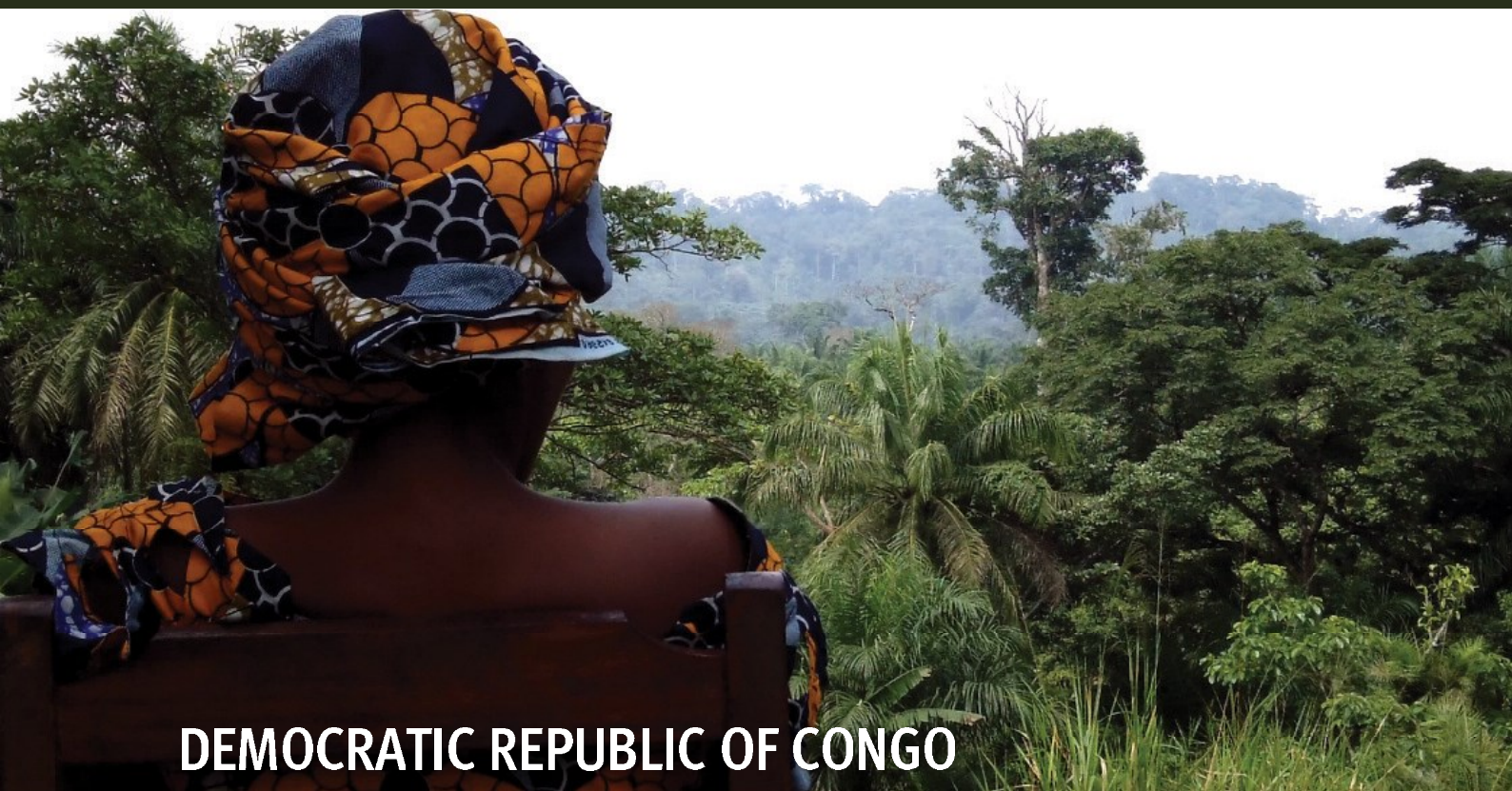


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DEMOCRATIC REPUBLIC OF CONGO

ENDING IMPUNITY FOR SEXUAL VIOLENCE

NEW JUDICIAL MECHANISM NEEDED TO BRING
PERPETRATORS TO JUSTICE

June 2014



Democratic Republic of Congo:

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Introduction

Horrific levels of rape and other forms of sexual violence have plagued eastern Democratic Republic of Congo for almost two decades. Tens of thousands of women, girls, men, and boys have been raped and otherwise sexually abused. The exact number of victims is unknown.

The gathering of world leaders and activists in London for the Global Summit to End Sexual Violence in Conflict on June 10-13, 2014, is an important opportunity for the Congolese government, donors, and other actors to make concrete commitments to support efforts to bring justice to the victims in eastern Congo. This document provides an overview of some of the worst cases of mass rape and other forms of sexual violence committed in recent years by the Congolese army and non-state armed groups, and the inadequate efforts to hold those responsible to account. It makes recommendations to strengthen accountability for crimes of sexual violence in Congo.

Dozens of armed groups operate in eastern Congo, and many of them—as well as members of the Congolese security forces—have been perpetrators of sexual violence. Armed groups have abducted and held Congolese women and girls as sex slaves. The perpetrators often harmed their victims with machetes and other weapons before or after raping them. Girls as young as 2 and women older than 80 have been targeted, as well as some men and boys. Many victims developed serious medical complications following the rape, frequently dying from their wounds.

Armed groups and members of the Congolese army have used rape as a weapon of war to “punish” civilians belonging to a particular ethnic group, or those they accused of supporting the “enemy.” Stigma and fear of rejection by their families or communities have prevented many women and girls from reporting rape. Others live in remote areas where no psychosocial or medical services exist. Many have been threatened by the perpetrators or members of their armed group or army unit, deterring victims from seeking justice.

In recent years, Congolese authorities have carried out an increasing number of arrests and prosecutions for rape, but the vast majority of perpetrators remain unpunished. Senior level officers who have command responsibility for soldiers who rape are effectively untouchable. The United Nations Joint Human Rights Office (UNJHRO) in Congo recorded 187 convictions by military courts for sexual violence between July 2011 and December 2013. Four of those convicted were members of armed groups; the others were soldiers, police, or other state agents. Of the 136 army soldiers convicted, only three were senior officers, namely lieutenant colonels.¹ The trial of one general, Jérôme Kakwavu, on rape charges is ongoing.

Widespread sexual violence in eastern Congo will not end until the perpetrators, including leaders bearing command responsibility, are brought to justice. Government officials should send strong, clear warnings to soldiers, officers, combatants, and warlords that rape carries a high price. Government officials who protect commanders or hinder investigations or prosecutions should also be brought to justice.

The justice system in Congo is beset by corruption, limited capacity, and political interference. Magistrates often lack proper training and basic equipment to conduct thorough investigations. Because of poor security in prisons, and corruption among judicial and prison staff, many of those arrested for rape have escaped from prison; some have returned to threaten the victims who denounced them. Others languish in appalling prison conditions awaiting trial, for weeks, months, or years. Ongoing insecurity in eastern Congo and the presence of armed groups has hindered the arrest of armed group commanders. The government has also had a policy over the past decade of rewarding former armed group leaders and alleged war criminals by integrating them into the army and giving them senior positions, effectively perpetuating the cycles of violence and impunity.

Human Rights Watch believes that a new judicial mechanism is needed in Congo to end the impunity protecting perpetrators of serious crimes in violation of international law, including sexual violence. A government proposal to establish specialized mixed chambers could make a difference and deserves international support. The chambers would be located within Congo's national judicial system with the participation of

¹ United Nations Human Rights Office of the High Commissioner and MONUSCO, « Progress and obstacles in the fight against impunity for sexual violence in the Democratic Republic of the Congo », April 9, 2014, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14489&> (accessed May 2014).

international judges and other personnel for a limited period. They would have the mandate to prosecute war crimes, crimes against humanity, and genocide committed in Congo since 1993. The minister of justice and human rights has drafted legislation to establish the specialized mixed chambers, and President Joseph Kabila has publicly expressed his support for this mechanism.²

Abduction, Rape, and Mutilation by Army Soldiers Around Shalio, April 2009

From April 27 to 30, 2009, Congolese army soldiers deliberately attacked refugees and other civilians in the hills of Shalio, Marok, and Bunyarwanda in Walikale territory, North Kivu, during military operations against the Democratic Forces for the Liberation of Rwanda (*Forces démocratiques de libération du Rwanda*, FDLR). The FDLR is a largely Rwandan Hutu armed group, some of whose members participated in the genocide in Rwanda in 1994. The soldiers killed at least 129 Rwandan Hutu refugees, mostly women and children. Many women and girls were raped during the attacks, and some of them were later killed.³

A group of soldiers took 40 women and girls from Shalio to the nearby military position at Busurungi, where they kept them as sex slaves, and gang-raped and otherwise abused them. A week later, 10 of the women escaped. Human Rights Watch interviewed several of these women. One had been mutilated: her attackers had cut chunks from her breasts and stomach. The fate of the remaining 30 women is unknown.

One of the victims told Human Rights Watch:

When the soldiers attacked us at Shalio, I lost six members of my family, including my 8-year-old daughter, 12-year-old son, and 15-year-old son, who were all beaten to death with wooden clubs in front of me. Then four of the soldiers took me and raped me. They told me that I'm the wife of an FDLR and they can do whatever they want to me. I was able to flee, but I've been very sick since then, and I have constant pains in my stomach.⁴

² Speech by President Kabila to both chambers of the Congolese Parliament, October 23, 2013, <http://afrique.kongotimes.info/rdc/politique/6768-cohesion-nationale-discours-joseph-kabila-devant-congres.html> (accessed April 5, 2014).

³ For more information on the attack in Shalio, see Human Rights Watch, *You Will Be Punished: Attacks on Civilians in Eastern Cong*, December 2009, pp. 117-124, <http://www.hrw.org/reports/2009/12/13/you-will-be-punished>.

⁴ Human Rights Watch interview with rape victim, Lukweti, October 6, 2009.

Human Rights Watch is not aware of any judicial investigation into the abuses in and around Shalio, which may amount to crimes against humanity and war crimes under international law.

Lt. Col. Innocent Zimurinda, a former officer from the armed group, the National Congress for the Defense of the People (*Congrès national pour la défense du peuple*, CNDP), who was integrated into the army in early 2009, played an important role in the Shalio attack. According to credible reports received by Human Rights Watch, including interviews with soldiers present during the attacks and United Nations (UN) sources, Colonel Zimurinda directly ordered the killing of all persons taken by their forces, including refugees.⁵

Zimurinda is a close ally of Gen. Bosco Ntaganda, the de facto deputy commander of military operations against the FDLR at the time. General Ntaganda was in Ngungu during the Shalio massacre, not far from where Zimurinda was based. Given the close relationship between the two men, there is a strong basis for investigating Ntaganda's possible involvement in the attack.

Ntaganda is now detained by the International Criminal Court (ICC) in The Hague where he faces charges of war crimes and crimes against humanity for alleged murder, rape, sexual slavery, recruiting and using child soldiers, and pillaging in Ituri in northeastern Congo from 2002 to 2003. He is not, however, facing charges for crimes committed in North Kivu province, such as the incident described above.⁶

In 2012, Zimurinda joined the M23, a newly formed armed group made up largely of former CNDP fighters who defected from the army. He fled to Rwanda in March 2013 following infighting between two M23 factions and the defeat of the faction led by Ntaganda. In May 2013, Congolese authorities issued an arrest warrant for Zimurinda for war crimes and

⁵ "DR Congo: Complaint Against Lt. Col. Innocent Zimurinda," Joint news release by 51 human rights and civil society organizations, March 1, 2010, <http://www.hrw.org/news/2010/03/01/complaint-against-lt-col-innocent-zimurinda>.

⁶ "Q&A: Hearing to Confirm the Charges Against Bosco Ntaganda at the International Criminal Court", Human Rights Watch Q & A, February 6, 2014, <http://www.hrw.org/news/2014/02/06/qa-hearing-confirm-charges-against-bosco-ntaganda-international-criminal-court>.

crimes against humanity, and in July the Congolese authorities officially requested his extradition from Rwanda. At time of writing, Zimurinda is believed to be in Rwanda.⁷

Mass Rape in the Luvungi Area, Walikale Territory, July 2010



The leader of the Mai Mai Sheka militia group, Ntabo Ntaberi Sheka, campaigns for a seat in parliament ahead of the November 2011 national elections, despite being sought on a Congolese arrest warrant for crimes against humanity, including sexual violence. Walikale, North Kivu, November 24, 2011. © 2011 AFP/File

In one of the largest cases of mass rape in eastern Congo in recent years, fighters from a coalition of three armed groups raped at least 387 civilians—300 women, 23 men, 55 girls, and 9 boys—in 13 villages along the Kibua to Mpofi road in Walikale territory between July

⁷ Letter from Human Rights Watch to President Joseph Kabila on Prosecuting M23 Leaders and Others for Serious Abuses, January 29, 2014, <http://www.hrw.org/news/2014/01/29/dr-congo-letter-president-joseph-kabila-prosecuting-m23-leaders-and-others-serious-a>.

30 and August 2, 2010.⁸ The perpetrators included fighters from the Nduma Defence of Congo (NDC), or Mai Mai Sheka, led by Ntabo Ntaberi Sheka; a group of FDLR combatants led by Capt. Serafin Lionso; and a group of army deserters led by Lt. Col. Emmanuel Nsengiyumva.

A 38-year-old mother of five from Luvungi village told Human Rights Watch:

I heard gunshots, and when I tried to flee, [the fighters] stopped me and said I wasn't going anywhere. They took me, my husband, and the children. They took everything they wanted from our house. Then they told us to help them transport what they had taken from the other houses in our village. On the way, they separated us into three groups—I was in one group, my husband in another, and the children in another.

When we got to a place a bit far in the forest, they told me to put down what I was carrying. Then they tied my hands and feet, spread out, to a tree. I couldn't move. They took off my clothes and started to rape me. The first, the second, the third, the fourth, and the fifth. I started bleeding seriously, but I couldn't do anything about it. When the sixth wanted to rape me, he said he needed to clean me off. He took his jacket and forced it into my genitals. Since the bleeding didn't stop, he continued. Imagine the size of a hand and the jacket that he forced into my genitals and the pain that I endured. Even with the pain, I managed to untie one of my hands, and when I wanted to defend myself, one of them immediately cut my left hand with his machete. After that, I lost consciousness, and I don't know how many others raped me. It was night, and I don't know when they left.

I regained consciousness early in the morning. I started to cry, but not loudly because I had no strength. There were insects all around me because of the blood. Luckily other people who were in the forest heard me. They came and untied me and helped me wash in the river. Little by little I started to get better. [Until now] only the people who treated me know this story.

⁸United Nations Human Rights Office of the High Commissioner and MONUSCO, "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," July 2011, p. 13 http://www.ohchr.org/Documents/Countries/CD/BCNUDHRapportViolsMassifsKibuaMpofi_en.pdf (accessed March 11, 2014).

I've hidden my shame until now. If only I had died, I would have been able to get rid of this shame.

I don't know anything about what happened to my husband and children, but I think my husband was killed. Other women had the same problem as me. Five of them died because of their medical problems after the rape.⁹

UN investigators found that Sheka, Lionso, and Nsengiyumva were “well aware of the planning and organization of this [military] operation, which was launched against an entire civilian population, and that they shared the spoils of the lootings at the end of the attacks.”¹⁰

Congolese military prosecutors, with the assistance of the UN, opened a judicial investigation shortly after the attacks. On October 6, 2010, following a public outcry against the mass rape in the media, Sheka handed over one of his commanders, Sadoke Kikunda Mayele, to UN and army officials, possibly in an attempt to shield himself from prosecution.

On January 6, 2011, military authorities issued eight arrest warrants for crimes against humanity, including for sexual violence, and other serious crimes, against Sheka, Mayele, Lionso and another FDLR commander, and four army deserters. Nsengiyumva, one of the alleged planners of the operation, was killed in a separate incident before an arrest warrant could be issued for him.

Mayele later died of illness in prison. Another suspect was later arrested, but he escaped from prison in November 2012. The other suspected perpetrators remain at large, and Mai Mai Sheka and FDLR fighters continue to carry out attacks on civilians, including sexual violence.

⁹ Human Rights Watch telephone interview with victim, Walikale, May 26, 2014.

¹⁰ United Nations Human Rights Office of the High Commissioner and MONUSCO, “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,” July 2011, http://www.ohchr.org/Documents/Countries/CD/BCNUDHRapportViolsMassifsKibuaMpofi_en.pdf (accessed March 11, 2014).

Sheka campaigned for parliament in Walikale in the 2011 national elections, despite his arrest warrant. Few efforts have been made to arrest him, despite attempts by government officials to encourage him to surrender. No trial was ever held for the mass rapes in Walikale.¹¹

Mass Rape by Army Soldiers in Fizi, January 2011



A rape victim and her son in the town of Fizi. The woman was raped when the army attacked Fizi between January 1-2, 2011, raping at least 50 women and girls. The woman's son suffered a head wound when soldiers threw him to the ground before raping and beating his mother. © 2011 Pete Muller/AP

Congolese soldiers from the 43rd Sector, commanded by Lt. Col. Mutuare Daniel Kibibi, raped at least 50 women and girls in the town of Fizi, in South Kivu province, on January 1-2, 2011.¹²

¹¹ "DR Congo: Arrest Candidate Wanted for Mass Rape," Human Rights Watch news release, November 2, 2011, <http://www.hrw.org/news/2011/11/02/dr-congo-arrest-candidate-wanted-mass-rape>.

¹² United Nations Human Rights Office of the High Commissioner and MONUSCO, "Progress and Obstacles in the Fight against impunity for sexual violence in the Democratic Republic of the Congo", April 2014, http://www.monusco.unmissions.org/LinkClick.aspx?fileticket=Gyh_dUBNGcs%3D&tabid=10770&mid=13783&language=en-US (accessed May 2014).

A girl who was 16-years-old at the time of the attack told Human Rights Watch what happened:

I was selling donuts (*beignets*) in the market when we started to hear gunshots. We gathered our goods and went quickly back to our homes and locked our doors. Later, we heard people outside and they shot into our door. My brother who was next to the door was killed by the bullet, and we started to cry. The soldiers entered our house and told us to shut up or they would shoot us too.

Then they took my mother and me behind the house. They called my father and brothers to watch what they were going to do to us. Then the soldiers raped my mother and me in front of my father and brothers. When my little brother saw what they were doing, he started to cry. The soldiers told him, “Since you’re crying, we’re going to give you a present.” Then they told him to sleep with me. He refused, and the soldiers cut his left hand and his back with a knife and he fell to the ground.

There were 11 soldiers. Five of them raped me, and five others raped my mother. The eleventh soldier was shot by the others because he had refused to rape me. There were two commanders in the group. One of the commanders was the first to rape me, and then he let the others rape me. By the time they left, my mother and I had lost consciousness.¹³

A 36-year-old woman described how soldiers threw a stone at her house to force her to open the door. Eight soldiers entered her house, and six of them raped her. “Two of them gave the orders to loot, rape me, and do other bad things,” she told Human Rights Watch. “The others replied, ‘Yes, chief.’ My husband abandoned me for six months because I was raped in front of him and the children.”¹⁴

¹³ Human Rights Watch telephone interview with victim, Fizi, May 22, 2014.

¹⁴ Human Rights Watch telephone interview with victim, Fizi, May 22, 2014.



Lt. Col. Mutuare Daniel Kibibi, after being convicted for crimes against humanity by a mobile court in Baraka, South Kivu. Troops under Lt. Col. Kibibi's command allegedly raped at least 50 women and girls in the town of Fizi on January 1-2, 2011. © 2011 Pete Muller/AP

To date, the rapes in Fizi are the only case in Congo in which a relatively senior army commander responsible for a mass rape was arrested and prosecuted. Following court hearings in Baraka, the South Kivu military court convicted nine soldiers, including Lt. Col. Kibibi, for crimes against humanity, including rape. They were sentenced to between 10 and 20 years in prison, and are serving their sentences at the time of writing.

The woman quoted above testified in the trial against Kibibi and the other soldiers. She said she was glad that they were arrested and convicted. “But we’ve been threatened by other soldiers who are still here,” she said. “They said they would kill us because we were the ones who accused their colleagues. For me, nine [soldiers convicted] isn’t enough. There were so many of them who committed crimes. The investigations should continue so that the others can also be arrested.”¹⁵

¹⁵ Human Rights Watch telephone interview with victim, Fizi, May 22, 2014.

Mass Rape and Sexual Slavery by the FDLR



A fighter from the Democratic Forces for the Liberation of Rwanda (FDLR), an abusive armed group operating in eastern Congo for the past two decades. FDLR combatants have raped, and often gang-raped, numerous women and girls, and have kidnapped many others and forced them to serve as sex slaves for FDLR commanders. © 2009 REUTERS/Finbarr O'Reilly

The Democratic Forces for the Liberation of Rwanda (*Forces démocratiques de libération du Rwanda*, FDLR) has been one of the most abusive armed groups operating in eastern Congo for the past two decades. FDLR combatants have raped, and often gang-raped, numerous women and girls, and have kidnapped many others and forced them to serve as sex slaves for FDLR commanders.

In May 2012, between 20 and 30 FDLR fighters rounded up and raped more than 30 women and girls from Kipopo village in Ufumandu *groupement* in Masisi territory, North Kivu. Three girls from the village, ages 7 to 11, died after being gang-raped. One woman told Human Rights Watch that she believes she was raped by at least five or six men, but lost

consciousness. “After that happened,” she said, “even though I’m still with my husband, it’s like we are no longer together.”¹⁶

In November 2012, the FDLR attacked Kipopo village again. A 28-year-old mother of five told Human Rights Watch:

We heard gunshots coming from all over the village, and everyone started to flee. My friend who had come to visit me was shot dead while fleeing. As I ran into the yard in front of my house, the FDLR grabbed me and took me into the forest. I had my baby on my back. I didn’t know what happened to my husband and my other children. I only had one thing in my head: death. They told me that before they killed me, they would first sleep with me and after they got what they wanted, it would be the end for me.

That night, I was raped by three FDLR in the forest. We were in their camp with two other women who had been captured from my village. We stayed with them three full days in the forest, and they raped us whenever they wanted. I don’t know how many raped me in total, but probably at least 10 men each day. After three days, the youth from the village attacked the FDLR, and during this attack, we were saved, and the FDLR fled without us.¹⁷

At the international level, some attempts have been made to hold FDLR leaders to account. The ICC has indicted two FDLR leaders for war crimes and crimes against humanity in Congo. The first, FDLR Executive Secretary Callixte Mbarushimana, was arrested in France in October 2010 on the basis of an ICC arrest warrant, but pre-trial judges declined to confirm the charges against him for lack of sufficient evidence, and he was released from the court’s custody in December 2011.¹⁸ Mbarushimana is also under investigation by a French war crimes unit in relation to alleged crimes committed during the 1994 genocide in Rwanda.

¹⁶ Human Rights Watch interview with victim, Goma, October 26, 2013.

¹⁷ Human Rights Watch interview with victim, Goma, May 22, 2014.

¹⁸ See “France: Rwandan Rebel’s Arrest Sends Strong Message,” Human Rights Watch news release, October 11, 2010, <http://www.hrw.org/news/2010/10/11/france-rwanda-rebel-s-arrest-sends-strong-message>; “ICC: Pursue Case Against Rwandan Rebel Leader,” Human Rights Watch news release, June 1, 2012, <http://www.hrw.org/news/2012/06/01/icc-pursue-case-against-rwandan-rebel-leader>.

The FDLR's military commander, Gen. Sylvestre Mudacumura, is sought on an arrest warrant from the ICC for war crimes committed in eastern Congo, including murder, mutilation, rape, torture, cruel treatment, and pillaging committed in 2009 and 2010 by troops under his command.¹⁹ Mudacumura remains at large in eastern Congo at time of writing.

Two political leaders of the FDLR, former president Ignace Murwanashyaka and vice-president Straton Musoni, were arrested in Germany—where they had been living for several years—on November 17, 2009, and charged with crimes against humanity and war crimes allegedly committed by FDLR troops in Congo between January 2008 and November 2009. The trial before a criminal court in Germany began on May 4, 2011, and is ongoing.

Army Mass Rape in Minova Area, November 2012



Congolese army soldiers in a military truck in Minova, around 50 kilometers west of Goma on November 26, 2012. Dozens of women and girls were raped by soldiers in and around Minova between November 20 and 30, 2012, as the soldiers fled the M23 rebels advance on Goma. © 2012 Phil Moore/AFP

¹⁹ "Situation in Democratic Republic of the Congo: The Prosecutor v. Sylvestre Mudacumura, Case n° ICC-01/04-01/12", December 6, 2012, <http://www.icc-cpi.int/iccdocs/PIDS/publications/MudacumuraEng.pdf>; See "ICC: Pursue Case Against Rwanda Rebel Leader," Human Rights Watch news release, June 1, 2012, <http://www.hrw.org/news/2012/06/01/icc-pursue-case-against-rwandan-rebel-leader>.

As the Rwandan-backed M23 armed group took control of the city of Goma in November 2012, Congolese soldiers from several army units fled the city and retreated toward Minova, a town about 50 kilometers away. From November 20 to 30, they went on a raping and looting rampage. Human Rights Watch documented at least 76 cases of rape of women and girls by army soldiers in Minova and nearby Bwisha, Buganga, Mubimbi, Kishinji, Katolo, Ruchunda, and Kalungu.²⁰ The victims included women as old as 60 and girls as young as 13. A UN investigation found that at least 126 women and girls in the area were victims of sexual violence by soldiers during that time.²¹ Most of the rapes happened between November 20 and 22.

Several women told Human Rights Watch that uniformed soldiers forced their way into their homes at night, pointed guns at them, and demanded money. The soldiers threatened to kill the women if they refused to have sex with them or if they screamed for help. Some of the victims were gang-raped in front of their husbands and children by several soldiers operating together. Other women were raped while fleeing what they thought was the M23's advance. A woman living in a displacement camp in Bweremana, 45 kilometers outside Goma, told Human Rights Watch that on November 22, when she got to the village of Ruchunda, she was stopped by army soldiers.

"They [the soldiers] took all my belongings and told me to lie on the ground," she said. "They said if I refused the rape, they would kill me. Then they tore off my *pagne* [dress] and started to rape me. Four of them raped me, one after another. When they finished, they abandoned me there. I was in a lot of pain and did not have the strength to keep walking."²²

A 30-year-old mother of four from a village outside of Minova told Human Rights Watch that she was preparing dinner on the night of November 22 when she heard gunfire. Four soldiers in uniform entered her home and started looting it. They tied her husband's hands and feet, then tied him to the door and beat him with the butt of their guns:

²⁰ "DR Congo: War Crimes by M23, Congolese Army", Human Rights Watch news release, February 5, 2013, <http://www.hrw.org/news/2013/02/05/dr-congo-war-crimes-m23-congolese-army>.

²¹ United Nations Human Rights Office of the High Commissioner and MONUSCO, "Report of the United Nations Joint Human Rights Office on Human Rights Violations Perpetrated by Soldiers of the Congolese Armed Forces and Combatants of the M23 in Goma and Sake, North Kivu Province, and in and around Minova, South Kivu Province from 15 November to 2 December 2012", http://www.ohchr.org/Documents/Countries/CD/UNJHROMay2013_en.pdf (accessed May 2014).

²² Human Rights Watch telephone interview with rape victim, Bweremana, December 13, 2012.

They said: “Give money. Give everything you have.” Then they all raped me. They said that if I resisted, they would kill me. The bedroom didn’t have a door, so [the children] could easily see what was happening. My husband has since abandoned me. He says he can’t stay with me because he saw how they raped me.²³

The army units that fought the M23 around Goma in November 2012, and which later retreated toward Minova, include the 802nd, 804th, 806th, and 810th regiments and the 391st and 41st commando battalions from North Kivu’s 8th military region. The 1006 and 1008 battalions from South Kivu’s 10th military region were also in the area, but the dates of their arrival in Minova are not clear. In addition, soldiers from the Republican Guard, the military police, and a headquarters battalion from the 8th military region were present in the area during this period.

On February 4, 2013, the UN peacekeeping mission in Congo, MONUSCO, initiated proceedings to suspend UN support to the army’s 41st and 391st battalions, in line with the UN’s Human Rights Due Diligence Policy on UN support to non-UN security forces,²⁴ which prevents the UN from supporting army units responsible for grave human rights abuses. The 391st and 41st battalions were special forces units that had been trained by the US and South African militaries, respectively.

In March 2013, seemingly in response to international pressure, the minister of justice and human rights announced that 12 army officers had been suspended in relation to the investigations into the incidents in Minova. Following this announcement, the UN suspended the procedure to withdraw its support to the 41st and 391st battalions. Human Rights Watch interviews with army officers and government officials, however, indicated that many of the officers who were supposedly suspended continued to actively serve in the army, and some may not have even been present in the Minova area during the attacks.

²³ Human Rights Watch interview with rape victim, Minova, October 30, 2013.

²⁴ United Nations, A/67/775-S/2013/110, “Identical letters dated 25 February 2013 from the Secretary-General addressed to the President of the General Assembly and to the President of the Security Council” with the annexed “Human rights due diligence policy on United Nations support to non-United Nations security forces”, March 5, 2013, http://www.un.org/ga/search/view_doc.asp?symbol=S/2013/110&referer=http://www.un.org/en/sc/documents/letters/2013.shtml&Lang=E (accessed May 2014).

On November 20, 2013—a year after the crimes took place—North Kivu’s Military Operational Court (*Cour militaire opérationnelle*, CMO) opened a trial for 39 soldiers, including five high-ranking officers, on charges of crimes against humanity and war crimes, notably rape, murder, and pillage, committed in Minova and surrounding areas between November 20 and November 30, 2012. On May 5, 2014, the verdict was announced, with only two low-ranking soldiers convicted of rape. In addition, 22 soldiers were convicted of pillage and disobeying orders and one was convicted of murder. Another 13 officers were acquitted.

There were some positive aspects of the Minova trial, including the direct use of the definition of crimes and modes of liability in the Rome Statute of the International Criminal Court. The proceedings were led by an experienced military judge, who had been involved in several rape and war crimes cases, including the trial of Colonel Kibibi mentioned above. He ordered protection measures for victims of sexual violence, including closed sessions and covering victims’ faces when they appeared in court. The participation of victims in court proceedings was also extensive. Despite these positive elements, justice has still not been served for the vast majority of victims. Serious gaps in the investigation meant that the evidence presented at trial was insufficient. There were also indications of interference by senior military officers and an unwillingness to investigate and prosecute the most senior officers bearing command responsibility.

M23 Rapes in Goma, November 2012



M23 rebels run towards the Rwandan border post in the city of Goma. During the rebels' occupation of Goma and surrounding areas between November 19 and December 2, 2012, they raped at least 36 women and girls. © 2012 Phil Moore/AFP/Getty Images

During the M23's occupation of the provincial capital, Goma, and nearby areas, between November 19 and December 2, 2012, M23 fighters raped at least 36 women and girls, including at least 18 soldiers' wives and a 10-year-old girl, who died from her injuries a day later. The night after they officially withdrew from Goma, on December 1 and 2, the M23 attacked a camp for displaced people just outside Goma and raped at least 13 women living in the camp.²⁵

A 32-year-old woman told Human Rights Watch that on November 19, word spread that M23 fighters were approaching her neighborhood. She fled but was stopped by M23 fighters:

²⁵ "DR Congo: War Crimes by M23, Congolese Army", February 5, 2013, Human Rights Watch news release, <http://www.hrw.org/news/2013/02/05/dr-congo-war-crimes-m23-congolese-army>.

They were armed men wearing military uniforms and speaking Kinyarwanda [the language of Rwanda]. There were a lot of them....They told us to put down what we were carrying and follow them along on a path up a hill. They shot one of the women who was with us, and then they took me by force up to the top of the hill. There were a lot of fighters there; more than 30. Some had rocket launchers and others had smaller weapons. Some wore uniforms, others didn't; they were wearing ponchos. They spoke Kinyarwanda, and I don't understand Kinyarwanda.

I was on my knees and asked them not to kill me. I tried to negotiate with them so they wouldn't execute me. Then they slapped me in the face and told me to take off my clothes. I was raped by the commander who was surrounded by his escorts. All the fighters on the hill saw it. When he was done, he told the others to continue raping me. When they finished, they told me to leave. They said if I dared tell even one person, they would come and kill me.²⁶

Judicial authorities have issued arrest warrants for over a dozen M23 leaders for war crimes and crimes against humanity.²⁷ Many are sought for crimes of sexual violence, although the warrants do not specify particular incidents. With the exception of Ntaganda who is awaiting trial at the ICC (see above), senior M23 leaders remain at large. Most are currently in Uganda or Rwanda.²⁸ To Human Rights Watch's knowledge, neither the Ugandan nor the Rwandan authorities have taken steps to investigate these individuals' role in committing or overseeing serious human rights abuses or to ensure they are brought to justice. Neither have any measures been taken to investigate alleged complicity in war crimes by Rwandan officials for their military support to the abusive M23 until its defeat in 2013.²⁹

²⁶ Human Rights Watch interview with victim, Goma, December 7, 2012.

²⁷ Letter from Human Rights Watch to President Joseph Kabila on Prosecuting M23 Leaders and Others for Serious Abuses, January 29, 2014, <http://www.hrw.org/news/2014/01/29/dr-congo-letter-president-joseph-kabila-prosecuting-m23-leaders-and-others-serious-a>.

²⁸ In July 2013, Congolese authorities sent Rwanda an official extradition request for four former M23 leaders.

²⁹ "DR Congo: Rwanda Should Stop Aiding War Crimes Suspect," Human Rights Watch news release, June 4, 2012, <http://www.hrw.org/news/2012/06/03/dr-congo-rwanda-should-stop-aiding-war-crimes-suspect-o>; "DR Congo: M23 Rebels Committing War Crimes", Human Rights Watch news release, September 11, 2012, <http://www.hrw.org/news/2012/09/11/dr-congo-m23-rebels-committing-war-crimes>.

Mass Rapes by Mai Mai Kifuafua in Karete and Musenge, Walikale Territory, July 2013

The Mai Mai Kifuafua is a largely ethnic Tembo local defense group that operates in southeastern Walikale and northern Kalehe territories, in an area bordering North and South Kivu provinces. Led by Delphin Mbaenda, the group has been responsible for numerous serious abuses, including sexual violence.

One of the worst recent attacks was in Karete village, Walikale territory, on the night of July 2-3, 2013, when Kifuafua fighters raped at least 25 women and girls. The actual number of victims may be much higher, as many women fled the village and did not return for fear of being stigmatized by their families or neighbors. At least six of the victims were children; the youngest was 14-years-old. A 37-year-old woman described how three Mai Mai Kifuafua fighters entered her home at 1 a.m., as gunfire rang outside. The fighters raped the woman as well as her 15-year-old daughter. They stole all their belongings and burned their house to the ground.³⁰

On the same night, Mai Mai Kifuafua fighters also attacked Musenge village and raped women there. A 32-year-old woman who was visiting Musenge told Human Rights Watch:

It was the Mai Mai Kifuafua. They came at 8 p.m. They had no shame or fear and continued the attack until 2 a.m. When they came to our house, they raped me in front of my children; one is 8 and the other is 10. I was one month pregnant at the time. A neighbor had given birth two days before the attack. They raped her, and she later died from the injuries. My younger sister was with her 2-month-old baby. When the attackers came to her, they said they were going to suspend the baby on a spear to show that they came to work, not play. When my sister begged them not to, they badly beat the baby boy, taking him by his legs and slamming him into the ground. They then raped my sister. Her baby boy is now paralyzed.³¹

³⁰ Human Rights Watch interview with victim, Walikale, October 17, 2013; Human Rights Watch interview with Congolese activist who documented the attack, September 6, 2013, Goma.

³¹ Human Rights Watch interview with victim, Walikale, October 17, 2013.

During the same attack, Mai Mai Kifuafua fighters took an 11-year-old girl from her home. She explained to Human Rights Watch how a fighter forced open the door of her home with a knife on the end of his gun. He asked her for money:

I said I have nothing. After that, two others came and they dragged me out of my house. I cried for my dad, but he didn't respond. The fighters then undressed me. They made me lie down on the ground and they started to rape me. There were three of them who raped me. They slapped me on the cheek and threatened to cut my head off. They told me they would kill me if I kept screaming. Until now, I have nightmares. When I go to the village people make fun of me. They say I'm the wife of a Mai Mai.³²

Human Rights Watch is not aware of any efforts by the Congolese authorities to investigate these attacks or to arrest and prosecute those responsible.

Army Rapes in Rutshuru Territory, November 2013

As the army moved into territories previously controlled by the M23 in late October and November 2013, soldiers committed numerous abuses in Rutshuru territory, including at least 41 rapes. Most of the rapes were committed between the village of Kalengera and the town of Bunagana.

Two 13-year-old cousins were raped when soldiers broke into their house at 4 a.m. on October 27. One of the girls told Human Rights Watch:

We heard the soldiers knocking on the door and then they came in. My cousin and I were sleeping in one room, and my aunt and grandmother were asleep in another room. The soldiers first stole 3,000 francs [about US\$3.30] from my aunt. Then they came to the room where we were sleeping. They asked us to take off our clothes; we refused. They said they were going to kill us. We were very afraid. My cousin took off her clothes, but I kept refusing. They forced my clothes off and raped both of us. Two soldiers raped me, and one raped my cousin.³³

³² Human Rights Watch interview with victim, Walikale, October 17, 2013.

³³ Human Rights Watch telephone interview with victim, Rubare, December 2, 2013.

Many of the rapes were committed by troops from the army's 601st regiment, under the command of Col. Ramazani Lubinga. The unit was based in Tongo, Rutshuru territory, before moving to Bunagana, on the border with Uganda, soon after the M23 left the town in October 2013. It returned to Tongo between mid-February and early March 2014.

On February 8, 2014, a lieutenant, a captain, and a corporal from the 601st regiment were convicted of rape following a mobile court hearing by the garrison-level military court in Rutshuru for rapes committed in Rugari near a military detention facility in December 2013. Human Rights Watch is not aware of any soldiers arrested or prosecuted for the rapes committed in late October and November after the M23's defeat, or any efforts made to investigate senior level commanders who may bear command responsibility for the rapes.

Recommendations

Human Rights Watch calls on the Congolese government, donors, and other partners to support the following efforts to ensure that those responsible for the incidents described above, as well as other crimes of sexual violence, are brought to justice in fair, credible trials.

1. Support the Establishment of Specialized Mixed Chambers

Given the limited number of cases that the International Criminal Court can prosecute and the weak capacity and lack of independence of the Congolese judicial system, Human Rights Watch believes a new mechanism is needed to prosecute crimes of sexual violence and other serious human rights abuses. The specialized mixed chambers proposed by the Congolese government would be embedded in the national justice system, with a mandate to prosecute war crimes and crimes against humanity committed in Congo over the past two decades.³⁴ It would be staffed by Congolese and non-Congolese judges and other personnel, with non-Congolese staff phased out as the chambers gain legitimacy, credibility, and independence.

³⁴ "Projet de loi modifiant et complétant la loi organique n 13/011-3 du 11 avril 2013 portant organisation, fonctionnement, et compétences des juridictions de l'ordre judiciaire en matière de répression des crimes de génocide, des crimes contre l'humanité et des crimes de guerre," April 2014, on file with Human Rights Watch.

A draft law was adopted by the Council of Ministers on April 22, 2014, and presented to the National Assembly on May 2. Citing technical concerns, members of parliament rejected the admissibility of the text on May 8. Government officials have said they will correct the technical errors and resubmit the draft law to parliament.

2. Support the Establishment of a Vetting Mechanism to Remove Human Rights Abusers from the Security Forces

Members of the Congolese security forces have been responsible for some of the worst abuses committed in Congo over the past two decades, including ethnic massacres, summary executions, mass rapes, torture, arbitrary arrests, and abductions. The pattern of abuse is in part due to the lack of accountability for past crimes and a policy of integrating former rebels into the security forces without formal training or vetting for their involvement in past human rights abuses. While there has been some progress with prosecutions in recent years, the vast majority of military and police responsible for grave abuses in Congo remain unpunished, and many remain in active service.

It will be difficult to end the cycles of violence in Congo until those responsible for serious abuses are removed from the security forces and brought to justice. To that end, a vetting mechanism should be a central component of Security Sector Reform (SSR) in Congo. Such a mechanism would remove perpetrators of serious human rights abuses from the security forces and support efforts to build disciplined, rights-respecting forces that protect civilians.³⁵

3. Reparations

Other mechanisms to support victims of sexual violence and other serious human rights abuses should be explored, including a comprehensive reparations program. In accordance with Congolese criminal law, civilian and military courts that prosecute rapes systematically order those who are convicted to pay a fine. But these individuals usually claim they cannot afford to pay damages to victims. When members of the armed forces

³⁵ Human Rights Watch, *Establishing a Vetting Mechanism for the Security Forces of the Democratic Republic of Congo*, April 7, 2014, <http://www.hrw.org/node/126130>.

are convicted of rapes and grave crimes, the state is convicted “*in solidum*” (because of its responsibility for actions carried out by the army, a public institution). However, the Congolese state is not known to have paid any such reparations to date. In addition to individual cash payments, other forms of reparations should be considered, including community reparations (such as the construction of schools, access to medical treatment and projects to provide economic opportunities for women abandoned by their families). The government should hold broad and transparent consultations with reparations experts and victims’ groups in order to set up a reparations program that would enjoy support and legitimacy.

4. Protection for Victims and Witnesses

All too often, victims and witnesses of sexual violence and other serious abuses are threatened, intimidated, or physically attacked by their perpetrators or members of the same armed group or army unit, making it even more difficult for them to seek justice. Greater efforts are needed to protect victims and witnesses who may be willing to testify. Recent experiences in the Fizi and Minova trials, including closed hearings, concealing victims’ identities, and preserving their anonymity, are positive practices that should be used in other trials. While the identity of victims should be known to defense lawyers in order to respect the rights of the accused, magistrates should be willing to act if this information is leaked or is used to intimidate victims, using provisions under Congolese law that criminalize intimidation or corruption of witnesses.

5. Ensure Rights of the Accused are Respected, Including the Right to an Appeal

Most trials for crimes of sexual violence that have taken place in Congo so far have tended to be expedited and the rights of the accused have not always been respected. The accused often do not have access to defense lawyers of their choosing who have recognized expertise in defending against accusations of rape or international crimes. Congolese law has provisions for legal aid for indigent defendants, but in practice this is hardly ever paid, further limiting the possibilities for the accused to be assisted.

There have also been cases where it appears that individuals tried for rape were not the actual perpetrators, but they were prosecuted either because authorities wanted to show

they were taking action, or because they were sacrificed to protect their commanders. Some defendants have also been denied their right of appeal. The trial of 39 soldiers accused of involvement in mass rape around Minova took place before the military operational court – an exceptional military court for crimes committed during military operations, created through a governmental decree and which does not allow appeals. The right to appeal is a fundamental fair trial right that must be respected.



(above) A Congolese woman in Luvungi, eastern Congo, a month after the mass rape of 387 women, children, and men in July 2010. One of the armed group leaders who allegedly planned the attack, Mai Mai leader Sheka Ntabo Ntaberi, is sought on a Congolese arrest warrant for crimes against humanity. He is still at large, and his fighters continue to commit horrific attacks on civilians in eastern Congo.

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(front cover) A 32-year-old woman who was raped in front of her husband and two children by Mai Mai Kifuafula fighters in Musenge village, Walikale territory in July 2013.

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