human rights*, 9 May 2006 (ACT 30/008/2006).

¹⁵⁸ South African National Conventional Arms Act 2002, Article 15 c) and d). South Africa law also includes a provision to "consider the conventional arms control system of the recipient country and its record of compliance with end-user certificate undertakings, and avoid the export of conventional arms to a government that has violated

an end-user certificate undertaking”.

¹⁵⁹ In 2010, the South Africa Auditor-General produced a report which revealed a serious lack of controls over exports of conventional weapons by the National Conventional Arms Control Committee (NCACC). The findings included: “permits were issued without the proper authorisation, delegation or ratification of the NCACC” and “At least 58 arms transactions with clients in at least 26 countries took place without the legally required input by relevant government departments.” “Confidential audit report shows meltdown in South Africa’s arms control regime”, DA, 31 January 2010. <http://www.da.org.za/newsroom.htm?action=view-news-item&id=7834> Last Accessed 10 May 2012.

¹⁶⁰ Article 4 of the Law of Ukraine “On the State Control of International Transfers of the Defense and Dual-Use Commodities” No. 549 dated 20 February 2003.

¹⁶¹ Power-point presentation on the State Export Control System of Ukraine by Oleksander M. Gryshutkin, First Deputy Chairman, State Service of Export Control of Ukraine.

¹⁶² For example, see Amnesty International, *Sudan: No End To Violence in Darfur: Arms Supplies Continue Despite Ongoing Human Rights Violations*, February 2012 (AFR 54/007/2012).

¹⁶³ There are three pieces of legislation relevant to arms transfers in the USA: the US Foreign Assistance Act, which pertains to Exports of defense articles or defense services to government end users; the US Foreign Assistance Act & Export Administration Regulations, which pertains to exports of policing and security equipment; and the “Leahy Law”, which pertains to foreign military or security assistance (equipment or training) to foreign government forces. For a more detailed discussion on the human rights principles embodied in US arms control law, see Amnesty International, *The US should support an effective human rights rule in the Arms Trade Treaty* (Index: AMR 51/057/2010).

¹⁶⁴ Export Administration Regulations §742.79(b) and (d).

¹⁶⁵ The Leahy provision in successive versions of the Foreign Operations Appropriations Act (see Section 551 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act 2006) and the Defense Appropriations Act (see Section 8061 of Defense Appropriations Act 2009). Note that the FOAA version covers both equipment and training, but the DAA version covers only training. The Leahy provision in the DAA can also be waived by the Secretary of State for Defense if she or he determines that “extraordinary circumstances” require it.

¹⁶⁶ Crime control equipment is defined in the Commerce Control List of the Export Administration Regulations.

¹⁶⁷ See for example case studies on US arms transfers in Amnesty International, *Blood at the Crossroads: Making the Case for an Arms Trade Treaty*, 17 September 2008 (ACT 30/011/2008); and Amnesty International, *Dead on Time: arms transportation, brokering and the threat to human rights*, 9 May 2006 (ACT 30/008/2006).

¹⁶⁸ The International Committee of the Red Cross (ICRC) has developed and published a practical methodology for IHL: see ICRC, *Arms transfer decisions: Applying international humanitarian law criteria*, 16 August 2007.

¹⁶⁹ See Amnesty International, *How to apply human rights standards to arms transfer decisions* (Index: ACT 30/008/2008). Also, see the following chapters ‘Respecting human rights in arms transfer decisions’ and ‘Undertaking a rigorous risk assessment’ included in Amnesty International, *Arms Transfers to the Middle East and North Africa: Lessons for an Effective Arms Trade Treaty*, 19 October 2011 (ACT 30/117/2011).

¹⁷⁰ This is proposed in both Amnesty International’s and the International Committee of the Red Cross (ICRC) assessment guidelines to determine whether a proposed transfer presents a substantial risk. See, Amnesty International, *How to apply human rights standards to arms transfer decisions* (ACT 30/008/2008) and ICRC, *Arms*

transfer decisions: Applying international humanitarian law, 2007.

¹⁷¹ For example, the OSCE Best Practice Guide on Marking, Record-keeping and Traceability of Small Arms and Light Weapons; Best Practice Guidelines for the Implementation of the Nairobi Declaration and the Nairobi Protocol on Small Arms and Light Weapons (SALW).

¹⁷² OSCE Best Practice Guide on Ammunition Marking, Registration and Record-Keeping, p9.

¹⁷³ OSCE Best Practice Guide on Marking, Record-keeping and Traceability of Small Arms and Light Weapons, p. 8.

¹⁷⁴ OSCE Best Practice Guide on Ammunition Marking, Registration and Record-Keeping, p9.

¹⁷⁵ International co-operation and assistance are important elements to include in an effective ATT, including technical assistance and capacity building, so as to assist states in meeting their obligations under international law and working towards best practices in these areas. This should be largely an uncontroversial component of the Treaty.

