



COALITION TO STOP THE USE OF CHILD SOLDIERS

Democratic Republic of Congo

Report to the Committee on the Rights of the Child
in advance of the DRC initial report on the Optional Protocol to the
Convention on the Rights of the Child
on the involvement of children in armed conflict

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Who are child soldiers?

The Coalition considers the term child soldier to be equivalent to the following description of children associated with armed forces or groups:

A child associated with an armed force or armed group refers to any person below 18 years of age who is, or who has been, recruited or used by an armed force or armed group in any capacity, including but not limited to children, boys and girls, used as fighters, cooks, porters, spies or for sexual purposes. It does not only refer to a child who is taking, or has taken, a direct part in hostilities.

Source: Paris Principles and guidelines on children associated with armed forces or armed groups, UNICEF, February 2007.

The Coalition to Stop the Use of Child Soldiers (the Coalition) is an international human rights research and advocacy organization. The Coalition seeks to end and prevent the military recruitment and use in hostilities of child soldiers (boys and girls below the age of 18), and other human rights abuses resulting from their association with armed forces or groups. It seeks the release of child soldiers from armed forces or groups, promotes their successful return to civilian life and accountability for those who recruit and use them. The Coalition promotes global adherence to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

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Contents

Executive summary and key recommendations	1
<i>Key Recommendations</i>	2
Conflict dynamics in the east	5
I. General Measures of Implementation	6
OPAC ratification and other international standards.....	6
Constitutional provisions.....	6
War crimes and crimes against humanity.....	7
The 2009 Child Protection Code	7
Military laws and policies prohibiting the recruitment and use of children by the security forces	8
Legal and policy framework for children’s DDR processes and implementation in practice	9
<i>Recommendations</i>	10
II. Prevention	10
Recruitment and use of child soldiers	10
Articles 1 and 2.....	12
Factors contributing to child recruitment in the FARDC	12
Child recruitment and use during “accelerated integration”.....	12
Ongoing recruitment of children by integrated FARDC units	14
Child recruitment into the Republican Guard	14
<i>Recommendations</i>	14
Article 4.1	15
Children’s involvement in non-state armed groups.....	15
Congolese armed groups	16
Foreign armed groups.....	17
Re-emergence of “Local Defence Forces”	18
<i>Recommendations</i>	18

III. Prohibition and Related Matters	19
Articles 4.2 and 6.1	19
Obstacles to effective prohibition.....	19
Impunity	19
Few and flawed prosecutions for child recruitment and use	20
Structural factors contributing to impunity	22
Non-implementation of the 2009 Child Protection Code	23
<i>Recommendations</i>	24
IV. Protection, Recovery and Reintegration.....	24
Article 6.3.....	24
Arbitrary arrest and unlawful detention of child soldiers by the FARDC.....	24
<i>Recommendations</i>	25
Reintegration – a flawed and insufficient approach	26
The invisibility of girl soldiers	28
Effectiveness of reintegration support.....	29
<i>Recommendations</i>	29
Child protection and development – a priority for post-conflict reconstruction	30
<i>Recommendation</i>	31
V. International cooperation and assistance	31
Article 7.1.....	31
Action plan for preventing the recruitment and use of child soldiers.....	31
Protection concerns relating to the drawdown of MONUSCO	31
Donors and funding for recovery and reintegration	32
<i>Recommendations</i>	32

Executive summary and key recommendations

The Coalition to Stop the Use of Child Soldiers (the Coalition) submits this report for consideration by the Committee on the Rights of the Child (CRC) in view of its examination in September 2011 of the Democratic Republic of Congo's (DRC) initial report under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OPAC). The report is intended to assist the CRC in formulating its questions and recommendations to the DRC government aimed at ending the recruitment and use of child soldiers and ensuring that they are provided with appropriate assistance to successfully return to civilian life.¹

Progress has been achieved towards ending the recruitment and use of child soldiers in the DRC over the last eight years. Tens of thousands of children have been released from the ranks of armed forces and groups; military laws and directives exist to prevent children's involvement in the armed forces; a Child Protection Code has been enacted criminalizing child soldier recruitment and use; and programs have been set up to secure the release, recovery and reintegration of returning child soldiers.

Despite these achievements the situation for child soldiers, those at risk of recruitment or re-recruitment, and those attempting to rebuild their lives following release, remains substantially unchanged, especially in the eastern provinces where armed conflict persists.

Hundreds of children remain in the ranks of the national armed forces (Forces armées de la République Démocratique du Congo, FARDC) despite legal and policy obligations to release them and government pledges to do so. Active recruitment – although reduced – is ongoing, and children have been recruited into other government security forces such as the Republican Guard. Some child soldiers captured by the FARDC have been unlawfully detained and in some cases ill-treated or tortured. Others have been harassed or used for intelligence-gathering purposes, exposing them to the risk of reprisals by armed groups. Hundreds, perhaps thousands, of children are in the ranks of armed groups. Many more children are at risk of recruitment and use in conditions of chronic insecurity where child protection mechanisms are virtually non-existent.

Impunity for child recruitment and use in hostilities is endemic, in violation of applicable international and national laws. While a few prosecutions have been carried out and convictions obtained, those convicted have escaped and in some cases returned to serve in the armed forces. Other suspected perpetrators remain at large, some of whom have been appointed to positions in the FARDC and are believed to be responsible for ongoing recruitment and use of children.

Despite legal obligations to ensure that child soldiers are released and provided with assistance for their recovery and reintegration, the DRC government has consistently failed to develop or implement an effective national strategy to identify and release child soldiers or provide them with assistance for their reintegration. Programs which do exist remain UN and NGO-led and are inadequate to address the scale of the problem.

¹ This report is based on the Coalition's research, including field research in the eastern DRC in July and August 2010 and continuing updates from Coalition contacts based in-country. Information was sought from the parents of child soldiers, military and civilian justice officials, and officials involved in reintegration programs, representatives of Congolese armed groups, UN and inter-governmental officials, and national and international NGOs.

As few as 50 per cent of returning child soldiers are believed to access reintegration support. Such programs as do exist often fail to address the medical, psychological or socio-economic needs of former child soldiers. Lack of political will, failure to build on best practice, short-term donor priorities and waning international support further undermine child soldiers' prospects for successful reintegration, creating a risk of drifting into other forms of hazardous labour and criminal activity or – as is frequently the case – a return to military life.²

Girl soldiers are particularly under-represented in release and reintegration programs, despite comprising up to 30 per cent of children involved in armed forces and groups. The dire situation of returning girl soldiers and their children – often born of rape – has been repeatedly documented since 2002 but the government has yet to take action to address the problem. Shame, stigma and exclusion prevent many girls who escape from identifying themselves as former child soldiers, thus depriving them of support for their recovery and reintegration. Under these circumstances many girls have no option but to return to their former commanders or drift into other marginal activities such as prostitution.

Longer term plans for the successful reintegration of all child soldiers must be integrally linked to post-conflict reconstruction programs which explicitly address the systemic causes and consequences of child soldier recruitment and use. Yet child protection and development barely feature in a major government plan for the stabilization and development of the eastern provinces.

In short, all the conditions for the military recruitment and use of children remain firmly in place. While efforts to secure the release of children are to be welcomed, the government's response, supported by international cooperation and assistance when necessary, must include a much longer term strategy for definitively ending recruitment. This should include the restoration of security and the rule of law, accountability through vetting, trials and other measures against child recruiters, formalization of recruitment procedures and armed forces' structures, and the provision of education and economic opportunities to support the protection and development of children across the DRC.

Key Recommendations

- Systematically screen all FARDC and Republican Guard units to identify and release all children, in coordination with UN child protection agencies. Grant access to UN and child protection actors to all military sites for verification.
- Issue new military command orders to all FARDC units reminding them of the legal prohibition of recruitment and use of individuals below the age of 18, and drawing attention to the provisions and penalties of the Child Protection Code.
- Ensure that the verifiable release of all children from armed groups is a precondition for entry into any future army or police integration and any related training programs.
- Widely distribute and provide training on the Child Protection Code to military and civilian authorities, and to civil society organizations.

² According to the *Report of the Secretary-General on Children and Armed Conflict in the Democratic Republic of Congo* most children who were separated from armed forces and groups during integration processes in 2009 had been recruited two or more times. See UN Doc. S/2010/369, 9 July 2010.

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- Prioritize criminal investigations and prosecutions of individuals suspected of recruiting or using children in hostilities, including through the provision of adequate resources for investigations and prosecutions.
 - Suspend from duty military personnel suspected of these offences pending completion of investigation and take appropriate disciplinary actions against them.
 - Ensure that children are not arbitrarily arrested or detained. In particular, ensure that children are not detained or prosecuted solely for their membership of armed groups or for military offences such as desertion. Instruct military commanders to promptly hand over captured children to protection actors.
 - Revive and re-establish a comprehensive national reintegration strategy for child soldiers and take immediate steps to identify and provide assistance to all former child soldiers, particularly girl soldiers and self-demobilized children.

Country summary

The DRC has experienced political and security crises since the signing of the Global and Inclusive Peace Agreement in December 2002. The agreement ended a devastating armed conflict (1998-2002) characterized by systematic human rights abuses and the deaths of an estimated five million people. At its peak, roughly half the country was controlled by Congolese armed groups supported by Rwanda and Uganda. The peace agreement was followed by a transitional power-sharing government (2003-06). Joseph Kabila was elected president during the country's first democratic elections in December 2006 and the new government took office in 2007. Progress towards democratic accountability and respect for human rights has since been reflected in the enactment of a new Constitution (2006) and several laws incorporating commitments to human rights and political freedoms. State authority, although weak, is now present in most areas of the country, and national and provincial parliaments are slowly finding a voice and tentative independence from the executive.

Yet there have been few advances in real terms. Political repression still hampers the emergence of an effective political opposition. Efforts to kick start economic development and rebuild the country's infrastructure are undermined by corruption and political patronage. The justice system, starved of resources and subject to regular political interference, offers most Congolese no redress against abuses of power; impunity for human rights violations is near-absolute. The country's health and education sectors are inaccessible to most of the population and poverty and malnutrition are endemic.

Armed conflict between the DRC's state armed forces (the FARDC) and numerous armed groups has persisted since 2002, centred on the eastern provinces of North and South Kivu. Conflict is fuelled by competition for political power and control of mineral resources, land and lucrative trade routes. Armed groups have continued to manipulate ethnic tensions, fear of land grabs and resentment over insecurity and human rights abuses to garner financial and popular support for their operations. Since 2004, the UN Group of Experts on the DRC has documented the FARDC's involvement in the trafficking of arms and natural resources (at times in alliance with armed groups), and Rwandan and Ugandan support to Congolese armed

April 2011

groups involved in similar activities.³ More than 1.3 million people are still displaced by conflict in this region.

Other areas of the country remain unstable and subject to sporadic conflict. Attacks by the Ugandan Lord's Resistance Army (LRA) in Oriental Province have resulted in the killings or abductions of thousands of civilians, including children. Armed groups remain active in the Ituri District of Oriental province and other areas remain vulnerable to outbreaks of inter-communal violence, often manipulated for political ends.

Militarily, the government's principle mechanism for pacification of non-state armed groups has been a dual process of integration into the armed forces or disarmament and demobilization. From its inception in 2004 the process was poorly managed and beset by delays, allegations of corruption and bias in the distribution of ranks and posts in the army. Screening measures to prevent child soldiers present in armed groups from joining the FARDC during the integration process were deeply flawed. No vetting process was established to exclude perpetrators of human rights abuses and known abusers have regularly been awarded command positions in the FARDC.

By 2006 some 106,000 adult combatants had been demobilized, and 50,000 former armed group members had been incorporated into "integrated" FARDC brigades intended to dismantle armed group loyalties and serve as the basis for a professional army.⁴ Plans for security sector reform and the creation of a professional army have, however, foundered in the face of government resistance to multilateral defence relations and vested interests in the pay and provisioning systems, from which senior officers reportedly profit.⁵

A second wave of army integration, initiated in 2009, was far less effective, resulting in the establishment of parallel chains of command within the FARDC, the withholding of weapons and disaffected armed groups rejecting and leaving the process (see Conflict dynamics in the east, below).

A major UN peacekeeping operation, known by its French acronym MONUC, was deployed to the DRC in 2002, involving some 16,000 troops, along with human rights and other civilian sections. MONUC was replaced by a reduced "stabilization" mission – MONUSCO – in July 2010, the bulk of whose military forces are now based in the Kivus. These peacekeeping operations have been the mainstay of civilian protection, including the monitoring and release of child soldiers. MONUSCO's mandate runs until June 2011 when further reductions to its strength and mandate are likely to be considered. MONUSCO's drawdown will inevitably threaten civilian and child protection, including that of child soldiers, in a context where the state has lacked the will or the capacity to fully assume its responsibilities in this regard.

³ See in particular *Final Report of the Group of Experts on the DRC*, UN Doc. S/2010/596, 29 November 2010. The Group of Experts on the DRC was established by Security Council Resolution 1533 in March 2004 to monitor implementation of sanctions imposed by the Security Council on the DRC in 2003. The sanctions regime (arms embargoes, travel bans and asset freezes) has since been regularly renewed and their applicability extended to include political and military leaders recruiting and using children and the targeting of women and children in armed conflict.

⁴ World Bank, *DDR in the DRC, Programme Update*, September 2009.

⁵ See International Crisis Group, *Security Sector Reform for Congo*, February 2006; and Caty Clément, *Security Sector Reform in the DRC - Forward to the Past*, in Hans Born and Albrecht Schnabel (eds), Geneva Centre for the Democratic Control of Armed Forces, Yearbook 2009.

Conflict dynamics in the east

Surges in active armed conflict throughout 2007 and 2008 resulted largely from the government's failure to resolve the underlying causes of conflict, impunity for past human rights abuses and continued insecurity.⁶ Fighting pitted the FARDC against the Tutsi-led (and at times Rwandan government-backed) National Congress for the Defence of the People (CNDP), ostensibly fighting to defend the Congolese Tutsi community from the Rwandan Democratic Forces for the Liberation of Rwanda (FDLR).⁷ Ethnically-based Congolese militias known generically as Mai Mai groups were militarily active throughout this period, fighting in opposition to the CNDP, both independently and in alliance with the FARDC, the FDLR and other armed groups. All these fighting forces regularly recruited and used children in hostilities, as well as committing other human rights abuses against child soldiers and civilians.

In January 2009 an agreement between the DRC and Rwandan governments to defeat the FDLR militarily resulted in a reconfiguration of fighting forces. The CNDP split internally and the CNDP's self-appointed leader, Bosco Ntaganda, announced that he would join forces with the FARDC to defeat the FDLR.⁸ The government simultaneously announced an "accelerated integration" program of the CNDP into the FARDC - largely on the CNDP's terms - in preparation for a joint military offensive against the FDLR spearheaded by former CNDP units and commanders. Initially a joint DRC and Rwandan army operation, subsequent FARDC offensives (known as Kimia 2 and Amani Leo) were supported logistically by the UN's peacekeeping forces.

Military operations were followed in March 2009 by the Goma peace agreements (Goma Accords) with the CNDP and 20 other Congolese armed groups, mainly Mai Mai militia opposed to the CNDP, in the Kivus.⁹ The armed groups committed to end hostilities, to convert into peaceful political parties and to integrate their forces into the army or police. In return, the groups were promised an amnesty for "acts of war and insurrection" (excluding war crimes, crimes against humanity and genocide), the release of political prisoners, and recognition of armed group ranks in the national army and police.¹⁰ Around 12,000 members of the CNDP and a number of ethnic Mai Mai militias integrated into the FARDC in North Kivu between January and April 2009 and a further 1,500 members of other Mai Mai groups joined the FARDC in July the same year.¹¹

⁶ International Crisis Group, *Five Priorities for a Peacebuilding Strategy*, 11 May 2009.

⁷ CNDP was formed in July 2006 by the renegade Tutsi general, Laurent Nkunda, ostensibly to defend and ensure the political interests of Congolese Tutsis in the eastern DRC and Congolese, mainly Tutsi, refugees in Rwanda. Laurent Nkunda was removed from the CNDP leadership in January 2009 and is now under arrest in Rwanda, although his conditions of detention remain unclear and no judicial proceedings have been initiated against him. Nkunda is accused of serious human rights abuses, including killings, rape and child soldier recruitment and use. The FDLR is a mainly Rwandan Hutu armed group which contains remnants of forces allegedly responsible for the 1994 genocide in Rwanda.

⁸ The International Criminal Court issued an arrest warrant for Bosco Ntaganda on the 22 August 2006. The charges relate to the conscription, enlistment and use of children below the age of 15 in hostilities.

⁹ Foreign armed groups, such as the FDLR and ADF/NALU (Allied Democratic Forces/National Army for the Liberation of Uganda) are deemed "negative forces" and are not involved in the peace process. Government strategy has aimed at the military eradication of these groups, supported by a resettlement and DDR program administered by the UN for captured or surrendered foreign fighters.

¹⁰ The amnesty law was enacted in May 2009, *Loi n° 09/003 du 7 mai 2009 portant amnistie pour faits de guerres et insurrectionnels commis dans les provinces du Nord-Kivu et du Sud-Kivu*.

¹¹ FARDC Structure Militaire d'Intégration (SMI): Rapport Synthèse Final des Opérations d'Intégration Accélérée et Classique des Groupes Armés du Nord Kivu, April 2009; Situation Synthétique des Ops de Désengagement et Intégration/Sud-Kivu, August 2009.

This apparent progress should not disguise the profound fragility of the situation. FARDC operations against the FDLR were accompanied by widespread human rights violations and were only partly successful militarily. The FDLR responded with violent attacks on civilians and their bases have remained relatively intact. The “accelerated integration” program was driven by political expediency and the military objective of containing and appeasing the Tutsi-led CNDP and the Rwandan government. A key outcome has been the military control by CNDP over most of the strategic areas rich in natural resources in the Kivus.¹²

Among the Mai Mai, perceptions of preferential treatment of the CNDP, frustration over the assignment of ranks and a poorly-managed process which resulted in a lack of salary payments led to a wave of desertions in early 2009 and unwillingness to fully demobilize. Many armed group signatories to the peace agreements reportedly retain reserve forces and stockpiles of weapons. Other armed group commanders have rejected the peace process entirely and new Mai Mai groups have formed. Most are factions of groups that signed the Goma Accords, leading to speculation of a deliberate splitting of forces by Mai Mai commanders, with wings inside and outside the peace process. Many of these new or residual armed groups have been ready to make alliances with the FDLR.

Hundreds of child soldiers were incorporated in the FARDC during the “accelerated integration” and the ensuing proliferation of armed groups has driven fresh child recruitment both to support military activity and to bolster troop strength prior to army integration in the belief that this will result in more senior ranks in the army or police force (see Recruitment by armed groups below). Increased insecurity has also prompted the re-emergence in some areas of “Local Defence Forces”, armed village units which often contain children.

I. General Measures of Implementation

OPAC ratification and other international standards

The DRC ratified the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict on 11 November 2001 and submitted a binding declaration setting the minimum age for voluntary recruitment at 18. The DRC has also ratified the Convention of the Rights of the Child (1990), International Labour Organization Convention 182 (2001), the Additional Protocols to the Geneva Conventions (1982 and 2002). It is a signatory to the African Charter on the Rights and Welfare of the Child. The DRC has also endorsed the Paris Principles and Guidelines on the association of children with armed forces and armed groups (2007).

Constitutional provisions

The 2006 Constitution defines a child as any person aged under 18 (article 41). The Constitution contains no specific prohibition against the recruitment and use of children. While it does prohibit the formation of “youth militia” (“*jeunesse armée*”, article 190), the possible application of this article to child recruitment and use is unclear.

¹² *Final Report of the Group of Experts on the DRC*, UN Doc. S/2010/596, 29 November 2010.

War crimes and crimes against humanity

The DRC ratified the Rome Statute of the International Criminal Court in 2002, but has not yet enacted national implementing legislation. Implementing legislation for the Rome Statute (*la proposition de loi portant mise en oeuvre du Statut de Rome*) was first introduced to the DRC parliament's lower house (the National Assembly) in 2008. The draft was accepted as "receivable" by the National Assembly in November 2010 and passed to the parliamentary Political Administrative and Justice Commission for further preparation. The draft law is still with parliament but has not been included on the agenda for the current parliamentary session. The passage of implementing legislation for the Rome Statute would entail the transfer of responsibility for the investigation and prosecution of war crimes, crimes against humanity and genocide from military to civilian jurisdiction, as well as the removal of the death penalty from the DRC's statute books, issues that are considered politically controversial.

At the national level, war crimes and crimes against humanity fall under the jurisdiction of Congolese military courts. The main body of military law is the 2002 Military Penal Code.¹³ It defines war crimes as "all offenses against the laws of the Republic committed during war and which are not justified by the laws or customs of war" (article 173). In a handful of cases, military judges have relied on the Rome Statute for clearer definition of what constitutes a war crime or crime against humanity, thereby establishing important national legal precedents. The Military Penal Code establishes command responsibility for war crimes, crimes against humanity and genocide "to the extent that they [commanding officers] tolerated the criminal acts of their subordinate" (article 175).

The 2009 Child Protection Code

A Child Protection Code was enacted in January 2009 (*Loi No. 09/001 du 10 janvier 2009 portant protection de l'enfant*). For the first time in national law, the Code prohibits the recruitment or use of children below the age of 18 by armed forces and groups and the police, although recruitment and use are not defined in the Code (article 71). Under the Code these offences are punishable by terms of imprisonment of between 10 and 20 years (article 187). The Code also commits state authorities to ensuring that children are released from the armed forces and groups and reintegrated into their families and communities (article 71). The Code prohibits the other Worst Forms of Child Labour defined by ILO Convention 182, and sets a prison term of between one and three years for violations of this prohibition.

The Code contains other provisions which, if implemented, could strengthen child protection significantly. It criminalizes the abduction, arbitrary arrest, rape and torture of children, all of which are crimes suffered by child soldiers. Torture of a child is punishable, in severe cases, by life imprisonment; rape of a child by between five and 20 years' imprisonment. The Child Protection Code also affords greater protection to children in conflict with the law. It sets the age of criminal responsibility at 14 and provides that in case of doubt over the age of a child, "the presumption of minority prevails" (article 110). It provides a number of non-custodial alternatives for courts when children aged 14 or over are convicted of criminal offences.

The Code establishes a number of state institutions to oversee child protection and the administration of child justice, including a National Children's Council, a police Special Brigade for Child Protection (*Brigade spéciale de protection de l'enfant*) and a national

¹³ Loi N° 024/2002 du 18 novembre 2002 portant Code pénal militaire.

system of Children's Courts (*Tribunaux d'enfants*). Most of these institutions are not yet operational, although units of the police Special Brigade exist in four provinces.

Military laws and policies prohibiting the recruitment and use of children by the security forces

Other legislation exists or is in preparation to protect children from involvement in the armed forces. A Presidential Decree of 9 June 2000 ordered the demobilization of all children below the age of 18 from the armed forces.¹⁴ The 2002 Military Judicial Code recognizes that military courts have no jurisdiction over anyone below the age of 18 years (article 114).¹⁵ The 2004 Defence and Armed Forces Law allows conscription only of persons aged 18 or over (article 7).¹⁶

Three draft laws are on the current parliamentary session agenda which should further codify the prohibition on recruitment of children by both the army and police. These are a law on the organization and functioning of the national police force (*loi portant organisation et fonctionnement de la Police nationale congolaise*), the draft of which specifies that recruitment must only be of persons aged 18 or over; a law on the organization and functioning of the armed forces (*loi portant organisation et fonctionnement des Forces armées de la RDC (FARDC)*); and a law on the status of military personnel (*loi portant statut du militaire des forces armées de la RDC*) which will set out recruitment procedures, disciplinary regulations and conditions of service in the army.

The Senate adopted the law on the national police force on 6 April 2011. The two other draft laws were debated in previous parliamentary sessions and the drafts should be finalized in April or May 2011. Following their passage through parliament, the laws will go to the Council of Ministers and finally to the President for promulgation.

In addition to legislation, military orders have been issued to prevent the recruitment of children into the armed forces, including instructions to prosecute recruiters under various military law provisions. On 12 May 2005 the Army Chief-of-Staff issued an order to all FARDC unit commanders prohibiting the recruitment into the FARDC of any person aged under 18.¹⁷ The order declared that severe penalties would be imposed on those who disobeyed, although it did not state what these penalties would be.

This was followed by a 19 May 2005 order from the FARDC Prosecutor-General (*Auditeur Général des FARDC*) to all military prosecutors instructing them to launch investigations and prosecutions of FARDC personnel who continued to recruit children. In the then absence of legislation criminalizing the recruitment of children, military prosecutors were instructed to use charges of "disobeying orders" (*violation de consignes*), punishable by between three to 10 years of imprisonment under article 113 of the Military Penal Code, or "abduction" (*enlèvement*) and arbitrary arrest and detention, punishable by between one and five years' imprisonment under article 67 of the (civilian) Criminal Code. A small number of prosecutions followed (see Section 3 *Prohibition and related matters* below).

¹⁴ Décret-loi n° 006 du 09 juin 2000 portant Démobilisation et Réinsertion des groupes vulnérables présent au sein des Forces Combattantes.

¹⁵ Loi n° 023/2002 du 18 novembre 2002 portant Code Judiciaire Militaire.

¹⁶ Loi n° 04/023 du 12 novembre 2004 portant organisation générale de la Défense et des Forces armées.

¹⁷ Circulaire NCL No. 00/0025/EMG/COMDT/05.

Legal and policy framework for children's DDR processes and implementation in practice

The Child Protection Code and the DRC's Operational Framework for Disarmament, Demobilization and Reintegration (DDR) codify the state's responsibility to provide assistance for the reintegration of former child soldiers (article 71). The government body responsible for adult and children's DDR is the Executive Unit for the National DDR Plan (known by its French acronym UEPN-DDR), created in 2007, and overseen by the defence ministry and an inter-ministerial DDR committee.¹⁸ A children's section within the UEPN-DDR is responsible for coordinating implementation of children's DDR processes, working with accredited national and international agencies.¹⁹ All DDR processes are nominally guided by a national Operational Framework which sets out procedures and guidelines for release, transitional care, family reunification and social reintegration programs.

In practice the state plays a limited role in DDR provision and the bulk of this work is carried out by UN agencies and NGOs, operationally coordinated by an inter-agency Child Protection Working Group, chaired by UNICEF. All child protection agencies, including the UEPN-DDR, UNICEF, MONUSCO Child Protection Sections, and relevant international and national NGOs participate in the Working Group.²⁰ MONUSCO Child Protection Sections lead on the identification and release of child soldiers from armed forces and groups and UNICEF coordinates return and reintegration processes. The concrete tasks of returning former child soldiers to their families and communities and providing reintegration programs are carried out mainly by a small number of international NGOs, often in combination with dozens of Congolese NGOs who act as implementing partners. A limited number of Congolese NGOs work independently of international NGOs.

All these UN agencies and NGOs, acting in various combinations, conduct limited public awareness-raising and training to state military and judicial officials on child protection. They are able to carry out some visits to military barracks to identify and release any children present, as well as offering a range of services to support reintegration. These actors also engage in direct dialogue and advocacy with armed group commanders when feasible, on occasion including informal negotiations at the local level for the release of children from their ranks. However, these activities are far from systematic and remain contingent upon the good will of individual military officials.

Various other state agencies are involved in DDR provision. These include the Ministry of Gender, Family and the Child and the Ministry for Social Affairs and Humanitarian Action responsible for vulnerable groups including orphans and other vulnerable children. Overall, these bodies have suffered from under-resourcing, in some cases from inadequate training, and a generally low government priority accorded to their work with children, according to officials interviewed by the Coalition.²¹ This has limited the ability of state agents to intervene to their full potential. The Coalition's impression was that while many state officials

¹⁸ Comité Interministériel chargé de la conception et de l'orientation en matière de Désarmement, Démobilisation et Réinsertion (CI-DDR), presided by the Minister of Defence and composed of the Ministries for Social Affairs, Humanitarian Affairs, Justice and Human Rights, and Labour.

¹⁹ UEPN-DDR responsibilities are set out in presidential order Ordonnance N° 07/057 du 14 juillet 2007.

²⁰ The Child Protection Working Group is a sub-unit of the UN Protection Cluster, led by the UN High Commissioner for Refugees (UNHCR).

²¹ Coalition interviews with UEPN-DDR and DIVAS officials, North Kivu and Ituri, July/August 2010.

involved in child DDR are deeply committed to their work, they are largely without political or institutional support.

Funding for children's reintegration projects comes wholly from international donors, with most funds provided by the World Bank/Multi-Country Demobilization and Reintegration Program (MDRP). Following allegations of corruption and mismanagement of DDR funds by the UEPN-DDR's predecessor funds are now administered and channelled through UNICEF, although some bilateral donor funds go directly to NGOs (See Section IV below for further detailed analysis of programs for release and reintegration of child soldiers).

Recommendations

- **Ensure that existing and planned legislation, including military laws, are aligned with the provisions of the 2009 Child Protection Code.**
- **Take immediate steps to enact effective implementing legislation for the Rome Statute**
- **Widely distribute and provide training on the Child Protection Code to military and civilian authorities, including judicial authorities, and to civil society organizations.**

II. Prevention

Recruitment and use of child soldiers

Many actions have been taken over recent years to end the recruitment and use of child soldiers in DRC. Nearly 40,000 child soldiers have been released from the ranks of armed forces and groups and recruitment levels have progressively reduced. However, for the thousands of child soldiers who remain – and those children at risk of recruitment – the situation remains substantially unchanged.²²

The FARDC, Mai Mai groups (who are listed collectively in view of their practice of constantly fragmenting and regrouping), the FDLR and other non-state armed groups have been listed in the annexes of seven consecutive UN Secretary-General's annual reports on children and armed conflict as parties that recruit and use children in hostilities. Most of these forces have additionally been cited for other abuses, including killings, abduction, crimes of sexual violence and attacks on schools.²³

Hundreds of children remain in the ranks of the FARDC and active recruitment – although reduced – is ongoing. The Republican Guard, answerable directly to the President, has also recruited and used children, thus far with no discernible consequences. Child soldiers captured by the FARDC continue to be unlawfully detained and in some cases have been subjected to torture and used for intelligence-gathering, exposing them to risk of reprisals.

²² In June 2008, Alphonse Ntumba Luaba, head of the DRC's national DDR program, estimated the numbers at between 3,000 and 6,000. Around 2,900 children have been released since then, but hundreds more recruited.

²³ Security General's reports to the Security Council on children and armed conflict, 2002, 2003, 2005, 2006, 2007, 2009 and 2010.

All armed opposition groups present in the DRC continue to recruit children and use them in hostilities. Children are estimated to make up 30 per cent or more of some armed groups. Among those noted for the highest levels of child recruitment are Mai Mai which have moved in and out of alliances with government forces, receiving financial and logistical support and, on occasion, participated in joint military operations.²⁴ The patterns of recruitment and use by Mai Mai are difficult to monitor because they frequently fragment and regroup. However, as of mid-2010, at least eight Mai Mai groups in the two Kivu provinces of eastern DRC were still holding or actively recruiting children.²⁵

Both girls and boys are recruited and used, usually between the ages of 12 and 17, although it is common to find younger children in armed groups. Children are favoured for their obedience, malleability and reckless courage in battle - factors that account for their high levels of death or injury. A belief that children possess mystical powers of protection has led to their use as bodyguards for commanders and for frontline duties. Mai Mai, in particular, hold mystical beliefs about the protective powers of children which are activated by rituals such as tattooing and the taking of hallucinatory potions in the expectation that these will deflect bullets or prevent injury.²⁶ Children are also used for carrying out basic tasks such as gathering firewood, preparing food, guarding cattle and carrying water.

Rape of girls associated with the FARDC and armed groups is widespread as well as their participation in military duties. As part of their training, many children undergo beatings or are forced to commit human rights abuses, including rape. Children who attempt to escape or who commit disciplinary offences are ill-treated or tortured, sometimes in the presence of other children. Some of these punishments result in death.²⁷

The physical consequences of life in the ranks are severe. Child soldiers may return with open wounds or physical deformations caused by old wounds or from carrying heavy weapons. Pulmonary infections, intestinal parasites and malaria are also common. Girl soldiers are often injured as a result of sexual violence or from giving birth and cases of fistulas are numerous (ruptures in the wall separating the vagina from the rectum or bladder). Serious psychological disturbances and excessive drug taking are also frequently reported.²⁸

Some children are forcibly recruited, sometimes *en masse*.²⁹ Other children enrol voluntarily, to escape poverty and hunger, to defend their communities, or to avenge the killing, rape or other violence against family members by enemy forces. In a context of chronic insecurity and ethnic polarization, parents and communities may also encourage a child's association with an armed group, perceiving it as their duty to offer one or more of their children to an armed group that claims to defend their community. In the past, children have been recruited across national borders. In 2009 the UN identified 75 foreign - mainly Rwandan - children

²⁴ *Report of the Secretary-General on children and armed conflict in the Democratic Republic of the Congo*, UN doc. S/2008/63, 10 November 2008, and *Report of the Group of Experts on the Democratic Republic of the Congo*, UN Doc. S/2008/772, 12 December 2008.

²⁵ Coalition to Stop the Use of Child Soldiers, *Mai Mai child soldier recruitment and use: entrenched and unending*, February 2010.

²⁶ Coalition to Stop the Use of Child Soldiers, *Mai Mai child soldier recruitment and use: entrenched and unending*, February 2010.

²⁷ Amnesty International, *No end to war on women and children*, (AI Index: AFR 62/005/2008), September 2008.

²⁸ These conditions were most recently described to the Coalition during an interview with the head of a Congolese child protection NGO, Bunia, 6 August 2010.

²⁹ Amnesty International, *No end to war on women and children*, AI Index: AFR 62/005/2008), September 2008.

among CNDP armed forces.³⁰ Many had apparently been lured from refugee camps by promises of education and money in the DRC.

Articles 1 and 2

Factors contributing to child recruitment in the FARDC

The recruitment and use of child soldiers by the FARDC has significantly diminished in recent years. Operationally, cooperation between FARDC units and child protection workers has steadily improved, resulting in the identification and release of children from the ranks by UN and NGO representatives mandated to perform this role. However, numerous reports attest to the persistence of child recruitment in many units, the use of children in hostilities and the routine informal use of children as porters and servants.³¹ One NGO which visits FARDC units in North and South Kivu to monitor the presence of children reported that, in their experience, children were present “in almost all army brigades”.³²

In practice FARDC recruitment procedures are inconsistently applied and much recruitment is informal. Recruitment appears to be mainly carried out at the discretion of regional military commands or individual unit commanders. Ineffective or non-existent mechanisms to verify the ages of incoming recruits are exacerbated by low levels of birth registration. Less than one third of Congolese children are registered at birth, according to government figures.³³

None of the military officials interviewed by the Coalition in 2010 were aware of centrally-issued FARDC policies or guidelines for verifying the age of recruits. Some were also unwilling to cooperate in age verification processes: NGO workers, UNICEF and MONUSCO Child Protection officers reported obstruction by some FARDC commanders and refusal to allow them entry into military facilities where children were believed to be present. Congolese child protection activists have reported receiving threats from some FARDC officers because of their efforts to identify and release children.

Child recruitment and use during “accelerated integration”

The “accelerated integration” program implemented in eastern DRC between January and April 2009 resulted in hundreds of children being assimilated into the FARDC.³⁴ Many of the children were hastily deployed within their newly-formed FARDC units to combat zones in North and South Kivu and Oriental provinces. No significant progress has since been made to trace these children. Of further concern are reports that many child soldiers with armed groups were reportedly hidden, chased away or abandoned by their commanders as the groups moved to the army integration sites in North and South Kivu, Maniema.³⁵ To the Coalition’s

³⁰ *Interim Report of the Group of Experts on the Democratic Republic of the Congo*, UN Doc. S/2009/253, May 2009.

³¹ Coalition interviews with UN and NGO child protection staff, eastern DRC.

³² Coalition interview, Bukavu, 12 August 2010.

³³ Plan d’Action National en faveur des Orphelins et Enfants Vulnérables Vivant en RDC, Ministère des Affaires Sociales, Action Humanitaire et Solidarité Nationale (MINAS), October 2009.

³⁴ See *Report of the Secretary-General on Children and Armed Conflict in the Democratic Republic of Congo*, UN Doc. S/2010/369, 9 July 2010.

³⁵ Former employee of an international NGO who assisted in screening, Goma, 31 July 2010 and NGO report on verification and release mission to six FARDC regrouping sites, North Kivu, September to November 2009, December 2009 (copy held by Coalition).

knowledge no efforts have been made to identify and locate these children who will most likely remain outside the orbit of reintegration assistance or protection.

UN officials did, however, succeed in identifying and releasing hundreds of children as armed groups entered into the integration process. Nevertheless the hurried and *ad hoc* nature of the screening process resulted in it being inconsistently applied.³⁶ Although integration was officially meant to take place at four sites, lack of transport and other logistical problems meant that it actually took place at more than 20 dispersed locations. UN officials and others involved in screening were often not informed of these arrangements or present when integration took place despite their mandated child protection role. One official estimated that the UN was present at fewer than half of the integration events. Officials noted that where screening did take place, armed group commanders often resisted identification of children and hid them.³⁷ Subsequently, the UN and the FARDC screened some units retrospectively, but the rapid deployment of many integrated units to front-line service left this process incomplete. The government has yet to carry out a comprehensive screening process to ensure that no children remain within the FARDC.

In this regard, the report of the *Group of Experts on the Democratic Republic of the Congo* submitted to the Security Council in November 2010 noted that “The MONUSCO Child Protection Section documented the release of 353 children from FARDC from January to September 2010; 103 of them had been recruited in 2010, and only 5 were formally released during screening. The Group remains concerned that child protection officers have not been given access to physically screen nearly two thirds of the FARDC combatants involved in joint military operations supported by the United Nations.”³⁸ The report further noted that since the outset of the Amani Leo operations, only one FARDC battalion had been fully screened by the MONUSCO Child Protection Section.

Evidence of the use of child soldiers in hostilities after their integration into FARDC units emerged in December 2009 when 43 children were released from two battalions of the 93rd FARDC brigade in Haut-Uélé territory, Oriental province. The children were mainly from armed group units which had integrated in North Kivu and been deployed to Haut-Uélé in early November to fight the Ugandan Lord’s Resistance Army (LRA). One UN official alleged that he saw children, who were “visibly child soldiers”, among a FARDC unit disembarking from a MONUC flight in Dungu, Haut-Uélé, in November.³⁹ MONUSCO and UNICEF child protection staff told the Coalition in mid-2010 that many children were believed to still be serving in FARDC operations against the FDLR and LRA in areas of Haut-Uélé and North and South Kivu.

36 For example the *Interim Report of the Group of Experts on the Democratic Republic of the Congo*, reports that among those released following interventions by MONUC, UNICEF and child protection workers were 911 children during the accelerated integration process in North Kivu (paragraph 75). See UN Doc, UN Doc. S/2009/253, May 2009.

37 Coalition interviews with UN and NGO protection workers, Goma, August 2010.

38 *Report of the Group of Experts on the Democratic Republic of the Congo*, UN Doc: S/2010/596, November 2010, paragraph 122.

39 Coalition interview with UN official, Bunia, 5 August 2010.

Ongoing recruitment of children by integrated FARDC units

As of mid-2010, active recruitment of children into the FARDC was continuing. Many recent cases involved former armed group units in the east that entered the FARDC via the accelerated integration process. In 2009, the UN documented 453 cases of recruitment by the FARDC, including 154 cases of child recruitment in the second half of 2009 attributed to former CNDP members.⁴⁰ One MONUSCO child protection officer reported that the UN had “clear evidence” that newly integrated units were still engaging in child recruitment in mid-2010.⁴¹ A senior FARDC officer involved in the Amani Leo operation in South Kivu informed the Coalition that many children were still present in FARDC forces in the province and that former CNDP commanders “posed a particular problem” in this regard.⁴²

Child recruitment into the Republican Guard

The Republican or Presidential Guard (*Garde Républicaine*) is commanded directly by the President and is outside FARDC command structures. The Republican Guard was responsible for the recruitment of large numbers of children in the context of recruitment drives in 2009 in Katanga and Kasai provinces. In late 2009, UN officials secured the release of 23 children recruited by the Republican Guard in Kasai and subsequently transferred to the Republican Guard base at Camp Seta in Kinshasa. According to one UN official who negotiated their release, child protection officers were initially refused access to the children. This resistance came not from the camp commander but from the “*Maison Militaire*”, a central security body answerable directly to the President.⁴³ The UN also documented the presence of 64 other children, apparently recruited by the Republican Guard, in the Kamina military training camp in Katanga province.⁴⁴

Recommendations

- **Carry out a comprehensive screening process, in collaboration with MONUSCO, to identify all children in FARDC units and the Republican Guard; ensure that any children in the ranks are immediately released and provided with support for their recovery and reintegration. The process should start with units created during the “accelerated integration” as a matter of urgency. Unimpeded access should be granted to UN and child protection workers to all military sites for verification.**
- **Issue new military command orders to all FARDC units reminding them of the legal prohibition on the recruitment and use of children aged under 18 and drawing attention to the provisions and penalties of the Child Protection Code.**
- **Standardize army recruitment procedures and train officers to ensure consistent and effective verification of the age of individual recruits. Widely circulate guidelines on verifying age and instruct recruiters that in the case of doubt over**

⁴⁰ *Report of the Secretary-General on Children in Armed Conflict*, UN Doc. S/2010/181, 13 April 2010, paragraph 71.

⁴¹ Coalition interviews with four UN officials, Goma and Bunia, August 2010.

⁴² Coalition interview with FARDC officer, Bukavu, 11 August 2010.

⁴³ Coalition interview in Goma with UN official based in Kinshasa, 1 August 2010.

⁴⁴ *Report of the Secretary-General on Children in Armed Conflict*, UN Doc. S/2010/181, 13 April 2010, paragraph 70.

an individual's age they should not be recruited. Ensure that the minimum age for recruits is strictly enforced and that military bases are regularly monitored in order to prevent and detect any underage recruitment.

- **In collaboration with the UN and child rights experts, provide training on child rights to all FARDC and Republican Guard personnel, including on the provisions of OPAC and the Child Protection Code.**
- **Provide training to FARDC personnel on the rights of girls, the legal prohibitions on their recruitment and use, including for sexual purposes, forced marriage, sexual slavery, rape and sexual violence.**

Article 4.1

Children's involvement in non-state armed groups

Congolese armed groups which have remained outside of the FARDC and foreign armed groups have continued to regularly recruit children and to use them in hostilities. Such groups are reported to have abducted thousands of children for use as combatants or as sexual or domestic slaves since 2002. The government continues to conduct military operations against these groups, often at a significant humanitarian cost, but has done relatively little to encourage armed groups to release children unharmed or to bring armed group commanders to justice for the military recruitment or use in hostilities of children, or other crimes involving children. Nor has the government insisted on the release of children as a precondition of armed group participation in army or police integration programs during past and ongoing negotiations with armed groups in the Kivus.

The government maintains contact with some armed groups and is believed to still have influence over many Mai Mai commanders, since many are former government allies.⁴⁵ Yet the government does not appear to prioritize child soldier release in these contacts. In August 2010 for example, government officials reportedly met with the Yakutumba Mai Mai, based in Fizi territory, to persuade it to re-enter negotiations. There was apparently no discussion of the need to release children believed to be associated with this group.⁴⁶

Many Congolese armed group commanders continue to believe that the size of their forces will help determine their rank on integration into the government forces. As a result, armed group commanders have continued to engage in the practice of fresh recruitments, often of children, before entering integration programs, to boost their force's numbers. The government has done little to counter this belief. It has provided senior officer grades to many former armed group commanders who were alleged recruiters and users of children.

State influence over foreign armed groups such as the FDLR is more limited. However, several child protection NGOs carry out awareness-raising activities with these groups, often with the assistance of MONUSCO. In this situation, one of the State's primary roles is to support and encourage the work of these organizations, and to ensure that they are able to operate in conditions of safety as far as possible, in line with its obligations under the UN

⁴⁵ Coalition to Stop the Use of Child Soldiers, *Mai Mai child soldier recruitment and use – entrenched and unending*, February 2010.

⁴⁶ Coalition interview with armed group representative, South Kivu, August 2010.

April 2011

Declaration on Human Rights Defenders.⁴⁷ Despite these obligations, the Coalition has learnt of continued threats by state (particularly military and intelligence) officials against Congolese child rights activists, often on the basis of their purported links with armed groups.

On the basis of its research, as of late 2010, the Coalition believes that the following armed groups were still recruiting or holding children and using them to participate in hostilities.⁴⁸ Collectively, Mai Mai groups account for the greater number of reports of recruitment received by the Coalition.

Congolese armed groups

North Kivu

- **Alliance des patriotes pour un Congo libre et souverain (APCLS)**, a Mai Mai group led by Janvier Buingo Karairi, active in parts of Masisi and Walikale territories. Much of the child recruitment by this group is reported to be forced.
- **Cheka Mai Mai**, active in Walikale territory.
- **Forces patriotiques pour la libération du Congo (FPLC)**, a Mai Mai group active in Rutshuru territory, despite the arrest of its leader, Gad Ngabo, in Uganda in July 2010. A Rutshuru community worker estimated that up to one third of FPLC were children.⁴⁹
- **Patriotes résistants congolais (PARECO)**, a coalition of Mai Mai groups, active in most territories of North Kivu and parts of South Kivu. The majority of PARECO forces joined the FARDC during accelerated integration, but a number of non-integrated PARECO units remain. Its leader, “General” Kakule Sikuli Lafontaine, abandoned the Goma peace process with some of his commanders and resumed fighting the FARDC in 2009. Lafontaine surrendered in February 2010 and is currently in Kinshasa. He appears to retain control over the remaining PARECO forces, without committing them to integration or demobilization.
- **Mai Mai Yira**, reportedly responsible for an attack on Nyaleke army camp, North Kivu, in April 2010, but unheard of before and since this attack. The group that attacked Nyaleke contained children, one of which was captured by the FARDC. A girl aged seven in the camp was killed by the Mai Mai during the attack.

South Kivu

- **Forces républicaines fédéralistes (FRF)**, a Banyamulenge (Congolese Tutsi) group, with two wings, led by Colonel Venant Bisogo and Major Michel Rukunda Makanika, active around Minembwe in Uvira territory, South Kivu province. The FRF agreed to integrate into the FARDC in January 2011, after a period of negotiation with the government. The FRF forces are now in regroupment centres.

⁴⁷ Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, 8 March 1999.

⁴⁸ Information given to the Coalition by UN and NGO child protection workers, military judicial officials and armed group representatives, eastern DRC, July – August 2010. The list is not necessarily exhaustive. Other allegations of recruitment of children by armed groups can be found in UN documents, including the November 2009 *Final report of the Group of Experts on the Democratic Republic of the Congo* (UN Doc. S/2009/603).

⁴⁹ Coalition interview, Goma, 1 August 2010.

Approximately 24 children were separated in March 2011 during the process, with identification carried out by the UN and a children's NGO partner of the Coalition.

- **Mai Mai Fujo**, Fujo Zabuloni Rubaruba is the son of a former Mai Mai leader, Zabuloni Rubaruba, who accepted integration in July 2009 and now holds the rank of FARDC general. A large part of his forces, which included many children, reportedly remained with Fujo or transferred allegiance to other armed groups.
- **Mai Mai Yakutumba**, based in Fizi territory and led by "General" William Amuri Yakutumba. A sizeable portion of this force has integrated the FARDC. Yakutumba himself, having signed the Goma Accords, later withdrew from the process and resumed fighting in opposition to the FARDC.
- **Union du peuple congolais pour la révolution (UPCR)**, active in Fizi territory and led by Adrien "Idi Amin", this Mai Mai group has been responsible for a number of abductions and appears to have relations with both the Fujo and Yakutumba Mai Mai.

Ituri

- **Front Populaire pour la justice au Congo (FPJC) / Forces de résistance patriotiques de l'Ituri (FRPI)**, active in southern Irumu territory of Ituri district, these two groups are described as essentially one. More than 100 children, including 38 girls, escaped from the FPJC/FRPI between March and July 2010. At that time some 200 children reportedly remained in the group, dispersed in forest areas in conditions that escaped children described as very poor.

Foreign armed groups

- **Allied Democratic Forces/National Army for the Liberation of Uganda (ADF/NALU)**, a Ugandan group active in the Ruwenzori mountain area, near Beni in North Kivu. The group comprises a large number of Congolese. Recent FARDC operations against the group appear to have sparked an upsurge of abductions and forced recruitment of children.
- **Forces démocratiques pour la libération du Rwanda (FDLR)**, believed to recruit children mainly from within its own family groups, although there are indications of Congolese fighters among its forces. The FDLR has also been responsible for numerous abductions of children. The Security Council Group of Experts on the Democratic Republic of the Congo, noted that MONUSCO statistics indicate "a striking increase" in recruitment of Congolese combatants by the FDLR, the majority of whom are children.⁵⁰
- **Lord's Resistance Army (LRA)**, responsible for abductions of children in Haut- and Bas-Uélé districts of Oriental province. Although LRA numbers and attacks have reduced significantly following the launch of joint DRC and Ugandan army operations against them, abductions of children are still taking place. The children are used actively in LRA attacks and girls held as sex slaves. A MONUSCO child protection officer told the Coalition that 700 children were recovered from the LRA in January 2010, captured by the FARDC, left behind by the LRA as too ill or wounded to move, or identified in communities after escape. Abductees included children from Uganda, Sudan and the Central African Republic, as well as the DRC.

⁵⁰ Report of the Group of Experts on the Democratic Republic of the Congo, UN Doc: S/2010/596, November 2010, paragraph 137.

Re-emergence of “Local Defence Forces”

Community-based militias known as Local Defence Forces (LDF), formed to protect villages from armed group attacks, were common in the Kivu provinces during the worst periods of conflict in the DRC. Ostensibly created for community self-protection, these militias quickly established a record for human rights abuses including child recruitment and use.⁵¹ The Coalition is therefore disturbed to learn of their re-emergence in parts of South Kivu, especially in the remote Hauts and Moyens Plateaux areas - a remote zone, far from major road axes and MONUSCO patrols. The formation of local defence militias suggests that insecurity has worsened for these communities but is also likely to raise levels of human rights abuse, and arms proliferation. According to reports, local defence militias are beginning to assert themselves in places such as Rubanga, Mubere, Lemera and Kitwija, and are engaging in recruitment of children. The Coalition has received reports from two sources that the FARDC provided arms to some LDF groups.⁵² Although the Coalition cannot confirm these reports, in view of the government’s history of providing military support to local militias, there is reason for concern.

Recommendations

- **Ensure that the release, recovery and reintegration of children associated with armed forces or armed groups is addressed in all peace or ceasefire negotiations and agreements with armed groups, in line with the UN operational guidelines on addressing children’s issues in peace agreements.**
- **Ensure that the verifiable release of all children from armed groups is a precondition for any future integration into the army or police and any related training programs. Screening for children should be undertaken by accredited independent child protection actors and verified by the UN.**
- **Ensure that no military, financial or logistical support is provided by the government or FARDC to local militias suspected of recruiting or using children or committing other human rights abuses. Priority should be given to regulating the activities of local defence forces and to ensuring that children are not recruited or used by them.**
- **Ensure that human rights and child protection organizations can carry out their legitimate work without fear of reprisals or threats.**

⁵¹ Amnesty International, *Children at War*, (AI Index: AFR 62/034/2003), September 2003.

⁵² Coalition interviews with child protection workers, Uvira, August 2010.

III. Prohibition and Related Matters

Articles 4.2 and 6.1

Obstacles to effective prohibition

The DRC is party to the main international human rights instruments relating to the protection of children from involvement in armed conflict and, as noted above, a clear national legal framework prohibiting and criminalizing the recruitment and use of children is in place. If implemented, existing laws would provide a strong basis for the protection of children from involvement in armed conflict. However, implementation of existing laws is systematically undermined by a variety of factors including lack of political will; impunity for human rights violations including child soldier recruitment and use; the dominance of military jurisdictions in the national legal system; political and military interference in the judicial process; corruption; under-resourcing and weak or non-existent institutional capacity in both the military and civilian justice sectors.

The Coalition believes that judicial investigations and prosecutions are an important element in ending child recruitment and use. Successful national prosecutions for the military recruitment and use of children, even in cases where the perpetrators are beyond the immediate reach of the law, could act as a significant deterrent.

Impunity

With respect to the recruitment and use of child soldiers, the most prominent example of the impunity enjoyed by senior military officials concerns FARDC **General Bosco Ntaganda**, the former military leader of the CNDP. An International Criminal Court (ICC) warrant for his arrest was issued in August 2006 on war crimes charges of enlisting children aged under 15 and using them to participate in hostilities.⁵³ Following a formal ICC request, the FARDC Chief Prosecutor issued a warrant for Bosco Ntaganda's arrest in May 2007 and requested MONUC's assistance to carry out the arrest.⁵⁴ However, neither the ICC nor the DRC's own arrest warrant has been acted on. On 31 January 2009, President Kabila stated publicly that in his view the needs of security, stability and peace in the Kivus overrode those of international justice in Bosco Ntaganda's case.⁵⁵ Bosco Ntaganda subsequently played a senior command role in the FARDC's military operations against the FDLR in 2009.

A further example of the impunity enjoyed by senior military officials was provided by the UN Group of Experts on the DRC, which in November 2009 named 21 serving senior FARDC officers with "established records of grave violations of human rights and international humanitarian law".⁵⁶ Of these, the Group accused 13 of "command responsibility for child recruitment and for maintaining children among the troops under his command". Accusations against these officers have been drawn to the attention of the DRC

⁵³ The charges relate to the 2002-2003 period when Bosco Ntaganda was Deputy Chief of Staff of the Patriotic Forces for the Liberation of Congo (*Forces Patriotiques pour la Libération du Congo*, FPLC), an armed group in the north-eastern district of Ituri.

⁵⁴ Under the terms of its Memorandum of Understanding with the International Criminal Court, MONUC may only make arrests of individuals indicted by the ICC when requested to do so by the DRC authorities.

⁵⁵ Remarks by President Kabila at a press conference at the Palais de la Nation, Kinshasa, 31 January 2009.

⁵⁶ See final report of the Group of Experts on the DRC UN Doc.S/2009/603, 23 November 2009, Annex 124

authorities by MONUSCO and others. Despite this, no judicial action is known to have been taken against them. Many have been actively involved in planning and implementing the FARDC's Kimia 2 and Amani Leo operations in the Kivus.

Few and flawed prosecutions for child recruitment and use

Despite the continuing recruitment and use of children, and clear legal prohibitions on the practice, to the Coalition's knowledge the DRC authorities have so far undertaken only four prosecutions of individuals for crimes relating to recruitment or abduction of children, all within the military, rather than civilian, justice system. Convictions of three of the accused - providing a potentially credible deterrent - were subsequently negated by their escape from prison and the fact that two are believed to have returned to the FARDC where they have continued to serve. Two of the prosecutions took place before the introduction of the Child Protection Code and relied on charges of "disobeying orders" or "abduction". Two were brought on charges of war crimes or crimes against humanity. In the fourth case, war crimes charges for the recruitment and use of under-15s in hostilities were not upheld by the court.

Jean-Pierre Biyoyo, a FARDC major and a former armed group commander, was convicted of recruiting child soldiers by a Bukavu Military Court in March 2006. His prosecution was based on article 67 of the ordinary Criminal Code for abduction ("*enlèvement*"). He received a prison sentence of five years, the maximum term prescribed for this offence. He escaped from prison in May 2006 and was subsequently promoted to the rank of FARDC colonel. In August 2010 he was reported to be involved in FARDC operations in South Kivu.⁵⁷ The authorities have taken no further action against him since his escape. The Military Prosecutor of the DRC's tenth (South Kivu) Military Region told the Coalition that he believed that Jean-Pierre Biyoyo had benefitted from the government amnesty provided to Kivu armed group members in May 2009.⁵⁸

FARDC Major **Alexandre Bwasolo Misaba**, known as "Mwami Alexandre", a former Mai Mai commander from Shabunda territory, South Kivu, was sentenced in April 2008 to five years' imprisonment for "disobeying orders" under article 113 of the Military Penal Code, for recruiting children aged between 10 and 14 years while he was a serving FARDC officer. He also escaped from prison and in mid-2009 was reportedly recruiting a new militia force, including children, in Shabunda territory. His present whereabouts are unknown.

In March 2009 **Gédéon Kyungu Mutanga**, commander of a Mai Mai group in Katanga province, and 20 of his subordinates, were convicted of crimes against humanity and other offences by the Haut-Katanga military court. Gédéon and five other defendants received death sentences.⁵⁹ The prosecution had also brought war crimes charges relating to the recruitment of 300 children between 2003 and 2006. These charges were dropped, however, after the court ruled that war crimes charges were not admissible in the absence of a declaration of war. The court did, however, recognize the State's responsibility for failing to disarm its former Mai Mai allies of weapons the State had itself provided, and awarded damages to

⁵⁷ Coalition interviews with UN and NGO staff, South Kivu, August 2010.

⁵⁸ Coalition interview with Auditeur Supérieur Militaire, Bukavu, 11 August 2010.

⁵⁹ The Court used the Rome Statute as a basis for the charges of crimes against humanity. Since the Rome Statute makes no provision for the death penalty, the defendants received life-terms for these offences. The death penalty was imposed for other crimes including insurrection.

April 2011

dozens of victims or their families.⁶⁰ An appeal has been lodged by the defence, but not yet heard.

Another FARDC officer, Lieutenant Colonel **Ndayambaje Nyangara Kipanga**, was sentenced to life imprisonment *in absentia* by a North Kivu military court in July 2009 for the abduction and rape of three girls, which the court qualified as a crime against humanity, using the provisions of the Rome Statute. He had escaped from prison in May 2009, however, and was reportedly still a serving FARDC commander in mid-2010.⁶¹ His subordinate, FARDC Major Lusungu Njoloko, was sentenced in the same trial to 10 years' imprisonment for rape. A third officer was acquitted.

The majority of senior officers and ex-armed group leaders so far brought to trial in the DRC or surrendered to the ICC are all from the Ituri region (where there is little at stake politically), demonstrating an imbalance in the application of justice when compared to the response to allegations of the same crimes in other regions of the country.

In July 2009, following sustained criticism of the conduct of government forces during military operations to defeat the FDLR, the government and FARDC High Command announced a "zero tolerance" policy for crimes committed by army personnel. Dozens of military trials of FARDC soldiers have since taken place, mainly in the Kivu provinces, for offences such as rape, looting and unlawful killing. Prosecutions of higher-ranking officers have been exceptional, however.

Investigations and prosecutions of child recruitment and use have not been prioritized as part of the government's "zero tolerance" campaign. One military prosecutor told the Coalition that the zero tolerance policy had "nothing to do" with child recruitment and use.⁶² Other than the cases referred to above, the Coalition is unaware of any other prosecutions for these offences.⁶³

In contrast, prosecutions for rape have been somewhat more forthcoming. In February 2011 eleven Congolese soldiers, including a senior army commander of the FARDC, were tried in a mobile court in Baraka (South Kivu) accused of raping more than 40 women in Fizi on New Year's Day and of other crimes committed against the population of Fizi. Ten days later, **Lt Col Kibibi Mutware** was found guilty of crimes against humanity and sentenced to 20 years in prison in the first conviction of a senior commander for rape in eastern DRC. Three of his officers were sentenced to 20 years and five soldiers to 10-15 years. The mobile court is part of a project run by the American Bar Association and funded by the Open Society Initiative for Southern Africa (OSISA) and uses Congolese lawyers and judges. Lt Col Mutware was one of many former rebels who had integrated the army.

⁶⁰ Congolese military courts sometimes award damages, in some cases substantial, against the State to victims of human rights abuse. The State rarely pays such damages.

⁶¹ *Report of the Secretary-General on Children and armed conflict*, 13 April 2010 (UN Doc. S/2010/181), paragraph 28.

⁶² Coalition interview with military judicial official, South Kivu, August 2010.

⁶³ The International Criminal Court has so far launched three prosecutions on charges which include war crimes of enlisting and conscripting children under the age of 15 and using them to participate actively in hostilities. The trials, against Thomas Lubanga, Germain Katanga and Mathieu Ngudjolo Chui, all of whom are in ICC custody, had not been completed at the time of writing this report. The charges relate to crimes committed in Ituri District. As noted above, an ICC indictment and arrest warrant has also been issued for Bosco Ntaganda, but not complied with by the DRC authorities.

In March 2011 the trial began of **Jérôme Kakwavu**, former leader of an Ituri armed group, the *Forces armées populaires du Congo* (FAPC), who was given the rank of general in the FARDC in 2004. He is accused of two counts of rape before the High Military Court in Kinshasa, crimes allegedly committed in 2004 while he was leader of the FAPC.

Structural factors contributing to impunity

A number of factors help explain the widespread impunity for human rights abuses in the DRC. Chief among these is the absence of political will to prosecute serving security force commanders. In the fragile security environment of the east, government policy has relied on pacification via integration of armed groups into the national army and police as the main means of sustaining the peace. The government has resisted repeated calls made by the UN, donor governments and international and national NGOs for the creation of an independent vetting mechanism to exclude from the army and police individuals credibly suspected of war crimes and serious human rights violations. The failure by the authorities to address such cases has seriously undermined attempts to build a professional and well-disciplined army.

Impunity is further encouraged by the dominance of military jurisdictions in the national legal system. Military courts have jurisdiction over a range of offences that are not of a purely military character. This includes jurisdiction over war crimes, crimes against humanity and genocide; all crimes committed with firearms; all crimes involving military and police personnel as well as civilians accused of offences committed in league with army or police members; and crimes involving members of armed or insurrectionary groups.⁶⁴ Military courts may apply common criminal law as well as military law.⁶⁵ Although the 2006 Constitution prescribes (article 156) that military courts only have jurisdiction over crimes committed by members of the armed forces or police, military law has not been revised and military courts continue routinely to try civilians, unconstitutionally and in violation of international fair trial standards.⁶⁶

Military judicial law requires that trial judges must have a higher rank than the defendant, representing a serious obstacle to the prosecution of senior officers.⁶⁷ Trials are often summary and fail to meet international standards of fairness. There are frequent reports of political and military command interference in trials, as well as routine obstruction of judicial investigations by FARDC commanders.⁶⁸ There are many instances of commanders obstructing investigations and shielding subordinates from prosecution. Out of fear of reprisals, and lack of confidence in the justice system, many victims of human rights violations do not lodge complaints.

The DRC's civilian justice sector is chronically weak. The Congolese justice system as a whole was described in 2008 by the UN Special Rapporteur on the independence of judges and lawyers as in "a deplorable state... prevented from functioning efficiently by the lack of

⁶⁴ Articles 111 & 112 of the Code judiciaire militaire.

⁶⁵ Article 76 of the Code judiciaire militaire.

⁶⁶ "The only purpose of Military Courts shall be to determine offences of a purely military nature committed by military personnel" and "Military courts should not in any circumstances whatsoever have jurisdiction over civilians", African Commission on Human and People's Rights, *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa* (2003), Principle L, Right of Civilians Not To Be Tried by Military Court.

⁶⁷ Articles 33 to 35 of the Code judiciaire militaire.

⁶⁸ Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, on his mission to the Democratic Republic of the Congo, UN Doc. A/HRC/8/4/Add.2, April 2008, paragraphs 38-39.

the most basic financial and material resources”.⁶⁹ In 2009, government spending on the judicial sector reportedly amounted to just 0.24 per cent of the national budget.⁷⁰

Non-implementation of the 2009 Child Protection Code

Within this broader context of impunity, a chronically under-resourced justice sector and negligence of child soldier issues, there is little tangible evidence of implementation of the Child Protection Code. Military officials confirmed that no prosecution had yet been mounted under the Code for the crime of child recruitment or use, citing lack of capacity and resources to launch investigations in remote and insecure areas as a major cause. One prosecutor claimed that lack of political and military will was also a major obstacle to prosecutions and “doubt[ed] strongly” that prosecutions would be launched. No prosecutions are known to have been initiated by the civilian courts.

Military and civilian prosecutors and judges interviewed by the Coalition reported that the Code had not been adequately publicized, and that they had received no training on its implementation.⁷¹ According to one military prosecutor, the Child Protection Code had received only “a very superficial kind of dissemination”. Another had not received a copy of the law and appeared to be unaware of its contents. Others had acquired copies on their own initiative. No official commentary or guidance on its implementation had been issued, they said.⁷² One told the Coalition that, even in Kinshasa, military judicial officials had had to ask for photocopies, and cited a case in May 2009 in which a judge, unaware of the existence of the new law, had applied the 1950 decree on delinquent children.⁷³

The government’s minimal efforts to distribute the Code or provide training on its application were also highlighted by the Coalition’s own initiatives. In October 2009 the Coalition funded the production and dissemination of an illustrated legal booklet summarizing key international and national laws prohibiting the recruitment and use of child soldiers, including the Congolese Child Protection Code. The booklet was published in French (2,000 copies), Swahili (1,200 copies) and Lingala (500 copies) and disseminated among a wide range of military, political, judicial and civilian officials. This initiative had a very positive impact - in one instance, some FARDC military commanders who were given the booklet and told about the ban on the recruitment and use of children proceeded to immediately release eight children from their ranks. Demand for the booklet was so high among the NGO partners, who were distributing it on behalf of the Coalition, that another 1,040 copies were reprinted in Swahili and Lingala in March 2011, to be distributed to military and political authorities across North and South Kivu, and the Equateur and Kasai provinces.

⁶⁹ Report of the Special Rapporteur on the independence of judges and lawyers, UN Doc. A/HRC/8/4/Add.2, April 2008 paragraph. 69.

⁷⁰ *Second joint report of seven United Nations experts on the situation in the DRC*, UN Doc. A/HRC/13/63, March 2010, paragraph 54.

⁷¹ The Coalition interviewed five military prosecutors and judges in Beni, Bukavu, Bunia and Goma as well as a civilian prosecutor and judge in Goma.

⁷² UNICEF has published a handbook on the Child Protection Code and has conducted training with the FARDC, although clearly not to the judicial officials interviewed by the Coalition.

⁷³ *Décret du 6 décembre 1950 - Enfance délinquante*.

Recommendations

- **Prioritize criminal investigations and prosecutions of individuals suspected of recruiting or using children in hostilities, including through the provision of adequate resources for investigations and prosecutions.**
- **Suspend from duty military personnel suspected of these offences pending completion of investigations and take appropriate disciplinary actions against them.**
- **With the assistance of MONUSCO, establish an independent mechanism to screen all FARDC, Republican Guard and police units to identify and remove individuals suspected of recruiting or using children in hostilities, or other serious human rights abuses.**
- **Facilitate the prompt and impartial investigation of allegations against the FARDC officers named by the UN Group of Experts and other FARDC personnel suspected of child recruitment and use.**
- **Provide training to all relevant judicial authorities on the Child Protection Code, and instruct prosecutors to begin investigations using the provisions of the Child Protection Code.**
- **Fully collaborate with the International Criminal Court, including in the arrest and surrender of Bosco Ntaganda.**
- **Publish information on the number of prosecutions and convictions for recruitment and use of children in armed conflict.**

IV. Protection, Recovery and Reintegration

Article 6.3

Arbitrary arrest and unlawful detention of child soldiers by the FARDC

There is serious concern about the treatment of child soldiers from armed groups captured by the FARDC. In most cases, according to those interviewed by the Coalition, captured children are handed over to child protection agencies without undue delay. However, the Coalition was informed of a number of cases where - rather than being afforded assistance for their recovery and reintegration – the children were arbitrarily detained and subjected to further human rights violations by the FARDC.

Large numbers of children were among fighters captured by the FARDC after an attack by Enyele tribal militia on Mbandaka, the capital of Equateur province, in early April 2010. According to a local child rights activist, 28 children, including 13 girls, spent three months in the custody of the FARDC 3rd Military Region in Mbandaka. FARDC officers, apparently driven by political pressure from the provincial governor, refused to release them for “security reasons” despite appeals from local NGOs, MONUC and UNICEF.

The children had reportedly been recruited by force by the Enyele and the girls raped by militia members. The children were finally released in July 2010.

According to other child rights activists from Equateur, 16 children, including six girls, aged between 10 and 17, also recruited by Enyele militia (which is no longer operational) were arrested by the FARDC in early 2010 and held in military custody in Gemena for around three months. Four of the boys had bullet wounds. The activists reported having been threatened by state officials, because of their efforts to bring about the children's release.⁷⁴

Former child soldiers are also vulnerable to harassment and re-recruitment. According to protection workers, arrest and detention of former child soldiers are common. Individuals are reported to be detained on the basis of accusations of "desertion" or "liaison with armed groups" or of petty crimes. In some cases they are linked to the child's inability to produce an "attestation de sortie", a document signed by the regional military command attesting his or her release from an armed group.⁷⁵

In one case, three former child soldiers, aged 14 to 16, were arrested in Vitshumbi, North Kivu, in April 2010. The children had tried to hand in a weapon, which they claimed to have acquired innocently, to an FARDC officer. They were arrested on charges of "illegal possession of a weapon", an offence under the Military Penal Code despite the fact that the Code is not applicable to under-18s. The children were reportedly held in a hole in the ground and badly beaten at the headquarters of the 18th FARDC Brigade at Katanda, necessitating the hospitalization of one of them, before being transferred to Goma. North Kivu military and civilian judicial authorities were alerted to the case by a local NGO who visited the children in Goma's central prison in May 2010. The children were still in detention at the time of the Coalition's visit in August 2010. It is not known if they have subsequently been released.⁷⁶

Recommendations

- **Ensure that children are not arbitrarily arrested or detained. In particular, ensure that children are not detained or prosecuted solely for their membership of armed groups or for military offences such as desertion.**
- **Ensure that captured child soldiers are always treated in accordance with international human rights and humanitarian law and promptly handed over to child protection actors.**
- **Detain children only as a measure of last resort and for the shortest possible period of time. Ensure that children deprived of their liberty as a consequence of their involvement in hostilities are treated with humanity and with respect for their inherent dignity.**
- **If criminal charges are brought against children, trials must be in compliance with international standards on juvenile justice, including the standards enshrined in the Convention on the Rights of the Child and illustrated in the Committee's General Comment on "Children's rights in juvenile justice".**

⁷⁴ Coalition interviews with Equateur-based activists, 2 August 2010.

⁷⁵ Coalition interview with MONUSCO Child Protection Officer, North Kivu, 9 August 2010.

⁷⁶ Coalition interviews with children's NGO and MONUSCO Child Protection Unit, Goma, July 2010. The children's military judicial case file no. is RMP2631/MUM/010.

- **Ensure that any FARDC or other security official suspected of the unlawful arrest, detention, torture and other ill-treatment of children is suspended from duty pending criminal investigation and prosecution.**

Reintegration – a flawed and insufficient approach

More than 30,000 child soldiers were released from armed forces and non-state armed groups between 2004 and the end of 2006 under the national DDR program for children established in the aftermath of the international armed conflict. This official figure had grown to 36,000 children by the end of 2009.⁷⁷ Hundreds more children have since been released from the armed forces and non-state armed groups, via screening and release processes carried out by UN and NGO protection workers nominally under the auspices of the government body the UEPN-DDR. Progress is, however, continually eroded by ongoing recruitment and re-recruitment of children.

The processes for the release, recovery and reintegration of children have been deeply flawed. At the core of the problem is the government's failure to exercise political leadership and to develop, manage and resource a comprehensive national strategy for the provision of "appropriate assistance" for the recovery and social integration of children, the objectives of which should be to:

- Identify and release all child soldiers within the ranks of the FARDC and armed opposition groups, including girl soldiers and their children.
- Ensure the recovery of former child soldiers, including by providing appropriate medical care.
- Address training, socio-economic and psychosocial needs to support the longer-term process of reintegration into civilian life.
- Provide effective protection from re-recruitment, unlawful detention and other human rights violations.

Evidence from independent sources suggests that fewer than 50 per cent of former child soldiers have benefited from reintegration assistance since the inception of the national children's DDR program in 2004, demand for which far exceeds the capacity of the UN and NGOs to provide.⁷⁸ Chronic delays in program delivery and funding have resulted in frustration and demoralization among many children who, in some cases, have returned to the ranks of armed groups in the absence of alternatives.

⁷⁷ UNICEF press release, 12 February 2010.

⁷⁸ Amnesty International concluded in October 2006 that "the majority of children released and reunited with their communities are ... unsupported or poorly supported in their return to civilian life and are not being provided with adequate educational or vocational opportunities", *Democratic Republic of Congo: Children at war – Creating hope for their future*, (AI Index AFR 62/017/2006), 10 October 2006. See also Coalition to stop the Use of Child Soldiers, "Priorities for children associated with armed forces and groups", Briefing to the Security Council Working Group for children and armed conflict, July 2007, and the DRC country entry in the *Child Soldiers Global Report 2008*. These figures are, however at odds with World Bank (2009) and government figures indicating that the percentage of child beneficiaries for the period stands at between 75 and 72 per cent respectively. The Coalition considers these figures to be an under-estimate. See the World Bank Multi-Country Demobilization and Reintegration Program (MDRP) website, DRC page: <http://www.mdrp.org/drc.htm>; and *Rapport Initial sur la mise en œuvre du Protocole facultatif à la Convention relative aux droits de l'enfant concernant l'implication d'enfants dans les conflits armés*, DRC Ministry of Human Rights, July 2008.

Information gathered from UN and NGO staff across the eastern provinces in 2010 suggested that this situation still continues. UNICEF officials and NGO staff in various localities in Ituri, North Kivu (Beni, Bunia and Rutshuru) and South Kivu (Katogata) provided detailed figures drawn from experience in their areas which uniformly suggested that, of several thousand child soldiers known to have been released in recent years, between 45 and 55 per cent had never received reintegration support or participated in a training program. An NGO in Kasai (central DRC) reported that out of 3,000 former child soldiers mainly released from Mai Mai groups in 2009, 1,700 of were still awaiting reintegration support.

Former child soldiers face various problems and obstacles to accessing reintegration programs. The situation of “self-demobilized” children (those who escape or return home by their own means) remains particularly precarious. Because they have not passed through an official release process (via the army integration program) they fail to gain official release certificates (“*attestations de sortie*”) that would help them gain access to support, as well as affording a measure of protection against re-recruitment.

The limited geographic reach of reintegration programs can also hamper access to them. The problem is particularly acute in central and western DRC where the presence of international actors, and therefore of funded reintegration projects, is minimal. One NGO activist commented that armed groups in Kasai “got tired of waiting for the arrival of DDR and the children just went home.”⁷⁹

In eastern DRC, demand is often greater than the capacity of NGOs to deliver reintegration projects. Hundreds of children in the Kivus were on international NGO waiting lists, according to international protection staff interviewed by the Coalition in August 2010. Within a context of limited resources problems of eligibility have also arisen, resulting in a checklist approach to identifying former child soldiers rather than a community-based approach aimed at identifying all the child soldiers in need of assistance.⁸⁰

More fundamentally, there is no effective system for tracking the identities, whereabouts and needs of former child soldiers. The official database, held by the UEPN-DDR and UNICEF, which should provide an overview, has been developed haphazardly, relying on reports from multiple child protection agencies. It does not always include information on self-demobilized or re-recruited children and, according to local stakeholders, its design is not suited to longer-term tracking and evaluation.⁸¹ Many actors believed that an overhaul of the database and its reporting systems is urgently needed to establish an accurate assessment of needs.

⁷⁹ Coalition interview, president of a Kinshasa and Kasai-based children’s NGO, Goma, 6 August 2010.

⁸⁰ Coalition interview with manager of international NGO, Goma, 2 August 2010.

⁸¹ Coalition interviews with UNICEF, UEPN-DDR officials and other contributors to the database, August 2010. A 2006 external evaluation commissioned by UNICEF, but not to the Coalition’s knowledge made public, concluded that “weak documentation practices compromise the accuracy of national and provincial statistics and render the national database not credible. The consequences of this are far-reaching: without a reliable system for collection of data on children separated from armed forces and groups, a strategy of social reintegration cannot be correctly formulated, planned or closely monitored.” (Unofficial translation from the French). *Rapport Final: Evaluation du Programme Désarmement, Sortie et Réinsertion des Enfants Combattants*, 2001-2006, UNICEF DRC, June 2006.

The invisibility of girl soldiers

The presence of girl soldiers in the ranks of armed forces and groups has been repeatedly documented over the years, yet little concrete action has been taken to identify and reach girl soldiers via DDR programs or to address their complex medical, economic and psychosocial needs. At the national level, girls have represented only around 13 per cent of the children accessing reintegration programs, according to UNICEF.⁸²

Securing the release of girls from the armed forces and groups and encouraging the girls themselves to come forward for assistance remains a critical problem, which the government and FARDC have yet to tackle. Reports indicate that girls are more frequently concealed and girls may not consider themselves to be child soldiers, but “wives” of armed group members.⁸³ The majority of girls associated with fighting forces are believed to return home unofficially (to “self-demobilize”) and thus are unable to access reintegration programs.

Child protection agencies have made efforts to make release and reintegration programs gender-sensitive and to create a protective, supportive environment for girls. Yet large numbers of girls continue to receive no assistance. Many girls have suffered rape and sexual abuse within armed forces and groups, often resulting in serious long-term injuries, including complex and potentially life-threatening obstetric-gynecological injuries. The fact of involvement in sexual activity means they encounter high levels of stigmatization and exclusion by their families and home communities, often compounded by the girl’s own feelings of shame. Association with an armed group has a severely detrimental impact on future marriage prospects and girls rarely have access to land, employment or economic resources of their own. These difficulties can deepen for girls with children of their own, often born through rape.

Although there are a few examples of international NGO-supported projects successfully identifying and supporting former girl soldiers, such initiatives are rare. There has been no systematic government or UN effort to reach girls and ensure their inclusion in reintegration programs. A UNICEF official interviewed by the Coalition acknowledged the problem and expressed confidence that a strategy would be forthcoming, but noted that funding development of a strategy for girls is “proving difficult with a loss of donor interest” in child DDR.⁸⁴

⁸² Coalition interview, senior UNICEF manager, Goma, 1 August 2010.

⁸³ The Cape Town and Paris Principles are clear on this point. The definition of a child associated with armed forces and groups includes any child who “has been recruited or used by an armed force or armed group in any capacity, including...for sexual purposes”.

⁸⁴ Coalition interview, UNICEF official, Goma, 9 August 2010.

Effectiveness of reintegration support

For those children who do access DDR programs, the provision of interim care and family reunification is reported to work relatively well, according to protection workers interviewed by the Coalition, although health and psychosocial care is generally minimal and is not provided as standard practice. Achieving durable reintegration of children within their communities has proved far less assured.

Under existing reintegration projects, children aged 14 or under are assisted to enter school and older children are assisted to acquire skills to become socially and economically self-sufficient. Programs typically include vocational training followed, in some cases, by apprenticeships or income-generating activities in which the child is given small business management training and a stock of goods to begin trading. The projects are run by international (usually) or national NGOs, supported by international donor funds, and typically last for between six months to a year, although some projects can be as short as three months.

Donor support has been limited in duration and where provision has existed, socio-economic projects have foundered in the face of their non-adaptability to local markets (compounded by general conditions of poverty, lack of infrastructure and under-development), lack of effective consultation with relevant stakeholders, including children and their parents and lack of specialist expertise on the part of those managing the projects. Support in the form of school fee payments for younger child soldiers (aged 14 and under) has proved more successful, but is generally limited to one year, beyond which many families are unable to pay the fees.

Disappointment with the reintegration support was identified as one of the main reasons given for children returning voluntarily to the armed forces and groups. Many local NGOs reported instances of children being “left to their fate” after returning home.

Recommendations

- **Seek the support and technical expertise of the UN to revive and re-establish a comprehensive national reintegration strategy for child soldiers.**
- **Take immediate steps to identify and provide assistance to all former child soldiers, including self-demobilized children and child soldiers abandoned by armed groups en route to army integration sites.**
- **As a matter of priority ensure the adoption of an efficient simplified procedure for the prompt issue of release certificates to all former child soldiers.**
- **In collaboration with the UN, establish an effective database for identifying and tracking the whereabouts and needs of all current and former child soldiers. Collect authoritative data on the numbers of current and former child soldiers requiring assistance. Conduct a mapping of existing initiatives and available funding; an evaluation of current and past initiatives with a view to building on best practice; and a full needs assessment of the nature, scope, duration, funding and expertise needed for the provision of “appropriate assistance” to former child soldiers.**

- **Significantly increase support for reintegration and recovery measures, ensure they are accessible in affected regions and develop multi-disciplinary assistance programs. Take steps to ensure that child soldiers, parents and communities are involved in the design and evaluation of reintegration projects.**
- **As a priority, develop and implement a strategy to identify and provide effective reintegration assistance to current and former girl soldiers and their children, in collaboration with the UN and child protection actors. Every effort should be made to ensure these initiatives, and any resulting programs, do not increase the stigma and exclusion faced by former girl soldiers.**

Child protection and development – a priority for post-conflict reconstruction

In the longer term the successful reintegration of former child soldiers will depend upon a broader strategy for post-conflict reconstruction – the establishment of security and rule of law, economic development, health and educational provision and so on. With respect to children, linkages must be made between the shorter-term reintegration processes and longer-term measures aimed at addressing the systemic problems which prevent children from enjoying their basic human rights and render them vulnerable to military exploitation.

The government's Stabilization and Reconstruction Plan for the Eastern DRC (STAREC), established in June 2009, presents one potential mechanism for addressing the rights of conflict-affected children, yet these are largely absent from STAREC in its current form.⁸⁵ A major component of STAREC is the reinforcement of police and judicial personnel in the conflict-affected territories, but this does not include the creation of additional specialized police child protection units, children's magistrates or juvenile courts.⁸⁶ It is essential that measures to prevent the military recruitment and use of children are developed and included alongside measures to guarantee and promote the economic, social and cultural rights of children in the east.

The Coalition considers that the DRC government, supported by the UN, should review STAREC and incorporate a strategy for prioritizing the needs and rights of children. Elements for consideration could include reinforcement of community child protection networks; the deployment of additional specialized police trained in child protection needs; the creation of children's courts and appointment of children's judges; training programs on child rights and child protection for the FARDC and the police; and an increase in the number of FARDC child liaison and training officers.⁸⁷ A strategy for the creation of education and youth employment programs should also comprise an integral element of STAREC.

⁸⁵ The plan, which is financially supported by the UN, aims to consolidate security and state authority, assist war-affected populations and revive economic activity in the east.

⁸⁶ The Police Special Child Protection Brigade (*Brigade de Police Spéciale de Protection de l'Enfance*) performs a valuable role. However, battalions of this Brigade exist only in four of the DRC's 11 provinces.

⁸⁷ There is only one FARDC officer in South Kivu responsible for training FARDC units on the prohibition of child recruitment and use. He told the Coalition that he had been able to train only 320 officers of an estimated 40,000 troops in the province and that minimal resources are available to carry out the training.

Recommendation

- **Review STAREC with a view to ensuring that child protection and development strategies – including specific provision for former child soldiers and to prevent child recruitment and use - are incorporated as a core priority, including implementation of the specialized child protection measures, and the provision of educational and youth employment programs.**

V. International cooperation and assistance

Article 7.1

Action plan for preventing the recruitment and use of child soldiers

Despite repeated calls by the Security Council and other international actors, the government has yet to adopt a concrete, time-bound action plan for the release of all children in the ranks of armed forces and groups and the prevention of further recruitment, as required by UN Security Council resolutions 1539 (2004), 1612 (2005) and 1906 (2009).⁸⁸ A draft action plan has been submitted to the Ministry of Defence and discussions on the draft were reportedly ongoing between the government and UN agencies in mid-2010. While there are no obvious obstacles to its adoption, it appears not to have been prioritized by the government. In an exchange of letters with the UN about the action plan in 2010, the Ministry of Defence reportedly maintained that the DRC is meeting all its obligations under relevant international treaties.⁸⁹ The Security Council Working Group on children and armed conflict reiterated its call for the adoption of the plan in March 2011 but it had not been adopted by 31 March 2011.

Protection concerns relating to the drawdown of MONUSCO

The reconfiguration and drawdown of MONUSCO risks undermining efforts to protect children against recruitment and bring about the release of child soldiers in a context in which the government has not demonstrated the will or capacity to assume its full protection responsibilities. MONUSCO child protection officers currently lead processes for the identification and release of children from armed forces and groups and MONUSCO joint protection teams (comprised of military and civilian officials) contribute to child protection in their areas of deployment. It remains unclear whether the UN Country Team will have the capacity to discharge these pro-active monitoring and protection roles.⁹⁰ The Coalition has urged the SCWG to ensure that this issue is taken into consideration in defining the UN's future role, strength and mandate in the DRC.

⁸⁸ Resolution 1906 renews the mandate of MONUSCO.

⁸⁹ Coalition interviews with UNICEF and MONUSCO child protection officials, July/August 2010.

⁹⁰ For example, while MONUSCO has for child protection officers in North Kivu, UNICEF has only two.

Donors and funding for recovery and reintegration

Sustained donor funding is key to supporting the successful reintegration of children. Many of the flaws in the design and delivery of reintegration programs are linked to the limited availability of funding and the relatively narrow and short-term priorities set by donors. The problems reportedly include sudden withdrawals of funding, projects which are too short to effect real change in a child's situation, and donor-imposed narrow eligibility criteria for accessing programs. All the consulted child protection actors pointed to the need for flexible multi-year funding, alongside greater transparency and accountability on how funds are allocated and used.

Regrettably the provision of future international funding appears increasingly uncertain, in part because of donor doubts on the quality to date of child reintegration programs, but more importantly because the DRC government has indicated that the release, recovery and reintegration of child soldiers is no longer a priority. "The strongest political message coming through is that the need is no longer there," commented one NGO official interviewed.⁹¹ The World Bank has reportedly agreed to an extension of financial support to child reintegration for a further 15-month program, according to a UNICEF manager, who noted that many reintegration projects were awaiting funding but "there is an argument [from donors] about whether [child] DDR is still needed".⁹²

Recommendations

- **Collaborate with the UN to adopt, without further delay, an action plan to end the recruitment and use of child soldiers. This action plan should, in line with the recommendation of the Security Council Working Group, include the immediate and unconditional release of all children still remaining in FARDC ranks, access to all military sites and "regroupement" centres for verification by child protection actors and prevention and accountability measures against responsible individuals.**
- **Cooperate with MONUSCO and the UN Country Team to ensure that there is ongoing capacity for child protection work in the mandate of the future UN presence in DRC.**
- **Seek sustained technical and financial assistance for effective, long-term reintegration programs of former child soldiers, reform of the armed forces and security sector, and reform of the criminal justice system to achieve full implementation of the Optional Protocol.**

⁹¹ Coalition interview, Goma, 2 August 2010.

⁹² Coalition interview, UNICEF official, Goma, 9 August 2010.



COALITION TO STOP THE USE OF CHILD SOLDIERS

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