

## CHILD SOLDIERS IN THE EAST OF THE DEMOCRATIC REPUBLIC OF THE CONGO

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*According to the academic literature, the most widely used estimate is that approximately 300,000 children are part of regular and irregular armies worldwide, either as combatants or as support personnel. Moreover, most scholars believe that their numbers are growing. However, the truth is that no one really knows the actual number of child soldiers fighting in some seventy-two government or rebel forces in about twenty countries. This is simply because field work on this subject is notoriously difficult. And as it is in breach of international humanitarian law to engage a child under the age of 18 years, regular armies and guerrilla forces are hardly going to publicize the number of child soldiers in their ranks. Whatever the true number of child soldiers may be, the fact remains that child soldiers have become a principal component of military forces across Africa, Asia, and Latin America. For Africa alone, estimates suggest that there are 120,000 children, 40 per cent of all child soldiers. Moreover, not only has Africa experienced the fastest growth in the use of child soldiers, but the average age of the children enlisted in some African countries is declining as well. And this is despite the fact that there are a number of international treaties and principles that prohibit the use of child soldiers. Successfully bringing peace, security, and the rule of law in the Kivu provinces, in the Democratic Republic of the Congo (DRC), will be a massive challenge that will require domestic and regional measures implemented over probably several years. This will necessitate the continued active political and financial support of the international community.*

### 1. Introduction

According to the academic literature, the most widely used estimate is that approximately 300,000 children are part of regular and irregular armies worldwide, either as combatants or as support personnel. Moreover, most scholars believe that their numbers are growing.<sup>1</sup> However, the truth is that no one really knows the actual number of child soldiers fighting in some seventy-two

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<sup>1</sup> V. Achvarina and S. F. Reich, “No place to hide: refugees, displaced persons, and the recruitment of child soldiers”, *International Security*, Vol. 31, 2006, 1, 128.

government or rebel forces in about twenty countries.<sup>2</sup> This is simply because field work on this subject is notoriously difficult. And as it is a breach of international humanitarian law to engage a child under the age of 18 years, regular armies and guerrilla forces are hardly going to publicize the number of child soldiers in their ranks.

Whatever the true number of child soldiers may be, the fact remains that child soldiers have become a principal component of military forces across Africa, Asia, and Latin America. In Africa alone, estimates suggest that there are 120,000 children, 40 per cent of all child soldiers. Moreover, not only has Africa experienced the fastest growth in the use of child soldiers, but the average age of the children enlisted in some African countries is declining.<sup>3</sup> And this is despite the fact that there are a number of international treaties and principles that prohibit the use of child soldiers.

Before turning to the situation of child soldiers in the eastern region of the Democratic Republic of the Congo (DRC), and in particular in the Kivu provinces, I shall briefly mention some of the most important international statutes dealing with the issue of child soldiers.

## 2. International statutes

According to UNICEF, a child soldier is any person under 18 years of age who is part of any kind of regular or irregular armed force or armed group in any capacity, including but not limited to cooks, porters, messengers, and anyone accompanying such groups, other than family members. The definition includes girls recruited for sexual purposes and for forced marriage. It does not, therefore, only refer to a child who is carrying or has carried arms.<sup>4</sup>

Some of the most important provisions in international law that deal with this issue are:

- i) *The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (2000)*: The Protocol raises the minimum age for direct participation in hostilities, from 15 years to 18 years (Article 1) for recruitment into armed groups, and for compulsory recruitment by governments. Article 2 prohibits absolutely conscription or forced recruitment below the age of 18 years. Article 4 provides that armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.
- ii) *The Statute of the International Criminal Court (1989)*: The Statute makes it a war crime to conscript or enlist children under the age of

<sup>2</sup> J. Hart, "The politics of 'Child Soldiers'", *Brown Journal of World Affairs*, Vol. XIII, 2006, 1, 217.

<sup>3</sup> Achvarina and Reich, "The politics of 'Child Soldiers'", *op. cit.*, 131.

<sup>4</sup> "The Paris Principles – Principles and Guidelines on Children associated with Armed Forces or Armed Groups", February 2007, available in the documents section of this issue.

15 years into national armed forces or to use them to participate actively in hostilities in international and internal armed conflicts.

- iii) *The International Labour Organization's Convention No. 182 (1999) on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour*. (Entered into force on 19 November 2000): Convention No. 182 prohibits the forced or compulsory recruitment of children under the age of 18 years for use in armed conflict. It obliges each state party to "take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency". Article 3 states that the worst forms of child labour include "forced or compulsory recruitment of children for use in armed conflict".
- iv) *The Geneva Conventions of 1949*: The 1977 Additional Protocol I (Article 8) and Additional Protocol II (Article 9) both forbid the recruitment and use of children under the age of 15 years. Both protocols emphasize children's special right to care, respect, and protection. They make the recruitment and use of child soldiers under the age of 15 years in armed conflict war crimes under international humanitarian law.

Finally, UN Security Council Resolutions 1539 (2004) and 1612 (2005) call for the monitoring and reporting of egregious child rights abuses in conflict areas. To assist with that task, the Security Council Working Group on Children and Armed Conflict (CAAC) was established in July 2005. By August 2007, the Working Group, which had considered ten country reports, made specific recommendations for each country, including for the DRC.

### 3. Political developments in the DRC

The people of the DRC, and particularly those who live in the eastern part of the country, have suffered enormously in the last 10 years or so. The number of deaths is quite simply staggering. Estimates are that since 1996, when Rwanda, Uganda, and Burundi backed an invasion led by Laurent Kabila, the father of the DRC's current president, Joseph Kabila, some 4 million people have died, mainly from hunger and disease.<sup>5</sup> In a recent study, however, the International Rescue Committee (IRC) reassessed the "excess" death toll for all of the DRC from August 1998 to April 2007 to be 5.4 million, of which 4.6 million occurred in the east alone.<sup>6</sup> Moreover, the IRC estimates that about 1,500 people die every day, mainly of preventable and treatable diseases such as malaria, diarrhea, respiratory infections, and malnutrition.<sup>7</sup> This makes the ongoing conflict the deadliest since Second World War. And as if this were not already bad enough, in addition to all these deaths, the people in the east

<sup>5</sup> J. K. Stearns, "Congo's peace: miracle or mirage?", *Current History*, May 2007, p. 202.

<sup>6</sup> "Excess" in this context means over and above normal number of expected natural deaths. International Rescue Committee, *Mortality in the Democratic Republic of Congo: An Ongoing Crisis*, Jan. 2008.

<sup>7</sup> *Ibid.*

continue to endure horrific attacks, including murder, widespread rape, and the forced recruitment and use of child soldiers. Who are these armed forces inflicting this shocking pain on civilians and what are their objectives? There are over a dozen non-state armed groups, but I shall focus on the three main ones.

The current fighting in the eastern part of the DRC has its genesis in the 1994 Rwandan genocide, in which some 800,000 persons, mainly Rwandan Tutsis, were killed. Many of the perpetrators of this genocide – *les génocidaires* – fled across the border into the DRC. In 2000, these Rwandan Hutus, who numbered about 8,000–10,000, founded the Democratic Forces of the Liberations of Rwanda [*Forces Démocratiques de la Libération du Rwanda* (FDLR)] after the Kinshasa-based Hutu command and the Kivu-based Army for the Liberation of Rwanda [*Armée de Libération du Rwanda* (ALR)] agreed to merge. The FDLR, which is composed almost entirely of ethnic Hutus, is opposed to Tutsi rule and influence in the region. Over the years, the FDLR has intermittently received the support of the DRC government, particularly to fight against the Rwandan armed forces (which invaded the DRC in 1996 and 1998) and General Laurent Nkunda's Congolese Tutsi militia group.<sup>8</sup>

General Nkunda, who is a 41-year-old Rwandan-trained Congolese Tutsi, describes himself as a born-again Christian. His rebel armed force is the main opponent of the FDLR. Nkunda's forces have been responsible for a string of human rights abuses, some amounting to war crimes, including scores of reportedly ethnically motivated rapes of women and girls,<sup>9</sup> committed at the time of a major offensive against government forces in North Kivu in January 2006, when his forces attacked Congolese army positions in Rutshuru territory.

General Nkunda claims to defend the interests of the Congolese Tutsis who represent less than 5 per cent of the total Congolese population of about 60 million. Despite their small numbers, Congolese Tutsis, backed by Rwanda and Uganda, played a prominent role in the overthrow of the 30-year-old Mobutu regime in 1996. They also played a significant role in the subsequent 1998 rebellion against Laurent Kabila whom they had helped put into power. Rwanda continues to provide support to Nkunda's forces.

Nkunda had fought alongside Kabila in the rebellion against President Mobutu during the war in 1996–7. In 1998, along with thousands of other Congolese Tutsis from the Congolese army, Nkunda joined the Rwanda, Uganda, and Burundi-backed Rally for Congolese Democracy (RCD) in the eastern part of the country, to fight President Kabila and the Congolese Army who, they felt, were not doing enough to protect the interests of the Congolese Tutsis in the east. Thus began the war in 1998–2002. This war eventually led to the military involvement of Angola, Zimbabwe, and Namibia on the side of the Congolese Government, to counter and halt the western advance of Rwandan,

<sup>8</sup> In 2006, Congolese forces requested and received FDLR assistance in their fight against Nkunda's forces in Rutshuru. Human Rights Watch, "Renewed crisis in Kivu", October 2007, Vol. 19, No. 17 (A), 15.

<sup>9</sup> Interview with MONUC official, Goma, March 2006, as cited in *Amnesty International Report 2006*, 14.

Ugandan, and Burundian troops. It ended in 2002 with a peace agreement which created a transitional government in preparation for the 2006 elections.

Following the 2002 Global and All Inclusive Accords, Nkunda's forces, as well as all other irregular forces, were meant to integrate with the national Congolese army, les *Forces Armées de la République Démocratique du Congo* (FARDC). This process, called "*brassage*" (mixing), required soldiers to be trained for 45 days and then to be deployed in a region other than the one they came from. The soldiers could also choose to be demobilized and return to civilian life. Nkunda and many of his men refused to report to Kinshasa for *brassage*, claiming that they feared for their lives if they integrated into the Congolese army.<sup>10</sup> He thus became a renegade.

Following the 2006 national elections – the first in over 40 years – Nkunda's forces fought the national army. In an effort to find a compromise solution, Nkunda and the Congolese government agreed to a limited form of integration called "*mixage*". This process provided that Nkunda's forces be integrated – mixed – with the Congolese forces in North Kivu. The mixed troops would be deployed locally rather than elsewhere in the DRC. The plan was that Nkunda's forces would eventually be fully integrated in the FARDC and deployed outside North Kivu.<sup>11</sup> This limited and gradual integration was meant to guarantee the security of Tutsi soldiers in the national army.

By mid-2007, this compromise had collapsed, both sides giving different versions of what had been agreed upon in the *mixage* agreement. Whatever the case may be, the fact is that *mixage* was always a bad idea. It allowed Nkunda's men to remain in the region where they had committed serious human rights violations against the local population, but this time as members of the national army. Following the collapse of *mixage*, in May 2007, Nkunda's men were told to opt for *brassage* and full integration or else to resign. Instead, hundreds of Nkunda's men left their units and rejoined Nkunda's forces.<sup>12</sup> Fighting between Nkunda's men and the Congolese army resumed in August 2007.<sup>13</sup> The final result of *mixage* is that, in 2008, Nkunda is in a much stronger position, militarily and politically, than he had been at the end of 2006, claiming to now have between 6,000 and 8,000 men under arms and having pushed the FDLR further west.<sup>14</sup> Case in point, a FARDC assault on Nkunda's positions in December 2007 ended in a humiliating defeat for the government forces.<sup>15</sup>

In late 2007, Nkunda controlled a 100 kilometres long crescent shaped area that goes from a position in the mountains 15 kilometres west of Sake, runs north between Masisi and Kiroliwe, turns east through his headquarters

<sup>10</sup> Human Rights Watch, "Renewed crisis in Kivu", *op. cit.*, 10.

<sup>11</sup> *Ibid.*, 16.

<sup>12</sup> *Ibid.*, 18.

<sup>13</sup> "Twenty-fourth Report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo", 14 November 2007, *S/2007/671*, 4.

<sup>14</sup> "DR Congo threatens war on rebels", *BBC News*, 23 Nov. 2007.

<sup>15</sup> L. Polgreen, "Congo reaches a deal to end fighting in east", *International Herald Tribune*, 22 Jan. 2008.

at Kichanga, and reaches Rutshuru. In this crescent, Nkunda has built institutions, including a radio station, a police force, and courts. His “administration” levies taxes, especially on trucks, artisan mining, and trade. He has formed his own political party, the National Congress for the Defense of the People (CNDP). He flies his own flag and has declared a new country, the “Land of the Volcanoes”.<sup>16</sup> His key demands are the dismantling of the FDLR, the expulsion of the Rwandan Hutus, and the return of the 45,000 Congolese Tutsi refugees from Rwanda.<sup>17</sup>

The third non-state armed group, the Mai-Mai, is a very loose, Kivu-based association of traditional Congolese local defense forces, warlords, traditional tribal elders, village heads, and politically motivated resistance fighters, who had primarily fought Rwandan government forces and their Congolese allies in 1996 and 1998. It is opposed to “Tutsi domination” and, accordingly, regularly clashes with General Nkunda’s forces. Apart from its opposition to Tutsis, it does not seem to have any other clear objective. While it frequently changes its allegiance, the Mai-Mai is generally allied to government forces and is comfortable with the anti-Tutsi stance of the FDLR. As it is such a loose grouping, there are no reliable estimates of its present military strength.

All this fighting, killing, and suffering has been happening despite the fact that there has been an 18,000 strong UN peacekeeping mission in the DRC, the United Nations Mission in the DRC (MONUC), since 2000. It is the largest UN peacekeeping operation in the world. It was established under Chapter VII of the UN Charter which authorizes the peacekeepers to take necessary action, among other things, to protect civilians under imminent threat of physical violence and to disarm non-state combatants. Its mandate has been renewed until the end of 2008.

However, there is some good news coming out of Congo. On 24 January 2008, in Goma, more than twenty-five warring groups, including Nkunda’s, signed the “Act of Engagement”, an agreement to end the fighting in Congo’s east which, according to the UN Office for the Coordination of Humanitarian Affairs (OCHA), has caused some 800,000 people to be uprooted.<sup>18</sup> This agreement, the first public and official peace settlement for the two Kivu provinces, includes a ceasefire; but it does not solve the most difficult and core issues of the conflict, such as the continued presence of the Rwandan Hutus in eastern Congo. It does, however, establish a framework for addressing them. A commission will deal with either the demobilization of Nkunda’s soldiers and other militia members, or their integration into the Congolese army. It will also address one of Nkunda’s major demands, the return of the Congolese Tutsis who fled to Rwanda between 1998 and 2003. The Goma agreement includes

<sup>16</sup> S. McCrummen, “For Tutsis of Eastern Congo, protector, exploiter or both?”, *The Washington Post*, 6 Aug. 2007.

<sup>17</sup> J. Prendergast and C. Thomas-Jensen, “Averting the Nightmare Scenario in Eastern Congo”, Enough, Strategy Paper No. 7, Sep. 2007, 6.

<sup>18</sup> “Nkunda’s rebel group spells out demands”, *AllAfrica.com*, 16 Jan. 2008.

a general amnesty for those accused of insurrection, but it does not cover charges for crimes against humanity and the recruitment of child soldiers. While it is indeed very significant that so many players signed it, the fact remains that some 2.1 million people have died since the signing of 2002 agreement which ended the 1998–2002 war.

Nevertheless, hopefully this agreement, along with one signed in November 2006 between the DRC and Rwanda, addressing the disarmament and resettlement of the Rwandan Hutus will help break the deadlock. The challenge, however, will be the sequential implementation of both agreements: Nkunda has made abundantly clear that he will not disarm his forces before the members of the FDLR do so, and vice versa.

#### 4. Child soldiers in the DRC

According to a 2004 report by the Coalition to Stop the Use of Child Soldiers, all armed forces in the DRC – government and rebel – were using child soldiers, many of them under the age of 15 years.<sup>19</sup> Thousands of children had been abducted or coerced into joining, but others had volunteered. Almost all girls and some boys were reported to have been raped or sexually exploited by their commanders or other soldiers. Children in all the armed groups witnessed and often participated in serious human rights abuses against civilians, as well as undertaking frontline duties. It is safe to assume that much of this is still happening.

In his latest report on the situation of child soldiers in the DRC, the UN Secretary-General acknowledged that significant progress had been made to improve the situation of children affected by armed conflict. But he also noted that major gaps still existed, particularly in the Ituri district and North and South Kivu provinces.<sup>20</sup> Between 2003 and 2006, as work began on integrating the armed factions into the Congolese army, Congolese and international workers identified and removed some 30,000 children from the ranks of both regular military units and non-state armed groups and returned them to civilian life. In North Kivu alone, just over 1,400 children were removed from General Nkunda's forces between June 2006 and May 2007.<sup>21</sup> But that is where the good news ends.

In December 2007, Hussein Mursal, country director of Save the Children, a British-based international charity, stated that:

The situation for children in eastern Democratic Republic of Congo is catastrophic. Fighters from all sides are using children as frontline fodder, raping young girls and attacking houses. . . . International governments

<sup>19</sup> "Coalition to Stop the Use of Child Soldiers", *Child Soldiers Global Report 2008*.

<sup>20</sup> "Report of the Secretary-General on Children and Armed Conflict in the Democratic Republic of the Congo", S/2007/391, 28 Jun. 2007, 1.

<sup>21</sup> *Ibid.*, para. 57.

must put pressure on all sides to stop fighting before another generation of Congolese children loses their childhoods to violence and fear.

The conflict is preventing Save the Children from returning demobilized child soldiers to their communities, because the risk of re-recruitment is so high.<sup>22</sup>

While recruiting has somewhat diminished over the last year because of a number of factors, including progress made in the implementation of the disarmament, demobilization, and reintegration (DDR) programme for children, the integration process of the Congolese army and a decrease in the number of active fighting zones, all the parties to the conflict have continued to recruit, use, and abduct children in 2007.<sup>23</sup> Accordingly, the presence of children among FARDC integrated and non-integrated brigades, and among the militia groups remains high, particularly in the Kivu provinces and Ituri district.<sup>24</sup> Moreover, not only did the commanders of the various armed groups deny the presence of children in their ranks, but they actively obstructed their removal during the *mixage* process discussed above. As a result, not only were few children removed, but the *mixage* meant that children in the new mixed FARDC brigades were used in active combat against the FDLR. This means that children continue to be victims of clashes and attacks between Congolese government forces and the FDLR.<sup>25</sup>

Compounding the failure to free the existing child soldiers, CNDP commanders continued the recruitment of children prior to and throughout the *mixage* process.<sup>26</sup> These recruitment activities were ongoing in returnee settlements in North Kivu, in UNHCR-run Congolese refugee camps in Rwanda and in the border town of Bunagana on the Congo–Uganda border. For example, a group known as the Association of Young Congolese Refugees actively recruited in refugee camps, offering young children well-paying civilian jobs in North Kivu; these children, however, ended up in Nkunda’s forces. UNHCR has raised the issue with the Government of Rwanda which has agreed to undertake an investigation into the matter, although President Paul Kagame initially dismissed the reports.<sup>27</sup> As the UN Secretary-General stated in his latest report, “the transportation of vulnerable children by both government and rebel groups

<sup>22</sup> Save the Children, “Rocketing Levels of Children Abducted by fighting groups in Democratic Republic of Congo”, Press release, 24 Dec. 2007.

<sup>23</sup> “Report of the Secretary-General on Children and Armed Conflict”, A/62/609 – S/2007/757, 21 Dec. 2007, 10.

<sup>24</sup> “Report of the Secretary-General on Children and Armed Conflict in the Democratic Republic of the Congo”, S/2007/391, 28 Jun. 2007, para. 17.

<sup>25</sup> Human Rights Watch, “Renewed crisis in Kivu”, *op. cit.*, 52; *Ibid.*, para. 18; “Report of the Secretary-General on Children and Armed Conflict”, A/62/609 – S/2007/757, 21 Dec. 2007, 10–11.

<sup>26</sup> “Report of the Secretary-General on Children and Armed Conflict”, A/62/609 – S/2007/757, 21 Dec. 2007, 10.

<sup>27</sup> Human Rights Watch, “Renewed crisis in Kivu”, *op. cit.*, 50; *Ibid.*



across borders during armed conflict constitutes one of the worst forms of child trafficking”.<sup>28</sup>

Unfortunately, it is not only General Nkunda who is actively recruiting. It is important to remember that all non-state armed groups are in the recruitment business, and they have been recruiting not only from the general population in Rwanda, Uganda, and North Kivu, but also from returnee settlements and schools.<sup>29</sup>

There have also been increasing numbers of child soldiers who have been detained by the Congolese authorities for alleged association with armed groups. Some of these children have been used as guides and informers for government military operations, usually under coercion.<sup>30</sup>

The last, but certainly not the least important issue is that of wide-spread sexual violence against women, in general, and against girls, in particular. Despite the adoption of two national laws on sexual violence on 20 July 2006, the number of cases of sexual abuse of children remains extremely high. According to the UN Secretary-General, from October 2006 to July 2007, of the more than 10,000 identified survivors of sexual violence in eastern Congo, almost 40 per cent were children. This represents a 4 per cent increase over the previous year.<sup>31</sup> The UN High Commissioner for Human Rights recently indicated that 60 per cent of cases of sexual violence in Kisangani, in northern Congo, involved victims between the ages of 11 and 17 years.<sup>32</sup>

There is evidence that General Nkunda’s fighters have deliberately used rape as a weapon of war.<sup>33</sup> But Nkunda’s men are not the only ones. Every armed group, including the FARDC, has perpetrated these appalling crimes. In addition to being raped, young girls are abducted and forced to join armed groups in which they regularly suffer inhuman and degrading treatment, beatings, and repeated rapes. No one knows the number of girls who have to endure such barbarity; but it is estimated that approximately one in three child soldiers in Congo is female.<sup>34</sup>

So how many child soldiers – in the broader sense of the definition – are there now in the DRC? It is very difficult to say, because there were no reliable figures on the numbers involved before the demobilization of the 30,000 children in 2003–6 and there are no figures on the present rate of

<sup>28</sup> “Report of the Secretary-General on Children and Armed Conflict”, A/62/609 – S/2007/757, 21 Dec. 2007, 3.

<sup>29</sup> “Report of the Secretary-General on Children and Armed Conflict in the Democratic Republic of the Congo”, S/2007/391, 28 Jun. 2007, para. 23.

<sup>30</sup> “Report of the Secretary-General on Children and Armed Conflict”, A/62/609 – S/2007/757, 21 Dec. 2007, 3.

<sup>31</sup> *Ibid.*, 11.

<sup>32</sup> *Ibid.*, 3.

<sup>33</sup> *Ibid.*, para. 42.

<sup>34</sup> UNICEF, “Child alert Democratic Republic of Congo: Martin Bell reports on children caught in war”, Jul. 2006, 4.

recruitment, abduction, and use of child soldiers.<sup>35</sup> However, most observers, including UN agencies, estimate that prior to 2003, children made up about 10 per cent of the armed forces, reaching 40 per cent in some instances.<sup>36</sup> And while the situation may have improved slightly, at least as far as numbers are concerned, it would not take much for the situation of child soldiers to deteriorate again, as happened when fighting between the FARDC and Nkunda resumed in earnest in August 2007. Prior to fighting, recruitment drives for child soldiers tend to increase. And it would probably happen again if the recently signed peace agreement were to collapse, which is always a distinct possibility, as sadly demonstrated by recent outbreaks of fighting between Nkunda's men and Congolese government forces.<sup>37</sup>

## 5. The Congo's legal obligations

The DRC has a very poor record on child soldiers over the last 10 years despite the fact that it has signed international treaties banning the recruitment of children into armed forces and has national legislation prohibiting it.

The DRC has ratified the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict. And it is party to the International Labour Organization's Convention 182. The DRC is also legally bound by the Additional Protocols to the Geneva Convention of 1949.

Unfortunately, the DRC has not ratified the African Charter on the Rights and Welfare of the Child which specifically prohibits the recruitment and use of children under the age of 18 years in both international and internal armed conflicts. Article 22(2) requires state parties to "take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain in particular from recruiting any child". The Charter entered into force on 29 November 1999.

Since 12 November 2004, Article 7 of Congolese military law expressly prohibits the recruitment of anyone below the age of 18 years into the armed forces. Article 184 of the Transitional Constitution adopted on 1 April 2003 banned the recruitment of persons under 18 years of age or their use in hostilities. And, while the new Constitution, promulgated in February 2006, did not specify a minimum age for recruitment into the armed forces, the DRC is legally bound by the international treaties it signed prohibiting the recruitment of children under the age of 18 years.

General Kisemba, former FARDC Chief of Staff, informed all officers of the mixed brigades on 14 February 2007 that they would be held responsible for the continued military service of any children and that the presence of children

<sup>35</sup> Human Rights Watch, "Renewed crisis in Kivu", *op. cit.*, 55.

<sup>36</sup> "Coalition to Stop the Use of Child Soldiers", *Child Soldiers Global Report 2004*.

<sup>37</sup> "Former rebels and soldiers clash in Congo", *Independent Online*, Cape Town, 19 Feb. 2008.

in their ranks was illegal.<sup>38</sup> This seems to have helped reduce the recruitment of children.

Finally, in the 2008 Goma “Act of Engagement”, Article III bans all signatories to the agreement from recruiting child soldiers and specifically commits them to promoting the rights of the child.

Nevertheless, despite all these international legal obligations, the existence of national military law and orders issued by the FARDC high command, only small measures have been taken to arrest recruiters of children among FARDC forces. In the one notable case, FARDC Major Jean-Pierre Biyoyo, was sentenced to death on 17 March 2006 by a Bukavu military tribunal for the illegal arrest and detention of children who had already left the armed forces and whom he had re-recruited in April 2004. Not only was his sentence later reduced to 5 years, he escaped from prison during the Bukavu Central Prison outbreak in early June 2006 and remains at large. The UN Secretary-General has stressed that it is the responsibility of the DRC government to re-arrest Biyoyo.<sup>39</sup>

Apart from thirteen FARDC officers who were responsible for executions, rape, and systematic looting in Ituri in 2006 and who were sentenced to life imprisonment, little progress has been made in combating impunity.<sup>40</sup>

Some positive international legal developments, however, have occurred. On 17 March 2006, Thomas Lubanga Dyilo, leader of an Ituri armed group, the Union of Congolese Patriots [*Union des Patriotes Congolais* (UPC)], was arrested and transferred to the International Criminal Court (ICC) in The Hague. Thomas Lubanga was formally charged on 28 August 2006 with committing war crimes under Article 8 of the Rome Statute for conscripting and enlisting children under the age of 15 years. Lubanga is the first person to be arrested and transferred to the ICC. The trial is scheduled to begin in January 2009.

On 17 October 2007, the Congolese authorities surrendered and transferred Germain Katanga, an alleged commander of the Patriotic Resistance Force in Ituri [*Force de résistance patriotique en Ituri* (FRPI)], to the ICC. Katanga has been indicted on six charges of war crimes and three charges of crimes against humanity in Ituri. No date has been set yet for his trial.

On 12 February 2008, the former Congolese rebel leader Mathieu Ngudjolo Chui, who is now a colonel in the FARDC, made his first appearance before the ICC where he is facing nine counts of war crimes that include allegations of sexual slavery and the use of child soldiers. He is alleged to have played a key role in carrying out a deadly attack on the village on Bogoro, in Ituri, in February 2003 in which some 200 people were murdered, while others were tortured, imprisoned or used as sex slaves.

<sup>38</sup> Human Rights Watch, “Renewed crisis in Kivu”, *op. cit.*, 54.

<sup>39</sup> “Report of the Secretary-General on Children and Armed Conflict in the Democratic Republic of the Congo”, S/2007/391, 28 Jun. 2007, para. 71.

<sup>40</sup> “Twenty-fourth Report of the Secretary-General”, *op. cit.*, 10.

These developments, however, although significant, remain exceptional. There is a climate of almost absolute impunity in the DRC for war crimes and other crimes under international law. This is despite the fact that, according to the Report of the Special Representative of the Secretary-General for CAAC, the Congolese authorities have made, among others, the following commitments:

- a) To take measures, in consultation with the United Nations, to tackle the issues of child recruitment and sexual violence;
- b) to take effective action to fight impunity of armed groups, such as those led by Laurent Nkunda and the FDLR; and
- c) to take steps, in consultation with the United Nations, to fight impunity.<sup>41</sup>

## 6. What needs to be done?

Because of the nature of the conflict in the DRC, a resolution of the conflict and in particular, an ending to the recruitment of child soldiers, will require the implementation of many multi-faceted measures. The following steps will need to be taken if there is to be peace and security in the east.

First, the DDR of Congolese combatants belonging to various armed groups must not only continue but must also be expanded and accelerated. To date, the national DDR programme has processed 165,687 former combatants. Of these, 62,929 have been integrated into FARDC while 102,758 have been demobilized and are receiving financial entitlements. Despite the considerable progress made, major challenges remain. Only 54,697 of the Congolese former combatants who have entered the DDR programme are targeted by longer term reintegration projects. Those excluded from these projects are a source of frequently violent unrest throughout the country. In addition, approximately 78,096 eligible Congolese combatants have yet to enter the national DDR programme. However, 19,400 combatants, consisting of Mai-Mai and other elements not signatory to the 2002 Agreement on the Transition in the DRC, are outside the purview of the national programme.<sup>42</sup>

Second, the international community must ensure there is sufficient funding for the DDR programme. This is essential, as the lack of funding for the national DDR programme has resulted in the withdrawal of several key actors in the field and has contributed to the creation of important gaps in programming of child disarmament, demobilization, and reintegration. UNICEF has attempted to address these gaps by increasing its funding for reintegration projects in addition to supporting all other phases of the child DDR programme.<sup>43</sup>

<sup>41</sup> "Report of the Special Representative of the Secretary-General for Children and Armed Conflict", 13 Aug. 2007, 12.

<sup>42</sup> "Twenty-fourth Report of the Secretary-General", *op. cit.*, 9.

<sup>43</sup> "Report of the Secretary-General on Children and Armed Conflict in the Democratic Republic of the Congo", S/2007/391, 28 Jun. 2007, para. 64.

Third, it is vital that donors allocate funds to assist with the reintegration of children into society, with an emphasis on compulsory education and vocational training opportunities. These would offer viable alternatives to joining armed groups as well as providing the children with skills which will enable them to eventually compete effectively in the market place. Of course, these educational and vocational opportunities must not be limited to former child soldiers. They should be offered to all children in the DRC, as a preventive measure, so as to avoid that children become targets for recruitment.<sup>44</sup>

Fourth, all foreign combatants in the DRC, particularly in the FDLR, must leave the Congo. About 15,300 of an estimated 18,500 foreign fighters, primarily from FDLR, have already been repatriated.<sup>45</sup> But they must all leave. As long as these non-state actors are present, there will be no peace; their presence gives General Nkunda and his men the justification they seek to wreak havoc in the Kivu provinces. The DRC government must pressure the FDLR to follow through with its 2005 Rome Declaration commitments, including its demobilization, and the repatriation of its troops to Rwanda.

Moreover, the DRC and Rwanda signed an agreement in Nairobi in November 2007 which committed the Congolese army to take military action against the FDLR if its fighters had not left by March 2008. The Congolese army, however, is under-trained, under-resourced, and lacks mobility to be able to pursue successfully a counter-insurgency campaign against the small but well-organized FDLR. The danger is that, if these foreign forces remain, the nightmare scenario would be one where the FARDC allied itself with the FDLR against General Nkunda's forces.<sup>46</sup> Such an occurrence could quite conceivably draw Rwanda back into the DRC, for a third time, to protect the Tutsis and once and for all deal with the Hutu *génocidaires*.<sup>47</sup> This would further exacerbate ethnic tensions and lead to a new mass movement of refugees.

Fifth, it will be vital that the current strength of MONUC forces remain at the same level for as long as required by the political, military, and humanitarian situation. Furthermore, MONUC, which has the mandate to use all necessary means to protect civilians under imminent threat of physical violence, particularly in the Kivus, should, where possible in conjunction with FARDC troops, more aggressively use its military capability to pursue non-state armed groups and disarm their fighters. MONUC's recent announcement that it is deploying new mobile bases, intended to protect civilians and to monitor the ceasefire, in eight towns in North Kivu, is an important effort in support of the recent Goma agreement, as are its decisions to reinforce the blue helmets on the ground and

<sup>44</sup> It has been estimated that there are about 250,000 children living in the streets of the DRC. Dan Wooding, "Church-backed project will give hope to Congo Street Children", *Journal Chrétien*, 20 Jan. 2008.

<sup>45</sup> "Twenty-fourth Report of the Secretary-General", *op. cit.*, 9.

<sup>46</sup> According to military experts, Rwandans make up at least a quarter of Nkunda's forces. Matthew Green, "Witnesses point to Rwanda role in Congo", *Financial Times*, 12 Nov 2008.

<sup>47</sup> For a discussion of this scenario, see Prendergast and Thomas-Jensen, "Averting the nightmare scenario in Eastern Congo", *op. cit.*

to transfer MONUC's general headquarters from Kisangani to Goma in North Kivu.

Sixth, the refugee camps in Rwanda must be protected more adequately from all armed forces so as to prevent them from going in and recruiting vulnerable children. In an excellent study on the situation of child soldiers in Côte d'Ivoire during the recent internal conflict in that country, it was convincingly demonstrated that access to refugee/IDP camps is the key determinant of child soldier recruitment rates.<sup>48</sup> The international community must strive to close off that ready source of potential child recruits.

Seventh, the all-pervasive climate of almost absolute impunity for war crimes and other crimes under international law must stop. This demand was re-iterated during the open debate in the UN Security Council on Child Soldiers on 12 February 2008 and in UNSCR 1794 (2007) which called on the Congolese authorities to bring to justice without delay perpetrators of grave violations of human rights and of international humanitarian law, with special attention to those responsible for recruitment and use of children as well as for grave violations against women and children, in particular sexual violence.<sup>49</sup> General Nkunda, who is wanted for war crimes, would be at the top of the list of perpetrators. But the reality on the ground and the need to find a political solution to the present crisis means that the best one could probably hope for is having him sent into exile. While this would be a second best solution, it would nevertheless remove a high value military leader from the killing fields of the Kivu provinces.

Eighth, MONUC's training programme for the FARDC which, among others, focuses on discipline and conduct, human rights, child protection, international humanitarian law, and the prevention of sexual and gender-based violence, must be expanded and accelerated. By November 2007, out of 100,000 FARDC troops less than 4,000 had gone through the training.<sup>50</sup> Similarly, MONUC's training of military magistrates and lawyers and in providing advice on the reform of military justice codes must continue apace.

Ninth, the illegal transfer and sale of weapons to non-state armed groups in eastern Congo, in violation of the 2003 UN arms embargo, must stop immediately. Accordingly, Rwanda's continued military assistance to Nkunda's forces must cease at once. The proliferation of small weapons in the region compounds the difficulty of finding a peaceful solution to the Congolese crisis.

<sup>48</sup> Achvarina and Reich, "No place to hide – refugees, displaced persons, and the recruitment of child soldiers", *op. cit.*, 138.

<sup>49</sup> According to a recent Amnesty International report, members of armed groups and government security forces continue to rape and other sexual abuse against women and girls and there has been a resurgence in the recruitment of children into fighting groups, particularly in North Kivu. "North Kivu: No End to War on Women and Children", Sep. 2008, 8–15.

<sup>50</sup> "Twenty-fourth Report of the Secretary-General", : "UN envoy says Congo rebels delaying peace talks", *VOA News*, 10 Dec 2008; David Milliband MP, "UN arguing for coherent international action in Congo" (Letter to the Editor), *Financial Times*, 16 Dec 2008.*op. cit.*, 8.

## 7. Conclusion

Successfully bringing peace, security, and the rule of law in the Kivu provinces will be a massive challenge that will require domestic and regional measures implemented, probably, over several years. This will necessitate the continued active political and financial support of the international community.

However, unless there is political commitment on the part of all actors – domestic and external – in achieving this goal, not only will the political situation in the east of the DRC continue to deteriorate, but it could also spread to other parts of the country which have remained relatively peaceful. This would put in jeopardy the slow process of political reconstruction since the successful 2006 national elections – the first ones in over 40 years.

Moreover, because of the regional dimension of the security crisis in the Kivu provinces, unless the presence of the FDLR fighters is resolved – whether by expatriation, disarmament, or both – there is a distinct possibility that there could once again be another regional war. And such a scenario would once again hurt the most vulnerable and weakest in the Congo – women and children.

### 7.1. *Postscript*

As feared since this article was delivered in February 2008, fighting has resumed in North Kivu. In August 2008 General Nkunda's men clashed with the DRC's army, as well as with the FDLR and Mai-Mai forces. Fighting has continued ever since. Nkunda's forces are now besieging Goma, the capital of North Kivu, and have captured a number of smaller towns north of Goma. This renewed fighting has created another 250,000 refugees, with thousands fleeing across the border into Uganda. MONUC has been unable to prevent or stop this latest fighting.

General Nkunda has repudiated the January 2008 agreement and has threatened to “liberate” all of Congo, unless President Kabila agrees to direct talks. Kabila, supported by the Southern African Development Community, is refusing to negotiate with Nkunda. Nevertheless, UN-sponsored low-level negotiations have been held in Nairobi between representatives of the Congolese government and General Nkunda's CNDP since early December 2008 in the hope of preparing the groundwork for higher-level talks later in the month. Unfortunately, these preliminary talks are not progressing well. The UN Security Council agreed on 20 November 2008 to increase MONUC's force by 3,000 men. But already there are reports of Angolan and Rwandan troops in North Kivu. In the meantime, the European Union has decided not to send EU troops, as they did in 2003, arguing that the political process in the Congo was “gaining ground” and that a separate EU force was not the right option now.<sup>51</sup>

<sup>51</sup> D. Lyon, “Impossible task for UN in DR Congo”, *BBC News*, 12 Nov. 2008; “Foreign troops drawn into Congo”, *BBC News*, 13 Nov. 2008; D. Brunnstrom, “Belgium says no prospects of EU force in Congo”, *International Herald Tribune*, 2 Dec. 2008. UN envoy says Congo rebels delaying peace talks”, *VOA News*, 10 Dec 2008; David Milliband MP, “UN arguing for coherent international action in Congo” (Letter to the Editor), *Financial Times*, 16 Dec 2008.