

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	377
Land:	DR. Congo
Kilde:	UN Security Council
Titel:	Report of the UN joint HR office violations perpetrated by CAF and M23. Del 1
Udgivet:	15. maj 2015
Optaget på baggrundsmaterialet:	Maj 2013



MONUSCO

The United Nations Organization Stabilization
Mission in the Democratic Republic of the Congo



**UNITED NATIONS
HUMAN RIGHTS**

OFFICE OF THE HIGH COMMISSIONER

**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**

MAY 2013

TABLE OF CONTENTS

SUMMARY	4
I. INTRODUCTION.....	5
II. METHODOLOGY	5
III. CONTEXT OF THE COMBAT AND OF ACTORS PRESENT IN THE AREA	6
IV. LEGAL FRAMEWORK.....	8
V. HUMAN RIGHTS VIOLATIONS.....	9
5.1. Human rights violations perpetrated by the FARDC	9
5.2. Human rights violations perpetrated by the M23	11
VI. MEASURES TAKEN BY CONGOLESE AUTHORITIES.....	13
VII. MEASURES TAKEN BY MONUSCO AND THE INTERNATIONAL COMMUNITY	14
VIII. CONCLUSIONS AND RECOMMENDATIONS.....	15

LIST OF ACRONYMS

AFDL	Alliance of Democratic Forces for the Liberation of Congo
CNDP	National Congress for the Defence of the People
DRC	Democratic Republic of the Congo
FARDC	<i>Forces armées de la République démocratique du Congo</i>
FDLR	Democratic Forces for the Liberation of Rwanda
FPLC	Patriotic Forces for the Liberation of Congo
ICC	International Criminal Court
ICGLR	International Conference on the Great Lakes Region
IDP	Internally Displaced Person
M23	<i>Mouvement du 23 mars</i>
MONUSCO	United Nations Organization Stabilization Mission in the Democratic Republic of the Congo
OHCHR	Office of the United Nations High Commissioner for Human Rights
RCD	Rally for Congolese Democracy
SRSg	Special Representative of the Secretary General
UNJHRO	United Nations Joint Human Rights Office

Summary

In April 2012, a mutiny of the *Forces armées de la République démocratique du Congo* (FARDC) in North Kivu, initiated by General Bosco Ntaganda, led to the creation of the *Mouvement du 23 mars* (M23) rebellion. After occupying part of Rutshuru territory from July 2012, the M23 rebellion seized the towns of Goma and Sake on 20 and 22 November 2012 respectively, while troops from the FARDC retreated towards Minova, South Kivu province. In partial compliance with the communiqué issued on 24 November 2012 by the International Conference on the Great Lakes Region (ICGLR), M23 combatants began to withdraw from Goma and Sake on 1 December 2012.

The present report outlines gross violations of human rights and serious violations of international humanitarian law, including killings and arbitrary executions, mass rape, and violations resulting from widespread looting, committed by FARDC soldiers during combat and retreat, and by combatants of the M23 during combat and the period of occupation of Goma and Sake between 15 November and 2 December 2012. The findings of this report are the result of increased monitoring activities and of several field investigations conducted by the United Nations Joint Human Rights Office (UNJHRO) during which more than 350 interviews were conducted with victims and witnesses.

The violations of human rights law and international humanitarian law committed by FARDC soldiers in particular were perpetrated in a systematic manner and with extreme violence, mostly as FARDC units retreated from the front lines and regrouped in and around the town of Minova, Kalehe territory, South Kivu province. In this context, at least 102 women and 33 girls were victims of rape or other acts of sexual violence perpetrated by FARDC soldiers. FARDC soldiers were also responsible for the arbitrary execution of at least two people, violations of the right to physical integrity of at least 24 civilians, cases of forced labour and the widespread looting of villages.

During the period of occupation of Goma and Sake by the M23, combatants of this armed group perpetrated gross human rights violations and serious violations of international humanitarian law. The UNJHRO documented at least 59 cases of sexual violence, of which 58 were cases of rape by M23 combatants in Goma and surrounding areas. At least 11 civilians were arbitrarily executed and at least a further two were victims of attempted arbitrary execution by the M23. The UNJHRO also documented cases of recruitment and use of children, forced labour, cruel inhuman or degrading treatment, and looting by M23 forces during the same period.

MONUSCO continues to support the judicial investigation by the Military Prosecutors in South Kivu and North Kivu provinces into the allegations of sexual violence, arbitrary executions, rights to property violations and other human rights violations by FARDC soldiers. In December 2012, 11 FARDC soldiers were arrested in connection with these incidents, including two for murder, but only two for related cases of rape. Furthermore, 12 senior army officers have been suspended to date in relation to the investigations into the incidents in Minova. The recommendations made in this report are aimed at ending the violence, and bringing the alleged perpetrators from all sides to justice.

I. Introduction

1. On 15 November 2012, renewed fighting broke out between combatants of the *Mouvement du 23 mars* (M23) armed group and soldiers of the *Forces armées de la République démocratique du Congo* (FARDC) to the north of the town of Goma, North Kivu province. After five days of combat, M23 rebels seized and occupied the town of Goma on 20 November 2012, advancing to the town of Sake, Masisi territory, on 22 November 2012. FARDC soldiers meanwhile retreated towards Minova, Kalehe territory, South Kivu province, where they regrouped. On 1 December 2012, following the International Conference on the Great Lakes Region (ICGLR) communiqué of 24 November 2012, M23 rebels began to withdraw from Goma, a process which continued the following day.
2. The United Nations Joint Human Rights Office (UNJHRO)¹ received several allegations of violations of human rights and international humanitarian law, including sexual violence, arbitrary executions and violations resulting from widespread looting, reportedly committed by both FARDC soldiers during combat and retreat, and by combatants of the M23 during combat and the period of occupation of Goma and Sake. Once informed of such allegations, the UNJHRO increased its monitoring and investigation activities in and around Goma. The present report focuses on the human rights violations that occurred between 15 November and 2 December 2012 during the fall of Goma and Sake, North Kivu, and the retreat of FARDC towards Minova, South Kivu.
3. The information contained in this report only reflects the cases confirmed by the UNJHRO in the context of the constraints outlined below. Thus, this report does not intend to present a comprehensive examination of the human rights situation in all areas affected by the conflict between the M23 and the FARDC during the period from 15 November to 2 December 2012.

II. Methodology

4. UNJHRO field presences conducted human rights monitoring and investigation activities² in the areas affected by the conflict in and around Goma, North Kivu. In addition to monitoring activities in and around Goma, the UNJHRO conducted two investigation missions to Minova and surrounding villages, Kalehe territory, South Kivu province, from 6 to 8 December 2012 and from 11 to 14 December 2012, one mission to Sake, Masisi territory, North Kivu, on 30 November 2012 and one mission to Bweremana, Masisi territory, North Kivu, on 17 December 2012. These missions were, on occasion, conducted jointly with other sections of MONUSCO, including Child Protection.
5. UNJHRO staff conducted over 350 interviews with victims and direct and indirect witnesses to the human rights violations described in this report. The teams also met with

¹ On 1 February 2008, the Division of Human Rights (DHR) of the United Nations Organisation Mission in the Democratic Republic of the Congo (MONUC) and the Office of the United Nations High Commissioner for Human Rights (OHCHR) in the Democratic Republic of the Congo (DRC) were merged creating the United Nations Joint Human Rights Office in the DRC (UNJHRO) which functions according to their respective mandates. This report is published in accordance with Security Council Resolution 2053 (2012).

² See Security Council Resolutions 1925 (2010) and 2053 (2012).

representatives of civil society organizations and other local sources in order to gather as much information as possible concerning the reports of human rights violations. In Minova, UNJHRO staff met with local administrative and military authorities, and held follow-up meetings with judicial authorities from North Kivu and South Kivu.

6. Owing to protection concerns for victims, witnesses and other sources, UNJHRO staff limited conspicuous contact with key interlocutors. UNJHRO staff also faced security constraints, which prevented access to certain areas including during the occupation of Goma and Sake. Furthermore, other potential sources of information were not available to UNJHRO staff, including people who had been displaced from the area as a result of the violence, and people who preferred not to give information for fear of reprisals. In terms of investigating sexual violence in particular, considering the stigma associated with rape in the area and the fear of repudiation by their families, victims are often reluctant to report cases. For these reasons, the UNJHRO was not able to verify all of the allegations it received.
7. During combat between FARDC soldiers and combatants of the M23 around Goma and Sake between 15 November and 30 November 2012, at least 17 people, including at least two boys, were reportedly killed and some 139 civilians were injured, including at least 25 children aged from 2 to 17. At this stage it is not possible to determine the exact circumstances of these incidents, or to indicate whether parties to the conflict took adequate precautions, in accordance with international humanitarian law.

III. Context of the combat and of actors present in the area

8. For years, the provinces of North Kivu and South Kivu have experienced cycles of violence and armed conflict centred on the huge mineral wealth and fertile land of this part of eastern Democratic Republic of the Congo (DRC). Weak state institutions, including the national army, police and justice institutions; persistent impunity; and the interference of external actors³ have undermined efforts to restore security in that region. The security situation in North Kivu and South Kivu provinces has deteriorated since April 2012, concomitant with the emergence of new armed groups, including the M23, and the resurgence of activities of older ones such as the *Forces démocratiques de libération du Rwanda* (FDLR), and the Raïa Mutomboki.
9. The M23 was formed on 6 May 2012, when former rebels from the *Congrès national pour la défense du peuple* (CNDP), led by General Bosco Ntaganda, mutinied from the national army which they had integrated in 2009. The group's founders cited the supposed failure of the agreements of 23 March 2009 according to which some elements of the CNDP integrating into the national army were to be given key military positions. M23 leaders consider that these engagements were not respected referring to unpaid wages and poor living conditions of integrated soldiers and alleging the killing of former CNDP soldiers in Dungu, Oriental Province. Tensions also arose as, during the period of integration, the government attempted to deploy former CNDP officers outside of the provinces of North Kivu and South Kivu and dismantle parallel chains of command – residual of the CNDP hierarchy – within the army.

³ See Final report of the Group of Experts on the DRC, 15 November 2012, available online at http://www.un.org/ga/search/view_doc.asp?symbol=S/2012/843.

10. A number of senior officers in the M23 are allegedly responsible for gross human rights violations, going back, in many cases, for years. For example, Bosco Ntaganda, a senior M23 commander indicted by the International Criminal Court (ICC), including for the enlistment, conscription and use of children while commander of the *Forces patriotiques pour la libération du Congo* (FPLC) rebel group in Ituri district, Orientale province, in 2002 and 2003, handed himself over to the United States Embassy in Kigali, Rwanda, on 18 March 2013, where he requested a transfer to the International Criminal Court (ICC). Sultani Makenga, another senior M23 commander, has been implicated in the recruitment and use of child soldiers, and is believed to be responsible for the Kiwanja massacre of 4-5 November 2008, when CNDP troops executed at least 67 civilians (mainly young men) in Kiwanja, North Kivu.⁴
11. The FARDC also has a poor human rights record and its soldiers have for years been responsible for many gross human rights violations. Poor discipline of soldiers and officers alike stems in part from the repeated integration of former rebels into the national army without formal training, or vetting mechanisms to ensure accountability. The FARDC lacks basic equipment and logistics, soldiers are poorly and irregularly paid, while allegations of corruption, particularly among senior officers, are rampant.
12. Combat between the mutineers and FARDC began in April 2012 in Masisi territory and, on 6 July 2012, the M23 seized the town of Bunagana, Rutshuru territory, North Kivu province. Two weeks later, the M23 took the towns of Rutshuru and Kiwanja, Rutshuru territory, some 70 km from Goma. After a lull, fighting broke out again on 15 November 2012 in areas to the north of Goma. Following five days of combat, the M23 seized the city of Goma on 20 November 2012, and the town of Sake on 22 November 2012.
13. The FARDC units which were engaged in fighting with the M23 in Kibumba and Munigi, north of Goma, from 15 November 2012 were the 804 and 810 regiments and 391 and 41 battalions from the 8th Military Region (North Kivu) and the 10062 Battalion from the 10th Military Region (South Kivu) which was sent as reinforcement. These units retreated to Sake on 18 November 2012. Soldiers of the 802 regiment and the Republican Guard were deployed to defend Goma airport and held their positions until 19 November 2012. At the same time, the 41 and 391 battalions under the operational command of the 8th Military Region were sent to Minova, in South Kivu province, in order to establish control in case the M23 attacked from Masisi territory. On 20 November 2012, soldiers of FARDC 802 and 804 regiments were engaged in fighting in the western Ndosho area of Goma. Following the fall of Sake to the M23 on 22 November 2012, about 6,000 to 8,000 FARDC soldiers, with dependents, retreated towards Bweremana, Masisi territory, North Kivu province, and Minova, South Kivu province, where the operational centre of the 8th Military Region was subsequently installed. FARDC units – 41 battalion, 391 battalion and 802 regiment – returned to Sake on 1 December 2012. By mid-December 2012, most units of the 8th Military Region had left Minova and surrounding villages.

⁴ See also OHCHR press release, “Citing “appalling” human rights records of leader of the M23 mutiny in DR Congo, Pillay fears further abuses”, 19 June 2012, available online at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12251&LangID=E>.

IV. Legal framework

14. The human rights mentioned in this report are protected by several international instruments ratified by the DRC, such as the International Covenant on Civil and Political Rights⁵, the African Charter on Human and Peoples' Rights⁶, the International Covenant on Economic, Social and Cultural Rights⁷ and the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict.⁸ They are also protected by the Universal Declaration of Human Rights,⁹ many of the provisions of which are considered to have customary international law status. According to this legal framework, the Congolese State is bound to respect these human rights norms and standards and to take necessary measures to prevent and punish violations of these rights whether committed by its own State security forces or by non-State actors.
15. International humanitarian law applicable to non-international armed conflicts binds all the parties involved in the conflict, including the FARDC and non-State actors such as the M23. As such, all Parties to the conflict are obliged to respect international humanitarian law, enshrined in Common Article 3 of the four Geneva Conventions of 12 August 1949 and Additional Protocol II to the Geneva Conventions relating to the Protection of Victims of Non-International Armed Conflicts of 8 June 1977, as well as customary international law, which ensure the protection of those who do not take a direct part, or who no longer take part in hostilities and notably prohibit uncompensated or abusive forced labour.
16. Some of the human rights violations documented in this report may, as a result of their type and nature constitute war crimes and crimes against humanity as defined by Articles 7 and 8 of the Rome Statute of the ICC, which have been incorporated into Congolese domestic law. Additionally, the violations of human rights outlined in this report may constitute crimes according to Congolese criminal law, such as murder, rape, child recruitment, and theft and abduction, all of which are crimes punishable by a prison sentence. It is the responsibility of the military justice system to investigate these violations, as it has jurisdiction over all crimes committed by members of the armed forces and armed groups.¹⁰

⁵ The International Covenant on Civil and Political Rights which came into force on 23 March 1976 guarantees the right to life (Article 6) and the right to physical integrity and prohibits the use of torture and cruel, inhuman or degrading treatment or punishment (Article 7).

⁶ The African Charter on Human and Peoples' Rights was adopted on 27 June 1981 in Nairobi and recognises the respect for life and integrity of the person (Articles 4 and 5), as well as the right to property (Article 14).

⁷ The International Covenant on Economic, Social and Cultural Rights which came into force on 3 January 1976 recognises the right to education (Article 13).

⁸ The Optional Protocol on the Involvement of Children in Armed Conflict to the Convention on the Rights of the Child came into force on 12 February 2002 and prohibits the recruitment and use in hostilities of persons under the age of 18 by armed groups.

⁹ The Universal Declaration of Human Rights of 10 December 1948 specifically recognizes the right to life, liberty and to the security of the person (art. 3) and the right to own property (art. 17). It also prohibits torture and cruel, inhuman or degrading treatment or punishment (art. 5)

¹⁰ Article 156 of the Constitution of the Democratic Republic of the Congo, 18 February 2006.

V. Human rights violations

17. During the armed combat between the M23 and the FARDC between 15 November and 22 November 2012, the UNJHRO documented human rights violations that were committed by both sides. During their occupation of Goma and Sake, M23 combatants committed gross violations of human rights and serious violations of international humanitarian law against the civilian population and members of the FARDC who had surrendered and were thus no longer participating in hostilities. Violations committed by both sides and documented by the UNJHRO include killings; rape; forced labour; recruitment and use of children; cruel, inhuman or degrading treatment; violation of the right to property. Following the advances of the M23 into Goma and Sake, FARDC units under the operational command of the 8th and 10th Military Regions fled southward in a disorganised manner, and regrouped in Minova and surrounding villages, Kalehe territory, South Kivu province, where they perpetrated the most serious human rights violations. FARDC soldiers entered several villages, where they committed mass rape and other acts of sexual violence, as well as cases of arbitrary execution, mistreatment and systematic looting.

5.1. Human rights violations perpetrated by the FARDC

Violation of the right to life

18. The UNJHRO documented the killings of at least two people by FARDC troops as they retreated and regrouped in and around Minova, Kalehe territory, South Kivu province. The two victims were killed in villages near Minova during looting incidents. In the first case on 22 November 2012, in Ruhunde village, Kalehe territory, South Kivu province, one man was beaten with the butt of a rifle and punched as he tried to resist the looting of his house by FARDC soldiers. He died several days later from his injuries. The second victim, a 14 year old boy, was shot dead on 25 November 2012 in the village of Kalungu, Kalehe territory, by a soldier of the 391 Battalion. The boy was returning from the fields when two soldiers tried to steal his goat. As he tried to resist and flee, one of the soldiers shot him.
19. On 18 November 2012, at least seven civilians were victims of attempted killings as FARDC soldiers fled Goma. In one case, FARDC soldiers shot and injured five adults and one child as they looted a home in the Majengo area of Goma, North Kivu province. Another man was shot while travelling on a motorbike near Mugunga, Goma, North Kivu province.

Sexual violence

20. The UNJHRO and MONUSCO Child Protection documented 135 cases of sexual violence committed by FARDC soldiers between 20 and 30 November 2012. At least 97 women and 33 girls (aged between 6 and 17) were raped and a further five women were victims of attempted rape in and around Minova, Kalehe territory, South Kivu province, particularly on the Minova – Ruhunde axis. According to concurring testimonies, the majority of the rapes were committed in a widespread manner on 22 and 23 November 2012. Most of the cases documented followed a similar *modus operandi*: FARDC soldiers entered houses, usually in groups of three to six, and, after threatening the inhabitants, looted whatever they could find.

One or two of the soldiers would leave with the looted goods and at least one would stand guard as the remaining FARDC soldiers raped women and girls in the house. Victims were threatened with death if they shouted; some were raped at gunpoint. Most victims were raped by more than one soldier. Almost all cases of rape documented by the UNJHRO were accompanied by death threats and additional acts of physical violence.

Torture, and cruel, inhuman or degrading treatment

21. During the period under review, the UNJHRO documented violations of the prohibition against cruel, inhuman or degrading treatment against at least 24 civilians, including four minors in villages around Minova, Kalehe territory, South Kivu province. Most of victims were beaten while attempting to resist FARDC soldiers from attacking their houses in and around Minova, South Kivu province. In two cases, men who intervened to prevent the rape of their wives were beaten by FARDC soldiers. In one of these cases, during the night of 22 to 23 November in Kalungu, Kalehe territory, the victim was tied with ropes and beaten by FARDC soldiers while his wife was raped in the adjacent room.

Violation of the right to property

22. Extensive looting by FARDC soldiers was documented by the UNJHRO. On 19 November 2012, FARDC soldiers looted a number of houses, particularly in the Ndosho and Kyeshero areas of Goma, North Kivu province, as they were leaving Goma. In addition, as they retreated towards Minova, FARDC soldiers systematically looted the town of Minova as well as at least eight villages on the Minova-Nyamasasa axis (Minova, Mubimbi, Buganga, Kalungu, Kishindji, Bwisha, Nyamasasa, Ruhunde and Bishenge), Kalehe territory, South Kivu province, between 21 and 25 November 2012, as well as the villages of Nyamasasa, Ruhunde, and Kalungu between 28 and 30 November 2012. FARDC soldiers also looted at least two IDP camps, in Mubimbi, Kalehe territory, during the night of 22 to 23 November 2012 and in Minova, Kalehe territory, during the night of 23 to 24 November 2012. In both instances, soldiers waited for humanitarian aid to be distributed to IDPs and looted the distributed goods during the following evening.¹¹ Soldiers of the 8th Military Region illegally occupied houses in the villages of Nyamasasa, Ruhunde and Buganga.

Violations of the prohibition against forced labour

23. Three cases of forced labour were documented by the UNJHRO. On 19 November 2012, as FARDC soldiers fled the area of Kanyarucina, Nyiragongo territory, North Kivu province, they forced IDPs from the nearby camp to transport bags of personal possessions, military equipment and looted goods towards the town of Sake, Masisi territory, North Kivu province. During looting in Minova and surrounding villages, throughout the night of 22 to 23 November 2012, FARDC soldiers threatened civilians and forced them to carry the looted goods from one village to another. In another case, as they returned to Sake on 2 December 2012, FARDC soldiers forced civilians to construct military positions and to transport possessions in nearby Kimoka and Lutobogo, Masisi territory, North Kivu province.

¹¹ Intentionally directing attacks against material involved in humanitarian assistance is considered a war crime (see Rome Statute, article 8(2)(e)(iii)).

Occupation of schools/violations of the right to education

24. From 20 November 2012, FARDC soldiers of the 8th and 10th Military Regions deployed South Kivu reportedly occupied 42 primary and secondary schools in Minova, South Kivu, and Bweremana, North Kivu, preventing over 1100 children from having access to education. The soldiers, and accompanying families, used chairs and desks as firewood and looted offices and stores. From 24 December the schools started to be vacated, although the majority of the institutions were seriously damaged.

5.2. Human rights violations perpetrated by the M23

Violations of the right to life

25. The UNJHRO has documented that at least eleven civilians were arbitrarily executed and at least a further two were victims of attempted arbitrary execution by M23 combatants in Goma and in Sake during the period of M23 control, from 20 November to 1 December 2012. As the M23 entered Goma on 20 November 2012, one man was shot and killed in a street in the Ndosho area of Goma by combatants who accused him of being a Mayi Mayi. On the same day, a 16 year-old boy was shot dead by M23 combatants for suspected collaboration with the FARDC. A number of victims were deliberately targeted and shot at close range by M23 combatants who entered their homes. For example on 22 November 2012, the wife of a well-known businessman was shot dead in her home in Goma by a group of M23 combatants. In another example, on 27 November 2012, one man was shot as he was driving behind a vehicle in which M23 combatants were holding another man. Suspecting the man of following them, M23 combatants shot him, and stole his car. The man later died from his injuries.
26. Under the M23 control of Goma, Sake and surrounding villages, dozens of human rights activists, legal professionals and journalists, as well as government employees received threats, including death threats, from M23 combatants, often in the form of text messages or phone calls, mostly for having spoken out against the group or resisting recruitment or complying with orders. Many of these people chose to flee Goma.

Sexual violence

27. The UNJHRO documented 59 cases of sexual violence perpetrated by M23 combatants in and around Goma during the period of M23 control. At least 49 cases of sexual violence were committed against women in the Katindo military camp in Goma, North Kivu province, by M23 combatants between 21 and 25 November 2012. The victims, mostly wives of FARDC soldiers who had fled during the M23 advance, were raped, often as they returned to the camp to pick up belongings they had left behind. In a case of sexual assault, on 29 November 2012, four M23 combatants reportedly came to a woman's house in Goma and asked for money; after the woman gave a large sum of money, two M23 combatants then reportedly put a gun to her head saying she had to choose between being raped and being killed. The woman was sexually assaulted. A 13 year-old girl was raped on 30 November 2012 by M23 combatants in Goma. During the night of 1 – 2 December 2012, as the M23 combatants were withdrawing from Sake and the Ndosho area of Goma, some

combatants attacked the Mugunga III camp for internally displaced persons where they raped at least eight women.

Cruel, inhuman or degrading treatment

28. The UNJHRO was able to confirm six incidents of cruel, inhuman or degrading treatment perpetrated by M23 combatants. During the night of 16 – 17 November 2012, two men in Kibumba village, Rutshuru territory, were whipped and mistreated by M23 combatants as they attempted to resist looting of their properties. At least two people accused of petty criminality by the M23 were subjected to public beatings on 23 November 2012, in the Ndosho area of Goma. On 24 November 2012, a group of 15 M23 combatants looted a shop and a residence attached to the shop in the Kyeshero area of Goma, hitting with hammers a number of customers in the shop. Following the raid on Mugunga III IDP camp by M23 combatants during the night of 1 – 2 December 2012, one man, who was physically unable to bear the 50 kg load he had been forced to carry, was severely beaten on the chest and on the buttocks with sticks. The man required hospitalisation as a result of injuries.
29. On 21 November 2012, M23 combatants beat up six surrendered FARDC soldiers in Rugari, Rutshuru territory, en route to the M23 training centre in Rumangabo. Surrendered FARDC soldiers who spent over two weeks in the M23 training centre at Rumangabo before being released told UNJHRO investigators that they were beaten by M23 guards several times daily.

Violations of the right to liberty and security of person

30. In Goma, 250 FARDC soldiers and at least four civilians were abducted and deprived of their liberty by M23 combatants. On 21 and 22 November 2012, at least 250 FARDC soldiers who had surrendered to M23 combatants in Goma, including 18 medical staff from the Camp Katindo military hospital in Goma, were forcibly transported to Rumangabo barracks, a training centre for the M23. On 10 December 2012, 186 surrendered FARDC soldiers, many of whom were old and sick, were released and sent back to Goma. In addition, the UNJHRO received reports that over 900 elements of the Congolese National Police were similarly forced to join the M23. On 22 November 2012, one prominent local figure was abducted by M23 combatants in Goma and taken to a hotel where he was threatened if he refused to take a position with the M23 administration. The man was later able to escape. On 27 November 2012, another prominent local personality was abducted by M23 combatants and driven to the Ndosho area of Goma, where he managed to flee. On 28 November, two guards working for a bank director were abducted from their homes in the Karisimbi area of Goma.

Violation of the right to property

31. M23 combatants in Goma were responsible for the widespread looting of government offices, including the North Kivu military court, and police stations, schools, as well as shops, private houses and scores of vehicles. Looting was often conducted in a violent manner, with victims being threatened if they did not hand over money and possessions.

During their occupation of Goma and Sake, the M23 illegally occupied a number of public and private buildings.

Violations of the prohibition against forced labour

32. On at least two occasions, M23 combatants forced civilians to carry looted goods. During the night of 16 – 17 November 2012, in the village of Kibumba, Rutshuru territory, 14 people – including seven children and two women – were abducted by M23 combatants and forced to carry goods looted from the village. During the attack on the Mugunga III camp by M23 combatants during the night of 1 – 2 December 2012, at least six men were forced to transport looted goods for up to 8 hours.

Recruitment and use of children

33. On 21 November 2012, M23 leaders held a public meeting in Goma stadium, during which they enticed youths to join the armed group. Training of new M23 recruits, including minors, started on 22 November 2012: military recruits were trained in Mubambiro, Masisi territory, North Kivu province, and police recruits were trained in Katindo, Goma. On 27 November 2012, the Child Protection Section of MONUSCO witnessed the presence of three alleged minors among a platoon of M23 combatants posted in front of the Central Bank building in Goma. Other witnesses also reported to the UNJHRO the presence of children within the ranks of the M23 in Goma. MONUSCO Child Protection has documented the cases of 24 children, aged 14 to 17, who were associated with the M23 during the period covered by this report, and who have since escaped. MONUSCO continues to receive credible allegations of forced recruitment by M23 combatants, including of children, in Rutshuru territory, North Kivu province and in Rwanda¹². These allegations are the subject of ongoing investigations by MONUSCO.

Violations of the right to a fair trial

34. On 20 November 2012, in the Ndosho area of Goma, one man, accused of carrying out criminal activities, was handed over to M23 combatants who reportedly said that the population should deal with him. He was killed, possibly as a result of ‘mob justice’. M23 combatants had earlier reportedly told the population that as they did not have a prison people should ensure their own security. As the de-facto occupying authority in Goma, M23 were combatants obliged to provide security to all citizens, including those accused of criminal behaviour.

VI. Measures taken by Congolese authorities

35. On 25 November 2012, following reports of mass rapes in and around Minova, Kalehe territory, South Kivu province, the Head of the Congolese Land Forces, General François Olenga, visited Minova where he met with senior FARDC officers and called for the army to respect its code of good conduct and human dignity.

¹² See also MONUSCO press release, “*MONUSCO denounces recruitment of children and youth by M23 armed group*”, 7 August 2012, available online at <http://monusco.unmissions.org/Default.aspx?tabid=10846&ctl=Details&mid=13890&ItemID=19268&language=en-US>.

36. On 7 December 2012, the Senior Military Prosecutor's office of South Kivu deployed a military prosecutor to Minova. Eleven FARDC soldiers have been arrested to date and are awaiting trial, although only two have been arrested on charges of rape and two on charges of murder. A Joint Investigation Team, comprised of military magistrates from both North Kivu and South Kivu, MONUSCO and NGO staff, travelled to Minova and surrounding villages from 6 to 13 February 2013. On that occasion, military investigators took testimony from several hundred victims, including a large number of victims of sexual violence. In order to ensure that the alleged perpetrators are handed over to the judicial authorities, military prosecutors are closely liaising with the provincial FARDC authorities.
37. At the end of March 2013, 10 senior officers were suspended in relation to the Minova incidents pending investigations. The individuals, all FARDC unit commanders, including the commanders of the 41 and 391 battalions, were to be put at the disposal of military justice authorities. The deputy commanders of the 41 and 391 battalions were subsequently suspended, thus bringing the total number of suspensions of senior officers to 12.

VII. Measures taken by MONUSCO and the international community

38. MONUSCO, in line with its mandate to protect civilians and to support the Congolese army, provided significant assistance to the FARDC during the period of fighting between 15 and 20 November 2012. This included 18 attack helicopter missions against M23 positions and direct fighting with M23 combatants in attempt to halt the armed group's advance towards Goma. After the FARDC withdrew from its positions in defence of Goma, MONUSCO forces took the decision not to engage in direct combat with the M23 due to the high potential for civilian deaths in a densely populated urban environment. MONUSCO forces did, however, continue to secure Goma airport, and other key points, and MONUSCO also maintained a strong presence in Goma town, including through around 80 daily patrols and the establishment of 17 Quick Reaction Forces to protect the population and prevent human rights violations and looting during the period of the M23 occupation of the town. Following the withdrawal of the M23 from Goma on 1 December 2012, MONUSCO supported the deployment of 278 police officers to Goma and Sake, who were transferred by boat from Bukavu, in South Kivu province.
39. In Goma, from 15 November to 26 November, MONUSCO evacuated 160 people who were considered to be at high risk due to the presence of the M23. These individuals included the Governor and Vice Governor, other government authorities, magistrates, police, journalists and human rights defenders. MONUSCO also provided a safe haven for over 3000 locals.
40. Based on preliminary findings from its human rights investigations, MONUSCO has met with senior government officials in Kinshasa, including the Head of State, the Vice-Prime Minister and Minister of Defence, the FARDC General Military Prosecutor and with military officials in South Kivu and North Kivu to advocate that appropriate measures be taken, as a matter of priority, to identify the units involved in the human rights violations documented in this report, and to hold the perpetrators accountable. On 21 December 2012, OHCHR published a media briefing¹³ on the human rights situation in eastern DRC,

¹³ OHCHR, "Press briefing notes on Democratic Republic of the Congo", 21 December 2012. Available online at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12906&LangID=E>.

highlighting human rights violations perpetrated by both FARDC soldiers and M23 combatants. In response, the M23 denied any involvement in human rights violations, and called on the ICGLR to establish a commission of inquiry into allegations of human rights violations by its combatants.

41. MONUSCO is providing support to Congolese military justice officials conducting investigations into allegations raised in this report. From 27 to 30 December 2012, the Senior Military Prosecutor of South Kivu undertook a mission with the support of MONUSCO and other partners to Minova and surrounding villages and, on 3 January 2013, he submitted to MONUSCO a request for assistance with a more in-depth follow-up investigation. A mission by judicial authorities to further investigate the violations and identify alleged perpetrators took place in the form of a Joint Investigation Team, with the assistance of NGO and other UN partners, as mentioned in paragraph 36 above. MONUSCO continues to provide support to the investigation by Congolese military justice, including through its Joint Investigation Team and Prosecution Support Cell mechanisms.
42. Considering the human rights violations outlined in this report, MONUSCO has been systematically reviewing the support it provides to certain units of the FARDC, in particular support to units of the 8th and 10th Military Regions present in the area of Goma and Minova between 15 November and 2 December, in line with Security Council Resolution 1906 (2009) which requires MONUSCO to condition support to the FARDC on compliance with international humanitarian, human rights and refugee law¹⁴ and the Human Rights Due Diligence Policy on UN support to non-UN security forces. On 4 February 2013, MONUSCO initiated the procedure of suspension of support to the 41 and 391 FARDC battalions. MONUSCO notes with satisfaction the suspension of the commanders and deputy commanders of the 41 and 391 battalions. In view of this, the procedure to withdraw support was suspended.
43. On 31 December 2012, the United Nations Security Council imposed sanctions – travel bans and asset freezes – on the M23 and on individual leaders of the movement. In its justification, the Security Council considered the M23 to be “complicit in and responsible for committing serious violations of international law involving the targeting of women and children in situations of armed conflict in the DRC including killing and maiming, sexual violence, abduction, and forced displacement”.¹⁵

VIII. Conclusions and recommendations

44. FARDC soldiers and combatants of the M23 armed group are responsible for gross violations of human rights law and serious violations of international humanitarian law in the context of the combat between the two Parties in and around Goma and Sake, North Kivu province, as well as during the retreat and regrouping of FARDC soldiers in Minova and surrounding villages, South Kivu province, between 15 November and 2 December 2012.

¹⁴ See Security Resolution 1906(2009), paragraph 22.

¹⁵ United Nations Security Council, “List of Individuals and Entities Subject to the Measures Imposed by Paragraphs 13 and 15 of Security Council Resolution 1596 (2005), as Renewed by Paragraph 3 of Resolution 2078 (2012)”. Available online at http://www.un.org/sc/committees/1533/pdf/1533_list.pdf.

45. Among the most serious human rights violations, the UNJHRO and MONUSCO Child Protection Section documented 135 cases of sexual violence perpetrated by FARDC troops in and around Minova, Kalehe territory, South Kivu province, and 59 cases of sexual violence perpetrated by the M23. The UNJHRO has documented other serious human rights violations perpetrated by the M23 and FARDC, as described above. Given the type and nature of these violations, and the context in which they have been committed, they may constitute international crimes as well as crimes under the Congolese penal code.
46. The UNJHRO is particularly concerned about the gross human rights violations perpetrated by the Congolese army, and its failure to protect civilians. This failure stems in part from a lack a ‘vetting’ procedure which has allowed former rebels, for example former leaders of the *Rassemblement congolais pour la démocratie* (RCD), CNDP and other rebel movements, to integrate into the national army without verification of their human rights records. More generally, the Congolese army lacks discipline, and effective mechanisms to ensure accountability for many ongoing human rights violations.
47. Thus it is recommended, as a matter of urgency:

To the Congolese authorities

- to promptly complete effective, thorough and impartial investigations into the human rights violations committed by the M23 and the FARDC outlined in this report, and to prosecute the alleged perpetrators of these acts, including those bearing command responsibility, regardless of their rank;
- to speed up reform of the justice sector, including enacting laws that will free the military justice from military command and place it under the authority of the Ministry of Justice and to ensure that in the future no civilians are tried by military justice jurisdiction;
- to take into account the human rights violations detailed in this report and the responsibility of the alleged perpetrators during all measures of security sector reform and the restructuring of armed forces and to implement a systematic verification of the human rights records of combatants, their commanders and their overall group during the integration process of armed groups into the FARDC;
- to implement the Action Plan to Stop and Prevent Underage Recruitment, Sexual Violence and Other Grave Child Rights Violations signed by the Congolese government on 4 October 2012, which include the issuance of military directives for the prevention of killing and maiming of children, of sexual violence against children and of the occupation of schools, and ensuring that perpetrators of these violations are held accountable;

To the international community

- to continue its support to the Congolese defence and security forces, with respect to verifying conformity with human rights standards, in order for them to fully ensure the protection of civilians, particularly in regions still affected by armed conflict;

- to support the military justice to complete effective, thorough and impartial investigations in the areas affected by the human rights violations described in this report in order to identify alleged perpetrators and commanding officers. Mobile judicial hearings in Minova should be supported in order to hold the perpetrators accountable and re-establish the confidence of the civilian population in the FARDC and Congolese justice system;
- to ensure that any arrangements resulting from regional peace negotiations be in line with norms and principles of international law and not prevent the investigation and prosecution of alleged perpetrators of gross human rights violations and/or serious violations of international humanitarian law, including war crimes or crimes against humanity, or the realisation of the right to an effective remedy by the victims of those violations;
- to support coordinated multi-sectorial assistance to victims of sexual violence in the framework of the Comprehensive Strategy on Combating Sexual Violence in the DRC;
- neighbouring states to support Congolese efforts to arrest and hold to account the leaders of the M23 allegedly responsible for violations documented in this report, as well as those leaders of the M23 facing long-standing allegations of responsibility for gross violations of human rights and serious violations of international humanitarian law;
- to request all parties to the conflict to respect international humanitarian and human rights law and to ensure the protection of civilians.
