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INTERNATIONAL COURT OF JUSTICE

CASE CONCERNING ARMED ACTIVITIES ON THE TERRITORY OF THE CONGO

(DEMOCRATIC REPUBLIC OF THE CONGO *v.* UGANDA)

SECOND PHASE

QUESTION OF REPARATION

MEMORIAL

OF THE

DEMOCRATIC REPUBLIC OF THE CONGO

VOLUME 10

(Annexes 6.1 to 7.4)

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LIST OF ANNEXES

Volume 10
Annexes 6.1 to 7.4

ANNEX 6.1

Paul Collier and Anke Hoeffler, *Aid, Policy and Peace: Reducing the Risks of Civil Conflict,* 2002, World Bank, Washington DC

[Original English: not reproduced]

ANNEX 6.2

Study by a team of economists from Kinshasa University on the effects of the conflict on the economy of the DRC

[Relevant extracts only]

Study by a team of economists from Kinshasa University on the effects of the conflict on the economy of the DRC

[Translation]

Evaluation of the macroeconomic injury resulting from Uganda's armed aggression against the DRC

Introduction

1. Background

By its Judgment of 19 December 2005 the International Court of Justice (ICJ) established that Uganda was responsible for having unlawfully occupied the territory of the DRC from 1998 to 2003.

It is now our task to quantify the damage caused to the DRC by the Ugandan army's military activities during that period of occupation.

The damage caused to the DRC fell into various categories, including in particular:

(i) breaches of human rights and humanitarian rights;

(ii) the use of force; and

(iii) the looting of natural resources.

However, it is increasingly recognized that war not only leads to breaches of human rights and humanitarian rights and the looting of natural resources, but also disrupts the operation of the entire economy of the country attacked and creates problems in every sector (agriculture, tourism, education, public health, etc.).

It is thus acknowledged that the effects of armed conflict are not time-specific. They persist long after the events which caused them have faded away. They are what are known as the "hysteresis effects of armed conflict", such as post-traumatic stress and psychological disorders, permanent physical injuries, bullet and shell impacts, displaced persons, refugees and rape victims, children forcibly recruited as soldiers, etc., (Blanchard, O. and Summers, L. (1986)).

The academic literature currently focuses on the impact of war on economic growth and its effect on the organization of production activities and on the increase in poverty (Chauvet, L. (2008); Collier, P. & Hoeffler, A. (2002); Collier, P., Hoeffler, A. & Soderborn, M., (2004); Collier, P. & Hoeffler, A. (2006); Collier, P. & Hoeffler, A. (1999); Collier, P. (1999); (2002); Collier, P., Hegre, H., Hoeffler, A., Reynal-Querol and Sambanis, N. (2003); Elbadawi, I. & Sambanis, N. (2001); Serneels, P. & Verpoorten, M. (2012); Kathy L. Powers and Kim Proctor, (2016)).

War not only destroys infrastructure and buildings but also has a very significant impact on growth in gross domestic product (GDP), production in all sectors, the current account balance (because of changes in the balance of trade, tourism and services and outflows linked to payments for imported weapons, military equipment and external services), debt, currency reserves, public finances and gross investment.

The Ugandan army's occupation of the DRC caused macroeconomic injury which our report seeks to evaluate because, as we noted above, war not just affects the conflict zone but also paralyses the normal operation of the entire national economic system.

2. Methodology

In order to determine the level of macroeconomic injury caused by the Ugandan army's occupation of the DRC, we used the model by **Collier and Hoeffler** (1999)[1], two World Bank economists who specialize in modelling the impact of war on the performance of the economies affected, using time-series.

This model, called the "rebellion model" by Robert Solow, is a nonlinear endogenous growth model (Solow-Swan) which uses gross domestic product (GDP) as a dependent variable, and, as explanatory variables, other macroeconomic aggregates such as population (POP), exports (EXPORT), imports (IMPORT) and foreign direct investment (FDI), and it includes a special variable (WAR) measuring the effects of war.

The data on these variables were obtained from the database at Sherbrooke University in Canada, which is used in many international studies. The database is impartial, regularly updated and covers every country in the world. Called "Perspectives Monde"[2], this teaching resource shows the main global trends since 1945. It was itself developed from the World Bank database.

The data on the variables gross domestic product (GDP), population (POP), exports (EXPORT), imports (IMPORT) and foreign direct investment (FDI) used in our report (1960-2008) have been taken from this source, updated to 10 July 2015 (see Annex 1).

Before beginning a proper econometric estimate, we will examine the characteristics of the descriptive statistics for the different variables, including mean, median, standard deviation, skewness and kurtosis, using a computer program which analyses statistical and econometric data (Eviews version 9.0), in order to obtain measures of central tendency for each variable and their distribution rates.

These measures are essential, since they describe the overall movement in a long-term phenomenon regardless of small-scale variations in the long term (cyclic variable), medium term (seasonal variable) or short term (random variable).

We will then conduct a correlation analysis in order to identify the binding force or degree of association between the variables in question, using a correlation matrix provided by the STATA 13.1 computer program for analysing statistical and econometric data. Where two phenomena develop in parallel with each other, they are said to be correlated in the sense that one influences the other; in the opposite case, neither has any influence on the other, which means that they are not correlated (Greene, W., 2005).

After the correlation analysis, we will conduct an actual econometric study in order to evaluate the impact on the Congolese economy of the war of aggression waged by Uganda. The loss of revenue sustained by the Congolese economy will thus be calculated.

Summary work plan

Section 1. Analysis of characteristics of descriptive statistics

Section 2. Correlation analysis

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[1]Collier, P. & Hoeffler, A. (1999), *On the economic consequences of civil war*, Oxford Economic, Paper, No. 51, 168-183.

[2]http://perspective.usherbrooke.ca/bilan/servlet/BMTendanceStatPays?codeTheme=2&codeStat=NY.GDP.MKTP.KD&codePays=COD&optionsPeriodes=Aucune&codeTheme2=2&codeStat2=x&codePays2=COD&optionsDetPeriodes=avecNomP&langue=fr.

Section 3. Econometric analysis

Section 4. Evaluation of macroeconomic injury

Section 1. Analysis of characteristics of descriptive statistics

This analysis provides us with measures of central tendency for each variable and the distribution rate for each one (Table 1).

Table 1. Elements of descriptive statistics

	PIBCONSTA...	POPULATION	EXPORT	IMPORT	INVESTISSE	DFLATEUR
Mean	1.48E+10	36128205	1.39E+09	1.32E+09	1.44E+08	913.7118
Median	1.60E+10	34000000	1.00E+09	8.70E+08	18000000	48.77000
Maximum	1.90E+10	59000000	3.30E+09	4.00E+09	1.80E+09	23773.10
Minimum	9.70E+09	20000000	7.20E+08	4.20E+08	-1.90E+08	3.990000
Std. Dev.	3.01E+09	11729808	7.15E+08	9.43E+08	3.95E+08	3836.679
Skewness	-0.245031	0.357273	1.056803	1.441161	3.569770	5.646369
Kurtosis	1.651174	1.869613	3.208724	4.132460	14.92461	34.05160
Jarque-Bera	3.346675	2.906073	7.330205	15.58416	313.9002	1774.057
Probability	0.187620	0.233859	0.025602	0.000413	0.000000	0.000000
Sum	5.79E+11	1.41E+09	5.43E+10	5.14E+10	5.60E+09	35634.76
Sum Sq. Dev.	3.45E+20	5.23E+15	1.95E+19	3.38E+19	5.92E+18	5.59E+08
Observations	39	39	39	39	39	39

Key:

E+ means Exponent; E+10 = Exponent 10, i.e., 10 thousand million; 1.48E+10 = 10,000,000,000 multiplied by 1.48 = 14,800,000,000 or 14.8 thousand million.

[PIBCONSTA = constant GDP; INVESTISSE = investment; DFLATEUR = deflator; Jarque Bera = Jarque Bera dispersion statistic.]

Source: calculated using the Eviews 9.0 program

This analysis of the characteristics of the descriptive statistics enables us to identify the overall movement in each of the variables over the long term regardless of small-scale variations.

— The DRC's average annual GDP was US$12.8 thousand million between 1960 and 2008, having reached a peak of US$19 thousand million in 1987. It was narrowly dispersed around the average;

— the average annual Congolese population (POP) was 36 million; it was narrowly dispersed around this average during the period under consideration;

— exports of goods and services (EXPORT) represented an annual average of US$1.39 thousand million; they were very narrowly dispersed around this average during the period under consideration;

— imports of goods and services (IMPORT) represented an annual average of US$1.32 thousand million and were very widely dispersed around the average during the period under consideration;

— foreign direct investment (INVEST) represented an annual average of US$144 million and was very widely dispersed around the average.

Section 2. Correlation analysis

A correlation analysis was then conducted in order to identify the binding force or degree of association between the variables in question, using a correlation matrix provided by a computer program for analysing statistical and econometric data.

In economics, where two phenomena develop in parallel with each other, they are said to be correlated. Although a correlation may show that armed conflict has some influence on the pace of economic development or decline, it does not establish or prove the causality between that impact and the conflict itself. This is why, in addition to the correlation analysis, an actual econometric study will be conducted, in order to evaluate the impact on the Congolese economy of the war of aggression waged by Uganda. The loss of revenue sustained by the Congolese economy will then be calculated.

The table below shows a negative correlation between production (GDP), population (POP), foreign direct investment (FDI) and the 1998-2003 Ugandan war (WAR) and vice versa. It also identifies a positive correlation between GDP and net exports.

The table forms a symmetrical triangular matrix showing each of the variables in columns and lines. It thus shows the same results twice, in the two triangles above and below the diagonal line of 1's where the same variables meet. By way of illustration, where the first column (GDP) and the second line (POP) intersect, the figure -0.41030 shows a negative correlation between those two variables. In the next line down, the figure [-0.0034], in other words three in a thousand, shows the probability of that correlation.

Table 2. Correlation matrix with significance level

	GDP	Population	Exports	Imports	Investment	War
GDP	1	-0.41030	0.00080	0.00510	-0.19150	-0.54900
Prob. [.]		**[-0.0034]**	**[0.9955]**	**[0.9721]**	**[0.2429]**	**[0.0000]**
Population	-0.41030	1	0.77250	0.74180	0.53070	0.45080
Prob. [.]	**[-0.0034]**		**[0.0000]**	**[0.0000]**	**[0.0050]**	**[0.0012]**
Exports	0.00080	0.77250	1	0.96980	0.69090	0.18130
Prob. [.]	**[0.9955]**	**[0.0000]**		**[0.0000]**	**[0.0000]**	**[0.2124]**
Imports	0.00510	0.74180	0.96980	1	0.73950	0.11190
Prob. [.]	**[0.9721]**	**[0.0000]**	**[0.0000]**		**[0.0000]**	**[0.4438]**
Investment	-0.19150	0.53070	0.69090	0.73950	1	-0.0180
Prob. [.]	**[0.2429]**	**[0.0050]**	**[0.0000]**	**[0.0000]**		**[0.9132]**
War	-0.54900	0.45080	0.18130	0.11190	-0.0180	1
Prob. [.]	**[0.0000]**	**[0.0012]**	**[0.2124]**	**[0.4438]**	**[0.9132]**	

Source: from Stata 14.1 program database

This analysis of the six variables used clearly shows that there is a negative correlation between production (GDP), population (POP), foreign direct investment (FDI) and the 1998-2003 Ugandan war (WAR) and vice versa.

Section 3. Econometric analysis

This analysis will enable us to determine the impact on the Congolese economy of the Ugandan army's war of aggression.

The analysis will be divided into four main phases:

1. Specimetrics
2. Estimation
3. Validation
4. Interpretation

3.1 Specimetrics

We will now present the different variables in question and the relationships between them, in the form of a mathematical model which will enable us to represent the phenomenon studied. This will be done in three stages: economic specification, mathematical specification and econometric specification.

3.1.1 Economic specification

The model initially used is an endogenous growth model. The operational analytical framework for the interaction between war and economic growth is based on the augmented Solow model, which involves additional variables to those originally used by Robert Solow. This model takes account of factors affecting growth through total factor productivity. In order to do so, the model needs an operational framework, and we use a **Cobb-Douglas** functional form, as follows:

$$Y = AK^{\alpha} H^{\beta} L^{1-\alpha-\beta} \qquad (1)$$

If we consider the intensive function of equation (1) and apply the differential to the log-linear form, we get:

$$g_y = g_A + \alpha g_k + \beta g_h + \gamma g_l \qquad (2a)$$

where g_y represents the growth rate of the variable Y; g_A represents the logarithm for technical progress A; g_k represents the growth rate of the physical capital variable (K); g_h represents the growth rate of the additional variables in the augmented Solow model (H), and g_l represents the growth rate of the human capital variable (L). The only variable which cannot be directly determined in ratio (2a) is the growth rate of technical progress. This is obtained indirectly as a residual known as the "Solow residual" after adjustment:

$$g_A = g_y - \alpha g_k - \beta g_h - \gamma g_l \qquad (2b)$$

The total factor productivity (TFP) accounts for the share of the growth rate that cannot be explained by the growth rate of the factors *K* and *L*.

In addition to human capital, other variables also contribute to the process of economic growth, particularly government action in terms of investment to guarantee the population's well-being or security, openness to international trade, and peace (absence of civil unrest or wars).

3.1.2. Mathematical specification

Here we include in the model described above (economic specification) the different variables taken into consideration in the study of the Congolese economy.

This gives us the following production function:

$$Q_t = A(t)F(K_t, LC_t, H(EXPORT, IMPORT, WAR)) \qquad (3)$$

where Q_t, $A(t)$, K_t, LC_t and H_t represent, respectively, the production vector (GDP), the measure of technical progress, physical capital (FDI), human capital or workforce (population), and a composite vector of the additional variables (exports, imports and war).

$$Q_t = AK_t^{\alpha} LC_t^{\beta l} H_t^{\beta k} \qquad (4)$$

This Cobb-Douglas production function can be linearized through log transformation so that the coefficients enable us to measure the elasticities of the variables lk, llc and lh.

$$lq_t = \Lambda + \alpha * lk_t + \beta_1 * llc_t + \beta_k * lh_t \qquad (5)$$

3.1.3. Econometric specification

The final model to estimate will thus be the linearized form, and we will include the error term (ε_t), which will record errors of measurement, specification and sampling.

$$lq\ t = \Lambda + \alpha * lk\ t + \beta\ 1 * llc\ t + \beta\ k * lh\ t + \varepsilon\ t \qquad (6)$$

3.2. Estimation

At this stage in the reasoning, we will produce a model *estimation* using two statistical methods (the ordinary least squares (OLS) method[3] and the generalized method of moments (GMM[4])), which enable the coefficients of the model to be calculated in the form of elasticities in order to measure the sensitivity of economic growth to variation in one of the model's exogenous variables. The results are shown in the table below.

[3]In statistics, in econometrics, a **linear regression** model estimates the relationship between a dependent variable and one or more explanatory variables, based on the assumption that the parameters of the function connecting the explanatory variables to the dependent variable are linear. This is therefore known as a **linear model** or **linear regression model**.

The **ordinary least squares method (OLS)** is the technical name for mathematical regression in statistics, and particularly linear regression. **Multiple linear regression** is a statistical analysis which describes the variations in an endogenous variable associated with the variations in multiple exogenous variables. It involves arranging a scatter diagram according to a linear ratio in the form of the matrix equation $Y=\beta X+ E_t$, where E_t is an error term. The ordinary least squares method consists of minimizing the sum of the squared deviations, or weighted deviations in multidimensional cases, between each point in the scatter diagram and its projected position, parallel with the ordinate axis, on the regression line (https://fr.wikipedia.org/wiki/R%C3%A9gression_lin%C3%A9aire_multiple), (https://fr.wikipedia.org/wiki/M%C3%A9thode_des_moindres_carr%C3%A9s_ordinaire).

[4]The **method of moments** is an intuitive estimation tool dating from the early days of statistics. It consists of estimating the parameters required by equating certain theoretical moments (which depend on those parameters) with their empirical counterparts. The reason for equating them in this way is that the law of large numbers implies that a mathematical expectation can be "approximated" by an empirical mean. It is therefore necessary to resolve a system of equations (https://fr.wikipedia.org/wiki/M%C3%A9thode_des_moments_(statistiques)).

Table [3.] Impact of the war on the DRC's economic growth

Explanatory variable	Gross domestic product (Ln_GDP)			
	OLS method		Generalized method of moments	
	Coefficient	t-stat	Coefficient	t-stat
Constant	118.9006	3.42**	35.188228	15.02***
Population (Ln_POP)	-5.763812	-2.74**	-1.322793	-6.43***
Exports (Ln_Export)			0.70795135	2.41**
Imports (Ln_Import)			-0.1770564	-0.88
Investment (Ln_FDI)			1.05e – 10	1.90*
Ugandan war (WAR)	-0.0753868	-1.81*	----------	Var. instrument
Time (Trend)	0.1567149	2.57**		
	R^2=0.5155	F(1 ; 44)=4.03	R^2=0.2841	Wald, chi(2)=48
N=48	DW-stat=1.61	SCR=0.13 426		Root MSE = 0.18

Key: ***, **, * = degree of significance at threshold of 1 per cent, 5 per cent and 10 per cent respectively
OLS: ordinary least squares method
Source: Congolese authorities, using Eviews 9.0 program

In the light of the results of the final model estimation in table [3], we can conclude that Uganda's military aggression, population and time all have a negative effect on GDP growth in the Democratic Republic of the Congo.

We can see that every reduction by a population unit produces a 5.76 per cent reduction in GDP over the period under consideration.

Similarly, war has a negative effect on GDP growth, resulting in a reduction of around 0.08 per cent of GDP.

Finally, we can see from table [3] that the estimated parameters (columns 2 and 4) representing the elasticities proved stable over the relevant period. We can therefore draw the following conclusions:

— the model is sound (the variance explained by the model is $R^2 = 0.52$, which is an average level; the model appears very sound);

— the variance analysis table and the associated F-test show that the model is actually highly significant overall; $F_{calc} = 4.03$, with a critical probability (p-value) far below the 5 per cent threshold currently used in practice;

— the variables Ln_POP, WAR and Time have a very high explanatory power for the variation in the dependent variable Ln_GDP. In fact, 55.5 per cent of the variability in Ln_GDP is explained by the variation in Ln_POP, Time and WAR;

— as for the generalized method of moments (GMM) model, its explanatory power is weak at 28 per cent, even though the explanatory variables have again been extended to include exports of goods (Ln_Export), imports of goods and services (Ln_Import) and foreign direct investment (Ln_FDI).

The two outcomes above, produced by the OLS and GMM methods, confirm the negative impact which the war had on the DRC's economic growth.

The model was then *validated* in two main phases: parametric validation and non-parametric validation. The first involved validating the linear equation resulting from table [3] by comparing it with the parameters of a *theoretical* linear equation using the hypothesis testing procedure — the hypothesis here being that the war had a negative influence on GDP. The second involved obtaining a small number of *statistics* providing an overall view of the relationship between the explanatory (or independent) variable and the explained (or dependent) variable.

These operations, analyses and tests demonstrate that the model is valid and support the conclusion that the war which affected the DRC between 1998 and 2003 had a negative influence on its GDP growth (graph 1): the POP, WAR and Time variables broadly account for the negative impact on the GDP dependent variable.

Table 4. Analysis of relaxing of econometric hypotheses

Tests	Gross Domestic Product (Ln_GDP)
1. Box-Pierce Q-stat	11.848
Prob. Q-stat	0.001
Ljung-Box Q-stat	2.6716
Prob. Q-stat	0.102
2. LM (Breush Godfrey) (2 lags)	
F*	3.722886
Prob. F (2,43)	0.0323
Obs*R²	7.232376
Prob. Chi-Square (2)	0.0269
3. Breush-Pagan-Godfrey Test (1 lags)	
F*	0.634713
Prob. F*-stat (3,45)	0.5965
Obs*R²	1.989223
Prob. LM-stat	0.5746
4. White Test (9 lags)	
F*	1.984622
Prob. F*-stat (3,35)	0.0785
Obs*R²	14.86510
Prob. Chi-Square (3)	0.0947
Scaled explained SS	17.45315
Prob. Chi-Square (3)	0.0421
5. Glejer Test (3 lags)	
F*	1.625412
Prob. F*-stat (3,35)	0.2011
Obs*R²	4.769086
Prob. Chi-Square (3)	0.1895
Scaled explained SS	4.969203
Prob. Chi-Square(3)	0.1741
6. Normality Test	
Jarque-Bera (h=18)	4.635767
Prob.	0.098482
7. Reset Test (lags 1)	
t-statistic	1.081458
Prob. t*-stat	0.2871
F*-stat	1.169551
Prob. F*-stat	0.2871

Source: our calculations using Eviews 9.0 software

3.3 Validation

In this section of the econometric analysis we will assess the validity of the estimations carried out in point 3.2. Validation is conducted in two main phases: parametric validation, and non-parametric validation.

3.3.1. Parametric validation

This phase, known as "parametric empirical inference", is used to validate individual estimators by comparing them with the parameters in the theoretical linear equation. The most usual procedure for doing this is hypothesis testing of the parameters.

The significance test for the coefficients is based on Student's t-statistic. The test hypotheses are formulated as follows:

— Ho: $\beta_i = 0$, the coefficient is significantly equal to zero

— Hl: $\beta_i \neq 0$, the coefficient is significantly different from zero

The critical region is as follows:

— where Student's t-statistic is ≥ 2 and the value of the probability associated with the test's t-statistic (or the lowest value above which the null hypothesis is accepted) is < 0.05, then the null hypothesis is rejected (RHo).

— where Student's t-statistic is < 2 and the value of the probability associated with the test's t-statistic (or the lowest value above which the null hypothesis is accepted) is ≥ 0.05, then the null hypothesis is accepted (AHo).

Thus, in the light of the results of table 3, we can conclude as follows:

— the explanatory variable Population (POP) is statistically significant given that its t-statistic = $2.74 \geq 2$, Ho is rejected at a threshold of 5 per cent.

— The explanatory variable Exports (EXPORT) is statistically significant given that its t-statistic = $2.41 \geq 2$, Ho is rejected at a threshold of 5 per cent.

— The explanatory variable Foreign Direct Investment (FDI) is statistically significant given that its t-statistic = $2 \geq 2$, Ho is rejected at a threshold of 10 per cent.

— The explanatory variable War (WAR) is statistically significant given that its t-statistic = 2 >= 2, Ho is rejected at a threshold of 10 per cent.

— The explanatory variable Time is statistically significant given that its t-statistic = $2.57 \geq 2$, Ho is rejected at a threshold of 5 per cent.

However, the explanatory variable Imports (IMPORT) is statistically insignificant given that its t-statistic = $0.88 < 2$, Ho is accepted at all thresholds of 1 per cent, 5 per cent and 10 per cent.

3.3.2. Non-parametric validation

Non-parametric inference, which is the method used in this phase, consists of obtaining a small number of statistics providing an overall view of the relationship between the explanatory (or independent) variables and the explained (or dependent) variable.

This method is based on two main statistics: the coefficient of determination (R^2) and the Fisher statistic (F-stat):

— the R-squared (R^2) coefficient of determination is an overall indicator of regression quality. It measures how the data fit the model. It is interpreted as the fraction of variance of the dependent variable, which is explained by the independent variables.

— the Fisher F-stat tests whether the model is sound overall, according to the following hypotheses:

— Ho: $\beta_1 = \beta_2 = \ldots = \beta_i \ldots = \beta_k = 0$, all the coefficients are significantly equal to zero

— Hl: $\beta_i \neq 0$, there is at least one coefficient which is significantly different from zero.

The critical region is as follows:

— where Fisher's F-stat is ≥ 5 and the value of the probability associated with the test's F-stat (or the lowest value above which the null hypothesis is accepted) is < 0.05, then the null hypothesis is rejected (RHo).

— where Fisher's F-stat is < 5 and the value of the probability associated with the test's F-stat (or the lowest value above which the null hypothesis is accepted) is ≥ 0.05, then the null hypothesis is accepted (AHo).

From the outcome of these tests, shown in table 4 in terms of the relaxing of the classical hypotheses, it is clear that the results of the econometric estimation remain valid. The corrected coefficient of determination is relatively weak. As the Ramsey test shows (a test based on the Fisher statistic), the model specification is sound. Similarly, the Jarque-Bera test shows that the residuals are distributed normally, and therefore the application of the inference does not present any technical problems. Alongside this, the results of the ARCH test rule out any possible heteroscedasticity[5] in the error variance. In order to test the null hypothesis of no error autocorrelation, the Breusch-Godfrey test was preferred to the Durbin-Watson. Since the critical probability of the Lagrange multiplier (LM) statistic associated with the Breusch-Godfrey test is greater than 0.05, we conclude that there is no error autocorrelation in the model.

Finally, as graph 2 shows, the estimated parameters are stable over the period under examination. The curve (CUSUM) fluctuates only within corridors (confidence intervals). In the light of the results of table 3, we can draw the following conclusions:

The model is sound, and the variables Ln_POP, WAR and Time have a very high explanatory power for the variation in the dependent variable Ln_GDP. In fact, 55.5 per cent of the variability in Ln_GDP is explained by the variation in Ln_POP, Time and WAR.

As for the generalized method of moments (GMM) model, its explanatory power is weak at 28 per cent, even though the explanatory variables have again been extended to include exports of

[5]The fact that the variance in the variable we want to predict (the error term) is not constant over the area of the random variable we are using (GDP).

goods (Ln_Export), imports of goods and services (Ln_Import) and foreign direct investment (Ln_FDI).

The two outcomes above, produced by the OLS and GMM methods, confirm the significant negative impact on the DRC's economic growth.

Starting from the Fisher F-stat >5, with a probability Prob. F-stat=0.000 < 0.05, we can conclude that the null hypothesis must be rejected, in other words, there is at least one $\beta_i \neq 0$ coefficient that is statistically different from zero. The model is therefore sound overall.

Section 4. Calculation of the macroeconomic injury suffered by the DRC as a result of the Ugandan army's aggression 1998-2003

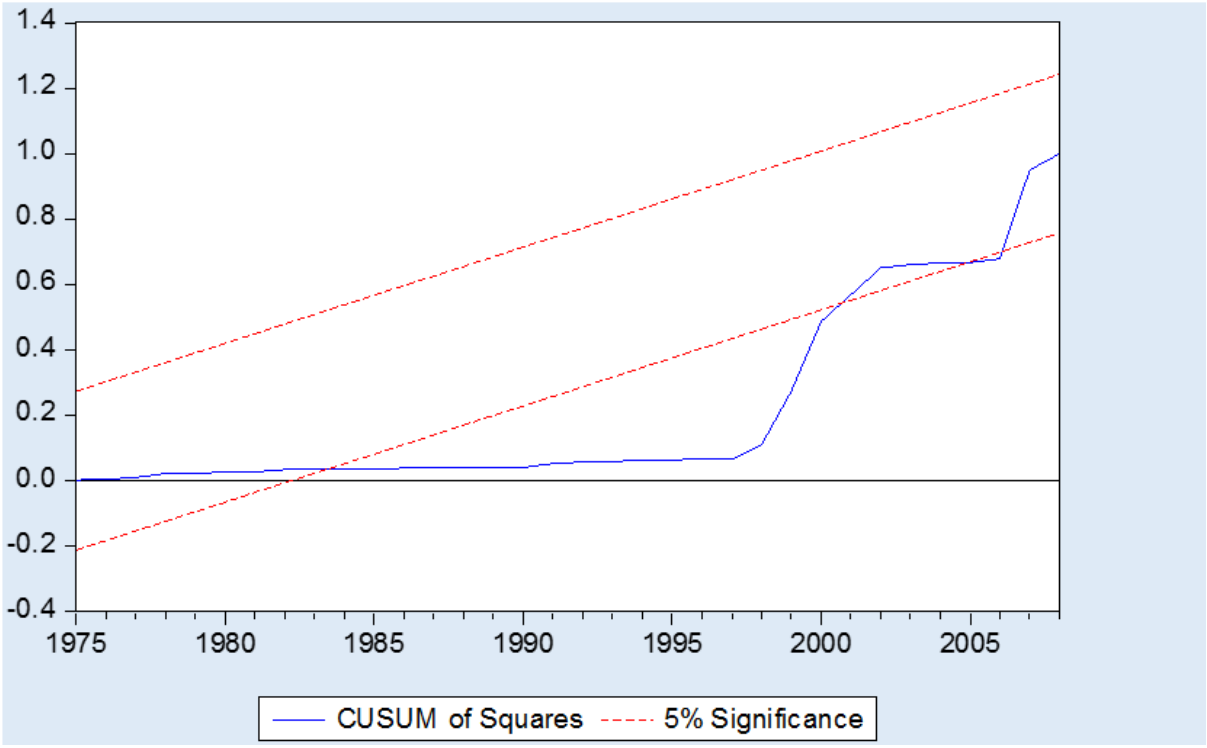
In the light of the results of the final model estimation in table 3, we can conclude that Uganda's military aggression, population and time have a negative effect on GDP growth in the Democratic Republic of the Congo.

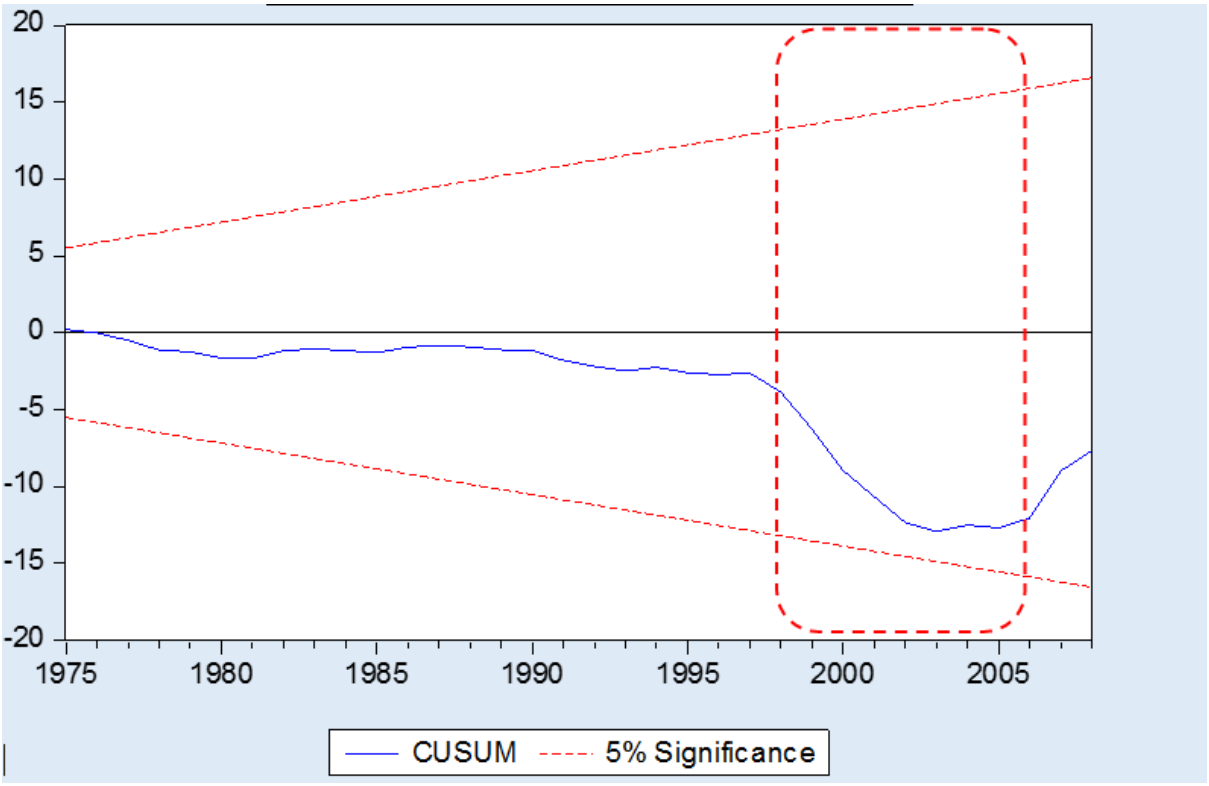
We can see that every reduction by a population unit produces a 5.76 per cent reduction in GDP over the period under consideration.

Similarly, war has a negative effect on GDP growth, resulting in a reduction of around 0.08 per cent of GDP.

The CUSUM test shows that the model is stable, in other words the predicted GDP variable changes within the corridor of the confidence intervals. The following graph shows that between 1998 and 2003, the GDP of the Democratic Republic of the Congo suffered an unprecedented fall, which coincided exactly with the period of the Ugandan army's aggression.

Graph 1. Test of structural (a) and cyclical (b) stability





Source: calculated using Eviews 9.0 program

The structural stability test (graph 1a) shows that the model was unstable during the period between the late 1980s and 2006. Similarly, the cyclical stability test (graph 1b) shows that the Congolese economy was destabilized during the period from 1998 to 2005 because of the war of aggression. The graph clearly shows a break in the development of the DRC's economic growth from 1998, the year when the war started, to 2005.

This result clearly confirms other studies, particularly those by Collier, P. and Hoeffler, A. and many others (Serneels, P. & Verporten, M. (2012); Collier, P., Hegre, H., Hoeffler, A., Reynal-Querol and Sambanis, N. (2003); Elbadawi, I. and Sambanis, N. (2001); Collier, P. (1999); Collier, P. and Hoeffler, A. (2002); Collier, P. and Hoeffler, A. (2006); Collier, P. and Hoeffler (1999); Collier, Hoeffler and Soderborn, M. (2004)), which show that war has a negative influence on GDP and thereby exacerbates poverty in the country attacked.

Thus, the argument that the Congolese economy was already in difficulties and was not negatively affected by the war of aggression is fallacious and distorted, and has largely been disproved by the study.

Finally, the effect of *civil war* on economic performance is *negative*. The results of the estimations show that there is a significant negative relationship (at a threshold of 5 per cent) between economic performance and the war of aggression by Uganda. This finding may be applied more widely in the light of the results of the study by Kabwe, F. (2014) evaluating the negative effect of the war on long-term mining income. That relationship becomes negative and remains significant (still at a 5 per cent threshold).

4.1. Interpretation of the results of the analyses: calculation of macroeconomic injury

The next stage was to interpret the results of the analyses in order to calculate the macroeconomic harm caused by the war. The following procedure was used, the results of which are shown in the table below.

1. Using the Collier and Hoeffler model, the steps described above enabled the *estimated GDP* to be calculated, in other words, the GDP reflecting the effect of the war (second column in the table below).

2. From that estimated GDP we calculated the annual GDP growth rate (third column in the table below). In particular, the table shows *negative* growth in 1999 and 2000.

3. The third operation was to evaluate constant GDP at 1998 prices, in other words to eliminate inflation (fourth column). This reflects the GDP which the DRC would have had if the war had not taken place. For example, in 1999, GDP was US$4,711,254,228.13 (first column), whereas it should have been US$6,412,404,422.

4. The difference between constant GDP (fourth column) and GDP at 1998 prices (second column) gives the deficit, in other words the loss of revenue suffered by the DRC as a result of the war (fifth column).

5. These deficits were capitalized at a discount rate of 5 per cent (sixth column).

Table 4: Calculation of macroeconomic harm suffered by the DRC as a result of the 1998-2003 war

Year	Estimated GDP	GDP growth rate	Constant GDP (1998 prices)	Deficit	Capitalization at rate of
			at 3.13%	deficit	5%
1998	6,217,787,667.74	0.0208	6,217,787,668		
1999	4,711,254,228.13	-0.2423	6,412,404,422	1,701,150,193.60	1,786,207,703.28
2000	4,305,805,218.67	-0.0861	6,613,112,680	2,307,307,461.47	2,543,806,476.77
2001	4,691,836,872.61	0.0897	6,820,103,107	2,128,266,234.41	2,463,734,199.61
2002	5,547,704,080.91	0.1824	7,033,572,334	1,485,868,253.37	1,806,082,148.65
2003	5,673,204,712.25	0.0226	7,253,723,148	1,580,518,436.09	2,017,186,539.17
2004	6,570,002,171.76	0.1581	7,480,764,683	910,762,511.12	
2005	7,103,546,476.39	0.0812	7,714,912,617	611,366,141.07	
2006	8,543,358,205.97	0.2027	7,956,389,382	-586,968,823.58	
2007	9,378,915,735.00	0.0978	8,205,424,370	-1,173,491,364.95	
2008	10,365,615,877.22	0.1052	8,462,254,153	-1,903,361,724.39	
				10,725,239,231.13	10,617,017,066.98

Source: calculated on the basis of data from the econometric estimation

It is thus clear from the calculations that the macroeconomic harm between 1999 and 2003 came to US$10,617,017.066.

However, the effects of armed conflict are not time-specific. They persist long after the events which caused them have faded away. They are what are known as the "hysteresis effects of armed conflict", which include, for example, post-traumatic stress and psychological disorders, permanent physical injuries, bullet and shell impacts, displaced persons, refugees and rape victims, children forcibly recruited as soldiers, etc.

In fact, the study shows that the effects of the war lasted until 2005. There was a cumulative increase in the loss of revenue of US$1,220,508,870.80 in 2004, and US$860,253,555.49 in 2005. This brings the total loss of revenue to US$12,697,779,493.27. This can be seen in table 5 below.

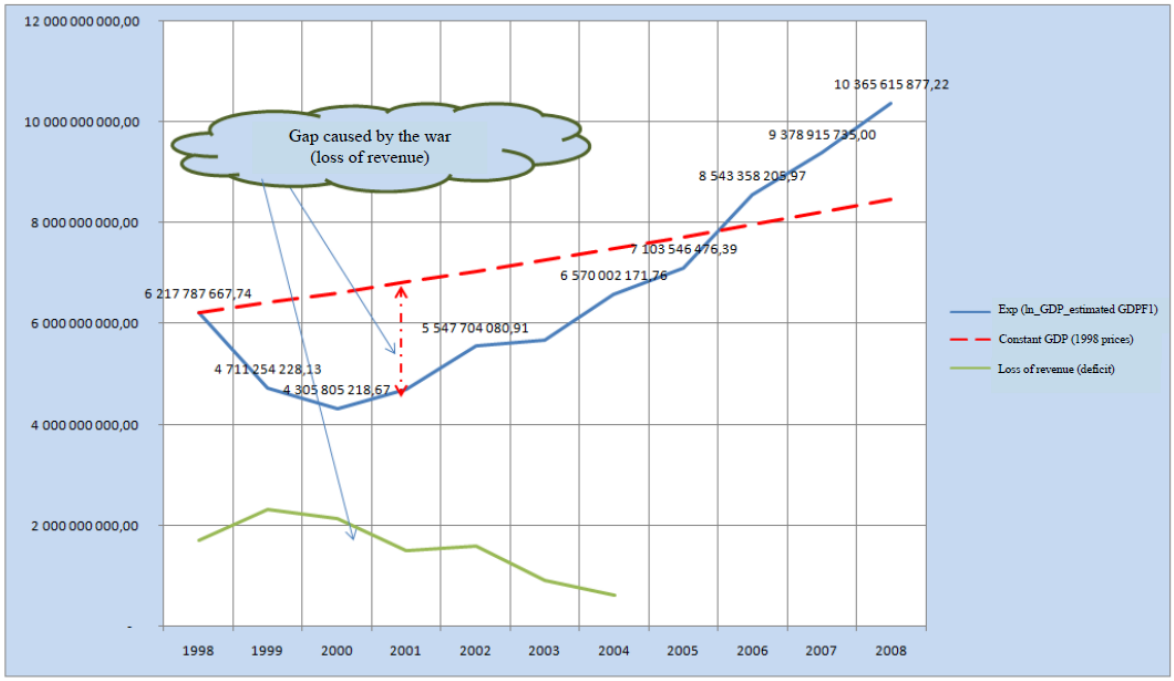
Year	Estimated GDP	GDP growth rate	Constant GDP (1998 prices) at 3.13%	Loss of revenue (deficit) deficit	Capitalization at 5%
1998	6,217,787,667.74	0.0208	6,217,787,668		
1999	4,711,254,228.13	-0.2423	6,412,404,422	1,701,150,193.60,	1,786,207,703.28
2000	4,305,805,218.67	-0.0861	6,613,112,680	2,307,307,461.47	2,543,806,476.27
2001	4,691,836,872.61	0.0897	6,820,103,107	2,128,266,234.41	2,463,734,199.61
2002	5,547,704,080.91	0.1824	7,033,572,334	1,485,868,253.37	1,806,082,148.65
2003	5,673,204,712.25	0.0226	7,253,723,148	1,580,518,436.09	2,017,186,539.17
2004	6,570,002,171.76	0.1581	7,480,764,683	910,762,511.12	1,220,508,870.80
2005	7,103,546,476.39	0.0812	7,714,912,617	611,366,141.07	860,253,555.49
2006	8,543,358,205.97	0.2027	7,956,389,382		
2007	9,378,915,735.00	0.0978	8,205,424,370		
2008	10,365,615,877.22	0.1052	8,462,254,153		
				10,725,239,231.13	12,697,779,493.27

Source: calculated on the basis of data from the econometric estimation

This trend in the loss of revenue can be visualized using graph 2 below, relating to the whole of the period concerned, from 1998 to 2005. The blue line shows the estimated GDP (including the effect of the war), while the red line shows constant GDP (that would have existed without the war).

The graph also shows that from 2006, the effects of the war diminished as peace returned and was consolidated after the end of the conflict. The deficit or loss of revenue decreased and the Congolese economy started to recover and increase growth. This once again confirms the direct link between the war and the harm suffered by the Congolese economy as a whole, in other words the causality between the harm and the internationally wrongful act.

Graph 2. Visualization of the trend in the loss of revenue recorded by the DRC



Source: calculated on the basis of model data

4.2. Compensation owed by Uganda

On the basis of the foregoing, the total macroeconomic injury suffered by the DRC as a result of the war is estimated at US$12,697,779,493.27.

Conclusion

Armed conflict causes serious damage to the countries attacked, as many studies have demonstrated. With regard to the Ugandan army's aggression against the DRC between 1998 and 2003, we have attempted, in this study, to determine the impact of the macroeconomic harm sustained by the Congolese economy. In order to do so, we used the "rebellion" model by Collier, P. and Hoeffler, A. (1999), an endogenous growth model based on the augmented Solow model, which takes Gross Domestic Product (GDP) as a dependent variable influenced by the independent variables physical capital (FDI) and human capital (POP) and additional variables (Imports, Exports, War).

We conducted, in turn, an analysis of the descriptive statistics, a correlation analysis and an econometric analysis. The results of these various analyses enabled us to evaluate the macroeconomic injury caused by the Ugandan's army's aggression against the DRC.

The loss of revenue to the Congolese economy caused by the war of occupation amounted to US$12.7 thousand million.

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[Annexes not translated]

ANNEX 7.1

***Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*; Annex to resolution 60/147 adopted by the United Nations General Assembly on 16 December 2005**

GENERAL ASSEMBLY RESOLUTION 60/147 (BASIC PRINCIPLES AND GUIDELINES ON THE RIGHT TO A REMEDY AND REPARATION FOR VICTIMS OF GROSS VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS LAW AND SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW)

The issue of basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights and humanitarian law was first raised in 1988 during the fortieth session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, in the context of its basic mandate to make recommendations to the Commission on Human Rights concerning the prevention of discrimination of any kind relating to human rights and fundamental freedoms. On 1 September 1988, the Sub-Commission adopted resolution 1988/11 in which it decided to discuss the matter of compensation at its forty-first session with a view to considering the possibility of developing some basic principles and guidelines in this respect (see Report of the Sub-Commission, E/CN.4/Sub.2/1988/45).

At its forty-first session, the Sub-Commission adopted resolution 1989/13 of 31 August 1989, by which it decided to entrust Mr. Theo van Boven, as Special Rapporteur, with the task of undertaking a study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms, with a view to exploring the possibility of developing some basic principles and guidelines in this respect, and requested him to submit a preliminary report on the matter for consideration by the Sub-Commission at its forty-second session (see Report of the Sub-Commission, E/CN.4/Sub.2/1989/58 (E/CN.4/1990/2). At its forty-sixth session, upon recommendation of the Sub-commission, the Commission on Human Rights adopted resolution 1990/35 of 2 March 1990, by which it recommended the Economic and Social Council to adopt a resolution authorizing the Sub-Commission to entrust Mr. van Boven with the abovementioned task and requesting the Secretary-General to provide him with all the assistance needed for this task (see report of the Commission on Human Rights, E/1990/22). The Economic and Social Council adopted resolution 1990/36 of 25 May 1990 to this effect.

At its forty-second session, the Sub-Commission considered the preliminary report submitted by the Special Rapporteur (E/CN.4/Sub.2/1990/10) and adopted resolution 1990/6 of 30 August 1990, by which it requested the Special Rapporteur to prepare a progress report for its forty-third session, taking into account comments made in the discussion on the preliminary report, as well as the relevant work and recommendations of the Committee on Crime Prevention and Control and relevant decisions of the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, and to undertake the necessary consultations with the United Nations Centre for Social Development and Humanitarian Affairs (see Report of the Sub-Commission, E/CN.4/Sub.2/1990/59 (E/CN.4/1991/2)).

The Special Rapporteur accordingly submitted his first progress report to the Sub-Commission on 25 July 1991, for its forty-third session (E/CN.4/Sub.2/1991/7). On 29 August 1991, the Sub-Commission adopted resolution 1991/25, by which it requested the Special Rapporteur to continue his study and to submit a second progress report containing additional information on and an analysis of relevant decisions and views of international human rights organs, as well as of national law and practice to the Sub-Commission, at its forty-fourth session, and a final report at its forty-fifth session (see Report of the Sub-Commission, E/CN.4/Sub.2/1991/65 (E/CN.4/1992/2)).

The Special Rapporteur submitted his second progress report to the Sub-Commission on 29 July 1992, for its forty-fourth session (E/CN.4/Sub.2/1992/8). On 27 August 1992, the Sub-Commission adopted resolution 1992/32, by which it requested the Special Rapporteur to continue his study and to submit to the Sub-Commission, at its forty-fifth session, a final report which should include a set of conclusions and recommendations aimed at developing basic principles and guidelines with respect to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms (see Report of the Sub-Commission, E/CN.4/Sub.2/1992/58 (E/CN.4/1993/2)).

The Special Rapporteur submitted his final report on 2 July 1993, at the forty-fifth session of the Sub-Commission (E/CN.4/Sub.2/1993/8). On 25 August 1993, the Sub-Commission adopted resolution 1993/29, by which it decided to transmit the study of the Special Rapporteur to the Commission on Human Rights. By the same resolution, the Sub-Commission decided to examine further, at its forty-sixth session, the proposed basic principles and guidelines included in the study and, for that purpose, to establish, if necessary, a sessional working group at that session with a view to adopting a body of such principles and guidelines, and it further requested the Secretary-General to invite governments and competent intergovernmental and non-governmental organizations to submit their comments on the proposed basic principles and guidelines (see Report of the Sub-Commission, E/CN.4/Sub.2/1993/45 (E/CN.4/1994/2) and Corr.1). At its fiftieth session, the Commission on Human Rights adopted resolution 1994/35 of 4 March 1994, in which it expressed its appreciation for the work of the Special Rapporteur and regarded the proposed basic principles and guidelines as a useful basis for addressing the question of restitution, compensation and rehabilitation for victims of gross violations of human rights. It therefore recommended that the Sub-Commission take measures to examine the proposed basic principles and guidelines with a view to making proposals thereon and report to the Commission (see Report of the Commission on Human Rights, E/CN.4/1994/132 (E/1994/24)).

At the forty-sixth session of the Sub-Commission, held from 1 to 26 August 1994 in Geneva, a Sessional Working Group on the Administration of Justice and the Question of Compensation was established to examine further the proposed basic principles and guidelines in accordance with resolution 1993/29 of the Sub-Commission. On 26 August 1994, the Sub-Commission adopted resolution 1994/33, by which, after noting the report of the Secretary-General prepared pursuant to Sub-Commission resolution 1993/29 (E/CN.4/Sub.2/1994/7 and Add.1) and the report of the sessional working group (E/CN.4/Sub.2/1994/22), it decided to continue the consideration of the proposed basic principles and guidelines at its forty-seventh session (see Report of the Sub-Commission, E/CN.4/Sub.2/1994/56). On 3 March 1995, the Commission on Human Rights, at its fifty-first session, adopted resolution 1995/34, in which it encouraged the Sub-Commission to continue to give consideration to the proposed basic principles and guidelines, requested States to provide information about relevant national legislation to the Secretary-General and requested the Secretary-General to submit a report to the Commission on this subject at its fifty-second session (Report of the Commission on Human Rights, E/CN.4/1995/176 (E/1995/23)).

The Working Group continued its consideration of the proposed basic principles and guidelines at the forty-seventh session of the Sub-Commission, which was held in Geneva from 31 July to 25 August 1995. On 24 August 1995, the Sub-Commission adopted decision 1995/117 (see Report of the Sub-Commission, E/CN.4/Sub.2/1995/51 (E/CN.4/1996/2)), by which it decided to request the Working Group to continue the consideration of the proposed basic principles and guidelines, with priority, at the next session and requested the former Special Rapporteur to submit a revised set of proposed basic principles and guidelines, taking into account the new comments received from States and intergovernmental and non-governmental

organizations (see Report of the Secretary-General E/CN.4/Sub.2/1995/17 Add.1 and Add.2) and the discussions on the matter in the Working Group (see Report of the Working Group, E/CN.4/Sub.2/1995/16). On 19 April 1996, the Commission on Human Rights, at its fifty-second session, adopted resolution 1996/35, by which, taking note of the report of the Secretary-General submitted to the Commission in compliance with its resolution 1995/34 (E/CN.4/1996/29), it requested States that had not yet done so to submit information in accordance with that resolution, and requested the Secretary-General to prepare an additional report, taking into account the information provided by States (see Report of the Commission on Human Rights, E/CN.4/1996/177 (E/1996/23)).

As requested by the Sub-Commission in its decision 1995/117 of 24 August 1995, the former Special Rapporteur submitted a revised text of the basic principles and guidelines to the Sub-Commission at its forty-eighth session (E/CN.4/Sub.2/1996/17). On 29 August 1996, the Sub-Commission adopted resolution 1996/28, by which it expressed its appreciation to the former Special Rapporteur and decided to transmit the revised draft to the Commission on Human Rights, together with its comments and the comments of the Working Group (E/CN.4/Sub.2/1996/16). By the same resolution, the Sub-Commission requested the former Special Rapporteur to prepare a note taking into account the comments and observations of the Working Group and the Sub-Commission in order to facilitate the examination by the Commission on Human Rights of the revised draft basic principles and guidelines (see Report of the Sub-Commission, E/CN.4/Sub.2/1996/41 (E/CN.4/1997/2)).

On 13 January 1997, the former Special Rapporteur accordingly submitted a note to the Sub-Commission, together with an adapted version of the draft revised basic principles and guidelines (E/CN.4/1997/104, annex). On 11 April 1997, at its fifty-third session, the Commission on Human Rights adopted resolution 1997/29, by which it invited the Secretary-General to request all States to submit their views and comments on the note and revised draft basic principles and guidelines and to prepare a report setting out such views and comments (see Report of the Commission on Human Rights, E/1997/23).

At its fifty-fourth session, the Commission on Human Rights adopted resolution 1998/43 of 17 April 1998 by which it took note of the report of the Secretary-General (E/CN.4/1998/34) submitted pursuant to the abovementioned resolution and, with the approval of the Economic and Social Council (see Economic and Social Council resolution 1998/256 of 30 July 1998), requested the Chairman of the Commission to appoint an independent expert to prepare a revised version of the basic principles and guidelines, taking into account the views of and comments provided by States and intergovernmental and non-governmental organizations, and to submit it to the Commission at its fifty-fifth session, with a view to its adoption by the General Assembly. By the same resolution, the Commission continued to request the Secretary-General to invite States that had not yet done so, as well as intergovernmental and non-governmental organizations, to submit their views and comments as soon as possible, and by no later than 31 October 1989, and to make that information available to the independent expert (see Report of the Commission on Human Rights, E/1998/23).

The independent expert appointed by the Commission on Human Rights, Mr. M. Cherif Bassiouni, submitted his first report to the Commission in February 1999, at its fifty-fifth session (E/CN.4./1999/65). On 26 April 1999, the Commission on Human Rights adopted resolution 1999/33, by which it requested him to complete his work and to submit to the Commission at its fifty-sixth session, in accordance with its resolution 1998/43, a revised version of the basic principles and guidelines (see Report of the Commission on Human Rights, E/1999/23).

The independent expert submitted his final report to the Commission on Human Rights (E/CN.4/2000/62) in January 2000, at its fifty-sixth session. On 20 April 2000, the Commission adopted resolution 2000/41, by which it requested the Secretary-General to circulate to all Member States the draft text of the "Basic principles and guidelines on the right to a remedy and reparation for victims of violations of international human rights and humanitarian law", annexed to the final report of the independent expert, and to request that they send their comments thereon to the Office of the United Nations High Commissioner for Human Rights. The Commission further requested the High Commissioner for Human Rights to hold a consultative meeting for all interested States, intergovernmental organizations and non-governmental organizations in consultative status with the Economic and Social Council, in order to finalize the basic principles and guidelines on the basis of the comments submitted, and to transmit to the Commission, at its fifty-seventh session, the final outcome of this meeting (see Report of the Commission on Human Rights, E/2000/23).

By note verbale of 31 August 2000, the Secretary-General invited all Member States to submit their comments on the basic principles and guidelines. However, as at 20 November 2000, replies had been received from only six Member States (see E/CN.4/2001/61). At its fifty-seventh session, the Commission on Human Rights therefore adopted decision 2001/105 of 23 April 2001, by which it requested again the High Commissioner for Human Rights to hold a consultative meeting in order to finalize the basic principles and guidelines and to transmit the final outcome of the consultative meeting to the Commission for consideration at its fifty-eighth session (see Report of the Commission on Human Rights, E/2001/23). On 24 July 2001, the Economic and Social Council adopted decision 2001/279, by which it endorsed the decision of the Commission on Human Rights.

At its fifty-eighth session, the Commission on Human Rights adopted resolution 2002/44 of 23 April 2002 by which it made an identical request (see Report of the Commission on Human Rights, E/2002/23).

The requested consultative meeting on the draft Basic principles and guidelines on the right to a remedy and reparation for victims of violations of international human rights and humanitarian law took place on 30 September and 1 October 2002 in Geneva, and the report of the Chairperson-Rapporteur, Mr. Alejandro Salinas, was transmitted by the High Commissioner to the Commission on Human Rights on 27 December 2002 (E/CN.4/2003/63). On 23 April 2003, at its fifty-ninth session, the Commission on Human Rights adopted resolution 2003/34, by which it requested the Chairman-Rapporteur of the consultative meeting, in consultation with the independent experts, Messrs. van Boven and Bassiouni, to prepare a revised version of the "Basic principles and guidelines on the right to a remedy and reparation for victims of violations of international human rights and humanitarian law", taking into account the opinions and comments of States and of intergovernmental and non-governmental organizations and the results of the consultative meeting. The Commission further requested the High Commissioner for Human Rights to hold a second consultative meeting, with a view to finalizing the basic principles and guidelines, encouraged the Chairman-Rapporteur of the first consultative meeting to conduct informal consultations with all interested parties, and requested the High Commissioner for Human Rights to transmit to the Commission at its sixtieth session the final outcome of the second consultative meeting (see Report of the Commission on Human Rights, E/2003/23).

The second consultative meeting took place on 20, 21 and 23 October 2003 in Geneva and the report of the Chairperson-Rapporteur of the consultative meeting (E/CN.4/2004/57, annex) was transmitted by the High Commissioner for Human Rights to the Commission on Human Rights, at its sixtieth session. On 19 April 2004, the Commission on Human Rights adopted resolution 2004/34, by which it requested

the Chairman-Rapporteur, in consultation with the independent experts, to prepare a further revised version of the basic principles and guidelines. It further requested the High Commissioner for Human Rights to hold a third consultative meeting and to transmit to the Commission on Human Rights, at its sixty-first session, the outcome of the consultative process (see Report of the Commission on Human Rights, E/2004/23). On 22 July 2004, the Economic and Social Council adopted decision 2004/257, by which it approved the request by the Commission on Human Rights to hold a third consultative meeting.

At its sixty-first session, the Commission on Human Rights adopted resolution 2005/35 of 19 April 2005 by which, welcoming the report of the Chairman-Rapporteur of the third consultative meeting (E/CN.4/2005/59), it adopted the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (see Report of the Commission on Human Rights, E/2005/23). Upon recommendation of the Commission, the Economic and Social Council adopted resolution 2005/30, by which it adopted the Basic Principles and Guidelines and recommended their adoption to the General Assembly.

At the sixtieth session of the General Assembly, the Third Committee discussed the text adopted by the Commission on Human Rights at four separate meetings (see A/C.3/60/SR.22, 29, 37 and 39). On 28 October 2005, a joint draft resolution (A/C.3/60/L.24) was submitted by Chile on behalf of forty-five delegations to the Third Committee entitled “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law” which was adopted by the Committee on the same day. On 16 December 2005, upon recommendation of the Third Committee (see Report of the Third Committee A/60/509/Add.1), the General Assembly adopted resolution 60/147 (Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law) without a vote.

ANNEX 7.2

United Nations General Assembly, Sixty-ninth Session, *Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence,* document A/69/518, 14 October 2014

United Nations A/69/518

General Assembly

Distr.: General
14 October 2014

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Sixty-ninth session
Agenda item 68 (b)
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Promotion of truth, justice, reparation and guarantees of non-recurrence*

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, in accordance with Human Rights Council resolution 18/7.

* The present report was submitted late in order to reflect the most recent developments.

14-62404 (E) 171014

A/69/518

Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence

Summary

In the present report, the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence addresses the topic of reparation for victims in the aftermath of gross violations of human rights and serious violations of international humanitarian law.

While highlighting progress in law and practice, the Special Rapporteur points to a gap in implementation, which reaches scandalous proportions.

The report focuses on addressing current challenges in implementation, which include States' political unwillingness to implement existing obligations using questionable economic arguments, the inadmissible exclusion of entire categories of victims on the basis of political considerations leading to the perception of biased reparation favouring only one side and the gender insensitivity of a majority of reparation programmes, which results in too few victims of gender-related violations receiving any reparation. The Special Rapporteur urges States to address these challenges and calls on the implementation of a human rights-based approach in the implementation of reparation programmes.

The Special Rapporteur emphasizes the importance of the participation of victims in reparation processes, including in relation to the design of programmes, stressing that active and engaged participation may improve a dismal record in the implementation of reparations.

I. Introduction

1. This report is submitted by the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence to the General Assembly in accordance with resolution 18/7 of the Human Rights Council. The activities undertaken by the Special Rapporteur from August 2013 to June 2014 are listed in his most recent report to the Human Rights Council (A/HRC/27/56).

II. General considerations

2. Having insisted in his first report to the Human Rights Council on the importance of designing and implementing programmes on truth, justice, reparation and guarantees of non-recurrence in a comprehensive fashion as part of a general policy to redress gross violations of human rights and serious violations of international humanitarian law, the Special Rapporteur devotes the present report to the element of reparation.

3. Here the focus is on large-scale administrative programmes intended to respond to a large universe of cases and not on the sort of reparations that stem from the judicial resolution of individual, isolated cases. Judicial reparations for violations of international crimes are important for many reasons and, in many jurisdictions, a matter of rights stipulated in both domestic and international law. Judicial cases can provide a powerful incentive to Governments to establish massive out-of-court programmes. But courts are unlikely to be the main avenue of redress in cases involving a large and complex universe of victims.

4. At their best, reparation programmes are administrative procedures that, among other things, obviate some of the difficulties and costs associated with litigation. For the claimants, administrative reparation programmes compare more than favourably to judicial procedures in circumstances of mass violations, offering faster results, lower costs, relaxed standards of evidence, non-adversarial procedures and a higher likelihood of receiving benefits. This is not a reason to deny access to the courts for purposes of reparation but, it is a reason to establish administrative programmes.

5. Given the existing literature on the topic of reparation programmes, including their design and implementation and lessons learned from them,[1] the present report will concentrate on some of the challenges faced by such programmes and shed some light on how those challenges can be met.

6. Despite significant progress at the normative level in establishing the rights of victims to reparations and some important experiences at the level of practice, most victims of gross violations of human rights and serious violations of international humanitarian law still do not receive any reparation. Normative progress and even solid practice in some cases should not obscure the implementation gap, which can rightly be said to be of scandalous proportions.

[1] Pablo de Greiff, ed., *The Handbook of Reparations* (Oxford, Oxford University Press, 2008) and *Rule of Law Tools for Post-Conflict States: National Consultations on Transitional Justice* (United Nations publication, Sales No. 09.XIV.2).

7. The violation of fundamental rights can be shattering for victims and have long-lasting effects with ripples felt by many persons and even across generations. The non-implementation of measures that can mitigate (they can never fully neutralize) the legacies of the violations, in addition to being a breach of a legal obligation, has severe consequences for both individuals and collectivities.

8. The present report deals not only with the legal grounds and concerns about what is owed to victims, but also with practical considerations. It is not uncommon, for example, to find support for the proposition that in post-conflict settings each and every ex-combatant should become the recipient of benefits through demobilization, disarmament and reintegration programmes. No similarly ambitious commitments are expressed even rhetorically concerning the reparation of the victims of such conflicts.[2] This is not only unfair, it has detrimental consequences. To the extent that demobilization, disarmament and reintegration programmes aim at the reintegration of ex-combatants, not attending to the claims of receiving communities and the victims therein does not facilitate that process. In post-conflict situations, providing benefits to ex-combatants without making any effort to provide reparations to victims can send the message that bearing arms, in the end, is the only way to get the attention of the State.[3]

9. Making the case in positive terms, reparation programmes can play a significant role in the aftermath of massive violations, both in and out of conflict. Like other transitional justice measures, reparations provide recognition to victims not only as victims but, importantly, also as rights holders. Moreover, they can promote trust in institutions, contribute to strengthening the rule of law and encourage social integration or reconciliation. The fact that reparation shares these goals with efforts to achieve truth, justice and guaranteeing non-recurrence is one of the arguments for adopting a comprehensive approach to redress.

10. The claim that reparations are part of a comprehensive policy, however, should not obscure their distinctive role: reparations are the only measure designed to benefit victims directly. While prosecutions and, to some extent, vetting are in the end a struggle against perpetrators, and truth-seeking and institutional reform have as their immediate constituency society as a whole, reparations constitute an effort that is explicitly and primarily carried out on behalf of victims.

11. Against this background, three caveats are in order. First, reparations are not simply an exchange mechanism, something akin to either a crime insurance policy or an indemnification system that provides benefits to victims in the wake of a violation of their rights. In order for something to count as reparation, as a justice measure, it has to be accompanied by an acknowledgment of responsibility and it has to be linked, precisely, to truth, justice and guarantees of non-recurrence. Second, recognizing the distinctive contribution that reparations can make to victims does not justify, either legally or morally, asking them — or anyone else —

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[2] Jonah Shulhofer-Wohl and Nicholas Sambanis, *Disarmament, Demobilization and Reintegration Programs: An Assessment* (Folke Bernadotte Academy Publications, 2010). Of the 46 countries listed as having had externally assisted demobilization, disarmament and reintegration programmes from 1979 to 2006, the Special Rapporteur counts that only eight had established any kind of reparation programme and that none had completed one.

[3] Pablo de Greiff, “Demobilization, disarmament and reintegration and reparations: establishing links between peace and justice instruments”, in *Building a Future on Peace and Justice*, Kai Ambos, Judith Large and Marieke Wierda, eds. (Springer, 2009).

to make trade-offs among the different justice initiatives. The effort, say, to make impunity for perpetrators more acceptable by offering to victims "generous" reparations, is therefore unacceptable. Third, the observation that reparations are designed to benefit victims directly does not mean that the positive consequences of a well-designed reparation programme are restricted to victims alone. To the extent that reparations are justice measures, they rest on general norms and their benefits have important positive spillover effects, one of which is to exemplify the fulfilment of legal obligation to take the violation of rights seriously.

12. A very varied set of countries facing diverse challenges have implemented reparation programmes of the sort at issue in this report and from which valuable lessons can be learned. Among the countries that have implemented some form of massive reparation programmes are Argentina, Belgium, Brazil, Canada, Chile, Colombia, Ecuador, El Salvador, Germany, Ghana, Guatemala, Haiti, Iraq, Morocco, Nepal, Paraguay, Peru, the Philippines, Sierra Leone, South Africa, Spain, Tunisia, Turkey, the United States of America and Uruguay. These countries vary in terms of legal tradition, type of conflict (or origin of violations), historical context, region and degree of socioeconomic development.

13. Given how strongly Governments are inclined to claim that reparation programmes are unaffordable — suspiciously, even before any effort to quantify their costs has been undertaken — the record shows that, beyond a certain threshold, political will seems to be a stronger factor than socioeconomic considerations in determining not just whether a reparation programme is implemented but also the basic characteristics of such a programme, including the magnitude and the type of benefits it distributes.[4]

III. Legal background

14. In traditional international law, where States are the major subjects, wrongful acts and ensuing reparations are a matter of inter-State responsibility.[5] International human rights law progressively recognized the right of victims of human rights violations to pursue their claims for redress and reparation before national justice mechanisms and, subsidiarily, before international forums.

15. As a result of the international normative process, the international legal basis for the right to a remedy and reparation became firmly enshrined in the elaborate corpus of international human rights instruments now widely accepted by States. Among the numerous international instruments are the Universal Declaration of Human Rights (article 8), the International Covenant on Civil and Political Rights (article 2), the International Convention on the Elimination of All Forms of Racial Discrimination (article 6), the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (article 14) and the Convention on the Rights of the Child (article 39). Equally, the relevance of instruments of international humanitarian law and international criminal law must be recalled in this regard: the Regulations concerning the Laws and Customs of War on Land

[4] See, for example, Alexander Segovia, "Financing reparations programs: reflections from international experience", in *The Handbook of Reparations*.

[5] Permanent Court of International Justice, *Case Concerning the Factory at Chorzów (Indemnities): Germany v. Poland* (21 November 1927).

(article 3), the Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (article 91) and the Rome Statute of the International Criminal Court (articles 68 and 75).

16. As stated by the Human Rights Committee in its general comment No. 31, the duty of States to make reparations to individuals whose rights under the International Covenant on Civil and Political Rights have been violated is a component of effective domestic remedies: "Without reparation to individuals whose Covenant rights have been violated, the obligation to provide effective remedy … is not discharged." This statement affirms that jurisprudence of many human rights bodies, which increasingly attaches importance to the view that effective remedies imply a right of the victims and not only a duty for States.

17. The growing body of jurisprudence on both the substantive and procedural dimensions of the right to reparation demonstrates the firm consolidation of the right to reparation in international law. Treaty bodies and national, regional and international courts, including the International Court of Justice, the Inter-American Court of Human Rights and the European Court of Human Rights, have considered a large number of both individual cases and group claims arising from periods of mass violations, and have developed a rich jurisprudence. That jurisprudence has confirmed that the State obligation to provide reparation extends far beyond monetary compensation to encompass such additional requirements as: public investigation and prosecution; legal reform; restitution of liberty, employment or property; medical care; and expressions of public apology and official recognition of the State's responsibility for violations.

18. The adoption by the General Assembly of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law by consensus in 2005 is a milestone, not because it is an effort to introduce new rights but, precisely, because it compiles what the international community, through the Commission on Human Rights first and the General Assembly second, recognized as already existing rights (see Assembly resolution 60/147, annex). There is no question, however, that the Basic Principles have had a role in catalysing a better understanding of the right to reparation and in guiding action in this domain, as shown by the fact that reference is increasingly being made to this document in the jurisprudence of various courts.

IV. Reparation programmes

19. Valuable lessons can be derived from the experience of various countries with massive administrative programmes. In the context of such programmes, the understanding of the term "reparation" is slightly narrower than in international law, where the term is used to refer to all measures that may be employed to redress the various types of harms that victims may have suffered as a consequence of certain crimes. This broader scope can be seen in the diversity of forms reparations can take under international law. The Basic Principles sets out five forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

20. The very broad understanding of the term "reparation" that underlies these five categories — an understanding that is closely tied to the more general category of "legal remedies" — is perfectly consistent with the trend of looking for relations of

complementarity between different justice measures. This trend is arguably the main contribution made to the struggle for the realization of human rights by transitional justice. Indeed, the five categories in the Basic Principles overlap with the holistic notion of transitional justice that has been adopted by the United Nations system.[6]

21. Operationally, however, the five categories go well beyond the mandate of any reparation programme to date: no reparation programme has been thought to be responsible for distributing the whole set of benefits grouped under the categories of satisfaction and guarantees of non-repetition in the Basic Principles. In practice, those who design reparation programmes are not responsible for policies dealing with, for example, truth-telling or institutional reform. Rather than understanding reparation in terms of the whole range of measures that can provide legal redress for violations, the term is used to refer to the set of measures that can be implemented in order to provide benefits to victims directly. Implicit in this difference is a useful distinction between measures that may have reparative effects and may be both obligatory and important (such as the punishment of perpetrators or institutional reforms) but that do not distribute a direct benefit to the victims themselves and those measures that do and are therefore to be considered reparations in the strict sense.

22. In the domain of practice concerning massive reparation programmes then, work is organized mainly around the distinction between programmes with material or symbolic measures and those that distribute benefits to individuals or collectivities.

23. For analytical purposes, it is helpful to conceptualize reparation as a three-term relationship in which the crucial concepts are "victims", "beneficiaries" and "benefits". The ideal behind a reparation programme, then, is to distribute a set of benefits in such a way as to turn every victim into a beneficiary. This simple model allows for a neat organization of some of the challenges faced by reparation programmes, bearing in mind that reparation is not just a mechanism for the transfer of goods but part of an effort to achieve justice.

A. Which violations should be the object of reparation benefits?

24. Perhaps the most fundamental question in the design of a reparation programme — Which kinds of violations will trigger access to benefits? — cannot be answered through the adoption of a general definition of "victims".[7]

25. Such a definition should, however, frame the design of reparation programmes. Of particular importance to framing considerations are: whether the harms to be repaired are of one type only; whether relevant violations include both acts and omissions; whether the victims include both those persons who are directly targeted by an action and those who suffer the consequences of an omission directly; and the fact that whether the perpetrator is identified, prosecuted or convicted is irrelevant in determining whether a person is a victim of a gross violation of international human rights law or of a serious violation of international humanitarian law. Even

[6] See, for example, section IX of the report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies (S/2004/616), the guidance note of the Secretary-General on the United Nations approach to transitional justice (2010) and Human Rights Council resolution 18/7.

[7] See the definition of "victim" contained in the Basic Principles.

after these points have been integrated in the general framework, however, crucial questions remain unanswered. During oppressive regimes and in times of conflict, a huge variety of rights are violated.

26. For a reparation programme to turn every victim into a beneficiary, its benefits would have to be extended to the victims of all the violations that may have taken place during a given conflict or repression. If it did that, the programme would be comprehensive. To date, no programme has achieved total comprehensiveness. For instance, no massive reparation programme has extended benefits to the victims of human rights violations common during periods of authoritarianism, such as violations of the rights to freedom of speech, association or political participation. Most programmes have concentrated heavily on a few civil and political rights, those most closely related to basic freedoms and physical integrity, leaving the violations of other rights largely unrepaired. This concentration is not entirely unjustified. When the resources available for reparations are scarce, choices have to be made and, arguably, it makes sense to concentrate on the most serious crimes. The alternative, namely drawing up an exhaustive list of rights the violation of which leads to reparation benefits, could lead to an unacceptable dilution of benefits.

27. That said, no programme has explained why certain violations trigger reparation benefits and not others. Not surprisingly, most programmes have ignored types of violations that perhaps could and should have been included. These exclusions have disproportionately affected women and marginalized groups. So the mere requirement to articulate the principles or at least the grounds for selecting the violation of some rights and not others is likely to remedy at least the gratuitous exclusions.[8] Strengthening avenues for the participation of victims, a topic to which the report will return, will be useful in this respect.

28. In the effort to prevent the excessive dilution of benefits by linking benefits to a narrow list of violations, it is important to bear in mind that there are exclusions that contravene not only specific legal obligations but also general principles, including equal treatment, which would weaken the legitimacy of the overall effort. Beyond that, such exclusions merely guarantee that the struggle for reparation will remain on the political agenda, which may threaten the stability of the initiative as a whole.[9]

B. What types of benefits should a reparation programme provide?

29. Fashioning a programme that distributes a variety of benefits (not all of them material or monetary) helps increase its coverage, without necessarily increasing its cost to the same degree.

30. The combination of different kinds of benefits is what the term “complexity” seeks to capture. A reparation programme is more complex if it distributes benefits of more distinct types and in more distinct ways than its alternatives. Material and symbolic reparations can take different forms and be combined in different ways.

[8] See Ruth Rubio-Marín, “The gender of reparations in transitional democracies”, in *The Gender of Reparations*, Ruth Rubio-Marín, ed. (New York, Cambridge University Press, 2009).

[9] For example, in Chile the exclusion of victims of torture and political detainees from most reparation programmes led the largest group of victims to struggle until the mid-2000s.

Material reparations may assume the form of compensation, i.e. payments in cash, or of service packages, which may in turn include provisions for education, health, housing etc. Symbolic reparations may include official apologies, the change of names of public spaces, the establishment of days of commemoration, the creation of museums and parks dedicated to the memory of victims, or rehabilitation measures such as restoring the good name of victims.

31. There are at least two fundamental reasons for crafting complex reparation programmes. The first is that doing so will maximize resources. Programmes that combine a variety of benefits ranging from the material to the symbolic and that distribute each benefit both to individuals and collectivities may cover a larger portion of the universe of victims. Since victims who have been subjected to different categories of violations need not receive exactly the same kinds of benefits, having a broader variety of benefits means reaching more victims. This broader variety of benefits allows for a better response to the different types of harm that a particular violation can generate, making it more likely that the harm caused can, to some degree, be redressed.

32. Reparation programmes can range from the very simple (i.e. merely handing out cash) to the highly complex (i.e. distributing not only money but also health care, educational and housing support etc.) and include both individual and collective symbolic measures. In general, since there are certain things that money cannot buy, complexity brings with it the possibility of providing benefits to a larger number of victims — as well as to non-victims, particularly in the case of collective symbolic measures — and of targeting benefits flexibly so as to respond to a variety of victims' needs.

33. Material compensation to individuals has received more attention than any other form of reparation, but other benefits, including symbolic measures, are increasingly a part of reparation programmes or are receiving more attention as possible elements of such programmes. As do other reparation measures, symbolic benefits aim, at least in part, to foster recognition. In contrast to other kinds of benefits, symbolic measures derive their great potential from the fact that they are carriers of meaning and can, therefore, help victims in particular and society in general make sense of the painful events of the past.[10] The following individual symbolic measures have been tried with positive effects: sending individualized letters of apology signed by the highest authority in Government, sending each victim a copy of a truth commission report and supporting families in efforts to give proper burial to their loved ones. Collective symbolic measures such as renaming public spaces, constructing museums and memorials, turning places of detention and torture into memorial sites, establishing days of commemoration and engaging in public acts of atonement have also been tried. Symbolic measures usually turn out to be significant because, in making the memory of the victims a public matter, they disburden the family members of victims from their sense of obligation to keep alive the memory of those who perished and allows them to move on to other things. This is part of what it means to say that reparations can provide recognition to victims not only as victims but also as rights holders more generally.

[10] See, for example, Brandon Hamber, "Narrowing the macro and the micro: a psychological perspective on reparations in societies in transition", in *The Handbook of Reparations*.

34. The trend in favour of including symbolic benefits (both individual and collective) deserves to be encouraged and promoted, but as one type of benefit among others, not as a substitute for the benefits that victims are owed and, in most cases, need. Furthermore, the participation of civil society representatives in the design and implementation of symbolic reparation projects is perhaps more significant than for any other reparation measure, given their semantic and representational function.

Medical services

35. According to the Basic Principles, the notion of "rehabilitation" owed to victims includes medical and psychological rehabilitation.[11] Generally speaking, there are good reasons for reparation programmes to be concerned with health issues, not least because of the very high incidence of trauma induced by experiences of violence and because there seem to be patterns of increased disease and morbidity among the victim population. Thus, the provision of medical services, including psychiatric treatment and psychological counselling, constitutes a very effective way of improving the quality of life of survivors and their families.

36. The provision of medical services as a reparation benefit should not, however, be conceived simply in terms of making pre-existing medical services available to victims. Victims of serious human rights violations often need specialized services that may not be readily available. For instance, in most countries emerging from conflict and repression, the number of mental health specialists experienced with torture victims is minimal. Quite aside from the need for specialized services, the victims' prior experiences affect the way services of all kinds need to be delivered and great efforts are then required to make providers at all levels aware of these special needs.

Other forms of rehabilitation

37. A good number of reparation programmes have established specific measures to rehabilitate not just the health of victims but what may be called their "civic status". These include measures to restore the good name of victims by making public declarations of their innocence, expunging criminal records and restoring passports, voting cards and other documents. The importance of these measures goes well beyond reasons of expedience and should be part and parcel of any programme that seeks to provide recognition of victims as rights holders. Some reparation programmes have learned from the traumatic experience of the widows of the disappeared, in particular in Argentina, who on the one hand clearly needed to resolve custody, matrimonial and succession issues but who on the other hand were reluctant to ask for the death certificates of their disappeared spouses. In programmes of this sort, certificates declaring a person to be "absent by forced disappearance" have started to be issued, allowing surviving spouses to recover or sell property, remarry and solve custody disputes, for example, without generating

[11] Since 1992, Chile has been providing medical services to the victims of the dictatorship. The reparation programme proposed by the Peruvian truth and reconciliation commission included recommendations concerning health care, both physical and mental. Interestingly, both the Peruvian commission and the Moroccan Equity and Reconciliation Commission included in-house medical units.

in them the feeling of betrayal they so frequently reported to be part of a request for a death certificate.[12]

Collective reparation

38. The notion of collective reparation has recently garnered interest and support.[13] The term "collective reparation" is ambiguous, as "collective" refers to both the nature of the reparation (i.e. the types of goods distributed or the mode of distributing them) and the kind of recipient of such reparation (i.e. collectivities).

39. A public apology, for example, is a collective reparation measure. The aims of such measures include giving recognition to victims, but also reaffirming the validity of the general norms that were transgressed (and, in this way, indirectly reaffirming the significance of rights in general, including, of course, the rights of victims, thereby strengthening the status of victims not just as victims but as rights holders).[14]

40. Collective reparations are not only symbolic: some are material as well, as when a school or a hospital is built in the name of reparation and for the sake of a particular group.[15] Collective reparations of the material kind are constantly at risk of not being seen as a form of reparation at all, and as having minimal reparative capacity. Part of the problem is that such measures do not target victims specifically. Collective programmes that distribute material goods concentrate frequently on non-excludable goods (i.e. goods that, once made available, are difficult to keep others from consuming). If a collective reparation programme constructs a hospital, for example, it is clear that both victims and non-victims alike will use it.

41. The problem is compounded by the fact that collective programmes of this sort tend to distribute basic goods, in other words goods to which all citizens, not only victims, have a right. It is argued by some that the benefits provided by these development "reparation" programmes are not accessible in contexts of deprivation and that making them available, therefore, constitutes a positive benefit. While prioritizing investment in these areas would result in victims having access to basic services before other citizens, that benefit dissipates once the basic good has become generally available. Strictly speaking, development programmes are not reparation programmes, for they do not target victims specifically and their aim is to satisfy basic and urgent needs to which beneficiaries have a right as citizens, not necessarily as victims.

42. Consequently, in order for reparation programmes to retain their distinctiveness, collective reparation programmes should be organized around

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[12] See Law No. 24,321 (1991).

[13] See the Basic Principles and the updated set of principles for the protection and promotion of human rights through action to combat impunity (E/CN.4/2005/102/Add.1).

[14] See Pablo de Greiff, "The role of apologies in national reconciliation processes: on making trustworthy institutions trusted", in *The Age of Apology: Facing up to the Past*, Mark Gibney, Rhoda E. Howard-Hassmann, Jean-Marc Coicaud and Niklaus Steiner, eds. (Philadelphia, University of Pennsylvania Press, 2008).

[15] Inter-American Court of Human Rights, *Aloeboetoe et al. case* (10 September 1993). See also Cristián Correa, "Reparations in Peru: from recommendations to implementation" (International Center for Transitional Justice, June 2013), and "The Rabat report: the concept and challenges of collective reparations" (Advisory Council on Human Rights of Morocco and International Center for Transitional Justice, 2009).

non-basic services. How this is to be done in contexts where basic services are not available is not so easy to fathom. Educational, cultural, artistic, vocational and specialized medical services targeting the special needs of the victim population are possibilities that deserve further exploration.

C. Magnitude of economic benefits

43. One of the greatest challenges faced by reparation programmes is where to set the level of monetary compensation. International practice in the area of reparations varies significantly from country to country. For instance, although the South African Truth and Reconciliation Commission proposed giving victims a yearly grant of around $2,700 for six years, the Government ended up making a one-off payment of less than $4,000 to the victims identified by the Commission. The United States provided $20,000 to the Japanese-Americans who were interned during the Second World War. Brazil gave a minimum of $100,000 to the family members of those who died in police custody. Argentina gave the family members of victims of disappearance bonds with a face value of $224,000, while Chile offered a monthly pension that amounted originally to $537 and that was distributed in set percentages among family members. A recent law for victims in Colombia provides that family members of victims of killings or enforced disappearance receive around $13,000. A similar figure was proposed by the interministerial commission in charge of implementing reparations in Peru.

44. The rationale offered for selecting a given figure, if one is offered at all, also varies. The South African Truth and Reconciliation Commission had originally recommended using the national mean household income for a family of five as the benchmark figure. The Government's selected figure of $4,000 was never justified in independent terms, and the figure does not correspond to anything in particular. The same thing can be said about the choice made by the Government of the United States to give $20,000 to the Japanese-Americans interned during the Second World War and about the decision by Brazil to provide at least $100,000. In Argentina, after it was suggested that the reparation plan be based on the existing plan for compensating victims of accidents, the President at the time, Carlos Menem, dismissed the suggestion, arguing that there was nothing accidental about the experiences of the victims and chose instead the salary level of the most highly paid officials in the Government as the basis for calculating reparation benefits. The one-time payment made by the Government of Colombia to family members of victims of enforced disappearance corresponds to 40 minimum monthly salaries. In such political contexts, the choices are made more with an eye to meeting the criterion of feasibility than to questions of principle. This, and not only the generally low levels of compensation offered by most programmes, makes such practices of questionable value as precedents and as guides for future practice. Indeed, simply requiring future programmes to justify their decisions concerning compensation levels may in itself produce positive results.

45. Judicial approaches to reparations have settled on a compelling criterion to decide on the magnitude of reparations, namely that of *restitutio in integrum*, which is an unimpeachable criterion for individual cases, for it tries to neutralize the effects of the violation on the victim and to prevent the perpetrator from enjoying the spoils of wrongdoing. Actual experience with massive reparation programmes suggests, however, that satisfying this criterion is rarely even attempted.

46. While international law arguably provides some latitude for the settlement of the large volume of reparations that are addressed in massive cases, it still calls, as summarized in the Basic Principles, for "adequate, effective and prompt reparation for harm suffered". The Special Rapporteur expresses alarm at the failure of some programmes to satisfy any defensible interpretation of these criteria.

47. In the context of transitional justice, understood as a comprehensive policy to redress massive violations, the aims of reparation programmes are to provide recognition to victims not only as victims but primarily as rights holders and to foster trust in institutions that have either abused victims or failed to protect them. These aims can be achieved only if victims are given reason to believe that the benefits they receive are a manifestation of the seriousness with which institutions take violations of their rights. Because reparation programmes are not mere mechanisms to distribute indemnities, the magnitude of the reparation needs to be commensurate with the gravity of the violations, the consequences that the violations had for the victims, the vulnerability of victims and the intent to signal a commitment to upholding the principle of equal rights for all.

V. Selected problems

48. The fundamental challenge that reparation still faces today is the great reluctance of Governments to establish such programmes. This lack of implementation leads to a situation that can be appropriately characterized as a scandal: most victims of gross human rights violations and serious violations of international law receive, in fact, little to no reparation, despite progress at the normative level.

49. The reluctance of Governments to implement reparation programmes rests upon many factors, including the not infrequent marginalization of most victims, which makes them, relatively speaking, politically weak agents. This marginalization makes the victims and their plight largely invisible to decision makers. The Special Rapporteur takes the opportunity to insist that taking rights seriously involves satisfying them independently of political considerations, even if the political views of victims are deemed unattractive.

50. Similarly, in many countries there are those who hold the view that, regarding past violations, it is better to "turn the page" and "let bygones be bygones". Not surprisingly, this is a view that is often expressed by elites, who either have not borne the brunt of the violations or have the wherewithal to neutralize some of their impact, and not by victims, on whose tireless efforts, progress on reparation usually depends. The Special Rapporteur insists that countries cannot pretend to secure stability at the expense of the rights of victims.

A. Reparation programmes are unaffordable

51. Many Governments react to demands for reparation by offering one of two arguments related to resources. The first is that reparations are unaffordable. The second is that reparations are not only expensive but that they compete for resources with other priorities such as development. Both claims warrant close scrutiny.

52. There is no question that a massive reparation programme for a large universe of victims involves the mobilization of significant resources. There is the tendency to think that there is, consequently, a straightforward correlation between a country's socioeconomic development and its ability to implement a reparation programme at all, and to the magnitude of the benefits it can distribute.

53. The record suggests, however, a more complex picture, in which political factors play a large role. There is no obvious direct correlation between the degree of socioeconomic development of a country and the magnitude of the reparation programmes it establishes to redress massive violations. Some countries with relatively wealthy economies have established programmes that are not particularly munificent, while some countries with comparatively smaller economies have established programmes that distribute relatively large benefits. Nor do economic factors alone explain either the existence of a reparation programme or the magnitude of the benefits distributed through it. Countries in comparable economic circumstances often take quite different paths on this issue.

54. Consequently, it appears that non-economic constraints play at least as large a role as purely economic factors. Whatever feasibility the claim that reparations are unaffordable for a given country may have depends on the seriousness of the effort to quantify these costs. Suspiciously, most Governments that make this claim do so before any such effort has been undertaken, laying bare their unwillingness to take seriously what is in fact a matter of legal obligation.

55. Furthermore, judgements about the feasibility of paying certain costs are usually of the ceteris paribus type, and in transitional or post-conflict situations it makes little sense for all other things to remain equal; absent an unexpected budget surplus, it will be impossible to engage in meaningful reparations for victims leaving all other State expenditures untouched.[16] As the lack of obvious correlations between macroeconomic factors and reparations suggest, the crucial variable has more to do with commitment to satisfying legal and moral obligations.

56. Broadly speaking, there are two main models for financing reparations: creating special trust funds or introducing a dedicated line in the yearly national budget for reparations. Countries that have experimented with the first model have, to date, fared significantly worse than countries that have used the second. Part of the reason may have to do with a question of political commitment. Nothing illustrates commitment more clearly than the willingness to create a dedicated budget line. The expectation that it will be possible to find alternative sources of funding for purposes of reparations underlying the creation of trust funds may either demonstrate, or actually give rise to, weak political commitments, emphasizing yet again that although socioeconomic development is important, it should not cloud the crucial significance of political factors.[4]

57. Having said this, there is no reason, in principle, why all creative funding efforts should fail. Some explanations include:

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[16] Thus, for example, some countries were expanding their navies while refusing to establish reparations in line with the recommendations of truth commissions, arguing that reparations would be too burdensome economically. See also Brandon Hamber and Kamilla Rasmussen, "Financing a reparations scheme for victims of political violence", in *From Rhetoric to Responsibility: Making Reparations to the Survivors of Past Political Violence in South Africa* (Johannesburg, Centre for the Study of Violence and Reconciliation, 2000).

(a) Special taxes targeting those who may have benefited from the conflict or the violations, like those that were proposed by the Truth and Reconciliation Commission in South Africa (but were never adopted);

(b) Especially in cases in which a State has accepted to provide reparations for victims of third parties, nothing should prevent the State from attempting to recover illegal assets from those parties. Peru has devoted a portion of the assets it recovered from corruption to victim-related issues, as did the Philippines, with monies recovered from the Marcos estate. Colombia is attempting to do the same with assets held by paramilitaries and, presumably, so will Tunisia, whose Truth and Dignity Commission is empowered to settle, through arbitration, cases of corruption. Reparation programmes should not, however, be held hostage to or made conditional upon the recovery of such assets in cases where the State bears clear responsibility for the violations, either through action or omission.

58. The international community's traditionally weak support for reparation initiatives stems from the belief that the assumption by the national Governments of the financial burden of reparation is part of what is involved in recognizing responsibility, and that carrying the burden has, in itself, a reparative dimension. This is not unjustified. The international community can, however, play a significantly larger role in the financing of reparations, including by: rethinking, at least in some cases, particularly in those in which international actors themselves have played an important role in a conflict, their reluctance to provide direct material support to reparation efforts; making sure that multilateral institutions, which play an important and influential role in setting economic conditions in the aftermath of transitions in general and of conflict in particular, do so in a way that is at least compatible with attending relevant obligations towards victims; and considering creative approaches to supporting reparations, including debt swaps whereby international lenders cancel a portion of the host country's debt on the condition that the same amount be spent on reparations and other forms of support for victims.[17] The Special Rapporteur calls on the international community to be more responsive in supporting reparation programmes for victims.

59. The second resource-related argument that Governments are wont to offer against reparations is that they compete with other priorities, including development. There are, indeed, two versions of this argument, one mild and one extreme: the milder form consists of pretending that development programmes are reparation programmes[18] and the extreme form is based on the assertion that justice can be reduced to development and that violations do not really call for justice but for development. Both forms constitute a failure to satisfy the abiding obligation to provide both justice and development initiatives.

60. Even when the attempt to pass a development project as a reparation programme is not a transparent ploy, in effect, the tendency to not spend resources on reparation should be resisted. Indeed, it is important to distinguish between development interests in general or the duty to satisfy social and economic rights in particular and the obligation to provide assistance under international humanitarian

[17] In the guidance note of the Secretary-General on reparations for conflict-related sexual violence several relevant examples are given of international financial support for reparation programmes.

[18] See *Rule of Law Tools for Post-Conflict States: National Consultations on Transitional Justice* for some illustrative examples of this tendency.

law. It is also important to distinguish these two from the obligation to provide reparations for human rights violations. Although there is much to be said about the advantages of trying to establish links between programmes that satisfy each of these obligations so as to enhance their impact, it is important to keep firmly in mind that these are distinct sources of obligation and that programmes will be successful if they integrate and respond to the nature of the distinct obligation on which they are grounded.[19]

61. Thus, while neither development initiatives nor humanitarian assistance need to be accompanied by an acknowledgment of responsibility, nothing can count as reparation, sensu stricto, without such acknowledgment. Furthermore, for an act to count as reparation, it is not just the intention that matters (that is, the willingness to acknowledge responsibility, as a retrospective expression of a commitment to rights, by trying to redress past violations but as a prospective expression also, by signalling through the very existence of the programme itself that rights are taken seriously); the type of goods distributed matters as well. Goods and services that all citizens get by virtue of being citizens can hardly count as reparations for victims.

B. Reluctance to admit responsibility

62. In some cases, a reluctance to admit responsibility is manifest independently of considerations related to costs. Indeed, there are countries that establish "reparation" programmes that provide benefits to victims but, at the same time, try, by different means, to deny or limit responsibility. Thus, in the legislation establishing some programmes it is argued that the benefits are given not as a way of satisfying the legal obligations of the State and the rights of the victims but as an expression of "solidarity" with them.[20] In other legal frameworks, the acts that are the subject of redress are declared to be "unjust" but such a declaration is also said to have no legal consequences (see Historical Memory Act of Spain, in A/HRC/27/56/Add.1).

63. Reparation programmes that fail to acknowledge responsibility in effect attempt to do the impossible. Just as an apology is ineffective unless it involves an acknowledgment of responsibility for wrongdoing (an apology depends on such recognition, everything else being an excuse or an expression of regret) reparation programmes that fail to acknowledge responsibility do not provide reparation and are more akin to mechanisms for the distribution of indemnification benefits. Experience confirms that victims, quite correctly, do not see the transfers performed through such programmes as reparations, and therefore continue to struggle to have that right satisfied. The Special Rapporteur emphasizes that reparation, properly speaking, involves an acknowledgment of responsibility.

[19] Inter-American Court of Human Rights, *Gonzalez et al. ("Cotton Field") v. Mexico* (judgement of 16 November 2009).

[20] See, for example, Law No. 975 of Colombia. This is a view that has unfortunately been endorsed by the Constitutional Court. For years, victims of State agents could not gain access to administrative programmes because the State claimed that it could accept responsibility only on the basis of judicial sentences.

C. Exclusions and selectivity

64. As mentioned above, all reparation programmes face the challenge of achieving comprehensiveness, in other words of making sure that the broadest possible categories of violations are the subject of redress (without diluting benefits to the point of becoming irrelevant). There are however, two ways of getting this wrong. One way is to exclude from the purview of the programme whole categories of victims that are significant because of either the nature or the prevalence of the violations. Part of the reason why this happens is that a significant number of reparation programmes nowadays stem from the recommendations of truth commissions, whose mandates predefine the types of violations to be focused on and because those mandates are not designed with an eye to reparations. Thus, for example, it took Chile (a country that has plenty of lessons to teach about successful reparations) years to establish reparation programmes for victims of torture and arbitrary detention, despite the fact that there were many more victims of these kinds of violations that there were of violations leading to death. The difficulty here was related to mandate of the National Commission on Truth and Reconciliation of Chile, which was limited to the latter kind of violations.[21] Similarly, even before the Government of South Africa decided not to follow the recommendations of its Truth and Reconciliation Commission concerning the magnitude of the benefits that victims should receive, the recommendations had become the subject of criticism for leaving out important categories of victims, an omission that was grounded in the mandate of the Commission. The argument that almost every non-white person in South Africa was the victim of apartheid and therefore deserved reparation aside,[22] the Truth and Reconciliation Commission's mandate defined victims in such a way as to exclude categories of victims that arguably should have been considered as beneficiaries. Among those individuals were the victims of the kind of routine violence that accompanied the social engineering aspects of apartheid, such as people who died, not in political demonstrations, but, for example, in forced removals and people who were detained under state-of-emergency provisions.

65. That said, whole categories of violations have also been disregarded in countries that have established reparation initiatives independently of truth commissions. In Uruguay, for example, the victims of arbitrary detention and torture have not received sufficient attention, despite the fact that the types of violations they suffered were inflicted systematically, as part of the modus operandi of a regime that came to have the largest population of illegal detainees per capita in Latin America (see A/HRC/27/56/Add.2). In Spain, where programmes were also established over the years to benefit various types of victims of both the civil war and the Franco dictatorship, many categories of victims, including those sentenced by some special tribunals, are still not considered even though they should be. The benefits that victims of the civil war and the dictatorship receive also differ significantly from the benefits offered by existing programmes (and from those that

[21] Law No. 19,123 (1992) established the framework for reparations for victims of deadly political violence, political executions and disappearance while in detention. It was only after the establishment of the Truth Commission for Torture and Political Detention in 2004 that deliberations leading to the establishment of reparations for these victims started.

[22] See, for example, Mahmood Mamdani, "Reconciliation without justice", in *Southern African Review of Books*, No. 46 (November/December 1996).

would be offered by legislation under consideration) to the victims of recent acts of terrorism, a politically laden issue (see A/HRC/27/56/Add.1).

66. No exclusion undermines the contribution that a reparation programme can make to the idea of the value of human rights more than those exclusions that give the impression that they are grounded on the political affiliation of either the victim or the perpetrator. Just as nothing undermines the credibility of a prosecutorial strategy more than its appearance of being one-sided, the same applies when reparation programmes appear to be opportunities to benefit one side of a conflict (see A/HRC/27/56 and A/HRC/24/42/Add.1, on Tunisia).

67. A truly human rights-based approach to reparations would take as the only relevant criterion for providing access to benefits the violation of rights. Several programmes, however, implicitly target supporters of some causes.[23] Worse still, some explicitly define access in terms of political considerations. Thus, there are laws creating reparation programmes that, for example, bar access to benefits for members of former or existing subversive groups, even if those individuals have been captured and tortured.[24] The Special Rapporteur insists that human rights should be placed at the centre of the design and implementation of reparation programmes and that introducing political considerations of any kind in defining criteria for access to benefits poses a fundamental threat to the nature and function of such programmes.

D. Gender and reparations

68. Cases of exclusions to reparations for gender-related reasons have received increasing attention of late and, because they have been the subject of significant normative progress and of some improvements in practice, in the present report it is stressed that it is important to further that progress and improve consistency in design and implementation.

69. In spite of significant conceptual progress (see A/HRC/14/22 and A/HRC/27/21)[25] and some positive practices at the domestic level, in far too few instances have individuals received reparation for serious gender-related violations through programmes with an inherent gender-sensitivity aspect. In the face of this

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[23] See, for example, the use of the term “martyr” in discussions about reparations. On the issue of reparation for “martyrs” and their families in Tunisia, see A/HRC/24/42/Add.1, paragraphs 19-21.

[24] See, for example, Law No. 19,979 (2012) and article 4 of Law No. 28,592 (2005) of Peru, by which members of subversive organizations are not considered victims (a limitation that explicitly contravenes the recommendations made by the Truth and Reconciliation Commission). See also article 11 of Law 1,449 (2011) of Colombia. In Chile and South Africa, reparations have been granted to victims even though they belonged to repressive organizations or subversive groups. In Brazil, reparations have been granted to those benefiting from the 1979 amnesty law, which covers political crimes and crimes with a political nexus. It could be argued, however, that the Brazilian laws (Nos. 9,140 and 10,559) are in fact exclusionary, given that they refer only to types of violations committed by State agents; this is also true of the laws on reparation of Argentina (Nos. 24,043, 24,441 and 25,914). In the former Yugoslavia, legislation for victims is partial in yet another sense, for it provides benefits for victims of enemy forces but not for victims of national forces.

[25] See the Nairobi Declaration on Women’s and Girls’ Rights to a Remedy and Reparation and the guidance note of the Secretary-General on reparations for conflict-related sexual violence.

shortcoming, the Special Rapporteur would like to recall the main elements and challenges set out below.

70. The participation of victims, in particular women and girls, in the early stages of debates on the design of reparation programmes contributes to ensuring that serious gender-related violations are not excluded from the range of rights that, if violated, will trigger reparation benefits. The intersection of gender with other aspects of identity (e.g. ethnicity and religion) and more structural positions (e.g. level of education) needs to be taken into account. In addition, focusing on overly narrow ranges of forms of sexual violence must be avoided so as to capture other, although still gender-related, serious violations (see A/HRC/14/22).[26]

71. Procedural and evidentiary rules often constitute sources of exclusion. Consequently, in instances of serious violations, some entities have applied a presumption of related gender-specific violations[27] or a lowered or differentiated evidentiary test.[28] Confidentiality and the provision of a safe environment will assist in minimizing re-victimization, stigma or exposure to reprisals. Other dimensions of procedure, such as the requirement of being a bank-account holder, strict application deadlines and closed-list systems beyond well-known limitations of lack of proximity and linguistic or literacy barriers, often constitute insurmountable hurdles.

72. The Special Rapporteur emphasizes that the main objective of reparation programmes is to tackle and, to the extent possible, subvert pre-existing patterns of structural discrimination against and inequalities experienced by women (see A/HRC/14/22).[26] Reparations must therefore not contribute to the entrenchment of these factors, which, indeed, provide a breeding ground for gender-related violations to occur in the first place. The Equity and Reconciliation Commission of Morocco, for example, departed from traditional law of inheritance when apportioning benefits among family members of deceased victims in order to benefit women. In some instances, such a transformative approach has shown to have an instigating spillover effect in relation to the reform of personal status and related legislation and practices.

73. In terms of distribution, providing periodic benefits or the undertaking of autonomy-enhancing projects, such as the provision of shares in microcredit programmes to women beneficiaries in combination with specific training, have shown to have a more sustainable effect than lump-sum or one-off benefits. Thus, beyond the necessary benefits in the areas of health and housing, for example, reparation programmes should aim to empower their beneficiaries, instead of drawing them into another form of dependency.

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[26] Ruth Rubio-Marín and Pablo de Greiff, “Women and reparations”, *International Journal of Transitional Justice*, vol. 1, No. 3 (2007).

[27] See, for example, the Equity and Reconciliation Commission of Morocco: International Center for Transitional Justice and Foundation for the Future, *Morocco: Gender and the Transitional Justice Process* (2011).

[28] Intentional Criminal Court, *Prosecutor v. Lubanga Dyilo*, decision establishing the principles and procedures to be applied to reparations.

E. Victim participation

74. There are many reasons for including participatory processes in the design and implementation of reparation programmes. For example, these processes may make a positive contribution to the programme's completeness and to its ability to turn every victim into a beneficiary; in situations of gross and systematic abuse, it is frequently the case that many victims are not registered anywhere, or that there is no single place where all of them are registered. Civil society organizations may have closer links with and a deeper reach into victims' communities than official institutions, which is why completeness can hardly be achieved without their active efforts.

75. The aim of securing the participation of victims and their representatives requires guaranteeing their safety. The case of Colombia, where in 2013 the Office of the United Nations High Commissioner for Human Rights confirmed the murder of 39 human rights defenders (see A/HRC/25/19/Add.3, paras. 70 and 72), including those raising claims for reparations, in particular land restitution, is an especially worrisome case, but Colombia is nowhere close to being the only country where people involved in the struggle for reparation are physically threatened. The Special Rapporteur emphatically calls on Member States to abide by their obligations to protect the life and well-being of those who are trying to make effective their rights, including those to reparation.

76. Victim participation in reparation programmes is not possible without effective outreach, information and access. Strategies need to be designed in order to overcome cleavages related to differences between urban and rural populations, indigenous and other cultural and ethnic groups, linguistic factors and literacy rates. No matter how neat a blue print for reparation might be, it is unlikely that a reparation programme can fulfil its fundamental aim of providing recognition and fostering civic trust if it is simply foisted on victims.

77. Victim participation can help increase the "fit" between the benefits on offer and the expectations of victims. Regarding symbolic reparations, both individual and collective, the benefits cannot fail to speak to their intended targets, among others, on pain of the message floundering completely.

78. This is true not just regarding symbolic reparations: rarely is the distribution of material reparations through massive programmes capable of satisfying the principle of *restitutio in integrum*. Their acceptability also depends on a complicated judgement about the appropriateness of the whole complex of benefits and of the relationship between them and other justice measures, including criminal justice, truth and guarantees of non-recurrence, a judgement that is also for victims to make.

79. One important contribution that victims can make, a contribution that is analogous to that made by victims to the definition of a prosecutorial strategy, which they can improve by helping to define the charges to be pursued, relates to the fundamental question of the types of violations that need to be redressed (see A/HRC/27/56). "Gravity" and "seriousness" are not merely technical terms. Whether a reparation programme is sufficiently comprehensive is not just an abstract issue but a function of whether the programme responds to violations that victims perceive to be especially significant.

80. In the face of the scandalously poor level of compliance with national and international obligations concerning reparations, and of the relatively poor record of implementation of the recommendations of truth commissions and other bodies, there is no better way to improve the degree of compliance with the relevant obligations than through an active, well organized and involved civil society. The Special Rapporteur calls on Governments to establish meaningful victim participation mechanisms regarding reparations, where success is measured not merely in terms of token measures but also in terms of satisfactory outcomes.

VI. Conclusions and recommendations

81. **Despite significant progress at the normative level establishing the rights of victims to reparations, as well as some important experiences at the level of practice, most victims of gross violations of human rights and serious violations of international humanitarian law still do not receive any reparation. This implementation gap is of scandalous proportions. It not only affects victims directly, but has a ripple effect that can be felt across generations and entire societies and that is laden with legacies of mistrust, institutional weaknesses and failed notions and practices of citizenship.**

82. **While well-designed reparation programmes should primarily be directed at victims of massive violations, they can have positive spillover effects for whole societies. In addition to making a positive contribution to the lives of beneficiaries and to exemplifying the observance of legal obligations, reparation programmes can help promote trust in institutions and the social reintegration of people whose rights counted for little before.**

83. **For a benefit to count as reparation and to be understood as a justice measure, it has to be accompanied by an acknowledgment of responsibility and needs to be linked with other justice initiatives such as efforts aimed at achieving truth, criminal prosecutions and guarantees of non-recurrence. The Special Rapporteur insists that each of these kinds of measures is a matter of legal obligation and warns against the tendency to trade one measure off against the others. Offering reparations to victims should not be part of an effort, for example, to make impunity more acceptable.**

84. **A distinction can be made between reparation programmes with material or symbolic measures and those that distribute benefits to individuals or collectivities. The Special Rapporteur calls on those responsible for designing reparation programmes to consider the great advantages of distributing benefits of different kinds and to not reduce reparation to a single dimension, be it material or symbolic. The great harms that reparation is supposed to redress require a broad array of coherently organized measures.**

85. **Symbolic measures are increasingly and successfully being used because they make the memory of the victims a public matter. They can disburden victims' relatives from a sense of obligation to keep the memory of the victims alive, thus allowing them, and hence society, to move on to other things. Yet, symbolic measures cannot bear the whole burden of redress.**

86. **Collective reparation programmes may offer, among other things, services that victim populations clearly need, including health care, education and**

housing, and thereby overlap with development programmes. The Special Rapporteur insists on the importance of linking reparations and development, but also on their distinct grounding, functions and purpose. He cautions against trying to pass development programmes as reparations. In addition to the right to basic services that everyone has, victims have, individually, a right to distinct forms of reparation.

87. **The Special Rapporteur expresses alarm at the failure of a number of programmes, which fall significantly short of providing adequate, effective and prompt reparation, as enshrined in the Basic Principles. While reiterating that reparations are not mere mechanisms to distribute indemnities, the magnitude of reparations needs to be commensurate with the gravity of the violations, the consequences they had for the victims, the vulnerability of victims and the intent to signal a commitment to upholding the principle of equal rights for all.**

88. **The argument that reparations are unaffordable cannot be taken at face value, especially if this claim is made prior to any effort to quantify the real costs and benefits of such programmes and to an analysis of other expenditures. The evidence suggests that there is no obvious correlation between economic factors and a willingness to implement reparation programmes. Political factors seem to be strong determinants. A commitment to satisfying rights is a stronger factor than affluence.**

89. **Human rights should be placed at the centre of the design and implementation of reparation programmes. Introducing political considerations of all kinds in defining criteria of access poses a fundamental threat to the nature and function of such programmes. Reparations should not be used as an opportunity to even scores or to benefit the supporters of the current regime. Neither the identity nor the political views of the victim and the perpetrator should be used as the defining criterion of reparation. The violation of rights, independently of other considerations, is the necessary and sufficient condition for gaining access to benefits. The Special Rapporteur calls on those responsible for establishing reparation programmes to be mindful of the possible unjustified exclusion of entire categories of victims.**

90. **Despite some progress in law and in some particular cases, there is ample room for reparation programmes to improve in terms of gender sensitivity. Too few victims of gender-related violations receive any reparation. Most programmes, to the extent that they even consider women, concentrate on sexually based violations and, to the extent that these address sexually based violations, they concentrate on rape. The Special Rapporteur calls for more comprehensive programmes that redress violations that typically and predominantly affect women. Practical and procedural obstacles should be removed so that women can benefit from the programmes. Requiring the explicit articulation of the principles that define the selection of violations that trigger access to reparation is a useful exercise. To the extent possible, reparation programmes should subvert pre-existing patterns of structural inequalities and discrimination against women. More work should be undertaken on empowering and autonomy-enhancing programmes.**

91. **The Special Rapporteur calls on Governments to establish mechanisms for the meaningful participation of victims and their representatives. This requires guaranteeing their safety. The Special Rapporteur urges Member States to**

abide by their obligations to protect the life and well-being of those who are trying to make effective their rights, including to reparation.

92. **Victim participation can help improve the reach and completeness of programmes, enhance comprehensiveness, better determine the types of violations that need to be redressed, improve the fit between benefits and expectations and, in general, secure the meaningfulness of symbolic and material benefits alike. Moreover, active and engaged participation may offer some relief in the light of the dismal record in the implementation of reparations.**

ANNEX 7.3

International Centre for Transitional Justice, *The Accountability Landscape in Eastern DRC. Analysis of the National Legislative and Judicial Response to International Crimes (2009-2014)*, July 2015

International Center for Transitional Justice

CRIMINAL JUSTICE

The Accountability Landscape in Eastern DRC

Analysis of the National Legislative and Judicial Response to International Crimes (2009–2014)

July 2015

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Cover Image: Baraka, DRC, February 2011.
Defense attorneys for soldiers accused of rape and crimes against humanity listen to victim testimony during the trials (Prime)

CRIMINAL JUSTICE

The Accountability Landscape in Eastern DRC

Analysis of the National Legislative and Judicial Response to International Crimes (2009–2014)

July 2015

Sofia Candeias, Luc Côté, Elsa Papageorgiou, and Myriam Raymond-Jetté

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About ICTJ
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CONTENTS

ACRONYMS

ABA	American Bar Association
AMS	Higher Military Prosecutor's Office (Auditorat Militaire Supérieur)
APCLS	Alliance of Patriots for a Free and Sovereign Congo
ASF	Lawyers without Borders (Avocats Sans Frontières)
CICC	Coalition for the International Criminal Court
CNDP	Congrès National du Peuple
Commission PAJ	Commission Politique, Administrative et Juridique
CPRDC	Commission Permanente de Réforme du Droit Congolais
DRC	Democratic Republic of the Congo
FARDC	Forces Armées de la République Démocratique du Congo
FAZ	Force armées zaïroises
FDLR	Forces Démocratique de Libération du Rwanda
FIDH	Fédération Internationale des Droits de l'Homme
FRPI	Force de Résistance patriotique de l'Ituri
HRW	Human Rights Watch
HMC	High Military Court (Haute Cour Militaire)
ICC	International Criminal Court
ICCN	Institut Congolais pour la conservation de la nature
JIT	Joint Investigation Mission
ICGLR	International Conference on the Great Lakes Region
IPIS	International Peace Information Service
LOCJ	Loi organique portant organisation, fonctionnement et compétences de l'ordre judiciaire
LRA	Lord's Resistance Army
MC	Military Court (Cour Militaire)
MGT	Military Garrison Tribunal (Tribunal Militaire de Garnison)
MJC	Military Judicial Code (Code Judiciaire Militaire)
MJDH	Ministère de la Justice et des Droits Humains
MPC	Military Penal Code (Code Pénal Militaire)
MOC	Military Operational Court (Cour Militaire Opérationnelle)
MONUSCO	Mission des Nations Unies pour la Stabilisation de la RDC
OPJ	Judicial Police Office
OSISA	Open Society Initiative of Southern Africa
PGA	Parliamentarians for Global Action
PNC	Congolese national police
PSC	Prosecution Support Cell
RCD	Rassemblement congolais pour la démocratie
UN	United Nations
UNJHRO	United Nations Joint Human Rights Office
UNDP	United Nations Development Program
UPC	Union des Patriotes Congolais

1. Introduction

> I would like to reassure them [Congolese women and men] that the search for national unity does not mean impunity. Quite the opposite: without justice, reconciliation is a sham! . . . At the domestic level, it is important to remember that, during the last few decades, the Congolese people have been the victims of the commission of international crimes by many insurgents. They deserve to see justice done.[1]

The Democratic Republic of the Congo (DRC) is obligated to prosecute those responsible for serious crimes;[2] however, over the past two decades of conflict, the Congolese government has failed to fulfill its legal obligation to effectively guarantee the legal and judicial protection of its citizens.

The promise to fight impunity in DRC, as well as its urgency, has been affirmed in various peace agreements signed since 1999. The 1999 Lusaka Ceasefire,[3] the 2002 Pretoria Accord on transition,[4] the 2003 Sun City Agreement,[5] and the later 2009 Goma Peace Agreement[6] all prohibited amnesty for serious crimes and promised prosecution of those responsible for these crimes.[7] Yet, until recently, Congolese policymakers have failed to fulfill these commitments.

At the regional level, this promise appears again in the Peace, Security and Cooperation Framework Agreement ("Framework Agreement") for the DRC and the region. Signed by 11 countries in the Great Lakes region in Addis Ababa on February 24, 2013,[8] this agreement aims "to put an end to recurring cycles of violence" that have afflicted the civilian populations

1 President Joseph Kabila, Speech to the National Parliament Convening in Congress (Oct. 23, 2013).
2 See Laura Davis, "Power Shared and Justice Shelved: the Democratic Republic of Congo", International Journal of Human Rights 17 (2013): 289-306.
3 U.N. Security Council, "Letter Dated 23 July 1999 from the Permanent Representative of Zambia to the United Nations Addressed to the President of the Security Council," U.N. Doc. S/1999/815 (July 23, 1999), www.un.org/Docs/s815_25.pdf ["Lusaka Agreement"]. Art. 22 and appendix A, art. 9.2 prohibits the granting of amnesty for genocide; appendix A, art. 8.2.2(b) and (c) notes that the "mandate of the UN force shall include [...][s]creening mass killers, perpetrators of crimes against humanity and other war criminal; [and] [h]anding over "génocidaires" to the International Criminal Tribunal for Rwanda."
4 Global and Inclusive Agreement on Transition in the Democratic Republic of the Congo (Dec. 16, 2002), www.ucdp.uu.se/gpdatabase/peace/DRC%20020021216.pdf ["Pretoria Agreement"]. Part III, art. 8 prohibits the granting of amnesty for war crimes, crimes against humanity, and genocide.
5 Inter-Congolese Political Negotiations: The Final Act (Apr. 2, 2003), annex 1(35), www.ucdp.uu.se/gpdatabase/peace/DRC%2020030402.pdf ["Sun City Agreement"], citing Resolution No DIC/CPR/05: On the Establishment of an International Criminal Court (March 2002), which requests that an international criminal court be established for the DRC.
6 Peace Agreement Between the Government and le Congrès National de Défense du Peuple (CNDP), Democratic Republic of the Congo-CNDP, Mar. 23, 2009, http://peacemaker.un.org/sites/peacemaker.un.org/files/CD_090323_Peace%20Agreement%20between%20the%20Government%20and%20the%20CNDP.pdf. See art. 3.1 on amnesty.
7 See Loi No 14/006 of DRC on the Amnesty for Acts of Insurrection, Acts of War and Political Offenses (Loi portant amnistie pour faits insurrectionnels, faits de guerre et infractions politiques), February 11, 2014, www.leganet.cd/Legislation/DroitPenal/divers/Loi.11.02.2014.htm ["Amnesty Law"]. Art. 1 provides an amnesty for acts of insurrection, acts of war, and political offenses committed in the DRC between February 18, 2006 and December 20, 2013. However, art. 4 excludes amnesty for, among other things, genocide, crimes against humanity, and war crimes.
8 Angola, Burundi, DRC, Central African Republic, Republic of Congo, Rwanda, South Africa, South Sudan, Tanzania, Uganda, and Zambia

in eastern DRC.[9] To give effect to this agreement, the signatories committed not to protect individuals accused of international crimes and facilitate the administration of justice.[10]

In September 2013, the member states also adopted benchmarks and indicators to measure the implementation of the Framework Agreement following a set timeframe to be achieved by September 2014. Among the indicators is the "number of suspects of war crimes, crimes against humanity, genocide and crime of aggression arrested and prosecuted."[11] Therefore, it follows that the number of arrests and prosecutions of persons suspected of perpetrating international crimes, before September 2014, should be indicative of actual implementation of this regional undertaking.

At the national level, the Congolese government also reaffirmed its determination to end impunity and ensure prosecution of international crimes with the conclusion of the Kampala Dialogue and the signature of the 2013 Nairobi Declaration.[12] The 2014 Amnesty Law was adopted in consideration of both the Framework Agreement and the Nairobi Declaration.[13] It excludes amnesty for international crimes and grave and massive human rights violations.[14]

Importantly, the president recently favored adopting the law to implement the Rome Statute of the International Criminal Court and the law to create specialized chambers, with the aim of providing justice to victims of international crimes. If passed by parliament, these legal developments would signal progress towards implementing the Framework Agreement. They would also help to make the DRC a rights-respecting state committed to ending systemic impunity.

The commitments made in the Framework Agreement represent a unique opportunity to seriously engage in the fight against impunity, building on limited previous progress and lessons learned from past attempts. As a result, a door to transitional justice is slowly opening in the DRC.

"Strengthening the state's capacity and ability to respond to international crimes and serious violations of human rights is an essential and fundamental step toward restoring victims' rights, entrenching the rule of law, and guaranteeing the non-repetition of abuses.."

Strengthening the state's capacity and ability to respond to international crimes and serious violations of human rights is an essential and fundamental step toward restoring victims' rights, entrenching the rule of law, and guaranteeing the non-repetition of abuses. To succeed, the DRC must be equipped with an adequate legal framework and a capable, independent, and accountable judiciary. This report seeks to provide an objective overview of the state's response—at both the legislative and judicial levels—to international crimes in the DRC between 2009 and 2014 and offers recommendations addressed to the DRC's executive, judiciary, and legislature as well as international partners on how to improve it.

Based on research and interviews with key national and international stakeholders, the first part of this report identifies and analyzes the status of the implementation of current legislation, the changes being pursued, and the challenges. The lack of clarity and gaps in Congolese legislation identified in this report must be addressed in order to

9 Peace, Security and Cooperation Framework for the Democratic Republic of the Congo and the Region [Addis Ababa Agreement], Feb. 24, 2013, www.un.org/wcm/webdav/site/undpa/shared/undpa/pdf/PSC%20Framework%20-%20Signed.pdf Angola, Burundi, Central African Republic, Congo, the Republic of Congo, Rwanda, South Africa, South Sudan, Tanzania, and Uganda.
10 Addis Ababa Agreement, art. 5 ("For the region").
11 See U.N., "Regional Commitments under the Peace, Security and Cooperation Framework Agreement for the DRC and the Region: Benchmarks and Indicators of Progress, September 2013 - September 2014" 2013, 6–7 , http://www.un.org/wcm/webdav/site/undpa/shared/undpa/pdf/Benchmarks%20and%20Indicators%20of%20Progress.pdf
12 Declaration of the Government of the Democratic Republic of the Congo at the End of the Kampala Talks [Nairobi Declaration], art. 8.4, Dec. 12, 2013, www.sadc.int/files/6813/8718/4209/GOVT_DECLARATION_ENGLISH0001.pdf
13 See Ibid.; Joint ICGLR-SADC Final Communiqué on the Kampala Dialogue (Dec. 12, 2013), www.sadc.int/files/8813/8718/4199/COMMUQUE_ENGLISH0001.pdf
14 Amnesty Law, art. 4.

ensure an effective judicial response to serious crimes, in conformity with international legal standards.

Analysis of the legal framework is conducted in light of the adoption of the 2013 Law on the Organization, Functioning and Jurisdiction of the Courts.[15] This law confers, for the first time, subject-matter jurisdiction over serious crimes on Courts of Appeal, rather than military courts. In practice, this law also lays the ground for the draft law creating specialized chambers in the ordinary courts, which has long been on the parliamentary agenda. The draft law has, indeed, faced significant political objections from members of the Congolese National Assembly who oppose specific aspects of the project, including provisions for the presence of foreign judges, jurisdiction by a civilian court over members of the military and police services, the absence of privileges of jurisdiction, and the absence of the death penalty.

This report also analyzes the proposed law to implement the Rome Statute, which, if passed, will constitute another significant piece of legislative reform. This law should allow Congolese criminal law to align its substantive and procedural laws with international criminal law standards. Not only would the passage of this law enable the state to comply with its international legal obligations,[16] it would also bring coherency to the legislative and institutional framework.

The second part of this report describes the judicial response between 2009 and 2014 to international crimes committed in the eastern DRC and analyzes the challenges. Legislative and institutional reforms will only be effective if they acknowledge and respond to the strengths and weaknesses of the current legislative and judicial settings.

Methodology

This report is the result of research conducted by ICTJ between February 2013 and January 2015. It integrates a preliminary review of available information on the fight against impunity, including academic research and reports of nongovernmental organizations (NGOs) and United Nations (UN) agencies. It also integrates an analysis of DRC laws and draft laws relevant to the prosecution of serious crimes. Further, ICTJ collected additional information during three field missions carried out in April, August, and November 2013 in Kinshasa, Bukavu, Goma, and Kisangani, and one field mission in Bukavu, Goma, and Bunia in January 2015.

The ICTJ team conducted 53 interviews with individuals involved in the justice sector, including investigators, prosecutors, judges, lawyers, members of national and international

15 Loi organique No 13/011-B of DRC on the Organization, Functioning and Jurisdiction of the Courts (Loi portant organisation, fonctionnement et compétences des juridictions de l'ordre judiciaire), April 11, 2013, www.leganet.cd/Legislation/Droit%20Judiciaire/LOI.13.011.11.04.2013.htm ["LOJC"].
16 The obligation to prosecute is provided in several international instruments that have been ratified by the DRC. See Convention on the Prevention and Punishment of the Crime of Genocide (78 U.N.T.S. 277, Dec. 9, 1948), art. 6; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1465 U.N.T.S. 85, Dec. 10, 1984), art. 4; Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (75 U.N.T.S. 31, Aug. 12, 1949), art. 49 (for grave breaches) ["Geneva Convention I"]; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (75 U.N.T.S. 85, Aug. 12, 1949), art. 50 (for grave breaches) ["Geneva Convention II"]; Geneva Convention relative to the Treatment of Prisoners of War (75 U.N.T.S. 135, Aug. 12, 1949), art. 129 (for grave breaches) ["Geneva Convention III"]; Geneva Convention relative to the Protection of Civilian Persons in Time of War (75 U.N.T.S. 287, Aug. 12, 1949), art. 146 (for graves breaches) ["Geneva Convention IV"]. See, inter alia, Diane Orentlicher, U.N. Economic and Social Council, "Promotion and Protection of Human Rights: Report of the independent expert to update the Set of principles to combat impunity, Updated Set of principles for the protection and promotion of human rights through action to combat impunity," U.N. Doc. E/CN.4/2005/102/Add.1 (61st session, Feb. 8, 2005), principle 1 and 19; U.N. General Assembly, "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law," Resolution 60/147, U.N. Doc. A/RES/60/147 (60th session, Dec. 16, 2005), preamble, art. 4.

NGOs, and personnel of MONUSCO (United Nations Organization Stabilization Mission in the Democratic Republic of the Congo) and other UN agencies working directly with the justice sector. The interviews were conducted in French and English. For reasons of security and confidentiality, ICTJ does not disclose the identity of individuals interviewed who requested confidentiality. The information gathered during interviews was analyzed and compared with information and data from other sources.

The report focuses exclusively on the period of 2009 to 2014. The "DRC Mapping Report," published in 2010 by the UN Office of the High Commissioner for Human Rights, already provides an extensive assessment of the legislative framework and the judicial response until 2009.[17]

17 U.N. Office of the High Commissioner for Human Rights (OHCHR), "Report of the Mapping Exercise documenting the most serious violations of human rights and international humanitarian law committed within the territory of the Democratic Republic of the Congo between March 1993 and June 2003," (2010) ["UN Mapping Report"].

2. Normative Framework in the DRC

In the DRC, the applicable law on serious crimes has been inconsistently applied by Congolese military courts. While applying existing national law on serious crimes, military courts have also made extensive yet inconsistent direct use of the Rome Statute. This normative framework and its application are analyzed in detail in section one of this part of the report. It is followed, in section two, by an overview and discussion of the main initiatives introduced by Congolese legislators to improve and address the shortcomings of the current legal framework.

Provisions Relating to the Prosecution of Serious Crimes

The Congolese Constitution provides for the primacy of international treaty law over domestic law.[18] As a result, a legal framework comprising international and domestic law informs the legal and judicial response to serious crimes. The DRC is party to numerous treaties that provide for the prosecution of serious crimes.[19] It ratified the Geneva Conventions of 1949 and the two Additional Protocols of 1977, the Hague Convention of 1954, and the Convention on the Prevention and Punishment of the Crime of Genocide of 1948.[20] Significantly, the DRC signed the Rome Statute on September 8, 2000, and ratified it on April 11, 2002.[21]

Since the adoption of the Military Justice Code in 1972, military law has defined genocide, crimes against humanity, and war crimes.[22] The ordinary Congolese Penal Code does not contain provisions relating to serious crimes. In response to the DRC's ratification of the Rome Statute,[23] parliament sought to amend the definitions of genocide, crimes against humanity, and war crimes in military law through legislative reform. The new Military

18 Article 215 of the Constitution states: "Les traités et accords internationaux régulièrement conclus ont, dès leur publication, une autorité supérieure à celle des lois, sous réserve pour chaque traité ou accord, de son application par l'autre partie" ("International treaties and agreements duly concluded have, upon publication, a superior authority than that of laws, subject for each treaty or agreement, to its application by the other party"). Moreover, art. 153 provides that: "Les Cours et Tribunaux, civils et militaires, appliquent les traités internationaux dûment ratifiés" ("Courts and tribunals, civil and military, apply international treaties duly ratified"). Constitution de la République Démocratique du Congo, February 18, 2006, as modified by Loi No 11/002 of DRC on Revising Some Articles of the Constitution (Loi portant révision de certains articles de la Constitution de la République Démocratique du Congo du 18 février 2006), January 20, 2011, www.senat.cd/images/Constitution_de_la_RDC.pdf ["Constitution"].
19 For the list of treaties ratified by the DRC, see Marcel Wetsh'okonda Koso, AfriMAP, Open Society Initiative for Southern Africa, "République démocratique du Congo: La justice militaire et le respect des droits de l'homme – L'urgence du parachèvement de la réforme" (2009), 27.
20 UN Mapping Report, 391–393.
21 Rome Statute of the International Criminal Court (2187 U.N.T.S. 90, Jul. 17, 1998) ["Rome Statute"].
22 Ordonnance-loi No 72/060 of Zaire (DRC) on Establishing a Code of Military Justice (Ordonnance-loi Portant Institution d'un Code de Justice Militaire), September 25, 1972 ["MJC (1972)"]
23 After the ratification of the Rome Statute, the DRC opted to revise the military law rather than adopt a law implementing the Rome Statute. See Exposé des motifs de la Loi n° 023/2002 du 18 novembre 2002 portant Code judiciaire militaire et loi n° 024/2002 du 18 novembre 2002 portant Code pénal militaire (entered into force on 25 March 2003).

Penal Code (MPC) was enacted in 2002. However, the amended definitions do not exactly correspond to the Rome Statute definitions.[24]

First, the MPC conflates the definitions of war crime and crime against humanity. It reaffirms that crimes against humanity are defined as grave violations of international law against civilian populations that do not require the existence of a state of armed conflict.[25]

However, in subsequent provisions, the MPC confusingly defines crimes against humanity as grave breaches against persons and objects protected by the Geneva Conventions and the additional Protocols, when the conventions only address situations of international and non-international armed conflict.[26]

Second, the MPC's list of criminal acts that comprise a crime against humanity is not as comprehensive as the one provided in the Rome Statute.[27] The MPC failed to include certain acts, notably, enforced disappearance, apartheid, and "other inhumane acts of a similar character."[28] In terms of war crimes, the MPC defines them very expansively as "all offences of the law of the Republic committed during war and that are not justified by the laws or customs of war."[29]

The MPC neither enumerates the prohibited acts nor distinguishes between international and national conflicts.[30] Thus any act that is an offense under domestic law can constitute a war crime if committed during a time of war. Such lack of detail and imprecision does not accurately reflect international law and does not provide adequate guidance to judges who are required to interpret and apply the MPC. For genocide, the MPC seemingly replicates the definition of genocide in the Genocide Convention, but includes "political group" among the protected categories, which does not follow the Genocide Convention or the Rome Statute.[31]

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24 For a detailed comparison of the differences between the definitions of crimes in Congolese domestic law and the Rome Statute, see Avocats Sans Frontières, "Etude de jurisprudence: L'Application du Statut de Rome de la Cour Pénale Internationale par les Juridictions de la République Démocratique du Congo" (2009), 25–71.

25 MPC, art. 165 (crimes against humanity): "Les crimes contre l'humanité sont des violations graves du droit international humanitaire commises contre toutes populations civiles avant ou pendant la guerre. Les crimes contre l'humanité ne sont pas nécessairement liés à l'état de guerre" ["Crimes against humanity are grave violations of international humanitarian law committed against civilian populations before or during war. Crimes against humanity are not necessarily related to a state of war"].

26 Ibid., art. 166 states: "Constituent des crimes contre l'humanité et réprimées conformément aux dispositions du présent Code, les infractions graves énumérées ci-après portant atteinte, par action ou par omission, aux personnes et aux biens protégés par les Conventions de Genève du 12 août 1949 et les Protocoles Additionnels du 8 juin 1977, sans préjudice des dispositions pénales plus graves prévues par le Code Pénal ordinaire" ["Constituting crimes against humanity and punished in accordance with the provisions of this Code, the grave breaches listed below, by the commission or omission, against individuals and properties protected by the Geneva Conventions of 12 August 1949 and the Additional Protocols of 8 June 1977, without prejudice to any more severe penalty provided by the ordinary Penal Code"]. Article 166 then itemizes 18 offences that constitute a crime against humanity, followed by a further 10 offences in art. 169. In the Mutins de Mbandaka case, the court has noted that the MPC "entretient une confusion entre le crime contre l'humanité et le crime de guerre qui du reste est clairement défini par le Statut de Rome de la Cour Pénale Internationale" ["creates confusion between crimes against humanity and war crimes that are for the rest clearly defined by the Rome Statute of the International Criminal Court"]; see "Avocats Sans Frontières, "Etude de jurisprudence: L'Application du Statut de Rome de la Cour Pénale Internationale par les Juridictions de la République Démocratique du Congo" (2009), 21.

27 Article 7, Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, First session, New York, 3–10 September 2002 (United Nations publication, Sales No. E.03.V.2 and corrigendum), part II.B; Official Records of the Review Conference of the Rome Statute of the International Criminal Court, Kampala, 31 May -11 June 2010 (International Criminal Court publication, RC/11), www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf

28 MPC, art. 166 and 169. See Antonietta Trapani, DOMAC, "Complementarity in the Congo: The Direct Application of the Rome Statute in the Military Courts of the DRC" (2011), 23–24

29 MPC, art. 173: "Par crime de guerre, il faut entendre toutes infractions aux lois de la République commises pendant la guerre et qui ne sont pas justifiées par les lois et coutumes de la guerre" ["War crimes mean all offenses against the laws of the Republic committed during war and which are not justified by the laws and customs of war"].

30 Ibid.

31 Ibid. art. 164: "Le génocide est puni de mort. Par génocide, il faut entendre l'un des actes ci-après commis dans

Third, the MPC takes an inconsistent approach to sentencing. Contrary to the principle of nulla poena sine lege ("no penalty without a law"), the MPC does not provide applicable sentencing for war crimes. Yet, it provides for the death penalty for perpetrators of genocide and crimes against humanity, although a moratorium is currently in place against the death penalty.[32]

Finally, the MPC does not provide for a mode of liability equivalent to the definition of command responsibility under article 28 of the Rome Statute. Under Congolese law, command responsibility provides that the superior will be considered a co-perpetrator or accomplice for having tolerated the actions of his or her subordinates, but only to the extent that those subordinates are also prosecuted.[33] This implies that the military commander will only be prosecuted if his or her subordinate is prosecuted, and only as a co-perpetrator or accomplice—not as a principal perpetrator.

"Military judges have had to decide, sometimes creatively, whether to apply domestic or international law to prosecute perpetrators of serious crimes."

In light of these inconsistencies and shortcomings, the military judges have had to decide, sometimes creatively, whether to apply domestic or international law to prosecute perpetrators of serious crimes.

Applying the Rome Statute to Congolese Criminal Law

Parliament has yet to pass a law implementing the Rome Statute that would harmonize domestic law with international law definitions. In the absence of such a law, Congolese military judges have, on various occasions directly applied the Rome Statute.[34] Yet, on the whole, judges have failed to identify clear criteria to explain their decision to use domestic law over international law, and vice versa.

The rationale given by military judges to directly apply the Rome Statute has been inconsistent. Judges do not always refer to the provision of the Constitution that establishes the primacy of international law vis-à-vis domestic law; judges have, instead, mentioned the Constitution merely as a secondary justification to use international law over domestic law. A primary reason cited by some judges is the "higher quality" of the Rome Statute in comparison to domestic law, as the former contains more favorable provisions to the accused, victims, and witnesses.[35] For example, regarding sentencing, military courts have

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l'intention de détruire, en tout ou en partie, un groupe national, politique, racial, ethnique, ou religieux notamment: 1. meurtre des membres du groupe; 2. atteinte grave à l'intégrité physique ou mentale des membres du groupe; 3. soumission intentionnelle du groupe à des conditions d'existence devant entraîner sa destruction physique totale ou partielle; 4. mesures visant à entraver les naissances au sein du groupe; 5. transert forcé d'enfants d'un groupe à un autre groupe." Compare with Genocide Convention, art. 2: "In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group; Article 6 of the Rome Statute: For the purpose of this Statute, 'genocide' means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group. (For the definition of the crime of genocide in the DRC before 2002, see MJC (1972), art. 530; and Antonietta Trapani, DOMAC, "Complementarity in the Congo: The Direct Application of the Rome Statute in the Military Courts of the DRC" (2011), 23.)

32 Ibid. art. 164 (genocide) and 167 (crimes against humanity).

33 MPC, art 175: "Lorsqu'un subordonné est poursuivi comme auteur principal d'un crime de guerre et que ses supérieurs hiérarchiques ne peuvent être recherchés comme co-auteurs, ils sont considérés comme complices dans la mesure où ils ont toléré les agissements criminels de leur subordonné" ["When a subordinate is prosecuted as the main perpetrator of a war crime and his or her hierarchical superiors cannot be investigated as co-perpetrators, they are considered accomplices if they tolerated the criminal actions of their subordinate"].

34 Elena Baylis, "Reassessing the Role of International Criminal Law: Rebuilding National Courts through Transnational Networks", Boston College Law Review 50(1) (2009): 4.

35 See the following cases: MC SK, Lt. Col. Balumisa Manasse et al. (Mar 9, 2011), RP 038/RMP 1427/NGG/2009 RMP 1280/MTL/09 ["Balumisa case"] (which includes a general reference to the "greater quality" afforded to victims and defendants' rights; the absence of the death penalty; and a clearer definition of crimes against humanity); MC SK, Lt. Col. Daniel Kibibi Mutware et al. (Feb. 21, 2011), RP 043/11 RMP 1337/MTL/2011 ["Kibibi case"] (which rejects

most often opted for the Rome Statute to justify ignoring the requirement in domestic law to impose the death penalty.[36]

Military courts, however, have not set aside domestic law provisions altogether. Instead, they have made use of a variety of sources to inform their decisions: the domestic military penal code, the Rome Statute, and the jurisprudence of international tribunals. Accordingly, military judges have intermittently used the provisions of the Rome Statute to fill gaps in domestic law.As mentioned, military judges have primarily used the Rome Statute to increase protections for victims and witnesses, who are inadequately protected under domestic law.[37] They have also borrowed key concepts that remain absent from the MPC, notably individual and subsidiary liability for commanders and other superiors.[38]

Despite the efforts of military judges to remedy the shortcomings of domestic law and increase protections for parties, the existing jurisprudence remains fragmented, inconsistent and, in turn, unpredictable for those brought before Congolese courts.

Military Jurisdiction over Serious Crimes

The adoption of the Law on the Organization, Functioning and Jurisdiction of the Courts in April 2013 achieved an important breakthrough.[39] For the first time, it assigned jurisdiction over serious crimes to civilian courts, making the Courts of Appeal competent for war crimes, crimes against humanity, and genocide.[40] Previously, the 1972 Military Justice Code had provided military courts with exclusive jurisdiction over crimes against humanity, war crimes, and genocide.[41] Under article 207 of the MPC, military courts have subject-matter jurisdiction over all infractions of the MPC.[42] Further, article 161 provides that any crime "related" to, or "indivisible" from, a serious crime falls under the subject-matter jurisdiction of military courts, regardless of whether it is civilian in nature.[43]

According to article 156 of the Constitution, military courts and tribunals hold personal jurisdiction over members of the army and national police.[44] However, several provisions

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the application of the death penalty as not being provided for under international law); MGT Bukavu, Jean Bosco Maniraguha et al. (Aug. 19, 2011), RP 275/09 and 521/10 ["Kazungu case"] (which refers to art. 68 of the Rome Statute and protective measures that are not provided for under military law).

36 See Ibid.

37 In Kazungu case, 34, the MGT of Bukavu relied upon art. 68 of the Rome Statute that gives numerical codes to civil parties, especially those who are witnesses, as they are exposed to reprisals. MGT Bukavu, Jean Bosco Maniraguha et al. (Aug. 19, 2011), RP 275/09 and 521/10 ["Kazungu (Trial) case"]; MC SK, Maniraguha et al. (Oct. 29, 2011), RPA 0177 (Appeal) RP 275/09 521/10 RMP 581/TBK/07 1673/KMC/10 (Trial) RP 275/09 ["Kazungu (Appeal) case"] The same reasoning can be found in the decision of MC SK, Lt. Col. Daniel Kibibi Mutware et al. (Feb. 21, 2011), RP 043/11 RMP 1337/MTL/2011 ["Kibibi case"]. See Rome Statute, art. 68.

38 For example, in MGT Bunia, Kakado Barnaba Yonga Tshopena (Jul. 9, 2010), RP 071/09, 009/010 074/010 RMP 885/EAM/08 RMP 1141/LZA/010 RMP 1219/LZA/010 RMP 1238/LZA/010 ["Kakado case"], the tribunal invoked article 28 of the Rome Statute to establish the superior liability of the accused; Rome Statute, art. 28.

39 LOJC. art. 91.

40 Id. art. 91.

41 Ordonnance-loi Portant Institution d'un Code de Justice Militaire [MJC], Ordonnance-loi N° 72/060 du 25 septembre 1972 (Zaire) (Dem. Rep. Congo).

42 See MPC, Title V. The MPC includes both military and mixed infractions (common law offenses aggravated by the circumstances of their commission and punished both by the ordinary Penal Code and the MPC). See also MJC (2002), art. 76, 79.

43 MPC, art. 161: "En cas d'indivisibilité ou de connexité d'infractions avec des crimes de génocide, des crimes de guerre ou des crimes contre l'humanité, les juridictions militaires sont seules compétentes" ["Should crimes be indivisible from or related to crimes of genocide, war crimes or crimes against humanity, the military courts shall have sole jurisdiction"].

44 Article 156 of the Constitution limits the competence of military courts to infractions by members of the armed forces and the police: "Les juridictions militaires connaissent des infractions commises par les membres des Forces armées et de la Police nationale. En temps de guerre ou lorsque l'état de siège ou d'urgence est proclamé, le Président de la République, par une décision délibérée en Conseil des ministres, peut suspendre sur tout ou partie de la République et pour la durée et les infractions qu'il fixe, l'action répressive des Cours et Tribunaux de droit commun au profit de celle des juridictions militaires. Cependant, le droit d'appel ne peut être suspendu" ["Military jurisdictions are aware of offences committed by members of the armed forces and the police. In times of war or when a state of siege or emergency is declared, the President of the Republic, by way of a decision made in the Council of Ministers, may suspend, in all or part of the Republic and for a period of time and over a set of offences that the President shall

Photo: Participants at the conference included Auditeur Opérationnel of North Kivu (NK) and General Major Bivegete of the High Military Court of the DRC (ICTJ Photo)

extend this personal jurisdiction over persons who are not linked to the army or the national police. During a war,[45] military jurisdiction expands to include civilians involved in fighting.[46] In peacetime, military jurisdiction also covers any civilians "who, although unrelated to the military, cause, engage in or assist one or more soldiers or similar, to commit an infraction under military law or regulation;"[47] "who, even if not part of the army, commit infractions against the Army, National Police, National Service, their equipment, their premises or within the army, the National Police or the National Service;"[48] and "who, without being soldiers commit crimes using weapons of war."[49] These jurisdictional exceptions give military courts competency over crimes that would otherwise be adjudicated by civilian courts.

The expansive jurisdiction of military courts, which was exclusive until April 2013, has stirred considerable controversy. First, military justice is a "justice of exception" that exists to address military offenses committed by military personnel in the exercise of their functions. Serious crimes, by their very nature, can never be legitimately considered as offenses committed in the course of military duty.[50]

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determine, action to suppress civilian courts and tribunals in favour of military jurisdictions. However, the right to appeal shall not be suspended"]. The MJC has not yet been amended to reflect this limitation, and includes many provisions establishing the jurisdiction of military courts over civilians.

45 Constitution, art.156.

46 MJC (2002), art. 115: "Les juridictions de droit commun sont compétentes dès lors que l'un des coauteurs ou complices n'est pas justiciable des juridictions militaires, sauf pendant la guerre ou dans la zone opérationnelle, sous l'état de siège ou d'urgence, ou lorsque le justiciable civil concerné est poursuivi comme coauteur ou complice d'infraction militaire."

47 Marcel Wetsh'okonda Koso, AfriMAP, Open Society Initiative for Southern Africa, "République démocratique du Congo: La justice militaire et le respect des droits de l'homme – L'urgence du parachèvement de la réforme" (2009), 47: "Thus, the military courts have jurisdiction in respect of any person connected with the army by any link whatsoever, including for belonging to the armed forces or having been in their service by some other link, or for having infringed their property."

48 MJC (2002), art. 112(7).

49 Ibid.

50 The African Commission on Human and Peoples' Rights has not yet made a determination on the jurisdiction of military courts over war crimes and crimes against humanity. Its decisions have already noted, however, that military courts do not have personal jurisdiction over civilians, otherwise it would constitute a violation of the right to a fair trial under the African Charter on Human and Peoples' Rights (OAU Doc. CAB/LEG/67/3 rev. 5, Jun. 27, 1981), art. 7 ["African Charter"]. Military jurisdiction is based on the discretion of the executive power, which compromises the impartiality of the tribunal as guaranteed by art. 7. The African Commission, therefore, concluded that "special military courts . . . constitute a violation of art. 7(1)(d) of the African Charter, by the mere fact of their composition, which is subject to the discretion of the Executive." See African Commission on Human and Peoples' Rights, "137/94-139/94-154/96-161/97:

Second, military justice, as a disciplinary instrument, is designed to be implemented in a swift manner, despite the prejudice this may cause to the basic rights of the defendant, including the right to a fair trial.[51] This is particularly true given that serious crimes are often very complex and require ample time, resources, and fair-trial guarantees to ensure that they are dealt with justly.

Finally, military courts do not offer guarantees of independence and impartiality. As part of the military structure, they are "an instrument of the Judiciary at the service of the command," according to the preamble to the law amending the Military Judicial Code (Code Judiciaire Militaire – MJC).[52] Cases have been documented in which military courts were pressured or influenced during trials by the military hierarchy.[53] This weakness, also discussed later in this report, reinforces the need for corrective legislative reform.

"Military courts do not offer guarantees of independence and impartiality . . . Cases have been documented in which military courts were pressured or influenced during trials by the military hierarchy."

Ultimately, there is a strong argument to completely transfer jurisdiction to civilian courts, as provided by the Law on the Organization, Functioning and Jurisdiction of the Courts. However, military judicial officials have built significant experience in the investigation and trial of international crimes. Hence, Congolese legislators and decision makers should first ensure an adequate transfer of the expertise progressively developed by the military justice sector in the investigation and prosecution of serious crimes to the civilian justice sector.

Legislative Bills Relevant to National Judicial Response to Serious Crimes

For the past several years, reforms have been discussed to align DRC's legal framework with the international law regime, particularly that of the Rome Statute and international principles of due process. Two such legislative proposals of note are: 1) the bill implementing the Rome Statute of the ICC under Congolese law and 2) the bill for the creation of a Court or specialized Chambers in the judicial system of the DRC. As of early 2015, neither bill had been adopted. Despite the enactment of the Law on the Organization, Functioning and Jurisdiction of the Courts, it is critical for the DRC to adopt these two bills to correct flaws in the legal framework governing the prosecution of serious crimes.

Rome Statute Implementation Bill

Since it was first introduced in 2012, the proposed Rome Statute implementation law has been subject to considerable controversy and disagreement. It contains two objectives that have met with controversy and disagreement on certain points: 1) to harmonize the substantive and procedural provisions of domestic criminal law with the Rome Statute (Harmonization of procedural, jurisdictional and substantive rules); and 2) to facilitate and

International PEN, Constitutional Rights Project, Civil Liberties Organisation and Interights (on behalf of Ken Saro-Wiwa Jnr.)/Nigeria" (1998), para. 86, www.achpr.org/files/sessions/24th/comunications/137.94-139.94-154.96-161.97/achpr24_137.94_139.94_154.96_161.97_eng.pdf. See also African Commission on Human and Peoples' Rights, "Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa," Doc/OS(XXX)247 (2003), part. L, www.achpr.org/instruments/principles-guidelines-right-fair-trial/

51 Claire Callejon, "Les principes des Nations Unies sur l'administration de la justice par les tribunaux militaires: pour une justice militaire conforme au droit international", Droits Fondamentaux 6 (2006): 4; Marcel Wetsh'okonda Koso, AfriMAP, Open Society Initiative for Southern Africa, "République démocratique du Congo: La justice militaire et le respect des droits de l'homme – L'urgence du parachèvement de la réforme" (2009), 78–87; Nyabirungu Mwene Songa, "Crime Against Humanity under the ICC Statute in Congolese Law," Presentation at a Capacity-Building Exercise under the Strengthening the Military Justice System Project: (YEAR) (citing the Bongi Massamba decision, in which the reasoning gives primacy to speed over due process, and does not uphold the rights of the defendant or fair trial requirements).

52 MJC, Preamble, : "La justice militaire apparaît ainsi désormais comme un instrument du pouvoir judiciaire au service de commandement, la garantie de l'action légale et régulatrice du pouvoir judiciaire dans les forces armées; si sa flexibilité est de structure pour mieux faire corps autant que possible avec les réalités militaires, sa permanence et son professionnalisme la mettent à l'abri de la conjoncture et du 'sur-mesure."

53 UN Mapping Report, 436, 442; U.S. Department of State, Bureau of Democracy, Human Rights and Labor, "Country Reports on Human Rights Practices for 2012: Democratic Republic of the Congo" (2013), 9; Open Society Foundations, "Putting Complementarity into Practice: Domestic Justice for International Crimes in DRC, Uganda, and Kenya" (2011), 40; Amnesty International, "The Time for Justice is Now: New Strategy Needed in the Democratic Republic of the Congo" (2011), 38–39

regulate judicial cooperation between the DRC and the ICC (Cooperation).

The most recent 2012 draft bill seeks to introduce three essential changes: 1) a complete transfer of jurisdiction for serious crimes to ordinary courts; 2) new rules on temporal and territorial competences over international crimes; and 3) a redefinition of substantive and procedural law applicable to international crimes.

In September 2012,[54] the latest version of the draft law implementing the Rome Statute was submitted to the National Assembly.[55] The draft bill ends the military courts' jurisdiction over serious crimes,[56] assigns the competence for these crimes to the Courts of Appeal, and includes the transfer of current cases involving serious crimes from military courts to Courts of Appeal.[57] Under the draft law, the right to appeal is to be exercised before the Court of Cassation, rather than the High Military Court.[58] To harmonize relevant domestic laws, the proposed legislation also amends the Military Judicial Code to ensure that the Courts of Appeal have exclusive jurisdiction over serious crimes.[59]

This proposal has met with considerable resistance. Some have argued that a complete transfer of jurisdiction would violate the constitution, which, according to some interpretations, gives military courts exclusive jurisdiction over military and police personnel.[60] It is unclear whether the constitution provides for relative or exclusive competence of the military jurisdiction; the wording of article 156 does not clarify this.[61] Moreover, some experts contend that it would be possible to derogate from article 156 on the basis that article 19(1) of the Constitution provides that competence is determined by law and there are already other exceptions to article 156.[62]

Another argument is that a full transfer of jurisdiction would undermine the nature and authority of military justice, which, as the guarantor of military order, is founded on principles of exemplarity and expeditiousness. Additionally, as previously mentioned, military courts already have experience in the prosecution of international crimes.[63] Finally, as a large portion of these crimes are committed by people in uniform, it is unrealistic to expect that civilian judges will be able to effectively prosecute these individuals when military justice itself faces obstacles in obtaining the cooperation of its peers.[64] Further, some military justice officials have criticized the transfer of jurisdiction as being counter-productive in the context of the DRC. Ultimately, Congolese legislators and policy makers

54 The first draft bill implementing the Rome Statute was drafted by the government in 2003. Afterwards, two new draft bills were submitted by the Ministry of Justice and Human Rights to parliament in 2005 and 2008, but none have been adopted.
55 Coalition nationale pour la Cour pénale internationale. "Proposition de loi modifiant et complétant le code pénal, le code de procédure pénal, le code judiciaire militaire et le code pénal militaire en vue de la mise en œuvre du Statut de Rome de la Cour Pénale Internationale," September 6, 2012. (Rome Statute Bill (2012)).
56 Rome Statute Bill (2012), art. 15 modifies MJC (2002), art. 76 and art. 16 modifies MJC (2002), art. 117
57 Rome Statute Bill (2012), art. 17: "Les affaires portant sur les crimes contre la paix et sécurité de l'humanité pendant es devant les juridictions militaires régies par les dispositions modifiées par la présente loi sont transférées en l'état aux cours d'appel du même ressort."
58 Rome Statute Bill (2012), art. 17.
59 As an exception to MJC (2002), art. 117 of the draft law provides for the application of ordinary law, rather than military law, and adds two military career magistrates with a rank higher than the defendant to the bench of the Court of Appeal and the Court of Cassation. The inclusion of military judges on the bench is justified because the defendant with a military rank must be judged by his "natural" judge, who must have a grade at least equivalent to that of the defendant (as provided for in MJC (2002), art. 34).
60 See Marcel Wetsh'okonda Koso, AfriMAP, Open Society Initiative for Southern Africa, "République démocratique du Congo: La justice militaire et le respect des droits de l'homme – L'urgence du parachèvement de la réforme" (2009), 28, 41, 45, 55.
61 Article 156 of the Constitution provides that "The military jurisdictions rule on the offenses committed by the members of the Armed Forces and the National Police," without explicitly making the jurisdiction exclusive.
62 Article 19(1) of the Constitution provides that: "Nul ne peut être ni soustrait ni distrait contre son gré du juge que la loi lui assigne" ["None shall be excluded from nor removed against his or her will from the judge assigned by law"); see International Center for Transitional Justice, "Report on the Discussions of the Experts Workshop Organized by ICTJ on the Legal Analysis of Texts on the Implementation and Specialized Court in September 2012" (2012) [on file with the author].
63 Ibid.; Amnesty International, "The Time for Justice is Now: New Strategy Needed in the Democratic Republic of the Congo" (2011), 22.
64 For a discussion of challenges faced by military justice, see Amnesty International, "The Time for Justice is Now: New Strategy Needed in the Democratic Republic of the Congo" (2011), 39.

need to ensure that they adequately address any apparent comparative advantages of prosecuting serious crimes in military courts.

Political considerations may also explain the lack of support for the full transfer of competence. The transfer of jurisdiction to civilian courts would diminish the political control presently exerted by the highest levels of military justice and some political leaders on the prosecution of serious crimes.

Photo: Inside the mobile courtroom in Kalehe, where the two men in yellow were standing trial for alleged atrocities (Physicians for Human Rights)

The preamble of the draft Rome Statute Bill establishes the territorial, personal, and universal jurisdiction of the ordinary courts.[65] However, it is completely silent on temporal jurisdiction. Consequently, it would seem that it would apply only to crimes committed after the Rome Statute's entry into force on July 1, 2002. Indeed, this should be the preferred reading of the bill, as its purpose is to absorb the offenses of the Rome Statute in their entirety. This would reasonably include the general principles of criminal law set forth in articles 22 to 24 of the Rome Statute, namely on legality and non-retroactivity.

The draft bill seeks to align the domestic definitions of serious crimes with those of the Rome Statute. It introduces into the (civilian) Penal Code a new section on crimes "against the peace and security of mankind," which include genocide, war crimes, and crimes against humanity.[66] The proposed definitions match those of the Rome Statute, with only a few minor differences.[67]

It also provides for the repeal of all definitions of serious crimes in the MPC and MJC, to avoid having two sets of definitions, and provides for the responsibility of commanders and other superiors as direct perpetrators (without making their prosecution conditional to the

65 Universal jurisdiction is only applicable to grave breaches of the Geneva Conventions, thus excluding conflicts not of an international character. See Geneva Convention I, art. 50; Geneva Convention II, art.51; Geneva Convention III, art. 130; Geneva Convention IV, art 147; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (1125 U.N.T.S. 3, Jun. 8, 1977), art. 11, 85 [Protocol I].
66 "Les crimes contre la paix et la sécurité de l'humanité" in the French text.
67 Among the differences in the definitions of crimes, there are, for example: 1) the absence of torture as an act constituting a crime against humanity in the implementation bill, 2) the addition of the tribal group in the definition of persecution, and 3) the prohibition of attacks against the personnel and property of a UN peacekeeping mission also extends to missions conducted under the auspices of the African Union.

prosecution of subordinates, as currently provided by the MPC).[68]

By introducing into domestic criminal law certain international law principles that are already codified in the constitution,[69] the draft bill contributes to the harmonization of criminal law with existing constitutional requirements. The legality of offenses and penalties,[70] and the individual character of criminal responsibility, are to be integrated into the Penal Code. The draft bill also introduces certain rights for the accused, such as the presumption of innocence, the right to be present at all stages of proceedings, and the right not to be compelled to testify against oneself. It also includes an article on the protection of victims, witnesses, and intermediaries.

Problematically, however, the draft bill does not explicitly provide for, or exclude, the death penalty as a sentence for serious crimes. Despite the present moratorium, other states may refuse to extradite alleged war criminals to the DRC on the basis that the accused could receive the death penalty.[71]

The bill proposes introducing into the Code of Criminal Procedure certain procedures for cooperation with the ICC, including mutual legal assistance, arrest and surrender, and execution of sentences, as provided for by the Rome Statute.[72] This would reinforce the 2004 cooperation agreement between the DRC and the Office of the Prosecutor of the ICC.[73] It would also formalize the commitment by the president of the DRC to cooperate with the ICC.

Draft Bill on Specialized Chambers

President Kabila, in his address to the National Congress on October 23, 2013, called for the establishment of specialized chambers to try serious crimes, because, as he said, "[the people] deserve that justice is done."[74] Establishing specialized chambers was also proposed as a benchmark indicator under the Framework Agreement, as defined by the National Oversight Mechanism.[75]

While the renewed call for specialized chambers is a positive sign, it is not the first time that the idea has been suggested.[76] In 2010, the Minister of Justice officially announced the government's intention to establish a Special Court to try serious crimes committed in the DRC.[77] Despite

68 See above; article 4 Rome Statute Bill (2012), referring to article 23 bis of the Penal Code.
69 Constitution, arts.17–18; Rome Statute of the International Criminal Court, arts. 86–127, July 1, 2002, 2187 U.N.T.S. 3.
70 Penal Code, art. 1: "Nulle infraction ne peut être punie des peines qui n'étaient par portées par la loi avant que l'infraction fût commise" ["No offense may be punished by the penalties that were brought by the law before the offense was committed"]. The bill seeks to amend it by integrating principles that are more accurate in terms of legality of offenses.
71 For example, the threat of the death penalty was used by Rwanda to justify refusing DRC's extradition request of Nkunda Ntabare in 2012. The Constitution of the Republic of Rwanda, 26 May, 2003, art. 25: "The extradition of foreigners shall be permitted only so far as it is consistent with the law or international conventions to which Rwanda is party." Some individuals wanted for international crimes in the DRC are currently in Rwanda and Uganda. L. Nkunda, B. Ngaruye, and I. Zimurinda are on the UN sanctions list and are thought to be in Rwanda, and S. Makenga, also on the sanctions list, is believed to have fled to Uganda after the defeat of M23.
72 Rome Statute, art. 86–111; Rome Statute Bill (2012), Chapitre VII : "De la coopération avec la Cour pénale internationale" (Section 1: "Des dispositions générales en matière de coopération avec la Cour"; Section 2: "De la coopération en matière d'entraide judiciaire"; Section 3: "De la coopération en matière d'arrestation et de remise d'une personne"; Section 4 : "De l'exécution des peines et mesures prises par la Cour pénale internationale").
73 Through this interim judicial cooperation agreement of October 6, 2004, the DRC pledged to cooperate fully with the ICC in establishing necessary practical mechanisms of assistance for the effective and expeditious conduct of investigations and prosecutions conducted by the Office of the Prosecutor. There was also an agreement for judicial assistance signed on November 8, 2005, to amend the Headquarters Agreement with MONUC. This authorized MONUC to assist the Congolese authorities in arrest operations, transport, and secured transfer of individuals to the ICC. See Joseph Kazadi Mpiana, "La Cour Pénale Internationale et la République Démocratique du Congo: 10 ans après. Étude de l'Impact du Statut de Rome dans le Droit Interne Congolais" ["The International Criminal Court and the Democratic Republic of Congo: 10 Years Later. Study of the Impact of the Rome Statute on Congolese Domestic Law"], Revue Québécoise de Droit International 25(1) (2012): 72–73.
74 President Joseph Kabila, Speech to the National Parliament Convening in Congress (October 23, 2013).
75 Mécanisme des critères de suivi et indicateurs de mise en œuvre des engagements nationaux de l'Accord-cadre, Ord. N.13/020, 13 May 2013.
76 A workshop was organized in March 2005 in Bukavu and Kinshasa, focused on discussing mixed chambers
77 This announcement was made on October 1, 2010, after the first Review Conference on the Rome Statute in Kampala in June 2010 and the publication of the UN Mapping Report, which recommended the establishment of a

numerous consultations with civil society and the expert assistance from several partners,[78] the bill for a Special Court could not overcome political resistance in parliament.[79] The Senate sent the draft bill back to the government for revision, indicating that some elements were already included in the draft law to implement the Rome Statute (which was also under discussion).[80]

The Ministry of Justice began work on a new bill modifying the LOCJ adopted in April 2013. Although this new bill was adopted by the Council of Ministers on April 22, 2014, the National Assembly voted it inadmissible on May 8, 2014. The Ministry of Justice was asked to review the bill before it could again be added to the parliamentary agenda.

Taking into account previous draft bills, the revised bill, which was presented to the National Assembly on May 6, 2014, envisaged the creation of specialized structures within the existing legal order, with the participation of foreign personnel for a limited time period and the competence of the specialized chambers.

The draft bill provides for the creation of specialized chambers within selected Courts of Appeal, in Goma, Lubumbashi, and Mbandaka, as well as within the Court of Cassation in Kinshasa.[81] The latter would serve as the final court of appeal. Consequently, the specialized chambers would form an integral part of the existing Congolese courts. Locating the chambers within these different Courts of Appeal should adequately reflect the geographic spread of the caseload. Representing an innovation of the domestic justice system, the bill will need to take into account important challenges.

The creation of specialized chambers needs to be accompanied by the creation of special units to investigate and prosecute crimes as well as a section to provide assistance to victims and witnesses. While the project provides for the creation of such units, their mandates should be clear and their staff duly qualified. The selection of magistrates and judicial staff must be transparent and based on a rigorous selection process that is closely linked to their ability to try serious crimes. In particular, specific knowledge of issues related to sexual violence and violence against children constituent of international crimes should be required.

"Considering the problems of corruption and poor performance that have characterized the Congolese justice system, the specialized chambers will have to meet high expectations to reestablish faith in the state's justice system."

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mixed jurisdictional structure to deal with international crimes committed in the DRC between 1993 and 2003.
78 Several versions of the bill have been circulated, and have been the subject of discussions and observations.
79 The main criticisms included that it would create a two-tiered system of justice; the international personnel component would undermine the sovereignty of the State; temporal jurisdiction from 1990; and compatibility of the project with certain constitutional provisions. For a summary of the opposition to the project, see Kimberly Howe, International Center for Transitional Justice, "Decision Makers Survey and Executive Summary of the Baseline Study for the ICTJ DRC" (2012).
80 The legislative process was marked by confusion, as the Minister of Justice submitted two different texts to the National Assembly on important points, thus exacerbating the reluctance of Parliament. After this defeat, the Minister submitted an amended text to the Senate and evoked the expedited process, but this strategy did not work. For a detailed chronology, see International Federation for Human Rights et al., "République Démocratique du Congo: Recommandations pour une Cour spécialisée mixte indépendante et efficace" ["Democratic Republic of Congo: Recommendations for an independent and effective specialized mixed court"] (2011), 4–5
81 The government seemingly opted to use existing structures within the domestic legal order, rather than create a new, specialized court under article 149 of the Constitution. The option of creating a specialized court was contained in the draft bill of August 2011. This final option was discussed because it would have the advantage of setting up a single structure, with its own organizational processes and separate staff, thereby ensuring uniformity of case law and simplifying the management of funding. For a comparative analysis between the two options, see "Synthèse des argumentations, propositions et amendements relatifs à l'avant projet de loi relatif aux chambres spécialisées pour la répression des violations graves du droit international humanitaire" ["Summary of arguments, proposals and amendments to the draft law on specialized chambers for the prosecution of serious violations of international humanitarian law"], Kinshasa, February 2011.

International Personnel

Due to the inadequate legislative framework and variations in the application of international criminal law by domestic courts, the case law indicates a general lack of international criminal law expertise among local judges.[82] Given the urgency to proceed with cases and the lack of domestic judicial capacity to prosecute serious crimes, the integration of international experts into the various specialized

bodies (the chambers and investigation and prosecution units) should help to improve both consistency and quality, and strengthen the technical capacity of national magistrates.[83] It is also intended to improve judicial independence in an area where political interference is rampant.[84]

To overcome criticism of the previous bill,[85] the current draft bill would only provide for a partial integration of international staff. In the Court of Cassation, three out of seven members of the appellate specialized chamber would be international. While it states that international staff must be integrated in the inquiry and prosecution unit, it does not specify the number.[86] In the Courts of Appeal, only two members out of five of the specialized trial chambers would need to be international.[87] According to the draft law, in the first instance, the presence of international staff would be determined on a case-by-case basis by the president of the chamber, without relying on identified objective criteria.[88] This ad hoc process, however, runs the risk of causing further delays in proceedings. The procedure and objective criteria for determining whether to integrate international staff into specialized trial chambers should be specified.

The bill also provides for the gradual withdrawal of international personnel on the basis that Congolese staff would progressively acquire the required technical skills.[89] The bill does not, however, set objective criteria for how to phase out international staff at each level of the specialized chambers.

Jurisdiction

The establishment of specialized chambers again raises the issue of jurisdictional competence to try members of the military and police services. The current draft bill provides that whenever members of the military and police services are prosecuted for serious crimes, at least two military magistrates must sit on the judicial panel in the first instance and at appeal.[90]

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82 Nyabirungu Mwene Songa, "Crime Against Humanity under the ICC Statute in Congolese Law," Presentation at a Capacity-Building Exercise under the Strengthening the Military Justice System Project: (YEAR) (highlighting gaps and inconsistencies in DRC case law).
83 In the August 2011 version of the draft bill, an international presence is no longer required at the prosecution and defence levels, nor is an international judge required in the appeal before the Court of Cassation
84 UN Mapping Report, at 483–487; Koso, Marcel Wetsh'okonda. "Les chambres spécialisées: une thérapeutique inappropriée contre l'impunité des crimes internationaux les plus graves en République démocratique du Congo," 6, www.grotius.fr/wp-content/uploads/2011/07/Les-chambres-sp%C3%A9cialis%C3%A9es-mixtes-version-longue.pdf. For example, within the war crimes Chambers in Bosnia and Herzegovina, it is now recognized that, after seven years, the international presence has encouraged the faith of the public in the impartiality and the daily work of the institution. According to HRW, international prosecutors have played a pivotal role in pursuing important cases which probably would not have been prosecuted because of their sensitivity. HRW, "Justice for Atrocity Crimes: Lessons of International Support for Trials before the State Court of Bosnia and Herzegovina," 1, 2012.
85 During previous discussions of the bill, the international component was perceived by some as undermining state sovereignty. It was also seen as an admission of the failure of the government's institutional reforms, which was problematic in light of upcoming elections.
86 See Projet de loi modifiant et complétant la loi organique No 13/011-B of April 11, 2013 portant organisation, fonctionnement, et compétences des juridictions de l'ordre judiciaire en matière de répression des crimes de génocide, des crimes contre l'humanité et des crimes de guerres, April 2014, art. 4 (referring to LOCJ, art. 91.5-91.6).
87 Ibid.
88 Ibid. art. 4 (referring to LOCJ, art. 91.3 al. 2).
89 While the bill presented to the National Assembly on May 6, 2014, did not specify the temporary presence of the international staff in the specialized chambers, the Exposé des motifs refers to their temporary status.
90 Projet de loi modifiant et complétant la loi organique No 13/011-B of April 11, 2013 portant organisation, fonctionnement, et compétences des juridictions de l'ordre judiciaire en matière de répression des crimes de génocide, des crimes contre l'humanité et des crimes de guerres, April 2014, art. 4 (referring to LOCJ, art. 91.7).

As demonstrated by the limited nature of the jurisdictional changes introduced to the text of the LOCJ, legislators' preference has been to maintain the prosecution of security personnel in military courts. However, once the specialized chambers start to try serious crimes, their work would be critically impaired if they did not enjoy jurisdiction over all possible groups of perpetrators. Consequently, the bill on the specialized chambers will need to be reconciled with the new LOCJ in a manner that will garner sufficient political support.

Finally, the temporal jurisdiction of the specialized chambers must be established. In the last version discussed, the chambers had jurisdiction over events that had happened as far back as 1993.

3. Judicial Practice

As discussed, the DRC's incomplete and problematic legislative framework has led to judicial practice that has been unable to fully serve the rights and intere/sts of the Congolese people. Still, as noted in the 2010 Mapping Report, a few decisions were issued by Congolese magistrates, despite material and psychological obstacles and political pressure.[91]

The report provides an extensive compilation of serious human rights and humanitarian law violations committed in the DRC from 1993 to 2003. It also takes stock of the judicial response until 2009. At the time of its publication in August 2010, the report indicated that since the transition in June 2003,[92] the Congolese military courts had dealt with 12 cases involving war crimes or crimes against humanity (only 2 of which involved incidents that had occurred before June 2003).[93]

"ICTJ identified that between January 2009 and December 2014, the military courts of eastern DRC opened at least 39 proceedings involving cases of serious crimes."

Despite the absence of official data, ICTJ identified that between January 2009 and December 2014, the military courts of eastern DRC opened at least 39 proceedings involving cases of serious crimes, representing a slight improvement over the previous period.[94] The analysis of available data around these cases allows us to reflect on prosecutorial trends for serious crimes in the DRC (see Appendix). Indeed, progress (or lack of it) on the judicial response to international crimes is influenced by factors that extend beyond just the legal framework. The analysis of other factors is essential to developing an appropriate institutional framework for investigating and prosecuting such crimes in the future.

The Context

To analyze the judicial response to international crimes, it is necessary to briefly contextualize the eastern DRC during the period under analysis.[95] Indeed, despite successive peace

91 UN Mapping Report, 18–20.
92 The transition was accompanied by the adoption of laws reforming military justice (notably the MJC (2002) and MPC) and the ratification of the Rome Statute on April 11, 2002.
93 Since the publication of the report in August 2010, no further proceedings have been opened on atrocities that were committed between 1993 and 2003; see UN Mapping Report, 18–19, 396–409
94 For the purpose of this study, ICTJ did not include cases that the Congolese military jurisdiction considered to involve international crimes but had no link to an armed conflict or did not amount to a widespread or systematic attack against the civilian population. This explains why the number of cases of international crimes compiled in this study might appear conservative in comparison with other studies. However, this number of cases does not pretend to be exhaustive. For a legal analysis on disagreements between Congolese military justice officials and renowned Congolese experts as to what qualifies as an international crime in DRC, see Avocats Sans Frontières, "Recueil de Jurisprudence Congolaise en Matière de Crimes Internationaux: Edition Critique" (2013), 25–31, 56–59, 90 (which considered genocide in the Mputu Muteba et al. case, and crimes against humanity in the Waka Lifumba case and the Lemera case).
95 On the political, security and regional context, see the reports of the U.N. Group of Experts on the Democratic Republic of the Congo: U.N. Security Council, "Letter dated 23 November 2009 from the Chairman of the Security

agreements signed in the region, eastern Congo has remained a conflict zone characterized by the active presence of various domestic and foreign armed groups, including Mai Mai groups, Democratic Liberation Forces of Rwanda (FDLR), Allied Democratic Forces (ADF), and the Lord's Resistance Army (LRA), whose atrocities against civilian and criminal activities have been widely documented.[96]

Significant clashes took place in 2008 between the Armed Forces of the Democratic Republic of the Congo (FARDC) and the National Congress for the Defence of the People (CNDP) in North Kivu, culminating with Laurent Nkunda and his CNDP troops entering Goma in October 2008.[97] A peace agreement was ultimately signed on March 23, 2009, an essential component of which was the integration of ex-CNDP members within the PNC and FARDC. Earlier, in 2008, the Peace, Security and Development Conference of North and South Kivu had already led to the Commitment Act (Act d'Engagement) of January 23, 2008.[98] While the 2009 agreement was only concluded with the CNDP, the Commitment Act, signed by Congolese Patriotic Resistance-Patriotic Armed Forces (PARECO/FAP), Mai-Mai Kifuafua, Mai-Mai Vurongo, Mai-Mai Mongol, Union des jeunes patriotes solidaires (UJPS), Mai-Mai Rwenzori, and Simba, provided for their integration into the FARDC.[99] As a result, members of other armed groups were also integrated into the FARDC.

The lack of vetting of members of these former armed groups may help to explain the indiscipline and human rights violations that have been widely attributed to the Congolese army, as in Kimia I, Kimia II, and Amani Leo operations. Indeed, integration has not been conditional on the assessment of former fighters' integrity or history of gross human rights violations or serious crimes.[100] Lack of basic training for former fighters may also help to explain violations.

Between 2008 and 2010, several military operations were launched to neutralize both national and foreign armed groups operating in the DRC. In the context of these

Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo addressed to the President of the Security Council," U.N. Doc. S/2009/603 (Nov. 23, 2009); U.N. Security Council, "Letter dated 15 November 2010 from the Chair of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo addressed to the President of the Security Council," U.N. Doc. S/2010/596 (Nov. 29, 2010); U.N. Security Council, "Letter dated 29 November 2011 from the Chair of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo addressed to the President of the Security Council," U.N. Doc. S/2011/738 (Dec. 2, 2011); U.N. Security Council, "Letter dated 12 November 2012 from the Chair of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo addressed to the President of the Security Council," U.N. Doc. S/2012/843 (Nov. 15, 2012); U.N. Security Council, "Letter dated 22 January 2014 from the Coordinator of the Group of Experts on the Democratic Republic of the Congo addressed to the President of the Security Council," U.N. Doc. S/2014/42 (Jan. 23, 2014).

96 See, generally, U.N. Joint Human Rights Office, "Final Report of the Fact-Finding Missions of the United Nations Joint Human Rights Office into the Mass Rapes and Other Human Rights Violations Committed by a Coalition of Armed Groups Along the Kbua-Mpofi Axis in Walikale Territory, North Kivu, from 30 July to 2 August 2010," 2011; U.N. Joint Human Rights Office, "Report on the Investigation Missions of the United Nations Joint Human Rights Office into the Mass Rapes and Other Human Rights Violations Committed in the Villages of Bushani and Kalambahiro, in Masisi Territory, North Kivu, on 31 December 2010 and 1 January 2011" (2011), 15; U.N. Joint Human Rights Office, "Report of the United Nations Joint Human Rights Office on Human Rights Violations Perpetrated by Armed Groups During Attacks on Villages in Ufamandu I and II, Nyamaboko I and II and Kibabi Groupements, Masisi Territory, North Kivu Province, Between April and September 2012" (2012); U.N. Joint Human Rights Office, "Report of the United Nations Joint Human Rights Office on Human Rights Violations Perpetrated by Soldiers of the Congolese Armed Forces and Combatants of the M23 in Goma and Sake, North Kivu Province, and In and Around Minova, South Kivu Province, from 15 November to 2 December 2012" (2013); Human Rights Watch, "Soldiers Who Rape, Commanders Who Condone: Sexual Violence and Military Reform in the Democratic Republic of Congo" (2009), www.hrw.org/reports/2009/07/16/soldiers-who-rape-commanders-who-condone; Human Rights Watch, "The Christmas Massacres: LRA Attacks on Civilians in Northern Congo" (2009), www.hrw.org/reports/2009/02/16/christmas-massacres; Human Rights Watch, "Trail of Death: LRA Atrocities in Northeastern Congo" (2010), www.hrw.org/reports/2010/03/29/trail-death

97 See International Crisis Group, "Congo: Five Priorities for a Peacebuilding Strategy" (2009), 3, www.crisisgroup.org/en/regions/africa/central-africa/dr-congo/150-congo-five-priorities-for-a-peacebuilding-strategy.aspx

98 Acte d'Engagement, Jan. 23, 2008 ["Commitment Act"], www1.rfi.fr/radiofr/images/097/Actedengagement_Goma080123.pdf

99 Ibid. art. 2.

100 See, generally, U.N. Office of the High Commissioner for Human Rights, "Rule-of-Law Tools for Post-Conflict States: Vetting: an operational framework" (2006), www.ohchr.org/Documents/Publications/RuleoflawVettingen.pdf

operations, particularly in the Kivus[101] and Orientale Province,[102] serious violations of human rights and international humanitarian law were allegedly committed by all parties.[103] Documented violations included attacks against civilians resulting from indiscipline and/or as a deliberate strategy to retaliate or punish local populations accused of providing support to the enemy; looting, torture, sexual and gender-based violence, large-scale killings, and other inhumane acts; as well as enlisting and conscripting children, forced labor, and sexual slavery.[104]

In April 2012, in light of the government's perceived unwillingness to implement the March 23, 2009 agreement, members of the ex-CNDP deserted the army to create the M23 rebel group.[105] The landscape of conflict in North Kivu and South Kivu changed dramatically with the outbreak of this rebellion.

Photo: M23 fighters loyal to Bosco Ntaganda run along the road towards Goma as Peacekeepers observed gathering of armed people North of the city, the 1st of March 2013. © MONUSCO/Sylvain Liechti

New armed groups were established and dormant groups reemerged to either support or resist M23. Seven months later, the M23, with the support of neighboring Rwanda and, to a lesser extent, Uganda, occupied the North Kivu provincial capital of Goma. To avoid further civilian casualties, MONUSCO surrendered the city to the rebels for 12 days. With international pressure mounting, M23 eventually relinquished control of Goma, withdrew to the outskirts of the city, and agreed to hold peace negotiations in Kampala, Uganda.

101 Operation Umoja Wetu ("Our Unity"), jointly launched by the FARDC and the Rwandan army in January 2009, lasted for almost 40 days and targeted the FDLR. It was followed by Operation Kimia II ("Calm"), jointly launched by FARDC and MONUC in March 2009, which lasted until January 2010 and also targeted the FDLR.
102 In December 2008, Operation Lightning Thunder was launched jointly by the DRC, Uganda, and South Sudan against LRA members in Orientale Province. Although the offensive weakened the LRA, it failed in its objective to apprehend the most senior LRA officials. In response, the LRA committed a series of atrocities against the population.
103 See Human Rights Watch, "You Will Be Punished: Attacks on Civilians in Eastern Congo" (2009), 11, www.hrw.org/reports/2009/12/14/you-will-be-punished; Oxfam International, "Waking the devil: the impact of forced disarmament on civilians in the Kivus" (2009), 2-3, www.oxfam.org/sites/www.oxfam.org/files/bn-waking-the-devi-drc-0907.pdf
104 See, generally, U.N. Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO), "Child Recruitment by Armed Groups in DRC From January 2012 to August 2013" (2013).
105 U.N. Security Council, "Letter dated 12 November 2012 from the Chair of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo addressed to the President of the Security Council," U.N. Doc. S/2012/843 (Nov. 15, 2012), 6-9; International Peace Information Service, "Mapping Conflict Motives: M23" (2012), 5–10, ipisresearch.be/publication/mapping-conflict-motives-m23/; Jason Stearns, Rift Valley Institute, "From CNDP to M23: The Evolution of an Armed Movement in Eastern Congo" (2012), 39-42, www.riftvalley.net/publication/cndp-m23#.VR4iM-FAclA; Jason Stearns, Judith Verweijen and Maria Eriksson Baaz, Rift Valley Institute, "The National Army and Armed Groups in the Eastern Congo: Untangling the Gordian Knot of Insecurity" (2013), 28–30, riftvalley.net/publication/national-army-and-armed-groups-eastern-congo#.VR4jd-FAclA

The international community launched a number of important initiatives to halt the escalating violence. In late February, 2013, 11 African states and 4 regional and international intergovernmental bodies signed the Peace, Security and Cooperation Framework for the DRC and the region. A month later, the UN Security Council authorized the deployment of a 3,000-person military force, the "Force Intervention Brigade," to the DRC.[106] A few days before the deployment of the Brigade, M23 suffered a serious internal crisis.

Its two leading military figures, Bosco Ntaganda and Sultani Makenga, had a major disagreement and took up arms to resolve their differences. Ntaganda fled, and in March 2013 he surrendered to the American embassy in Kigali, which transferred him to the ICC. He has since been indicted on 13 counts of war crimes and 5 counts of crimes against humanity.[107]

Meanwhile, in August 2013, the Brigade arrived in eastern DRC and joined the Congolese army to neutralize armed groups. The army defeated the M23 rebels three months later, and on December 12, 2013, the Congolese government and M23 signed three declarations, officially ending 20 months of rebellion.[108] The fate of most of the more than 1,000 ex-M23 rebels who fled to Rwanda and Uganda after the demise of the group remains unknown. More than 4,000 combatants from numerous other armed groups also surrendered after the M23's defeat to join the Congolese government's demobilization, disarmament, and reintegration (DDR) program. However, authorities have so far failed to implement a robust and effective DDR plan.[109]

Following the end of the M23 rebellion, there was a relative decline in attacks against civilians in areas formerly under M23's control. However, crimes continue to be committed by armed groups in areas outside the control of the FARDC and MONUSCO, including the FRPI in Ituri, Mai-Mai Cheka in North Kivu, and Mai-Mai Yakutumba in South Kivu. In 2014, the Congolese army and Force Intervention Brigade confronted a number of other armed groups, including ADF, APCLS, and Sheka.

It is in the context of instability that we can more accurately assess the DRC's judicial response to serious crimes and its limitations.

Judicial Response to International Crimes from 2009 to 2014

Between January 2009 and December 2014, judicial authorities opened 39 cases related to events that had occurred between 2002 and 2014 in the eastern provinces and districts of the DRC (Ituri, North Kivu, and South Kivu). This number was obtained through research and interviews with investigators, prosecutors, judges, lawyers, members of national and international NGOs, MONUSCO and UN personnel, and other justice stakeholders.

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106 U.N. Security Council, Resolution 2098, U.N. Doc. S/RES/2098 (6943rd meeting, Mar. 13, 2013), 6.
107 ICC, The Prosecutor v. Bosco Ntaganda, www.icc-cpi.int/en_menus/icc/situations%20and%20cases/situations/situation%20icc%200104/related%20cases/icc%200104%200206/Pages/icc%200104%200206.aspx
108 See Declaration of the Government of the Democratic Republic of the Congo at the End of the Kampala Talks (Dec. 12, 2013), www.sadc.int/files/6813/8718/4209/GOVT_DECLARATION_ENGLISH0001.pdf; Declaration of Commitments by the Movement of March 23 at the Conclusion of the Kampala Dialogue (Dec. 12, 2013), www.sadc.int/files/7013/8718/4213/M23_DECLARATION_ENGLSH0001.pdf; and Joint ICGLR-SADC Final Communiqué on the Kampala Dialogue (Dec. 12, 2013), www.sadc.int/files/8813/8718/4199/COMMUQUE_ENGLISH0001.pdf ["Nairobi Declarations"]. Ugandan President Yoweri Museveni (then chairperson of the International Conference on the Great Lakes Region) and Malawi President Joyce Banda (then chairperson of the Southern African Development Community), signed a statement announcing the end of the Kampala talks and called on both parties, in para. 8, to implement their commitments.
109 Even more seriously, over 100 demobilized men, women, and children died from starvation and disease in a remote military camp; see Human Rights Watch, "DR Congo: Surrendered Fighters Starve in Camp" (2014), www.hrw.org/news/2014/10/01/dr-congo-surrendered-fighters-starve-camp

These cases relate to facts that were qualified by military prosecutors and judges as international crimes and that were connected to an armed conflict or committed as part of a widespread or systematic attack against the civilian population.[110]

Military judicial authorities in South Kivu initiated twenty-two cases:[111] fourteen cases were attributed to FARDC (of which three were adjudicated in the first instance,[112] two are in appeal,[113] eight are still under investigation,[114] and one was interrupted);[115] three cases were attributed to foreign armed groups or FDLR elements (of which one was adjudicated in first instance,[116] one on appeal,[117] and one remains under investigation);[118] and five cases were attributed to domestic armed groups (including two cases attributed to former members of RCD, who became members of FARDC, that remain under investigation,[119] two cases against Mai-Mai group members—including one closed[120] [(classé sans suite)[121]] and one under investigation,[122] and one adjudicated case of acts attributed to an armed group created by Kyat Hend Dittman).[123]

In North Kivu during the same time period, the military courts initiated ten cases regarding serious crimes.[124] These comprised six cases attributed to FARDC, including three cases adjudicated by

110 Two important cases concerning crimes committed in Eastern DRC were not included in this compilation because the proceedings were not conducted in the jurisdiction of North Kivu, South Kivu, or Ituri. A delegation of the UN Security Council brought the case of General Kakwavu to the attention of the DRC President in May 2009, for crimes committed in Ituri in 2013. He was brought before the High Military Court in Kinshasa. See HMC, General Kakwavu (Nov. 7, 2014), RP 004 RMP 0343 ["Kakwavu case"]. The Kahwa case was initially brought before the TMG-Bunia in 2006, but was then appealed before the CMS-Kisangani and then brought before the HCM in 2014 for crimes committed in Ituri. See HMC, Kahwa (Aug. 13, 2014), RPA 023/06, RP 039/2006, RMP 227/PEN/2006 ["Kahwa case"]. See, also, U.N. Joint Human Rights Office, "Progress and obstacles in the fight against impunity for sexual violence in the Democratic Republic of the Congo, 9 April 2014, para. 41.

111 Two additional cases of serious crimes initiated before the military jurisdiction of South Kivu were not included in the Appendix due to a lack of sufficient information on the context and nature of the crimes: AMS-SK, Col. Gwigwi Busogi et al. (Jun. 5, 2013), RMP 1473/BKL/13 ["Gwigwi case"]; and AMS-SK, Lt. Col. Maro Ntumwa (Aug. 11, 2014), RMP 1539/BKL/2014 ["Maro case"].

112 CM-SK, Lt. Col. Bedi Mobuli Engangela, RP 083/14 RMP 1377/MTL/11, 15 December 2014 (Col. 106 case); CM-SK, Lt. Col. Balumisa Manasse et al., RP 038RMP 1427/NGG/2009 RMP 1280/MTL/09, 9 March 2011 (Balumisa case) ; CM-SK, Lt. Col. Kibibi Mutuare et al., RP 043/11RMP 1337/MTL/2011, 21 February 2011 (Fizi I/Baraka).

113 CM-SK, 1er sergent Christophe Kamona Manda et al, (7 November 2011) RPA 180 RP 0132/10 RMP 0933/KMC/10 (trial) RMP 0802/BMN/010 (appeal) (Lemera–Mulenge case) ; CM-SK, Slt. Kabala Mandumba, Emmanuel Ndahisaba et Donat Kasereka, (20 October 2013) RPA 230 RMP1868/KMC/11 (appeal) RP 708/12 RMP 1868/TBK/KMC/10 - 12 (trial) (Mupoke Market case).

114 AMS SK and AMG-Uvira, Lt. Col. Mukerenge (Jun. 21, 2010), RMP 1298/PEN/10 "[Mukerenge case"]; AMS SK, Commander Rupongo Rogatien John and Shaka Nyamusaraha (Oct. 25, 2011), RPM 1373/WAV/11 ["Kikozi case"]; AMS SK, Major Safari Kateyateya et al. (Sept. 30, 2013), RMP 2605/KK/2012 RMP 1486/BKL/13 ["Lwizi–FARDC case"]; AMS SK, Col. Sebimana et al. (Jun. 19, 2012), RMP 1421/BKL/12, ["Katalukulu case"]; AMS-SK, Maj. Mabiala (Aug. 26, 2013), RMP 1482/KK/13 ["Mirenzo case"]; AMS SK, Col. Ilunga Jean Jacques Birungurungu (Feb. 22, 2013), RMP1463/WAV/13/NDM/KK/2013 RMP 2678/KMC/12 ["Birungurungu case"]; AMS SK, Lt. Col Angali Mukumbwa et al. (Sept. 9, 2009), RMP 1245/MTL/09/Bukavu ["Lulingu case"]; AMS SK, Maj. Kayumba Nyenyere Venance et al. (Jun. 17, 2014), RMP 1526/BKL/2014 ["Mutarule case"].

115 AMS SK, Col. Kulimushi alias Kifaru (Jun. 24, 2011), RMP 1358/MTL/11 "[Fizi II, Nakiele case"]. While two investigation missions were led in the area and 121 victims were interviewed, doubts arose about the credibility of some of the testimonies. Therefore, the binvestigation was suspended. See, also, U.N. Security Council, "Letter dated 29 November 2011 from the Chair of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo addressed to the President of the Security Council," U.N. Doc. S/2011/738 (Dec. 2, 2011), para 641A.

116 TMG-BKV, Sabin Kizima Lenine, RP 702/11 RMP 1901/KMC/2010, 29 December 2014 (Sabin Kizima Lenine case).

117 MC SK, Maniraguha et al. (Oct. 29, 2011), RPA 0177 (Appeal) RP 275/09 521/10RMP 581/TBK/07 1673/KMC/10 (Trial) RP 275/09 ["Kazungu (Appeal) case"].

118 AMG Bukavu, AMG Uvira, Singabanza et al. (Jan. 23, 2012; Mar. 17, 2012), RMP 2304/KMC/2012 and 2180/IH/2304/KMC/2012 ["Singabanza Nzovu case"]

119 AMG Uvira, Lulinda and Lusenda, RMP 0940/KMC/2010 ["Lulinda and Lusenda case"]; AMS SK, Commander Shetani (Sept. 10, 2009), RCD, RMP1248/MTL/09 ["Kasika Carnage case"].

120 AMS SK, Ombeni Matayo (Apr. 5, 2012), RMP 1282/KM/09 ["Ombeni Matayo case"].

121 The legal basis for classé sans suite is art. 199 MJC; itcan be implicitly derived from the interpretation of art. 53 of Criminal Procedural Code of the DRC, Décret du 6 août 1959 portant Code de procédure pénale, entered into force on April 15, 1960, following the principle of prosecutorial discretion. It can, for instance, be invoked due to a lack of evidence.

122 AMG Uvira, Eben-Ezer, RMP 2128/MPL/12 ["Eben-Ezer case"].

123 MC SK, Kyat Hend Dittman et al. (Oct. 15, 2012), RP 036-039 RMP 1303/MTL/2010 1308/MTL/2010 ["Kyat Hend Dittman case"].

124 Five additional cases of serious crimes before the military jurisdiction of North Kivu were not included in Appendix for confidentiality matters, lack of sufficient information on the context and nature of the crimes committed, or lack of corroborated information on legal proceedings initiated: AMS OPS NK Maj. Bwete Landu et al. (Sept. 6, 2012), RMP 0155/MLS/09 ["Kasuho case"]; AMS OPS NK, Lukopfu-Kaniro, (no RMP available) ["Lukopfu/Kaniro case"]; Confidential case; Kimia II case (Jurisdiction and RMP not available); AMG Beni NK, Mbau, Kamango, Watalinga, Beni Territory, RMP1405/HKK/014 "[Mbau, Kamango, Watalinga case"].

the Military Operational Court (CMO)[125] and three cases under the investigation of the Auditorat Général Opérationnelle (AMO), with one of these cases also concerning members of the APCLS.[126] It also included one case before the CMO against elements of CHEKA and FDLR.[127] Cases under investigation comprise one against M23,[128] one against elements of Mai-Mai, Raia Mutomboki, and Nyatura groups,[129] and one against APCLS, Mai Mai CHEKA, and FDLR.[130] In total, two cases have been adjudicated, one case is pending before the CMO, and seven cases remain under investigation by the AMO. Since the CMO was established, all cases concerning international crimes in the jurisdiction of North Kivu have been directed to AMO and the COM. All cases involving serious crimes in South Kivu and Ituri have been dealt with by the Auditorat Militaire de Garnison (AMG), Military Garrison Tribunal (MGT), AM, and CM.

Table: Status of Cases of Serious Crimes Before Courts in Eastern DRC, 2009–2014

LOCATION	TOTAL NUMBER OF CASES	NUMBER OF CASES AGAINST FARDC	NUMBER OF CASES AGAINST FDLR	NUMBER OF CASES AGAINST FRPI	NUMBER OF CASES AGAINST MAI MAI	NUMBER OF CASES AGAINST OTHER ARMED GROUPS
South Kivu	22	14 3 adjudicated 2 in appeal 8 under inv. 1 interrupted	3 1 adjudicated 1 in appeal 1 under inv.	0	2 1 under inv. 1 closed	3 1 adjudicated 2 under inv.
North Kivu	10	6 3 adjudicated 3 under inv. (including 1 case also against APCLS)	1 Also against Mai Mai CHEKA	0	3 (3 under inv.: 1 against M23; 1 against elements of Mai Mai, Raia Mutomboku, and Nyatura groups; 1 against elements of APCLS, Mai Mai CHEKA, and FDLR)	
Ituri	7	1 1 under inv.	0	3 2 adjudicated 1 under inv.	3 3 adjudicated	0

In Ituri, seven cases were initiated for international crimes.[131] These include one case under investigation against FARDC;[132] three attributed to FRPI, including two adjudicated cases,[133]

125 MC OPS NK, Minova-Bweremana (May 5, 2014), RP 003/2013 RMP 0372/BBM/01 ["Minova case"]; MC OPS NK, Sub Lt. Salomon Bangala Urbain and Lubamba Kuyangisa (Aug. 19, 2014), RP 001/013 RMP 0364/BBM/13 ["Salomon case"]; MC OPS NK, Lt. Col. Birotsho Nzanzu Kossi et al. (Nov. 11, 2014), RP 019/014RMP 0412/BBM/014 ["Birotsho case"]
126 AMS OPS NK, Miriki, Bushalingwa and Kishonja, Lubero and Walikale Territories, RMP 026/2009 (Miriki/Lubero case); AMS OPS NK, Maj. Dario, Maj. Emmanuel Ndungutsi, Maj. Eustache, Col. Jonathan Balumisa Tchumaandall (Jan. 13, 2011), RMP 0236/MLS/2011 ["Bushani case"]; AMS OPS NK, Col. Mudahunga Safari, Col. Muhire et al. (Jul. 2, 2013), RMP 0041/MA/2013RMP 0362/BBM/2013 ["Kitchanga case"]. The Kitchanga case concerns both FARDC and members of the APCLS.
127 MC OPS NK, Lt. Col. Mayele et al., RP 055/2011 RMP 0223/MLS/10 ["Kibua-Mpofi/Walikale case"]
128 AMS OPS NK, Col Makenga Sultani et al. (Jun. 27, 2012), RMP 0297/BBM/2012 ["M23 case"].
129 AMS OPS NK, Ufamandu I, Ufamandu II, and Kibiti (Jul. 12, 2013), RMP 0363/BBM/12 ["Ufamandu/Masisi case"].
130 AMS OPS NK, Janvier Buingo Karairi (APCLS) and Ntabo Ntaberi Sheka (NDC) (Aug. 15, 2011) RMP 0261/MLS/11 ["Mutongo case"].
131 Two additional cases of serious crimes initiated before the military jurisdiction of South Kivu were not included in the Appendix due to a lack of sufficient information on the context and nature of the crimes committed: AMG Ituri (Apr. 29, 2014), RMP 2542/YBK/14; AMG Ituri, Salumu Bin Amisi (PNC Officer) and Lunzolo Mayitiki (civil) (Jun. 14, 2012), RMP 1810/KNG/12.
132 AMG Ituri, Lt. Col. Simon Boande Belinga, Maj. Golf Terengbana Moyanzi, Capt. Foudre Grégoire Batafe et al. (Jan. 2, 2014), RMP 2456/KNG/013 ["Sud Irumu FARDC case"].
133 MGT Bunia, Kakado Barnaba Yonga Tshopena (Jul. 9, 2010), RP 071/09, 009/010 074/010 RMP 885/EAM/08 RMP

and one under investigation;[134] and 3 adjudicated cases against Mai-Mai Simba, including 1 at first instance,[135] and 2 at the appellate level.[136]

Although many factors influence prosecutions in eastern DRC, the capacity of the Congolese judicial system and the support it receives from external partners remain central. An analysis of open investigations in Congolese jurisdictions illustrates these external influences on the national judicial response to international crimes.

Capacity of the Judicial System and Level of Support Required

With current limited capacity, the Congolese judicial system greatly relies on partners to initiate and lead investigations and prosecutions of international crimes. This dependence stems primarily from reliance on external information, lack of logistical and financial autonomy, lack of organizational oversight and incentives, and lack of specialized technical capacities and prosecutorial strategy.

Reliance on External Information

Several interviewees emphasized that investigations of international crimes are consistently precipitated by initial information and cases brought to the attention of the military justice by MONUSCO and/or national or international human rights organizations. Information shared by external partners was repeatedly described by judicial authorities as the main triggers for judicial investigations.

The lack of accessibility by national authorities to crime scenes and locations—especially in remote areas controlled by armed groups—partly explains this situation. Consequently, where partners like MONUSCO are unable to gather information, little information is transmitted to relevant investigative and prosecutorial authorities and a limited number of proceedings are initiated. In several cases, lack of accessibility and security were critical impediments to the continuation of investigations (as in the Cheka,[137] Kimia II,[138] and Ufamandu cases[139]), sometimes this even leading to the closure of cases (as in the Fizi II case[140]). The difficulty of arresting alleged perpetrators in remote areas (particularly in areas where Mai-Mai Sheka-NDC, Raia Mutomboki, ADF Malu, and APCLS groups operate) provides a further obstacle, as the judiciary has less incentive to investigate crimes committed where there are minimal chances of actually detaining a defendant.

1141/LZA/010 RMP 1219/LZA/010 RMP 1238/LZA/010 ["Kakado case"]; MGT Ituri, Irizo Muzungu Barakiseni and Baluku Utugba Bahati, RP 175/12 RMP 1699/MML/012RMP 1699/KNG/12RMP 1703/KNG/12 ["Cobra Matata case"].
134 AMG Ituri, FRPI of Cobra Matata-FARDC (Mar. 9, 2012), RMP 2778/YBK/014 ["FRPI of Cobra Matata"].
135 MC Kisangani, Moussa Oredi, Mumbere Makasi, Gaston Awawungo, Delphin Mumbere Mulimirwa alias Le Blanc, Kambale Kahese, Mumbere Sumbadede, Sébastien Katembo Mukandirwa (Aug. 11, 2012), RPA 274/013, GMT Ituri, RP 153/012 RMP 1818/KNG/13, RP 153/012; MGT Ituri, Morgan Sadala (Oct. 18, 2012), RP 155/012 RMP 1915/KNG/12 ["Morgan/Epulu Reserve Carnage case"]; MC Kisangani, Paul Morgan Sadala, Papy Masumbuko, Philipo Tegere, Munbere Emmanuel, Katembo Mastaki et al. (Apr. 16, 2014), RPA 341/14, MGT Ituri, RP 246/13, RMP 2030/KNG/012 ["Mambasa I (Paul Sadala alias Morgan) case"].
136 MC Kisangani, Moussa Oredi, Mumbere Makasi, Gaston Awawungo, Delphin Mumbere Mulimirwa alias Le Blanc, Kambale Kahese, Mumbere Sumbadede, Sébastien Katembo Mukandirwa (Aug. 11, 2012), RPA 274/013, GMT Ituri, RP 153/012 RMP 1818/KNG/13, RP 153/012; MGT Ituri, Morgan Sadala (Oct. 18, 2012), RP 155/012 RMP 1915/KNG/12 ["Morgan/Epulu Reserve Carnage case"]; MC Kisangani, Paul Morgan Sadala, Papy Masumbuko, Philipo Tegere, Munbere Emmanuel, Katembo Mastaki et al. (Apr. 16, 2014), RPA 341/14, MGT Ituri, RP 246/13, RMP 2030/KNG/012 ["Mambasa II (Paul Sadala alias Morgan) case"].
137 AMS OPS NK, Janvier Buingo Karairi (APCLS) and Ntabo Ntaberi Sheka (NDC) (Aug. 15, 2011), RMP 0261/MLS/11, ["Mutongo case"]; AMS OPS NK, Col. Janvier (APCLS), Col. Moyo Rabu, FDC's Chief, Raia Mutomboki's Chief, and FARDC members (Nov. 14, 2012), RMP 0337/BBM/12; MC OPS NK, Mai Mai Sheka, Lt. Col. Mayele et al., RP 055/2011 RMP 0223/MLS/10 ["Kibua-Mpofi/Walikale case"].
138 AMS OPS NK, Ufamandu I, Ufamandu II, and Kibiti (Jul. 12, 2013), RMP 0363/BBM/12 ["Ufamandu/Masisi case"].
139 AMS SK, Col. Kulimushi alias Kifaru (Jun. 24, 2011), RMP 1358/MTL/11 ["Fizi II, Nakiele case"].
140 MC SK, Maniraguha et al. (Oct. 29, 2011), RPA 0177 (Appeal) RP 275/09 521/10 RMP 581/TBK/07 1673/KMC/10 (Trial) RP 275/09 ["Kazungu (Appeal) case"]; AMS OPS NK, Janvier Buingo Karairi (APCLS) and Ntabo Ntaberi Sheka (NDC) (Aug. 15, 2011), RMP 0261/MLS/11 ["Mutongo case"]; AMS OPS NK, Col. Janvier (APCLS), Col. Moyo Rabu, FDC's Chief, Raia Mutomboki's Chief, and FARDC members (Nov. 14, 2012), RMP 0337/BBM/12; MC OPS NK, Mai Mai Sheka, Lt. Col. Mayele et al., RP 055/2011 RMP 0223/MLS/10 ["Kibua-Mpofi/Walikale case"]..

Investigating crimes allegedly committed by foreign armed groups is immensely difficult. Judicial authorities indicated that challenges included difficulty accessing the sites where crimes were committed, poor reporting and recording of evidence, and the inability to identify perpetrators. As a result, a very low number of proceedings have been initiated against these groups. For example, there are very few cases against FDLR officials, despite their well-documented involvement in the commission of many atrocities. Indeed, only four cases were opened against FDLR members in South Kivu and North Kivu between 2009 and 2014.[141] Similarly, the absence of international partners in areas such as the Uele Districts of Orientale Province, where the LRA has been active, may partially explain the lack of proceedings, despite the large number of well-documented atrocities by the LRA.

One should note, however, that information collected during human rights investigations by MONUSCO and other agencies is not consistently shared with, or disclosed to, domestic judicial authorities. This failure is often explained as a precaution and blamed on the lack of an adequate communication and information management system within the military judiciary. Some partners are unwilling to share reports to protect the confidentiality of their sources in the absence of such a system.

For instance, interviewees raised concerns about information that would incriminate perpetrators of child recruitment, where the absence of guarantees of confidentiality or adequate preparation by the Congolese party prevent any sharing. This situation, however, has led to missed opportunities to support and positively contribute to investigations of serious crimes. Judicial actors interviewed indicated a lack of awareness of the investigative and reporting work carried out by different NGOs and UN agencies. For example, a military investigator noted that he only became aware of the existence of a UN report documenting the very criminal acts that he was investigating during a training workshop organized by an international organization.

In some instances, this situation reflects the lethargy of the Military Prosecutor's Office. Instead of relying on partners to bring cases to it, the military prosecutor should play a proactive role in investigating cases. Consequently, some interviewees noted that the active work of the international community might have "allowed" domestic authorities to pass up their natural leadership role. By playing the leading role in the identification and documentation of cases of serious crimes, international partners have replaced, in some ways, the Congolese state in its primary functions.

One should note that cases have also been initiated following the arrest of alleged perpetrators of serious crimes by military commanders (as in the Epulu Reserve[142] and Mambasa I cases[143]) or by the civilian population (as in the Kuzungu[144] and Singabanza[145]). In these situations, cases may first be referred to the Military Prosecutor's Office, which would then inform external partners of the case. At this stage, as described below, the investigation still depends on the logistical and financial support of partners. For instance, after the arrests of Colonel 106 and Kazungu, external partners led or facilitated cautious investigations in remote and insecure areas where violations had been committed.

141 MC Kisangani, Paul Morgan Sadala, Papy Masumbuko, Philipo Tegere, Munbere Emmanuel, Katembo Mastaki et al. (Apr. 16, 2014), RPA 341/14, GMT Ituri, RP 246/13, RMP 2030/KNG/012 ["Mambasa I (Paul Sadala alias Morgan) case"]..
142 MC Kisangani, Moussa Oredi, Mumbere Makasi, Gaston Awawungo, Delphin Mumbere Mulimirwa alias Le Blanc, Kambale Kahese, Mumbere Sumbadede, Sébastien Katembo Mukandirwa (Aug. 11, 2012), RPA 274/013, GMT Ituri (Aug. 11, 2012), RP 153/012 RMP 1818/KNG/13 RP 153/012; MGT Ituri, Morgan Sadala (Oct. 18, 2012), RP 155/012 RMP 1915/KNG/12 ["Morgan/Epulu Reserve Carnage case"]
143 TMG – ITURI, RP 246/13, RMP 2030/KNG/012, 16 April 2014 (Mambasa I (Paul SADALA alias Morgan et al.).
144 MC SK, Maniraguha et al. (Oct. 29, 2011), RPA 0177 (Appeal) RP 275/09 521/10 RMP 581/TBK/07 1673/KMC/10 (Trial) RP 275/09 ["Kazungu (Appeal) case"].
145 AMG Bukavu, AMG Uvira, Singabanza et al. (Jan. 23, 2012; Mar. 17, 2012), RMP 2304/KMC/2012 2180/IH/2304/KMC/2012 ["Singabanza Nzovu case"].

Logistical and Financial Support for Investigations

Beyond sharing preliminary information, the investigative process also benefits from, and often depends on, logistical and financial support from external partners. When an investigation is opened or a trial must be conducted outside of the Court's premises (audience foraine),[146] the Military Prosecutor's Office typically submits a request for support to the Prosecution Support Cell, with a copy to relevant stakeholders, notably international partners [such as United Nations Development Programme (UNDP), Lawyers Without Borders (ASF), American Bar Association (ABA), and United Nations Joint Human Rights Office (UNJHRO)] and to provincial authorities.

These requests are examined at stakeholder coordination meetings, where logistical and financial needs are identified, budgeted, and covered by different partners.

Congolese judicial institutions have extremely limited resources to cover the costs of investigations and prosecutions. Indeed, the Congolese state has not provided the essential resources needed by military courts to undertake key actions in the investigation of cases, including paying for office supplies, transport, and communication.

As a result, UNJHRO and NGOs that represent victims as civil parties during trials (such as ASF and ABA) have consistently assumed the preliminary identification of victims and witnesses and logistical arrangements for interviews. Logistics and expenses related to both investigations and mobile trials (such as transport and per diems for magistrates; per diem and judicial fees of legal representatives, victims and witness protection measures; and transport and transfer of accused and convicted persons) are also typically supported and funded by stakeholders.

Congolese military bodies have received substantial financial and technical support from various partners to conduct investigations and trials.[147] From January 2009 to December 2014, several projects and initiatives were introduced to support Congolese national judicial authorities. MONUSCO launched two initiatives: the Joint Investigations Teams, introduced in 2009,[148] and the Prosecution Support Cells, introduced in 2010.[149] Beyond

146 In the DRC, audience foraine refers to hearings or trials that are held outside the facilities of the courts or tribunals, generally in remote areas, when deemed necessary. Such sessions require resources to cover the personnel needs, including travel, for the sessions. Loi No 023/2002 of DRC on the Military Judicial Code (Loi portant Code judiciaire militaire), November 18, 2002 ["MJC (2002)"] provides the legal basis for these mobile trials to be held by the military judiciary. Article 7 states: "En temps de guerre, la Haute Cour Militaire tient des chambres foraines en zones opérationnelles" ["In times of war, the High Military Court (HCM) holds mobile chambers in operational zones"]; art. 13 provides that "La Cour Militaire peut se réunir en tous lieux de son ressort. Dans les circonstances exceptionnelles, le siège de la Cour Militaire peut être fixé en un autre lieu du ressort, par arrêté du Ministre de la Défense" ["The Military Court can sit in all places falling under its jurisdiction. In exceptional circumstances, it can it sit outside its jurisdiction, by order of the Minister of Defence"]; art. 18 provides that "En cas de guerre ou dans toutes autres circonstances exceptionnelles de nature à mettre en péril la vie de la Nation, notamment les menaces de guerre, de rébellion ou d'insurrection armées, il est établi dans les zones d'opération de guerre, des Cours Militaires opérationnelles qui accompagnent les fractions de l'armée en opération. L'implantation des Cours Militaires Opérationnelles est décidée par le Président de la République" ["In times of war or other exceptional circumstances likely to endanger the life of the Nation, including threats of war, rebellion or armed insurrection, Military Courts are to be established in the war operation zones to accompany fractions of the military operation."]. Loi organique No 13/011-B of DRC on the Organization, Functioning and Jurisdiction of the Courts (Loi portant organisation, fonctionnement et compétences des juridictions de l'ordre judiciaire), April 11, 2013, www.leganet.cd/Legislation/Droit%20Judiciaire/LOI.13.011.11.04.2013.htm ["LOJC"], art. 45–47 provides for audiences foraines for the civilian jurisdiction.

147 A large proportion of trials involving international crimes are held in mobile courts, usually located where the crimes were committed, to bring justice closer to the victims. See art. 67 of Loi No 82-020 of DRC on the Code of the organization and jurisdiction of courts (Loi portant Code de l'organisation et de la compétence judiciaires), March 31, 1982, www.leganet.cd/Legislation/Droit%20Judiciaire/OL.31.03.82.n.82.020.htm. These mobile courts are financed exclusively by external support. For a lengthier discussion on mobile courts, see Open Society Initiative for Southern Africa, "Helping to combat impunity for sexual crimes in DRC: An evaluation of the mobile gender justice courts" (2012).

148 U.N. Security Council, Resolution 1925, U.N. Doc. S/RES/1925 (6324th meeting, May 28, 2010), para. 12(f).

149 The Prosecution Support Cells were mandated by U.N. Security Council, Resolution 1925, U.N. Doc. S/RES/1925 (6324th meeting, May 28, 2010), para. 12(d). See the text box for more information on PSC. A Memorandum of Understanding was signed between MONUSCO and the Government of the DRC, represented by MDNAC, on

providing logistical support, these initiatives aim to improve the technical quality of investigations and judicial proceedings.

Originally established by the UNJHRO, the Joint Investigation Teams support investigation missions initiated by national authorities. As explained above, the Prosecution Support Cells respond to specific support requests from judicial authorities, as regulated by the Memorandum of Understanding between the Ministry of Defense and Former Combatants, and MONUSCO (see text box below).

These initiatives were designed to respond to slightly different needs. Joint Investigations Teams provide technical expertise and support to investigations of serious violations of human rights, while the Prosecution Support Cells provide international specialized expertise to judicial investigations and aim to transfer competencies to national judicial investigative teams. While contributions from both groups are acknowledged by the DRC, the Joint Investigations Teams are regarded as more effective (see text box below). Through specific projects, capacity-building support has also been provided by organizations such as UNJHRO, UNDP, ABA, and ASF.

In reality, as noted by several interviewees, the role of partners goes well beyond providing financial and logistical support. Since 2010, partners in the DRC have established working groups that meet regularly to coordinate and support initiatives, discuss pending cases, and identify actions that need to be taken to advance specific judicial processes.

These are the provincial Coordination Groups (specifically, Task Force Justice International, in South Kivu; Cadre de Concertation, in North Kivu; and Cluster Rule of Law, in Oriental Province). They are led by the Prosecution Support Cells that bring together partners such as UNJHRO, UNDP, ASF, ABA, RCN Justice & Démocratie, Physicians for Human Rights, ICTJ, and TRIAL, as well as representatives of military magistrates. These groups not only coordinate financial and logistical support, but also aim to facilitate and maintain direct exchanges with judicial authorities, working as an oversight mechanism and attempting to prompt action.

Lack of Organizational Oversight or Incentives and Capacities to Investigate Complex Crimes

The lack of organizational oversight in the national judiciary has undermined professional competence and the quality of performance at all levels of Congolese judicial institutions. The absence of a system of organizational incentives and oversight has been detrimental to professional motivation and morale, and has contributed to the judicial system's reliance on support from partners. As stated by several judicial authorities, there are no compensation or discipline mechanisms that would potentially encourage or reward due diligence.

Judicial authorities are often intimidated by outside parties, yet they do not benefit from the support of their military superiors to obtain necessary security for themselves or their family. (Magistrates are often unable to obtain cooperation from relevant military regions to detain or arrest individuals or for mere protection.)

These risks are only made more serious by the dysfunctional penitentiary system, where there are regular riots and prisoner escapes, including of inmates convicted of serious crimes (such as the escape of Sub-Lt Kabala Mandumba and Kyat Hend Dittman from Bukavu prison).

December 19, 2011. This provided the legal basis for cooperation with the military justice.

A Reflection on Technical Support from MONUSCO

MONUSCO's mandate requires it to "[s]upport national and international efforts to bring perpetrators to justice, including by establishing Prosecution Support Cells to assist the FARDC military justice authorities in prosecuting persons arrested by the FARDC." This is a pioneering initiative, a peacekeeping mission with the promise and hope of making an effective contribution to the fight against impunity.

The Prosecution Support Cells were established in 2011 through a Memorandum of Understanding between the Ministry of Defense and former combatants and MONUSCO. Its aim is "to support investigations and prosecutions relating to the commission of serious crimes within the jurisdiction of military courts, including crimes listed in the Rome Statute." The cells support may encompass logistical support, specialized training, practical advice, guidance, and technical expertise. Action by the cells requires a request of support from the national party. According to the memorandum, the cells may offer direct support; however, the parties have thus far not made use of this option. Eight military jurisdictions have functional cells: Beni, Bukavu, Bunia, Goma, Kalemie, Kindu, Kisangani, and Lubumbashi.

While implementation was intended to address technical gaps in investigating cases of serious crimes and support, through active assistance from experts, it is difficult to assess its achievements. In September 2013, an independent evaluation noted that the impact of the project is limited, due to significant delays and inappropriate recruitment of staff who do not speak French or another local language. (This problem has since been addressed.) In addition, geographical separation between cell staff and the Congolese magistrates who require the assistance reduces opportunities for capacity building. It was also reported that the precise contribution made to capacity building is unclear (see Peace Consolidation Fund in the DRC - External Evaluation of the implementation of projects, 25-26, 34).

The majority of the experts recruited to serve on the cells came directly from national courts, where, in most cases, they had no direct experience with international crimes. As stated by several actors in the field, although these individuals are experts in their respective national laws, they do not have particular expertise in investigating mass crimes, and they have limited knowledge of international humanitarian or criminal law. Further, NGOs and partners noted that cell experts are not particularly knowledgeable about the context of the conflict and demonstrate, in general, little initiative to familiarize themselves with cases beyond their requested contribution.

When asked about the contribution made by the cells to ongoing investigations, judges referred exclusively to the logistical support for organizing missions and did not refer at all to any technical support. From the cells' perspective, many of their members who were interviewed by ICTJ for this report noted an initial lack of confidence from Congolese judicial actors.

Under the previous MONUC configuration, the UN Security Council in 2004 had instructed the mission to cooperate with efforts to ensure that those responsible for serious violations of human rights and international humanitarian law were brought to justice (S/RES/1565, October 1, 2004). Thus in 2009, the UNJHRO established the Joint Investigations Teams to support the Congolese government to fight impunity for violations of human rights "by ensuring that investigations of judicial authorities are carried out in compliance with the protection of victims and witnesses, as well as the sources and human rights defenders." Teams were organized with the participation of the office of the military prosecutor and relevant MONUC/MONUSCO units (such as UNJHRO human rights officers, child protection officers, and fight against sexual violence officers). The teams were intended to support cases of human rights violations based on certain criteria: the number of victims; the systematic character of violations; the targeting of individuals because of their gender, social, ethnic, or religious background; and the prominence or seniority of the perpetrators involved. UNJHRO is comprised of staff with expertise in human rights and international humanitarian law and a good understanding of the dynamics of the conflict (including familiarity with armed groups and their leaders). Therefore, they seem to be in a unique position to support authorities in investigating and prosecuting serious crimes. By the nature of its mandate, which includes investigating and documenting serious human rights violations, UNJHRO is among the first units to access information. The role of Joint Investigations Teams is limited to assisting auditors during field missions and does not involve accessing prosecution evidence (unlike the Prosecution Support Cells, which may, under the MoU, request access to case information).

Dysfunction in the military jurisdiction has contributed to a "culture of lethargy." Judicial actors feel allowed to perform the minimum amount of tasks required to secure their salaries, which discourages them from playing the proactive role that their duty requires.

Lack of Specialized Technical Capacities and Prosecutorial Strategy

While external partners and international donors have made important investments in training staff and building the capacity of the national judiciary, the ability of national actors to investigate and prosecute complex crimes remains insufficient. National investigations have continually focused on isolated events, without linking these to broader, well-documented criminal patterns.

Cases are built around specific individuals who participated in or directed a well-defined event, but there is a failure to look at relevant hierarchies, chains of command, and networks to which these individuals belong. Although prosecution of a low-level perpetrator may eventually lead to the punishment of the person most directly responsible for a specific attack, the true criminal nature of the associated organization is never exposed, and the accurate context of the violence remains obscured.

Problematically, investigators and military prosecutors are, in fact, not trained to deal properly with proceedings of this nature. According to one judicial actor:

> When you investigate superiors beyond the direct perpetrator, you need to know how to look beyond people who shoot or rape. You must even look beyond the commander or highest graded person. You must look for connections that are not always obvious. We don't have the resources to discover it.

The current judicial process in the DRC does not follow a comprehensive prosecutorial strategy; investigations are initiated on an ad hoc basis after information is shared by external partners or after the arrest of perpetrators of serious crimes.

Bearing in mind the different priorities of funders, international partners, and media that influence the activities supported by international actors in the DRC, these dynamics have led to a disproportionate number of cases involving sexual violence (26 out of 39 cases compiled by ICTJ include charges of rape amounting to an international crime, see Appendix) as compare to other serious crimes reported.

Between 2009 and 2014, no investigations were initiated into other widely documented serious crimes committed in eastern DRC, such as recruitment of child soldiers and pillaging of natural resources.[150]

While the UN Mapping Rreport presents an important record of crimes committed between 1993 and 2003, information on crimes committed between 2003 and 2014 still needs to be collected in a systematic way. Indeed, for this period, international crimes committed in eastern DRC have not been subject to a mapping exercise or a comprehensive data collection process. Neither the Congolese judiciary nor the executive branch has this data. The factual record of international crimes is, therefore, unknown. Yet, an effective prosecutorial strategy that enables an appropriate judicial response to international crimes cannot be reasonably designed without the results of such a mapping exercise. The national

150 For example, the UN identified 910 children who were recruited and used in 2013 by armed groups, primarily Mai-Mai groups (297 children) and Nyatura (338 children). See U.N. General Assembly and Security Council, "Children and armed conflict: Report of the Secretary-General," U.N. Doc. A/68/878–S/2014/339 (68th session, 69th year, May 15, 2014), para 59. On the pillage of natural resources by armed groups in Eastern DRC, see, for example, U.N. Security Council, "Letter dated 22 January 2014 from the Coordinator of the Group of Experts on the Democratic Republic of the Congo addressed to the President of the Security Council," U.N. Doc. S/2014/42 (Jan. 23, 2014), para. 165–169.

judicial response to international crimes can only be properly assessed in comparison with comprehensive data on the crimes committed throughout the DRC.

The absence of a mapping of international crimes committed from 2003-2014 and the lack of a prosecutorial strategy, worsened by a lack of specialized technical skills, undermine the national judicial response to serious crimes.

Being unable to address patterns of violations, tackle chains of command, or make links between armed actors and groups providing them with financial and political support prevents the state from making a strategic attempt to dismantle those networks that support the perpetration of crimes.[151] If a strategy were adopted, it would increase the leverage of the Congolese judiciary to prioritize cases, overcome ad hoc approaches, resist external pressure, and facilitate national ownership of the initiation of cases.

Analysis of Open Investigations: External Influences and Judicial Response to Atrocities

In addition to institutional and capacity obstacles, a host of domestic, regional, and international interfering factors influence whether particular incidents are successfully investigated and adjudicated. Despite significant international pressure and assistance, the national judicial response to serious crimes remains very limited when compared to the number of atrocities documented in eastern DRC. Representatives of NGOs, UN officials, and judicial actors repeatedly observed that most crimes are left uninvestigated and most perpetrators are never brought to justice. As explained by an international NGO worker interviewed by ICTJ:

> If there is an interest to conclude the investigation and refer the case to the court—either for internal political reasons or because of the media coverage of events or international pressure—then the proceedings will go quickly. Otherwise, the case is opened, the first acts are carried out, and then it falls into oblivion until another case gains more attention.

Despite the magnitude of crimes allegedly committed by FARDC, only a few cases concerning FARDC soldiers have been prosecuted. A high number of these cases have stalled, although the perpetrators were under national command and, thus, easily identifiable. The non-cooperation of military and/or commanders at the highest levels, who refuse to surrender soldiers, often explains the failure of these proceedings.[152] For instance, in the case of Lt. Col. Balumisa, an alleged political alliance between the commanders and the accused persons resulted in the arrest of only 3 out of 11 accused FARDC members. This was despite repeated requests from the Military Prosector's Office and the court.[153] Eight others were condemned in abstentia. (Again, see the Bushani Case below.) However, one should note that the discrepancy between cases that are documented and allegedly committed by rebel armed groups is, as noted above, even more serious.

There have been other challenges in investigating and prosecuting members of foreign armed groups, such as the CNDP and M23. Notwithstanding the DRC's apparent political willingness to prosecute certain individuals and Rwanda's expressed commitment to

151 U.N. Human Rights Council, "Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff," U.N. Doc. A/HRC/27/56 (27th session, Aug. 27, 2014), para 72.
152 For instance, in the Mupoke case, the MGT of Bukavu underlined the lack of willingness of military hierarchy to assist the justice system, noting that an accused had been transferred from South to North Kivu: "Le Tribunal denote que la hiérarchie militaire dans ce cas sous analyse n'a pas collaboré avec la justice de manière transparente" ["The tribunal notes that the military hierarchy in this case has not collaborated with the judicial institutions in a transparent way"]. See MC SK, S-Lt. Kabala Mandumba, Emmanuel Ndahisaba and Donat Kasereka (Oct. 20, 2013), RP 708/12 RMP 1868/TBK/KMC/10-12 (Trial), RPA 230 RMP 1868/KMC/11 (Appeal) "[Mupoke Market case"].
153 MC SK, Lt. Col. Balumisa Manasse et al. (Mar. 9, 2011), RP 038/RMP 1427/NGG/2009 RMP 1280/MTL/09 ["Balumisa case"]. See, also, AMS OPS NK, Maj. Dario, Maj. Emmanuel Ndungutsi, Maj. Eustache, Col. Jonathan Balumisa Tchumaandall (Jan. 13, 2011), RMP 0236/MLS/2011 ["Bushani case"].

Photo: In a Goma courtroom, 39 Congolese soldiers stand trial for rape in the Minova trial (Elaisha Stokes/ GlobalPost)

cooperate, pursuant to the Framework Agreement, Rwanda is yet to provide the necessary judicial cooperation to promote accountability.[154] The DRC has issued four extradition requests (for Innocent Zimurinda, Baudouin Ngaruye, Eric Badege, and Jean-Marie Runiga) and transmitted them to the Rwandan government in July 2013. The Congolese military prosecutor, in January 2014, issued a further 13 arrest warrants for former M23 members for crimes committed in Rutshuru between June and August 2012. None of these alleged perpetrators has been arrested.[155] Judicial authorities in DRC, however, have at least recognized that the continued existence of the death penalty does create one obstacle to extradition. Abolishing the death penalty, even though there is now a moratorium, would help to remove at least one barrier.[156]

Progress and Weaknesses of Current Response

Five cases exemplify the progress and weakness of the Congolese judicial response to serious crimes: 1) the Fizi I Case; 2) the Minova Case; 3) Walikale Case; 4) Bushani Case; and 5) Cobra Matata Case.

The Fizi I case concerns an attack launched in Baraka (in Fizi, South Kivu) by a group of dissident FARDC members as part of the Amani Leo Operation in 2011. Civilians were captured, beaten, stabbed, and detained; dozens of women were raped; and shops were destroyed and pillaged.

154 Judicial cooperation is an integral part of the Addis Ababa Agreement, which provides, at art. 5, that signatory states of the region shall act "[t]o facilitate the administration of justice through judicial cooperation within the region" and shall "neither harbour nor provide protection of any kind to persons accused of war crimes, crimes against humanity, acts of genocide or crimes of aggression, or persons falling under the United Nations sanctions regime." Concerning the implementation of the commitments pledged in this Framework, see U.N. Security Council, "Report of the Secretary-General on the implementation of the Peace, Security and Cooperation Framework for the Democratic Republic of the Congo and the region," U.N. Doc. S/2014/153 (March 5, 2014), para. 44–45, in which the Secretary-General urges "Heads of State in the region to address the question of judicial cooperation and accountability as a matter of utmost priority and ensure that people suspected of committing heinous crimes and serious human rights violations are held accountable" and calls on countries of the region to "take appropriate actions against persons falling under the United Nations sanctions regime."
155 AMS OPS NK, Col Makenga Sultani et al. (Jun. 27, 2012), RMP 0297/BBM/2012 ["M23 Rutshuru case"]; U.N. Joint Human Rights Office, "Progress and Obstacles in the Fight Against Impunity for Sexual Violence in the Democratic Republic of the Congo" (2014), para. 30.
156 Also, see Human Rights Watch, "DR Congo: Letter to President Joseph Kabila on Prosecuting M23 Leaders and Others for Serious Abuses" (2014), www.hrw.org/news/2014/01/29/dr-congo-letter-president-joseph-kabila-prosecuting-m23-leaders-and-others-serious-a

Bweremana-Minova Case

In November 2012, following the advance of M23 towards Goma, different units of the FARDC committed arbitrary executions, abuse, and pillaging along the Bweremana-Minova road, which connects North and South Kivu. Over 130 women (including 33 minors) were victims of sexual violence. Among the alleged perpetrators are members of the 391st FARDC unit. After it was learned that one of the FARDC units that appeared to have been involved in the crimes was trained by the U.S. military, the case received significant international attention and the national authorities responded quickly.

In early December 2012, the Superior Military Prosecutor of South Kivu, and later the Superior Military Prosecutor of North Kivu, opened criminal investigations into alleged violations. With the assistance of the Prosecution Support Cell, UNJHRO, and several NGOs, separate investigation missions were organized in the two provinces. A commission requested that the FARDC hand over the accused, but the military hierarchy was slow to respond. The international community showed great concern over the slowness of the procedure and the lack of action by DRC authorities, especially against senior officers allegedly involved in the commission of the crimes who continued to serve in the FARDC (despite the official announcement that 12 soldiers were suspended). UN Security Council resolutions demanded justice and the punishment of the various officials. The case was only brought to trial after the direct intervention of the Military General Prosecutor.

On November 11, 2013, 39 members of the FARDC were indicted, including 15 officers, on charges of war crimes (pillage and rape) and the disobeying of orders. In total, 310 victims and witnesses were interviewed as part of investigations, including 105 victims in North Kivu and 205 victims in South Kivu, with the assistance of ASF and ABA.

The low quality of the investigations, in the opinion of several respondents, jeopardized the efficiency of justice in the case. Investigations were conducted by two military prosecution offices in parallel, without effective coordination. The final investigation file that was transmitted to court contained just a few short interviews of victims and the accused (not in their entirety). It did not clearly indicate the place where crimes had been allegedly committed (e.g., no map of the place of the crimes is available) and the decision referring the cases for trial only labelled the offenses without providing further details. Further, the prosecution failed to collect forensic evidence of sexual violence assaults.

Congolese judicial authorities decided to try the case in front of the OMC; however, its decisions cannot be appealed (Ordonnance n° 08/003 portant implantation d'une Cour militaire opérationnelle, January 9, 2008). Because this contradicts the double degree principle, UNJHRO decided not to support the judicial proceedings, including with witness protection, although it was reported that victims and lawyers had received threats since the beginning of the trial. While victims were represented by ABA and ASF, defendants were represented by lawyers designated by the Goma Bar and supported by UNDP.

Despite the fact that lawyers representing the victims were in regular contact with their clients, the considerable distance between the court and the villages where the events had occurred (more than an hour and a half by expensive transport) made victims' participation in the proceedings difficult. At the opening of the trial, there were only the defendants, judges, lawyers, members of the press, and a dozen international observers. No victims were present. In an attempt to overcome these difficulties and collect testimonies directly from victims, the OMC organized mobile hearings (audience foraines) in Minova from February 11–19, 2014. In total, 42 hearings were held during the trial. However, while 1,016 victims constituted themselves as civil parties, only 52 civil parties for the crime of rape and 76 civil parties for the crime of pillage participated in the hearings.

The OMC issued its decision on May 5, 2014. While commanders acknowledged that crimes had been committed and victims described them during the trial, the judicial officials failed to investigate, indict, and sentence all of those responsible for the crimes. Indeed, out of 39 individuals accused, only 16 were found guilty, including only two of rape (both non-officers). The decision was heavily criticized by national civil society and the international community as well as victims. It led many to argue that proceedings could only represent preliminary proceedings towards the genuine investigation and prosecution of all other individuals who were allegedly responsible for committing these crimes who were not charged, particularly higher-level officials.

The Minova case involved an attack by the 391st Unit of the FARDC against the population of Bweremana-Minova. Violations committed included the rape of more than 100 women. In both cases, Congolese judicial authorities were able to conclude investigations and refer cases to court in 2 and 12 months, respectively.

Financially, the judicial investigation costs of the Fizi case (per diem and accommodation for the magistrates) were covered almost exclusively by the Congolese State.[157] The Minova investigation was, instead, fully funded by external partners, without any publicly known financial support from the Congolese state. Once the case was referred to court, the cost of the mobile trial of Fizi was mostly borne by external partners,[158] whereas the Congolese state covered a more substantial portion of trial expenses in the Minova Case.[159] In both cases, preliminary interviews of victims during the investigations and the legal representation of the victims and defendants during the trial were supported by international partners (such as ASF, ABA, and UNDP).

It is clear that the prioritization of these cases by the judicial authorities as well as the resources allocated to the prosecution were exceptional. The rapid resolution of proceedings was largely due to substantial international pressure from the media in the Fizi I case and by media, NGOs, international organizations, and diplomats in the Minova Case.

In contrast, two other cases exemplify the failure of the Congolese justice system to complete proceedings, despite unprecedented international support and pressure.[160]

The Walikale case relates to the attack on the Kibua-Mpofi Axis (in Walikale, North Kivu) in August 2010. More than 300 people were raped, more than 100 houses and shops were looted, and more than 100 people were abducted and subjected to forced labor by members of Mai Mai Sheka, FDLR, and ex- FARDC.[161] The Bushani case involved an attack on the villages of Bushani and Kalambiro. Men in uniform, identified as members of FARDC, raped approximately 50 women, inflicted cruel and inhuman treatment on civilians, and looted approximately 100 houses.[162]

In October 2010, an investigation was opened into the Walikale case and several arrest warrants were issued, including against the leader of the Mai Mai group Sheka Ntabo Ntaberi. On October 5, 2010, Lt. Col. Sadoke Mayele, of the Mai-Mai Sheka, was arrested, with MONUSCO's support. Two court appearances were held after Mayele's arrest, but the trial was then suspended for security reasons.[163] He subsequently died in prison in August 2012, after which all legal proceedings against him were terminated. Maj. Alphonse Karangwa, an ex-FARDC, was apprehended in September 2012, but escaped from custody a few weeks later.

Insecurity in the Kibua-Mpofi axis due to FDLR and Mai-Mai Sheka activity made it difficult to arrest the accused. Judicial actors consistently raised this as the main obstacle to resuming the trial. However, it was reported that Mai-Mai Sheka leader Ntabo Ntaberi Sheka

157 Partners covered transport for magistrates and expenses related to the interview and protection of victims.
158 Partners covered the expenses related to 10 days of the mobile court, including: transport and per diem for magistrates, victim and witness protection measures, judicial fees and per diems for legal representatives, transport and transfer of accused and convicted persons, and expenses related to the trial room location. The per diem and the accommodation for the magistrates for two additional mobile trial days were covered by the provincial authorities; the rest of the fees were covered by external partners.
159 However, external partners still fully funded 11 days of the mobile trial held in Minova.
160 MONUSCO assisted in the arrest and transfer of Lieutenant Colonel Sadoke Mayele, who was accused of having played a role in the commission of violations in Walikale
161 U.N. Joint Human Rights Office, "Final Report of the Fact-Finding Missions of the United Nations Joint Human Rights Office into the Mass Rapes and Other Human Rights Violations Committed by a Coalition of Armed Groups Along the Kibua-Mpofi Axis in Walikale Territory, North Kivu, from 30 July to 2 August 2010" (2011), 8–9, 13–15.
162 U.N. Joint Human Rights Office, "Report on the Investigation Missions of the United Nations Joint Human Rights Office into the Mass Rapes and Other Human Rights Violations Committed in the Villages of Bushani and Kalambahiro, in Masisi Territory, North Kivu, on 31 December 2010 and 1 January 2011" (2011), 5, 11.
163 The first court appearance was held on September 29, 2011, to confirm the identity of the accused; during the second appearance on December 6, 2011, and with the agreement of the defense, his trial was relocated to Walikale.

escaped from an arrest attempt in Goma in July 2011. The attempt was led by FARDC with MONUSCO's support, but Sheka was allegedly informed beforehand by FARDC members whom he was close to.[164] According to the UN DRC Group of Experts, another opportunity was missed on November 23, 2011. Sheka surrendered to FARDC Col. Chuma, along with 60 of his men. At the time, he was publicly campaigning and running for office as a National Deputy.[165] By the time the FARDC had received the order to arrest Sheka, he had already left the bush, leaving his men behind, in order to be reintegrated into FARDC.[166] In a promising sign, however, some efforts have continued, with FARDC launching an operation with the MONUSCO Force Intervention Brigade on July 2, 2014, against Mai-Mai Sheka-NDC in localities east of Walikale.[167]

The Bushani case lost judicial momentum soon after it opened on January 13, 2011. According to several interviewees, the slow pace of the proceedings and the eventual disintegration were attributable to the direct involvement of FARDC members who had financial and personal links to the perpetrators. UNJHRO blamed the lack of progress on a number of causes, including the lack of cooperation from the FARDC hierarchy.[168]

In the Cobra Matata case the prosecutor suspended proceedings against the leader of FRPI on February 3, 2013, for political reasons, citing peace efforts. Matata had expressed willingness to surrender, along with his troops, and integrate into FARDC on a number of conditions.[169] Matata was finally arrested by the military operational command of Ituri on January 2, 2014, and was transferred to Kinshasa on January 5, 2014. In other cases where political motivations are less apparent, the majority of unresolved cases eventually fall into obsolescence due to a lack of follow-up by judicial authorities.

164 Human Rights Watch, "DR Congo: Arrest Candidate Wanted for Mass Rape" (2011), www.hrw.org/news/2011/11/02/dr-congo-arrest-candidate-wanted-mass-rape; Timo Mueller, "Four years ago today: The Luvungi rapes began," Timo Mueller, July 30, 2014, http://muellertimo.com/2014/07/30/four-years-ago-today-the-luvungi-rapes-began
165 Ibid.
166 Ibid.
167 U.N., "Conference de Presse des Nations Unies du Mercredi 9 Juillet 2014" (2014), 6, monusco.unmissions.org/LinkClick.aspx?fileticket=FjUST8ktYDk%3D&tabid=11192&mid=14882&language=fr-FR
168 U.N. Joint Human Rights Office, "Report on the Investigation Missions of the United Nations Joint Human Rights Office into the Mass Rapes and Other Human Rights Violations Committed in the Villages of Bushani and Kalambahiro, in Masisi Territory, North Kivu, on 31 December 2010 and 1 January 2011" (2011), 15.
169 MGT Ituri, Irizo Muzungu Barakiseni and Baluku Utugba Bahati, RP 175/12 RMP 1699/MML/012RMP 1699/KNG/12RMP 1703/KNG/12 ["Cobra Matata case"].

4. Conclusions

The DRC has not shown significant progress in the prosecution of perpetrators of serious violations in recent years. The number of cases remains low compared to the scale of the atrocities committed. Judicial proceedings are often blocked when there is no international pressure on national jurisdictions or assistance to investigate or prosecute—or when there is political interference. The vast majority of cases seem to be initiated and pursued due to direct pressure from partners. Conversely, initiatives from Congolese judicial organs and officials do not appear to be valued or taken into consideration at the institutional or political level. They are only appraised at the individual level in order to evaluate performance for further career development.

Investigations in ongoing cases show a lack of prosecutorial strategy and prioritization in case selection, though they are essential to successful prosecutions when resources are limited, as they are in the DRC. Until now, investigations conducted by the Congolese judiciary with the support of the international community are exclusively directed to specific events. In the absence of a comprehensive mapping of international crimes for the period of 2003-2014, as well as a lack of resources and expertise, contextual analysis of the facts and hierarchical group structures is never carried out effectively. Yet, such a mapping is critical to informing the drafting of a national judicial strategy. A contextual analysis is also crucial to identifying the highest-ranking individuals responsible for crimes committed and, thus, contribute to an effective deterrence policy.

"A comprehensive mapping of international crimes and a clear prosecutorial strategy are necessary if criminal justice is to contribute to a transition."

In the context of the DRC, conflict is characterized by a multitude of groups and alliances. A comprehensive mapping of international crimes anda clear prosecutorial strategy are necessary if criminal justice is to contribute to a transition.[170] Admittedly the DRC context presents incredible complexity, requiring the creation of specialized investigative teams solely dedicated to this task. Investigators on such teams should be supervised by experienced judges who are trained in international criminal law. To date, the technical support provided to national judicial organs seems inadequate to achieve the desired result.

Without a clear prosecutorial strategy, there is no objective basis to enable effective communication to victims or the public about the prioritization of judicial investigations or

170 The Usalama Project of the Rift Valley Institute intends to provide a better understanding of armed groups in the DRC, especially for international organizations operating in the country and spending millions of dollars to resolve the conflict. In Stearns, Jason, Judith Verweijen and Maria Eriksson Baaz, Rift Valley Institute, "The National Army and Armed Groups in the Eastern Congo: Untangling the Gordian Knot of Insecurity" (2013), 13, http://riftvalley.net/publication/national-army-and-armed-groups-eastern-congo#.VR4jd-FAclA, the authors refer to a kaleidoscope of Congolese and foreign armed groups. The authors write, "[t]he diversity within this multitude is remarkable: there are large-scale military movements with elaborate political structures; rebel groups without political wings; small-scale local defence and village militias; and factions that amount to little more than bandit gangs. Some of these groups have significant military capabilities and political influence, and represent a direct threat to the government in Kinshasa. Others are confined to small, remote areas and are more troubling to the civilian population than to the government."

trials, or to explain how cases are selected and justice is effected. Sharing information on the objective criteria underlying a prosecutorial strategy would be crucial to rebuilding public confidence in the formal justice system.

5. Recommendations

To the President of the Democratic Republic of the Congo

1. Appoint a focal person from the judicial sector to ensure an effective contribution from the DRC at the biannual Heads of State meeting of the Regional Oversight Mechanism of the Framework Agreement, as well as to conduct regular assessments of DRC compliance with its commitments. That person should be responsible for collecting information regarding the fulfillment of Commitments Six and Seven of the Framework Agreement, in accordance with th appropriate indicators.

2. Provide support and guidance to accelerate and facilitate the adoption of key legislation in the fight against impunity, in particular, the law implementing the Rome Statute and the law on the establishment of specialized chambers.

3. Publish regularly the progress achieved in the judicial repression of serious crimes, in consideration of the national benchmarks and indicators in the National Oversight Mechanism.

To the Executive

4. Designate an independent group of experts to undertake a comprehensive mapping of international crimes committed between 2003 and 2014. Along with the Mapping Report conducted by OHCHR of serious violations of human rights committed between 1993 and 2003, the findings should be submitted to Congolese judicial and political authorities to inform the drafting of a national judicial strategy to respond to crimes committed during this period.

5. Ensure that the prosecution of international crimes in eastern DRC is clearly identified as a priority in the implementation of the five-year plan for the justice sector.

6. Increase the judicial budget, ensure its effective management, and strengthen the operational capacity of relevant jurisdictions to investigate and prosecute serious crimes.

7. Improve recruitment processes to ensure that only qualified and experienced staff who are specially trained in the field of international crimes are appointed.

8. Ensure that legislative proposals on the repression of international crimes in accordance with the Rome Statute are presented to Parliament. The Minister should ensure that the draft law on the implementation of the Rome Statute and the draft law on the specialized chambers are not in conflict, but instead reinforce each other, and are presented to Parliament as such.

9. Ensure that new legislative proposals presented to Parliament on the jurisdiction of the civil and military courts over international crimes are harmonized, allowing a gradual, but absolute, transfer of all cases to ordinary (non-military) courts.

10. Ensure that an extraordinary meeting of the Justice Thematic Group is held to present data and specifically discuss the progress and challenges of the judicial response to serious crimes.

11. Appoint a focal person to be in charge of reviewing the laws and international agreements on judicial and criminal cooperation in force in the DRC. That focal point should ensure implementation of the relevant provisions of the ICGLR Protocol on Judicial Cooperation.

To the Military Prosecutor General

12. Maintain an inventory of ongoing cases related to international crimes and ensure the development of a strategy for prioritizing cases.

13. Develop a prosecutorial strategy, in coordination with the (civilian) Prosecutor General, based on transparent and objective criteria to ensure that all efforts to fight impunity are as complementary and comprehensive as possible. This strategy should be made public and subject to periodic evaluations.

To the Judiciary

14. Establish an information management system that would enable systematic and confidential information sharing with international and national partners on the commission of serious crimes.

15. Specifically assign judicial staff to cases of serious crimes. Staff must receive sufficient training on international criminal law, particularly regarding the characteristics of serious crimes, such as the context of their commission, the structure and organization of perpetrators, and the responsibility of commanders. Such training should be provided by experienced practitioners in the field of international criminal law who have extensive knowledge of the Congolese context.

To the Superior Council of Magistracy

16. Promote a series of trainings on the prosecution of international crimes for civil magistrates. To this end, taking into account the expertise they have acquired in this area, military judges should be integrated into the teams of trainers.

17. Support the coordination of military prosecutors and military judges with the General Prosecutor and judges of the Courts of Appeal in their investigation and prosecution of serious crimes by creating an institutional coordination mechanism.

18. Create a clear, fair, and transparent system of reporting through which the work of judges is assessed according to results. Internal organizational incentives should promote a more proactive role by judicial officers in the investigation and prosecution of serious crimes. Disciplinary action should be introduced for procedural violations, corruption, and undermining cases of serious crimes.

To the Legislature

19. Prioritize the adoption of the draft law implementing the Rome Statute. Ensure that provisions of the draft law are integrated into the ordinary Criminal Code and the Code of

Criminal Procedure, and that they strictly adhere to the Rome Statute, especially regarding the definition of crimes, modes of liability, sentencing of crimes, criminal procedure, and cooperation procedures with the ICC. Also ensure that the adopted law is fully in line with international criminal law standards regarding protecting the rights of the defendant and protecting victims, witnesses, and intermediaries.

20. Prioritize the adoption of the draft law on the establishment of specialized chambers. Ensure that the draft law provides criteria for a rigorous selection process for the magistrates and judicial staff that guarantees that they have sufficient expertise in trying serious crimes. The law must also effectively integrate international experts within the specialized chambers at the trial and appellate levels, as well as outline the phasing-out procedure. It should also provide for a single appellate specialized chamber to ensure judicial consistency, create special investigation units, and establish a section with the specific objective of providing assistance to victims and witnesses.

21. Ensure that the draft law on the implementation of the Rome Statute and the draft law on the establishment of the specialized chambers are consistent and that they reinforce the complementarity of both laws.

To the International Community

22. Continue to assist the judiciary with logistical, financial, and technical support, recognizing that their contribution remains critical to the prosecution of serious crimes in the DRC.

23. Undertake an independent evaluation of the technical support provided by the initiatives of international partners. Assess the effective contribution of these initiatives to the quality and number of investigations and prosecutions of serious crimes.

24. Design international assistance with the objective of strengthening judicial capacity and increasing its role in initiating investigations and prosecuting serious crimes.

25. Initiate and sustain investment in training and build the capacity of civilian and military judicial actors. Such activities should strongly emphasize investigating and prosecuting serious crimes in consideration of the particular elements of these crimes, the context of their commission, the structure and organization of perpetrators and their groups, and command hierarchy.

26. Support the designation and work of an independent group of experts to undertake a comprehensive mapping of international crimes committed between 2003 and 2014.

27. Support the Military Prosecutor General and the (civilian) Prosecutor General in initiating a prosecutorial strategy. This strategy should maximize the resources allocated to the fight against impunity for serious crimes and ensure transparency and consistency in the administration of justice and the selection of cases.

28. Support the investigation and prosecution of cases of serious crimes in accordance with criteria set out in the national prosecutorial strategy.

29. Support the judiciary in establishing an information management system within the military and civilian judicial sector. Establish a system of information sharing with the judiciary that protects the confidentiality of sources and facilitates the systematic sharing of information on the commission of serious crimes.

APPENDIX

Table of international crimes cases initiated before Congolese courts and tribunals in South Kivu, North Kivu, and Ituri between 2009 and 2014

CASE NUMBER	CASE NAME[1]	DATE AND LOCATION OF ALLEGATIONS	SUMMARY OF THE FACTS	EVOLUTION OF THE CASE	SUPPORT PROVIDED
SOUTH KIVU PROVINCE[2]					
RP 083/14 RMP 1377/ MTL 2011	Col. 106 case Lt. Col. Bedi Mobuli Engangela, alias Col. 106	16 December 2005, January-March 2006 Kashewe, Bulambika, Kambale, Kando, Kahuzi-Biega, Kahesi, Hembe, Bikumbi, Mihinga, Cifunzi, Mushingi, Nguliro, Chibumbuji, Karama, Kashumu, Kashesha in Kalima, Bitale and Kalonge groupments in the sectors of Buhavu and Buloho, territory of Kalehe, Shabunda, South Kivu	On 16 December 2005, around 1 a.m., Lt. Col. Bedi Mobuli, alias Col. 106, attacked the village of Bulambika. He looted shops, removed civilians from their homes, tortured them, and used women and girls as sexual slaves. From January to March 2006, Col. 106 and his troops committed further attacks in the villages of Kashewe, Bulambika, Kambale, Kando, Kahuzi-Biega, Kahesi, Hembe, Bikumbi, Mihinga, Cifunzi, Mushingi, Nguliro, Chibumbuji, Karama, Kashumu, and Kashesha.[3] UNJHRO also reported that, on 2 September 2006, Col. 106's troops abducted 33 individuals. Col. 106 was member of the former Force armées zaïroises (FAZ). He was integrated into the Mai Mai militia following the Rassemblement congolais pour la démocratie (RCD) rebellion, and spent six years in this capacity in Bunyakiri. In 2003, Col. 106 was integrated into the FARDC with the ranking of a Captain.	**Registration at the AMS SK:** 21 November 2011. **Arrest:** On 4 May 2013provisional arrest warrant including charges (MAP) issued against Col. 106. He was arrested in Bukavu in 2007 and transferred to Kinshasa, then transferred again from Kinshasa to Bukavu on 2 April 2013.[4] **Charges:** • Prior to referral decision: charges in the registry of the AMS' Secretary included incendiarism, rape, pillage, abduction, sexual slavery, child recruitment, and hostage. • Referral decision: crimes against humanity of rape, murder, other inhumane acts, sexual slavery, murder, imprisonment, and other forms of liberty deprivation, and of arbitrary arrest, rape, and abduction.[5] **Registration at the MC** on 23 May 2014; sent by the AMS to the MC on 27 December 2013. **Civil parties:** 723 **Trial:** From 11 August to 30 August 2014 in Kalehe; from 9 September to 22 September 2014 in Bukavu. Date of the start of the trial was set on 11 August 2014. **Verdict and sentence:** Delivered on 15 December 2014. Col. 106 was found guilty of crimes against humanity by rape, sexual slavery, pillage, arbitrary arrest, and the war crime of murder. Col. 106 was sentenced to life imprisonment. He was also sentenced to a complementary sentence of 5 years as an interdiction to exercise civil rights. Col. 106 was also condemned in solidum with the state to pay amounts between $500 USD to $1500 USD to each civil party. **Imprisonment:** Col. 106 was transferred to Kinshasa to serve his sentence. **Appeal:** Col. 106 appealed the MC's decision before the HMC.	**UNJHRO:** Identification of victims and witnesses, support of investigation (expenses coverage for magistrates, logistics), expenses coverage of victims' lawyers during the trial, protection measures for victims before, during and after the trial; medical and psychological assistance. **MONUSCO:** Transfer of the accused to Ndolo Bukavu and Bukavu in Ndolo after his conviction, security, logistics assistance. **UNDP:** Expenses coverage for judges and defendants. **ASF:** Legal aid, legal representation and protection of victims. CAP: technical support.

RP 0132/10 RMP 0933/ KMC/10 (Trial) RPA 0180 RMP 0802/ BMN/ 010 (Appeal)	Mulenge/ Lemera case First Sgt. Christophe Kamona Manda, et al.	8 August 2009 Mulenge, Uvira territory, South Kivu	On 8 August 2009,[6] FARDC members of the 83rd battalion attacked civilian women, who were being escorted by men, on their way to look for food in neighboring fields in Kishagala, Mulenge center. The FARDC accused the women and their daughters of being wives of their enemy, the FDLR.[7] Seven women, including one blind woman and two pregnant women, were raped by FARDC members and other non-identified militiamen in an abandoned school and in fields near Kishagala, Mulenge.[8] In 2009, the FARDC 83rd battalion was based in Sangein for the purpose of operations against FDLR in the region. During the Kimia II operation against FDLR, the 83rd battalion sent a company to Mulenge Centre. Prior to this operation, the civilian population had fled hostilities in Mulenge and found refuge in Mugaja.[9]	**Arrest:** • Arrest warrants were issued against: (1) First Sgt. Christophe Kamona Manda, (2) Cpl. Ndagijimana Sekuye, (3) Cpl. Justin Mambwe Mukebu, (4) Cpl. Gahungu Maniragaba, and (5) Sgt. Okelo Tangi. • The arrest of the accused was facilitated by the Commander of the Integrated Battalion. The accused were arrested in Hombo, in Kalehe territory, South Kivu. **Charges:** Crimes against humanity by rape. **Civil parties:** Seven.[10] **Trial:** Hearings were held on 10, 11 and 12 October 2010.[11] **Verdict and sentence:** On 30 October 2010, the MGT Uvira found all five defendants guilty of crimes against humanity by rape. All five defendants were sentenced to life imprisonment. The MGT Uvira also condemned all five to pay, jointly and severally with the state, $50,000 USD to the victims.[12] **Appeal:** • On 1 November 2010, all five convicted persons appealed the MGT Uvira's decision before the MC SK. • Registration before the MC SK on 15 October 2011. • Appeal began on 1 November 2011. • Verdict and sentence delivered on 7 November 2011. The MC SK confirmed the judgment rendered in its entirety.[13] All of the convicted were sentenced to life imprisonment, except for Sgt. Okelo Tangi, who died before the appeal.[14]	**ASF:** Assistance and legal representation of victims. **UNDP:** Institutional support and assistance to defendants.
RP 038 RMP 1427/ NGG/ 2009 RMP 1280/ MTL/09	Balumisa case Lt. Col. Balumisa Manasse, et al.	26-28 September 2009 Katasomwa, Kalehe territory, South Kivu	From 26 to 28 September 2009, members of FARDC's former 85th brigade (which became the 332nd brigade during the trial), under the command of Lt. Col. Balumisa Manase, launched attacks against the civilian population of Katasomwa Centre, Katasomwa Rijiwe, Katasomwa Parc, Kitendebwa, Mweva Chibangi, and other neighboring villages. Violations included rape, including collective rape, and widespread pillaging of a school, houses, and storagerooms. This caused the civilian population to flee Katasomwa. The attacks were launched in retaliation for the murder in	**Registration at the AMG Bukavu:** on 26 October 2009; complaint received on 23 October 2009. **Transferred from AMG Bukavu to the AMS SK**: on 26 August 2010. **Registration at the AMS SK:** on 20 November 2009. **Registration at the CMS SK:** on 1 September 2010 (sent from AMS SK to MC SK on 31 September 2010). **Arrest:** • Arrest warrants were issued against: (1) Lt. Col. Balumisa Manasse, (2) Maj. Eugide Elya Mungembe, (3) Cpt. Makanyaka Kizungu Kilalo, (4) Lt. Col. Jean-Claude Senjishi, (5) Cpt. Chongo Musemakweli, (6)Cpt. Beni Mutakato, (7) Cpt. Desiré Ekofo Petea, (8) Lt. Zihindula, (9) Lt. Justin Matabaro, (10) Sub. Lt. Kanabo, and (11) Sub. Lt. Lybie Mirasalo.	**UNJHRO and UNDP:** Institutional support. **ASF:** Assistance and legal representation of the victims.

			Katasomwa, on 26 September 2009, of a FARDC member, under Capt. Ekofo Petea (known as Le Blanc). He was killed by a civilian who was a demobilized former member of the military.[15]	• On 16 October 2009, (1) Lt. Col. Balumisa Manasse, (2) Maj. Eugide Elya Mungemba, and (3) Capt. Makanyaka Kizungu Kilalo were arrested. • On 20 November 2009, a provisional arrest warrant (including specific charges) was issued against the three individuals arrested. • These three were the ones initially arrested, but the other persons convicted (see below) were arrested during the process. No additional information is available on their date of arrest. **Charges:** • Concealment against Balumisa Manasse and Jean-Claude Senjishi; • Illegal wearing of ranking insignia against Eugide Elya Mungembe; • Crimes against humanity by rape against all accused, except Jean-Claude Senjishi; • Crimes against humanity by pillage against all accused, except Jean-Claude Senjishi; • Abduction of a four month old child against all accused, except Jean-Claude Senjishi; • Destruction of schools against all accused, except Jean-Claude Senjishi; • Crimes against humanity for other inhumane acts against all accused, except Jean-Claude Senjishi.[16] **Transfer:** The case was transferred from the AMG Bukavu (RMP 1427/NGG/2009) to AMS SK (RMP 1280/MTL/09) on 26 August 2010.	
				Registration at the CMS SK: On 1 September 2010. **Civil Parties:** 176 (including 22 victims of rape).[18] **Trial:** Started on 28 February 2011. **Verdict and sentence:** declared on 9 March 2011 by the MC SK: • Jean-Claude Senjishi guilty of concealment (five years); • Balumisa Manasse guilty of concealment (18 months), crimes against humanity by rape (15 years), crimes against humanity for other inhumane acts (15 years); • Elia Eugide Mungembe guilty of crimes against humanity by rape (15 years), crimes against humanity for other inhumane acts (15 years); • Makanyaka Kizungu Kilalo guilty of infraction by concussion (one month), crimes against humanity by rape (15 years), crimes against humanity for other inhumane acts (15 years); • Chongo Musemakweli, Beni Mutakato, Desiré Ekofo Petea, Zihindula, Justin Matabaro, Kanabo, and Lybie Mirasalo	

				guilty of crimes against humanity by rape (life imprisonment), crimes against humanity for other inhumane acts (life imprisonment); • The MC SK also condemned Jean-Claude Senjushi and Kizungu Kilalo to restitute or compensate, in solidum with the state, the stolen goods (including cattle, goats, beer, and boots. • MC SK also required all accused, in solidum with the state, to pay $5,000 USD to victims of rape and $200 USD to victims of pillage. **Appeal:** The convicted, as well as the Auditeur, appealed the case before the HMC on the day of the verdict, 9 March 2011.	
RP 708/12 RMP 1868/ TBK/ KMC/ 1012 (Trial) RPA 230 RMP 1868/ KMC/11 (Appeal)	Mupoke Market case Sub. Lt. Kabala Mandumba, Emmanuel Ndahisaba and Donat Kasereka	17 January 2010 Walungu territory, South Kivu	On 17 January 2010, around 30 members of the 512th battalion of FARDC, under the command of Donat Kasereka, attacked the civilian population in the market of Mupoke. Following the attack and the escape of the population into the surrounding areas, the military plundered the market and homes. Men and women who attempted to flee were raped, beaten or forced to come back to the market to transport pillaged goods.[19] The perpetrators, and the civilians transporting the goods, walked towards Nyalubembe where FARDC was based. After two hours of walking, in Kapuku, those who were weak were released, others escaped, and some were raped during the night. The following morning, all women were sent back to Mupoke. The men were forced to continue transporting the goods to Nyalubembe (a further five-hour walk).[20] This attack was launched to identify and defeat the FDLR militiamen present at the market. It was prepared two days earlier by the commanders of the various FARDC units.[21]	**Registration at the AMG Bukavu:** 20 October 2010 **Arrest:** • Arrest warrants were issued against Sub. Lt. Kabala Mandumba Mundande, Emmanuel Ndahisaba, Monga Mukangabantu, and Donat Kasereka. • On 5 October 2010, Sub. Lt. Kabala Mandumba was arrested. • On 21 October 2010, a provisional arrest warrant (including specific charges) was issued against Sub. Lt. Kabala Mandumba. • At the time of the trial, Emmanuel Ndahisaba, Monga Mukangabantu and Donat Kasereka still had not been apprehended.[22] **Charges:** Initial charges, as per the referral decision of the AMG Bukavu, were for crimes against humanity. However, these were amended by the MGT Bukavu during the trial to the war crimes of murder, torture, rape, pillage, and attacks against protected property.[23] On appeal, the MC SK requalified the facts to the war crimes of murder, pillage, rape, and degrading treatment.[24] **Registration at the MGT Bukavu:** 21 March 2012 **Civil parties:** 135, including one murder victim, 11 rape victims, 15 torture victims, 107 pillage victims, one victim of an attack against protected property (a church).[25] **Trial:** Commenced 8 October 2012. **Verdict and sentence:** Delivered on 15 October 2012, the MGT Bukavu condemned:	**MONUSCO:** Security during trial. **UNJHRO:** Support of the trial (expenses coverage for the magistrates, interpreters, escorts), measures to protect victims. **PSC:** Operational and technical support (organization of a mobile trial, transportation including judges to the mobile courts, technical advice during interviews with victims and witnesses) following a request for support that was made to them approved on 27 July 2012. **ASF, ABA, African Center for Peace, Democratie and Human Rights (ACPD), UNDP:** Support to the trial.

				• Sub. Lt. Kabala Mandumba to 20 years' imprisonment for the war crimes of murder, rape, torture, pillage, and attacks against protected property; • Emmanuel Ndahisaba, Monga Mukangabantu, and Dona Kaserekawere, in absentia, to life imprisonment;[26] • All accused to pay, jointly with the state, amounts of $50,000 USD for the murder victim; $2,500 USD to $30,000 USD to the rape victims; $1,750 USD to $15,000 USD to the torture victims; $5,000 USD to the victim of the attack against protected property (the church representative); and $800 USD to each of the 107 victims of pillage.[27] **Appeal:** • The MGT decision was appealed by Kabala Mandumba on 16 October 2012 and by the Prosecutor on 17 October 2012; • The appeal date set on 6 May 2013 was postponed until 9 May 2013, and again until 13 May 2013; • The verdict and sentence were delivered on 20 October 2013. The MC SK confirmed the guilty verdict, and sentenced Kabala Mandumba to life imprisonment for the crimes against humanity of murder, pillage, rape, and degrading treatment. • The MC SK also sentenced Kabala Mandumba to pay, jointly with the state, $60,000 USD for the murder victim; $55 USD to $5,000 USD to rape victims; and $2,000 USD to victims of degrading treatment. Sub. Lt. Kabala Mandumba subsequently escaped from prison.	
RMP 1298/ PEN/10	Mukerenge case Lt. Col. Mukerenge	21 June 2010 Fizi, South Kivu	Allegations included mass rapes and other crimes against humanity.	**Registration at the AMS Bukavu:** 21 June 2010. **Transfer:** As the case did not concern high officers, it was transferred on 25 June 2010 to the AMG Uvira (by letter 258/AMS/SK/2010). This case was initiated after a complaint was lodged by a local NGO in Fizi. Once the case was transferred, it was not followed up by the NGO. The case did not proceed because of a lack of evidence.[29]	
RP 043/11 RMP 1337/ MTL/ 2011	Fizi I/Baraka case Lt. Col. Daniel Kibibi Mutuare, et al.	1-2 January 2011 Fizi Centre, Fizi, South Kivu	Between 1 and 2 January 2011, Lt. Col. Daniel Kibibi Mutuare, acting Commander of the 43rd operational sector of the Amani Leo operation, launched a targeted attack against the population of	**Registration at the AMS SK:** 26 January 2011. **Referral decision:** On 3 February 2011. **Arrest:** • Arrest warrants were issued against: (1)	**MONUSCO:** Transferred by plane, on 24 March 2011, Lt. Col. Kibibi Mutware and six other accused from Bukavu central prison to Ndolo military prison

			Fizi.[30] Seven civilians were captured, beaten, and detained until the intervention of the territory administration on 2 January 2011. Many civilians, including children, were also beaten and stabbed. Dozens of women, aged between 19 and 60, who were hiding in their houses were raped in front of their husbands and children by armed military members. Goods were stolen, nd shops were destroyed and pillaged. Many families were displaced.[31] The attacked was launched in retaliation for an incident against one FARDC soldier who was mobbed in Fizi center on 1 January 2011.[32] Lt. Col. Daniel Kibibi Mutuare ordered his men to scour every corner of Fizi and arrest all men. This led the military soldiers to conduct a manhunt, loot and destroy shops, and commit murder, torture, and rape.[33]	Daniel Kibi Mutuare, (2) Sido Bizimungu, alias America, (3) Mundande Kitambala, (4) Chance Bahati Lisuba, (5) Abdoul Haruna Bovic, (6) Lucien Sezibera, (7) Eric Kenzo Shumbusho, (8) Kisa Muhindo, (9) Muyamaraba Amani, (10) Justin Kambale Bwira, and (11) Pascal Ndagijimana. • The accused were arrested on 2 January 2011. • Provisional arrest warrants including charges (MAP) were issued on 31 January 2011. **Charges:** All eleven defendants were charged with crimes against humanity for rape, other inhumane acts, terrorism, imprisonment, and other severe deprivations of physical liberty. **Civil parties:** 91. **Trial:** commenced on 10 February 2011 (it had been sent to the MC SK by the AMS SK on 3 February 2011). **Verdict and sentence:** on 21 February 2011, the MC SK made the following orders: • Daniel Kibi Mutuare to 20 years' imprisonment for crimes against humanity by rape, other inhumane acts, terrorism, imprisonment, and other severe deprivations of physical liberty; • Sido Bizimungu to 20 years' imprisonment for crimes against humanity by rape, other inhumane acts, and terrorism; • Mundande Kitambala to 20 years' imprisonment for crimes against humanity by imprisonment, other severe deprivations of physical liberty, other inhuman acts, and terrorism; • Abdoul Haruna Bovic to 20 years' imprisonment for crimes against humanity by other inhumane acts and terrorism; • Eric Kenzo Shumbusho to 20 years' imprisonment for crimes against humanity by rape, other inhumane acts, and terrorism; • Lucien Sezibera to 15 years' imprisonment for crimes against humanity by rape, other inhumane acts, and terrorism; • Justin Kambale Bwira to 10 years' imprisonment for crimes against humanity by other inhumane acts, and terrorism;	in Kinshasa. This transfer was organized after information was received about the planning of an escape from the Bukavu prison.[35] Provided a helicopter to transport magistrates. Also provided technical and logistical support to mobile trial.[36] **UNJHRO:** Protection measures for the victims. **UNDP and ABA:** Institutional support and assistance to the defendants. **ASF, DanChurchAid, and Arche d'Alliance:** Assistance to victims.
				• Pascal Ndagijimana to 10 years' imprisonment for crimes against humanity by other inhumane acts, and terrorism; • Kisa Muhindo to 10 years' imprisonment for crimes against humanity by other inhumane acts, and terrorism;	

				• Chance Bahati Lisuba was found not guilty of all charges; • The MC SK condemned all those accused found guilty to pay, jointly and severally with the state, $10,000 USD to each rape victim, $1,000 USD to victims of imprisonment, $200 to victims of harm and injuries, and $500 USD to victims of theft.[34] **Appeal:** An appeal was lodged before the HMC.	
RMP 1373/ WAV/11	Kikozi case Maj. Rupongo Rogatien John and Maj. Shaka Nyamusaraba	26 March 2011 Kikozi, Uvira territory, South Kivu	On the night of 26 March 2011, FARDC soldiers from a battalion composed of former members of the newly integrated Forces Républicaines Fédéralistes (FRF), launched an attack in Kikozi, in the Kalungwe groupement.[37] Nine women were raped, 16 civilians were subjected to torture, cruel and degrading treatment, and several houses and a health center were looted.[38]	**Registration at the AMS SK:** 25 October 2011 (following a complaint lodged by Célestin Ibrahim on 4 April 2011 concerning alleged crimes against humanity). **Accused:** The alleged perpetrators were identified as Maj. Rupongo Rogatien John and Maj. Shaka Nyamusaraba of the 4422nd battalion.[39] An arrest warrant was issued against the alleged perpetrators.[40] **Charges:** Mass rape. No progress has subsequently been made on the case. [41]	**UNJHRO:** Deployment of a joint team with members of the AMG of Uvira, in the area to document allegations of human rights violations on 19-20 April 2011.
RMP 1358/ MTL/11	Fizi II, Nakiele case Col. Kulimushi, alias Kifaru	9-12 June 2011 Nakiele, Fizi, South Kivu	From 9 to 12 June 2011, FARDC soldiers under the command of Lt. Col. Kifaru Niragire Karibushi, alias Kifaru, committed an attack in the village of Nakiele (140 kilometers north of Fizi center), and two neighboring villages.[42] Allegations included the alleged rape of at least 250 women.[43] Kifaru is a former member of Mai Mai PARECO and was integrated into FARDC and placed in charge of the 43rd sector, but deserted from a military training camp at Kananda on 9 June 2011. He subsequently surrendered to the authorities on 7 July 2011, along with 191 soldiers.[44]	**Registration at the AMS SK:** 24 June 2011.[45] **Investigations:** • Two investigation missions were led in the area, and 121 victims were interviewed. However, doubts arose about the credibility of some of the testimonies.[46] The investigation was suspended as a result. • Another investigation seems to have been opened against Col. Kulimushi, alias Kifaru, on 21 June 2011 (RMP 1299/PEN/10).[47]	**MONUSCO:** Deployment of a joint team in Nakiele and the surroundings on 6-7 July 2011; deployment of a second investigation mission between the 10-15 August 2011, but investigations were interrupted for security reasons.[48] **UNJHRO and UNDO:** Institutional support. **ABA and Arche d'Alliance:** Assistance to victims.
RMP 2605/ KK/2012 RMP 1486/ BKL/13	Lwizi–FARDC case Maj. Safari Kateyateya, et al.	21 July 2012 Mushashirwa, Kalehe, South Kivu	On 21 July 2012, soldiers of the FARDC 102nd battalion, based in Chololohave, allegedly attacked the villages of Karimba and Businzir. 61 people were attacked, including 13 cases of sexual violence.	**Registration at the AMG Bukavu:** 13 September 2012 (RMP 2605/KK/2012). **Transfer:** On 17 September 2012, transferred to AMS SK (by letter No 278, dated 17 September 2012) as at the time AMG Bukavu opened the investigation, the rank of Maj. Kateyateya was not known.	**UNJHRO:** Support to investigations (special flights, expenses coverage for the magistrates, logistics). **ABA:** Assistance to victims, with the support of ACPD.

			The attack was launched during an operation against the FDLR.	**Registration at the AMS SK:** 30 September 2013 (new RMP: RMP 1486/BKL/13). **Arrest:** • Col. Vonga Ngizo, Lt. Col. Luezo, and Maj. Kateyateya Safari were arrested on 13 June 2014. • Provisional arrest warrant (including charges) was issued against the three defendants arrested on the same day, 13 June 2014. • Since 15 September 2014, the three defendants have been on provisional release, with a requirement to report to the AMS twice per week. **Charges:** Crimes against humanity.	
RMP 1421/ BKL/12	Katalukulu case Col. Sebimana, et al.	6 August 2011 Fizi, South Kivu	Ten women were allegedly raped by FARDC soldiers from the 431st battalion, under the command of Col. Sebimana. It was reportedly in retaliation for the murder of two soldiers by an alleged thief. The joint mission report indicates that the women victims refused to complain for fear of reprisals.	**Registration at the AMS SK:** 19 June 2012. **Charges:** Murder, rape, extortion, arbitrary detention, torture, and home invasion (as described in the AMS SK registry). The facts were reported by NGOs, but no investigation was opened regarding this attack as the commander, Col. Sebimana Mwendangabo Samuel, was protected by the CNDP. **Other convictions:** In 2012, Sebimana was prosecuted and tried for insurrection, extortion, and other criminal acts in another case (RP1421).	**MONUSCO:** Support to the initiation of an investigation.[49]
RMP 1482/ KK/13	Mirenzo case Maj. Mabiala	7-9 June 2013 Mirenzo and Chirimiro, South Kivu	Between 7 and 9 June 2013, FARDC members attacked the villages of Mirenzo and Chirimiro. Nine civilians were killed, and. houses in the villages were looted and burned. The attack was planned after confrontations with Raia Mutomboki and after Cpt. Bahati was informed of Raia Mutomboki's plan to liberate one of their members who had previously been arrested by FARDC.	**Registration at the AMS SK:** 26 August 2013 (following a complaint lodged by a national NGO, LADHO, on 8 September 2013 in Bunyakiri). **Accused:** Maj. Mabiala, from the special battalion. **Investigation:** Investigations are ongoing. An investigation that was planned for December 2014 was postponed.	**UNJHRO:** Support of the victims during the investigation. **ASF:** Assistance to victims. **UNDP:** Institutional support.
RMP 1463/ WAV/13/ NDM/ KK/2013 RMP 2678/ KMC/12	Birungurungu case Lt. Col. Ilunga Jean Jacques	1 December 2012 Birungurungu, Lulimba, Fizi territory, South Kivu	On 1 December 2012, Lt. Col. Jean-Jacques Ilunga and FARDC allegedly committed rape and torture on the Bembe community of Birungurungu and Lulimba.	**Registration at the AMG/BKV:** 5 November 2012 (following a complaint N° 024/NYRA/DIV/2012 submitted on 29 October 2012) **Transfer:** From AMG Bukavu to AMS SK (by letter No 024, dated 6 February 2013). **Registration at the AMS SK:** On 22 February 2013.	**UNDP:** Received a request from AMS in January 2014 to lead investigations into the allegations against Col. Ilunga in Birungurungu.[50] **ASF:** Assistance to the victims with the support of ACPD to identify victims.

				Arrest: • While Lt. Col. Ilunga's commander, Gen. Masunzu, had initially refused to proceed with Lt. Col. Ilunga's arrest, on 16 August 2013, Lt. Col. Ilunga was arrested. • On 3 September 2013, a provisional arrest (including charges) was issued against him. • On 18 December 2013, Col. Ilunga was granted provisional release with a requirement to report to AMS twice per week. **Charges:** Crimes against humanity. **Investigation:** Investigations are ongoing. A support request was submitted to the justice sector's partner to lead investigations and interviews with victims.	
RMP 1245/ MTL/09/ Bukavu	Lulingu case Lt. Col. Angali Mukumbwa, et al.	2-3 July 2009 Shabunda, South Kivu	Between 2 and 3 July 2009, members of FARDC 5th brigade attacked villages in South Kivu, committing rape, looting, and taking civilian hostages.	**Registration at the AMS SK:** 9 September 2009. **Arrest:** AMS SK had led an investigation in Shabunda and Lulingu. Some accused were arrested at the time of the investigation, but they escaped before they could be transferred to the Bukavu prison. **Charges:** Crimes against humanity of pillage and rape. **Investigations:** Due to difficulties in accessing Shabunda, it has been difficult to undertake comprehensive investigations. The total list of suspects has not yet been identified.	**The project "Restauration de la justice à l'Est du Congo" (REJUSCO):** Logistical and financial support of investigations. **ASF:** Provided funding to the national NGO CADDHOM to provide legal assistance
RMP 1282/ KM/09	Ombeni Matayo case Ombeni Matayo	7 August 2002 Kalimba village, Bunyakiri, South Kivu	On 7 August 2002, Mai Mai, under Ombeni Matayo's command, attacked the civilian population of Kalimba village, Bunyakiri, with a rocket. The attack was launched in reprisal for the civilian population's presumed support of Armée patriotique rwandaiseAPR and RCD.	**Registration at the AMS SK:** 28 November 2009. **Arrest:** An arrest warrant for war crimes was issued against the presumed author, who was expected to be in Hombo. It was transmitted to the Congolese national police (PNC) of Bunyakiri for execution. On 5 April 2012, it was determined that the presumed author of the violations was initially incorrectly identified.[51]	**ASF:** Financial support of a national NGO, LADDHO, to collect data before presenting the allegations to the AMS.
RP 036-039 RMP 1303/ MTL/ 2010 1308/ MTL/ 2010	Kyat Hend Dittman case Kyat Hend Dittman, et al.	March-June 2010 Shabunda territory, South Kivu	In March 2010, the police station in Kitindi was attacked, and uniforms, weapons and ammunition were stolen. In April 2010, six individuals under the command of Emmanuel Kyat Hend Dittman went to Wagila Ngoy quarry to loot possessions and collect taxes. Twenty individuals were forced to leave with the militiamen to transport the looted	Two cases (RP 036 and RP 039, RMP 1303/MTL/2010 and RMP 1308/ MTL/2010) were joined at the trial before the MC SK on 20 August 2010. **<u>RMP 1303/MTL/2010:</u>** **Registration at the AMS SK:** 23 June 2010 (following minutes of meetings No 08/46/20/007/006/2009). **Accused:** Kyat Hend Dittman, et al.	**UNDP:** Support of mobile trials. **UNJHRO:** Institutional and logistical support, , protection and transportation of victims. **ASF:** Assistance and legal representation of victims.

			property. During the night of 31 May 2011, the militiamen attacked the political and administrative authorities and the population of Matili, committing torture and pillage. On the way to Shabunda, Kyat Hend militiamen launched attacks against police stations in a number of villages, including Mulungu, Tusisi, and Tutungulu.[52] In 2010, a rebel movement led by Emmanuel Kyat Hend Dittman, alias Pharaon, encouraged the population to dismantle state authority in Shabunda territory. In Bangoma Nord and Beygala, the militiamen under the command of Kyat Hend formed an alliance with Raia Mutomboki, under the command of Amuri Kikukama. The command of the troops was given to Kyat Hend.[53]	**Charges:** participation in an insurrectional movement, crimes against humanity, and theft of military properties. **RMP 1308/MTL/2010:** **Registration at the AMS SK:** Following complaint No 15/AMS/IPJ/MSG/SBD/10 of 2 September 2010 inShabunda. **Accused:** Charlequin, et al. **Charges:** Participation in an insurrectional movement, crimes against humanity, pillage, conspiracy, illegal detention of war weapons and ammunitions, illegal wearing of rank insignia, voluntary assault, and murder. **RP 039:** **Registration at the MC/SK Registry:** 8 August 2010. **RP 036:** **Registration at the MC/SK Registry:** 04 August 2010. **Trial:** The date to commence the trial was set for 17 September 2010. **Arrest:** 27 individuals were arrested (the date of the arrests is unknown): (1) Emmanuel Kyat Hend Dittman, (2) Kasongo Wassanga, (3) Célestin Nsunga Mubulanwa, (4) Songa Kinyengele, (5) Gabriel Lepalepa Mwanda, (6) Paul Yiyi, alias Misenga, (7) Paul Sengi Kyabutwa, (8) Léon Busilingi Matenda, (9) Wabula Kalenga, alias Nadia, (10) André Mwepa Salumu, (11) Bernard Sadiki Masumo, (12) Amuri Kikukama, (13) Mbula Kinyasubi Songa, (14) Kitembo Mugeni, (15) Sébastien Chikuru Katara, (16) Bahati Mwati, (17) Kazombo Amisi, (18) Dodos Asani Abeli, (19) Feruzi Lubanda, (20) Alexander Bwansolu Mizaba, (21) Wabula Kalenga, alias Nadia,[54] (22) Kitalaganza Ngoma, (23) Bitalibwa Kangolingoli, (24) Wenda Kyamoneka, (25) Lukamenya Kikuni, (26) Abedi Kikuni Betu, alias Benz, (27) Kalomo Mali Ya Macha, alias Djo Mali, and (28) Kitima Sumaili. The accused were issued provisional arrest warrants (including charges) on 24 June 2010.	
				Charges: Conspiracy against state authority and territorial integrity, conspiracy, terrorism, incitement of military disciplinary misconduct, participation in an insurrectional movement, crimes against humanity of imprisonment or other severe deprivation of physical lib-	

				erty, other inhumane acts, armed robbery, rape, conscription with the enemy, simple desertion, and desertion abroad.[55] **Civil parties:** 49 (although 69 victims were identified). **Verdict and sentence:** On 15 October 2012, the MC SK made the following orders: • Kyat Hend Dittman and Célestin Mubulanwa Nsunga to 20 years' imprisonment for crimes against humanity of imprisonment or other severe deprivation of physical liberty, other inhumane acts, conspiracy against state authority and territorial integrity, participation in an insurrectional movement, and terrorism; • Lepalepa Wanda to 10 years' imprisonment for crimes against humanity of imprisonment or other severe deprivation of physical liberty, other inhumane acts, conspiracy against state authority and territorial integrity, participation in an insurrectional movement, terrorism, and desertion; • Kazombo Amisi to 15 years' imprisonment and Bahati Mwati to 10 years' imprisonment for crimes against humanity of imprisonment or other severe deprivation of physical liberty, other inhumane acts, participation in an insurrectional movement, and terrorism; • Kitima Sumaili, Bisilingi Matenda, Feruzi Lubanga, and Lukamenya Kikuni to 10 years' imprisonment for participation in an insurrectional movement, and terrorism; • Bwansolu Mizaba to three years' imprisonment for desertion; • Yiki Paul to 30 months' imprisonment for desertion; • Mwepa Salumu to 15 years' imprisonment for participation in an insurrectional movement, and terrorism; • Bitalibwe Kangolongoli to 15 years' imprisonment for participation in an insurrectional movement, and rape; • Sadiki Masumu to 15 years' imprisonment for conscription with the enemy, terrorism, and participation in an insurrectional movement; • Mbula Kanyasubi Songa and Amuri Kikukama to 15 years' imprisonment and Asan Abeli Dodos to 10 years' imprisonment for terrorism and participation in an insurrectional movement.	
				• The MC SK acquitted Sengi Kyabutwa, Wabula Kalenga, Kasongo Wassanga, Kitalaganza Ngoma, Wenda Kyamonika, Kalumo Mali Ya Macho, Abeli Biluma Dumbo, Chikuru Katara, and Songa Kinyengele.	

				The MC SK declared the end of proceedings against Kitembo Mugeni and Abedi Kikuni Benz. **Appeal:** An appeal is pending before the High Military Court. Kyat Hend Dittman escaped from the Bukavu central prison.	
RMP 1526/ BKL/2014	Mutarule case Maj. Kayumba Nyenyere Venance, et al.	6 June 2014 Mutarule, South Kivu	At least thirty civilians, including eight children, were killed in an attack on 6 June, 2014 in Mutarule. The perpetrators attacked civilians at a church service, shooting and burning victims to death. They also attacked a health center and several houses.[56]	**Registration at the AMS:** 17 June 2014. **Arrest:** Maj. Kayumba Nyenyere Venance and Sheria Kahungu arrested on 11 June 2014. Provisional arrest warrants issued on 17 June 2014. **Charges:** War crimes of murder, attacks against civilians and protected objects (as described in the AMS SK registry). **Trial:** A mobile court was scheduled to take place in October 2014, but it was postponed for lack of sufficient funding.	
RMP 2128/ MPL/12	Eben-Ezer case Eben-Ezer	4 October 2011 Kalongwe, Fizi territory, South Kivu	On 4 October 2011, an attack was launched by unidentified perpetrators against civilians in Kalongwe on the basis of their Banyamulenge origin. Fourteen individuals from the Eben-Ezer NGO, travelling on a mission to Itombwe and Minembwe, were attacked in Kalongwe. Ten were of Banyamulenge origin and four were of other origins. Seven of the Banyamulenges were killed by guns, machetes, or burned alive; two were severely injured; one escaped. The four non-Banyamulenges were not attacked.	**Registration at the AMG Bukavu:** 24 April 2010(RMP 1673/KMC/10). **Arrest:** • As per the referral decisions of 15 December 2007 and 8 May 2008, the accused persons were Jean Bosco Maniraguha, alias Kazungu, Sibomana Kabanda Tuzaruana, Rasta, Freddy, Vatican, Gitamisi, MONUC and Njegitera.[61]	
RMP 0940/ KMC/ 2010	Lulinda and Lusenda case Lulinda	29-30 June 2000 Lusenda village, South Kivu	During the night of 29 June 2000, the Forces pour la Défense de la Démocratie (FDD) and RCD launched an attack against the population of Lusenda village. The village was looted and 79 persons were killed.	This case is still at the investigation level. It seems to be blocked, as no developments were noted.	(The Auditorat Militaire de Garnison of Uvira requested support from partners to investigate this case and interview victims. No support was provided.)
RP 275/09 and 521/10 RMP 581/ TBK/07 and 1673/ KMC/10 (Trial) RPA 0177 (Appeal)	Kazungu case Jean Bosco Maniraguha, alias Kuzungu or Petit Bal, et al.	June 2006-January 2007 Tulumamba, Kalega, Rwamikundu, Mamba, Fendula, Kafuna, Mushenge, Bitage, Tulabilao, Mafuo, Kabiso, Batatenga, Hungu and other villages, South Kivu	From June 2006 to January 2007, Jean Bosco Maniraguha, alias Kazungu or Petit Bal, Sibomana Kabanda Tuzaruana, and other members of FDLR Rasta launched attacks on many villages in South Kivu, particularly on the Kalehe and Bunyakiri axes. Attacks were committed on the Kalonge axis in June and July 2006, and on the Bunyakiri axis between August 2006 and January 2007.[57]	**Registration at the AMG Bukavu:** 24 April 2010(RMP 1673/KMC/10). **Arrest:** • As per the referral decisions of 15 December 2007 and 8 May 2008, the accused persons were Jean Bosco Maniraguha, alias Kazungu, Sibomana Kabanda Tuzaruana, Rasta, Freddy, Vatican, Gitamisi, MONUC and Njegitera.[61] • Jean Bosco Maniraguha, alias Kazungu, and Sibomana Kabanda Tuzaruana were arrested. Precise date of arrest is not	**UNDP and UNJHRO:** Institutional support. **ASF:** Assistance to victims. **ABA:** Psychological support to victims during the Appeal.

			On 2 July 2006 at around 7:30p.m., Kazungu and 18 of his militiamen attacked villages in Kalonge, including Tulumamba, Kalega, Rwamikundu, Mambu, and Fendula. They committed pillage, abducted and killed civilians, including women and girls. Individuals who were abducted were brought back to the FDLR Rasta camp, distributed between the militiamen, and repeatedly raped.[58] During the evening of 9 July 2005, at around 8p.m., 56 houses in Rwamikundu village were burned, killing 52 people including, seven children. More civilians were tortured and killed. Women, including girls, were tortured and raped.[59] Sibomana Kabanda Tuzaruana joined the FDLR Rasta to support the militiamen. After confrontations between FARDC and FDLR Rasta, attacks were launched against a number of villages, including Kafuna, Mushenge, Bitage, Tulabilao, Mafuo, Kabiso, Batatenga, and Hungu. They committed murders, rapes, and pillages. Twelve houses in Cifunza village and 13 houses in Sati village were burned.[6]	available at AMG Bukavu. RP refers to the arrest of Kazungu in Kabiso village in January 2007.[62] **Charges:** Crimes against humanity of murder, rape, imprisonment, inhumane treatment, torture, and illicit possession of arms and munitions of war.[63] **Transfer:** Transferred from AMG Bukavu to MGT Bukavu on 15 December 2008 (RMP 581/TBK/KMC/07) and 8 May 2010 (RMP 1673/KMC/10). **Joinder of cases:** Both case RMP 581/KMC/07 and RP 275/09 against Jean Bosco Maniraguha, alias Kazungu, and Sibomana Kabanda Tuzaruana for crimes committed in Bunyakiri, and case RMP 1673/KMC/10 and RP 521/10 against Jean Bosco Maniraguha, alias Kazungu, Sibomana Kabanda Tuzaruguana, et al. or crimes committed in Kalonge, were joined by MGT Bukavu.[64] **Registration at the MGT Bukavu:** 2 January 2011. **Civil parties:** 400 civil parties[65] **Trial:** Commenced 8 August 2011. **Verdict and sentence:** On 16 August 2011, the MGT Bukavu gave the following orders: • Jean Bosco Maniraguhato sentenced to life imprisonment for all charges (crimes against humanity of torture, rape, murder, imprisonment and other forms of	
				physical deprivation, and illegal possession of arms and munitions); • Sibomana Kabanda sentenced to 30 years' imprisonment for crimes against humanity of murder, and imprisonment and other forms of physical deprivation; • Both accused to provide restitution of the victims' belongings.[66] • MGT BKV also ordered the state, alone, to pay $700 USD for compensatory damage to each rape victim; $550 USD to each torture victim, $400 USD to each victim of imprisonment and other forms of physical deprivation; and $5,800 USD for each murder victim.[67] **Appeal:** • Registered at the MC SK on 13 October 2011. • Commenced on 24 October 2011. • On 29 October 2011, the MC SK confirmed the convictions delivered by MGT Bukavu. It confirmed Jean Bosco Maniraguha's life imprisonment, and	

			[0]	increased Sibomana Kabanda's sentence to life imprisonment. • For victims who cross-appealed the order, the MC SK ordered the state to pay $10,000 USD for compensatory damage to each rape victim; $20,000 USD to each murder victim; $5,000 USD to each victim of imprisonment and other forms of physical deprivation; and $5,000 USD to each victim of torture and other inhumane acts.[68]	
RP 702/11 RMP 1901/ KMC/ 2010	Sabin Kizima Lenine case	30 December 2009 Lulingu, Shabunda, South Kivu	On 30 December 2009, FDLR launched an attack in the village of Lulingu, Shabunda. Sabin Kizima Lenine allegedly entered the village, attacked women and girls, looted property, burned alive one young man, and abducted boys to become porters.[66]	**Registration at the AMG Bukavu:** 11 November 2010. **Arrest:** Sabin Kizima Lenine was arrested on 10 November 2010. On 11 November 2010, a provisional arrest (including charges) was issued against the accused. **Charges:** crimes against humanity by murder, rape, torture, and other degrading acts. **Civil parties:** 454 civil parties. **Registration at the MGT Bukavu:** During February 2012 (it had been sent from AMG Bukavu on 13 December 2011). The MGT Bukavu had initially set the date of trial due to difficulties organizing the hearings, considering victims and witnesses (100 in total) were in Shabunda, which is remote and 350 kilometers from Bukavu. **Trial:** Commenced 9 June 2014. **Verdict and sentence:** on 29 December 2014, MGT Bukavu condemned Sabin Kizima Lenine to life imprisonment and to pay $5,000 USD for each rape victim; $10,000 USD for each murder victim; and $3,000 USD for each victim of imprisonment or other forms of physical liberty deprivation. **Appeal:** An appeal was requested before the MC Bukavu.	**UNJHRO:** Support of the April 2011 investigation (expenses coverage for magistrates, logistical support), support during the trial (expenses coverage for the magistrates, supplies), assistance to victims during the investigation, protection measures for victims. **UNDP:** Institutional support. **ASF:** Assistance and legal representation to victims
RMP 2304/ KMC/ 2012 2180/ IH/2304/ KMC/ 2012	Sabin Kizima Lenine case Singabanza Nzovu case Singabanza, et al.	1-4 January 2012 Nzovu, Shabunda territory, South Kivu	From 1 to 4 January 2011, FDLR launched an attack against remote villages in Shabunda, South Kivu.[70] Thirty-three people were killed, one woman and one girl were abducted and raped for two days, 2700 people were displaced, and most of the houses of the region were looted and burned.[71]	**Registration at the AMG Bukavu:** 23 January 2012. **Transfer:** Transferred to AMG Uvira on 17 March 2012 (by letter 059). **Charges:** Crimes against humanity by murder and attempted murder. **Arrest:** On 23 January 2012, Jean Bosco Singababanza and Dufitimana Victor were arrested.	**MONUSCO:** Part of a joint team to investigate alleged violations on 9-12 April 2011.[72] **PSC:** Technical support in planning investigation, as well as logistics, transport, and equipment. **UNDP:** Institutional support. **ABA and ASF:** Assistance to victims.

					UNDP: Institutional support. **ABA and ASF:** Assistance to victims.
RMP 1248/ MTL/09	Kasika Carnage case Commander Shetani	24 August 1998 Kasika, Kalama, Kilungutwe, Zokwe and Tchidasa, South Kivu	On 24 August 1998, members of RCD, under the command of Commander Shetani, and APR attacked the villages of Kasika, Kalama, Kilungutwe, Zokwe, and Tchidasa. At least 800 civilians were killed and the villages were looted and burned. These attacks were revenge for earlier defeats of RCD and APR by the Mai Mai militia, under Commander Nyakiliba. They presumably followed the instruction to kill every civilian on the Tubimbi-Kangola axes.	**Registration at the AMS SK:** 10 September 2009. **Charges:** War crimes of murder (as described in the AMS SK registry). **Accused:** Col. Eric Rorimbere and Commandant Shetani. Since the violations were allegedly committed, Eric Rorimbere had become a general in FARDC, assigned to Lubumbashi. **Arrest:** No arrest to date. **Investigations:** No investigations are ongoing, but the case is still open.	
NORTH KIVU PROVINCE[73]					
RMP 026/2009	Miriki/Lubero case	January 2009-May 2009 Miriki, Bushalingwa, and Kishonja, Lubero and Walikale territories, North Kivu	In early 2009, FARDC soldiers attacked villages in North Kivu, including Miriki, Bushalingwa, and Kishonja. FARDC soldiers pillaged and burned hundreds of houses, as well as schools and health centers, in the context of military operations in Eastern DRC. It was also reported that women were taken as sex slaves by soldiers.[74] One attack in Miriki was in retaliation for the killing of more than 12 soldiers by Rwandan militias. FARDC soldiers allegedly killed the police commander, who they accused of collaborating with the FDLR, and pillaged and burned houses.[75]	Information not available.	

RMP 0236/ MLS/2011	Bushani case Maj. Dario, Maj. Emmanuel Ndungutsi, Maj. Eustache, Col. Jonathan Balumisa Tchumaandall	31 December 2010-1 January 2011 Bushani, Kalambahiro, Masisi territory, North Kivu	Between 31 December 2010 and 1 January 2011, men identified as belonging to FARDC[76] launched attacks against the villages of Bushani and Kalambahiro, in Masisi territory.[77] Soldiers committed sexual violence, including rape, against at least 47 women (including one girl), abducted civilians, and inflicted inhuman and degrading treatments to at least 12 other persons.[78] They also allegedly looted 100 houses and three buildings, and burned or destroyed four houses.[79] At the time of these events, the joint MONUSCO and FARDC mission, "Hatua Yamana", was being undertaken. It ran from 31 December 2010 to 7 January 2011 to fight against numerous armed groups in the area, including Alliance of Patriots for a Free and Sovereign Congo (APCLS) and FDLR. The 1213, 2212, 2222, 2331, and 2311 FARDC battalions were part of the mission. However, it has not been confirmed whether any of these battalions committed the violations.[80]	**Registration at the Auditorat militaire opérationnelle (AMO):** 13 January 2011. **Accused:** (1) Maj. Dario (2312th battalion), (2) Maj. Emmanuel Ndungutsi (2331st battalion), (3) Maj. Eustache (2222nd battalion), (4) Maj. Bony Matiti (1213th battalion), (5) Lt. Col. Jule Butoni (2312nd battalion), (6) Maj. Mahoro Sebuhoro (deputy, 2311st battalion), (7) Col. Paul Mugisha Muhumuza, (8) Col. Jonathan Balumis Tchuma (9-12) four Company Commanders not otherwise identified. **Arrest:** Maj. Mahoro was arrested on 3 May 2011, but subsequently escaped. **Charges:** Crimes against humanity by rape, pillage, and imprisonment. **Investigations:** • On 10 February 2011, the MOC requested the availability of the commanders of the FARDC battalions. • In March 2011, FARDC officers, including Col. Tshumo and Col. Mugisha, were made available to be questioned by military justice officials. • UNJHRO indicated that the absence of progress is due to a number of factors, including the lack of cooperation of FARDC hierarchy.[81] • The number of victims has not been determined, and investigations are ongoing.	**UNJHRO:** Deployment of a team to investigate in the area from 17 to 19 January 2011; Second investigation in conjunction with representatives of the military prosecutor at the CMO and local NGOs from 2 to 4 February 2011; Publication of a public report on the case.[82]
RP 003/2013 RMP 0372/ BBM/013	Bweremana–Minova case	20-30 November 2012 Minova, and neighboring villages of Bwisha, Buganga, Mubimbi, Kishinji, Katolo, Ruchunda and Kalungu, North Kivu and South Kivu	From 20 to 30 November 2012, members of FARDC committed numerous rapes in Minova and neighboring villages.[83] Over 102 women and 33 girls were victims of rape and other sexual violence offences.[84] Following M23 attacks in Goma and the takeover of the city on 20 November 2012, FARDC withdrew to the city of Minova and the surroundings areas of Kalehe territory. While fleeing the frontline towards Minova, FARDC soldiers engaged in a series of massive abuses, including sexual violence, pillaging, and other systematic violations of human rights such as murder, and cruel, inhuman and degrading treatment.[85]	**Registration at the AMO:** 4 November 2013. **Transfer:** Sent from AMO to MOC on 8 November 2013. **Accused:** (1) Lt. Col. Nzale Nkumu Ngandu, (2) Lt. Col. Sylvain Djalonga Rekaba, (3) Lt. Col. Romain Nzambe Kwande, (4) Lt. Col. Jean-Marie Wasinga Ntore, (5) Maj. Rocky Usuna Kitambi, (6) Capt. Patrick Kangwanda Swana, (7) Capt. Byamungu Rusema Sema, (8) Capt. Ndjate Kusombo, (9) Capt, Jean-Marie Bola Mpulu, (10) Capt. Jules Kilonda Pemba, (11) Capt. Nzemo Rene Albert, (12) Capt. Charles Kapende Mayimbi, (13) Lt. Paty Kasereka Kambale, (14) Lt. Désiré Solo Mateso, (15) Sub. Lt. Sabwe Tshibanda, (16) Sub. Lt. Mbaki Bokinda, (17) Adj. First Cl. Kalaki Mutombo, (18) Adj. First Cl. Etienne Longondo, (19) Adj. First Cl. Alele Monga, (20) First Sgt. Maj. Kabongo Katete, (21) Sgt. Trésor Balonga Sangwa, (22) Sgt. Roger Kasereka Bolali, (23) Cpl. Jules Mogisha Tibasima, (24) Cpl. Guélord Betoko Ipoya, (25)	**MONUSCO:** Joint investigative mission with the Auditorats NK and SK; Logistical support for government missions of administrative investigations; Logistical and technical support; 2 missions and 1 protocol mission to deliver legal documents; Provided technical reports (interviews, examinations and rogatory commission). **PSC:** Operational and technical support (practical advice during interviews with victims and witnesses, magistrates transport);

				Cpl. Mohindo Kizito, (26) Cpl. Jean Kombe Bakaluke, (27) Cpl. Michel Magbo Alphonse, (28) Cpl. Kabiona Ruhingiza, (29) Cpl. Désiré Mumbere Kisangani, (30) Cpl. Patrick Paluku Mbokani, (31) Cpl. Kambale Bakwana, (32) First Cl. Jean Kambale Kamabu, (33) First Cl. Kakule Karubandika, (34) First Cl Manzia Mombi, (35) First Cl. Kambale Kazeire, (36) First Cl. Paluku Akufakala, (37) Mumbere Tshongo, (38) Jean de Dieur Mandro Lotima, and (39) Donation Bahati Safari. **Charges:** War crimes of rape, pillage, murder, and violation of instructions. **Trial:** • Commenced 20 December 2013. • While the trial was initially set to commence on 20 November 2013, the First President of the HMC nominated two magistrates of the HMC (HMC advisors) to be part of the MOC bench. This nomination presumably caused the delay of a month so that the magistrates could familiarize themselves with the case. **Civil Parties:** 1,016 civil parties.[86] **Verdict and sentence:** On 5 May 2014, the MOC NK found 26 members of the FARDC guilty, including two superior officers, out of the total 39 individuals accused. Two were convicted of rape and sentenced to life imprisonment; one was convicted for murder and sentenced to life imprisonment; one was convicted for extortion and sentenced to five years' imprisonment; one was convicted for pillage with aggravating circumstances and sentenced to 20 years' imprisonment; one was convicted of embezzlement of ammunition and sentenced to 10 years' imprisonment; 19 were convicted of pillage and sentenced to ten years' imprisonment; and one was convicted of pillage and sentenced to 20 years' imprisonment.[87] **Appeal:** The civil parties appealed the MOC decision on 9 May 2014.	**UNJHRO:** Assisting victims during investigations and mobile trials; **UNJHRO and Child Protection Unit (CPU):** 2 investigative missions (interview with about 200 victims and witnesses). **ABA and ASF:** Legal representation of victims. **MONUSCO and UNJHRO:** Joint investigation with the Auditorats of NK and SK. Logistical support to a governmental
RMP 0041/ MA/2013 RMP 0362/ BBM/ 2013	Kitchanga case Col. Mudahunga Safari, Col. Muhire, et al.	27 February-5 March 2013 Kitchanga, Masisi territory, North Kivu	Between 27 February 2013 and 5 March 2013, civilians were targeted during FARDC and APCLS confrontations, between Masisi and Kitchanga.[88] At least 27 civilians, including ten children, were killed, two women were raped and then killed, 89 were wounded, and more than 500 houses were looted, burned and destroyed.[89]	**Registration at the AMO:** 2 July 2013. **Charges:** Crimes against humanity by murder, pillage, and burning, and war crimes by murder, pillage, and burning. **Accused:** Involved both members of the FARDC and APCLS. Twelve presumed authors were interviewed during the investigations.	**UNJHRO:** Logistical and financial support of investigations,[94] assistance of victims during the investigations. **UNDP, PSC and ASF:** Two joint investigation missions on 1-6 October 2013 and 21-25 July 2014.

			The attack allegedly had had an ethnic dimensions, with FARDC members attacking civilians of Hunde origin for their suspected support of APCLS.[90] However, both parties to the conflict committed attacks against civilians. The majority of the offences were committed by FARDC members of the 812th regiment, based in Kitchanga.[91] A number of offences were committed by APCLS, under the command of Musa Jumapile.[92] Col. Mudahunga and Col. Muhire allegedly distributed arms to Rwandophones of Kitchanga and Kahe camp, inciting them to attack Hundes.[93]	**Investigations:** Over 300 victims were identified.	**UNDP and PSC:** Institutional support. **ASF:** Assistance to victims and financial support of the national NGO, Action Globale Pour La Promotion Sociale Et La Paix (AGPSP), who participated in the identification of victims. **PSC:** Support of ongoing investigations
RMP 0223/ MLS/10 RP 055/2011	Kibua–Mpofi Walikale case Lt. Col. Mayele, et al.	30 July-2 August 2010 Bunangiri, Kembe, Tweno, Ruvungi, Bunyampiri, Chobu, Bitumbi, Rubonga, Kasuka, Ndorumo, Brazza, Kitika, Nsindo, North Kivu	From 30 July to 2 August 2010, a coalition of armed groups, including FDLR and Mai Mai Sheka, attacked 13 villages near Luvungi on the Kibua Mpofi axis, in Walikale territory.[95] At least 387 women, men, and children were raped.[96] Rapes were mostly committed by groups of two to six combatants, in the presence of victims' children and relatives.[97] Combatants also allegedly looted at least 923 houses and 42 shops in the villages.[98] At least 116 people, including 15 minors, were allegedly abducted and subjected to forced labor.[99] At least 12 men and three children abductees were also subjected to cruel, inhuman, and degrading treatment.[100] The attack would have been planned on 27 July 2010 in the presence of Ntabo Ntaberi Sheka, Capt. Sérafin Lionso (FDLR) and Lt. Col. Emmanuel Nsengiyumva.[101] The attack was ordered on the same day by Ntabo Ntaberi Sheka.[102] It was intended to punish those communities considered as supportive of the FARDC, and for equipping the coalition of armed groups.[103]	**Registration at the AMO:** 30 August 2010. **Accused:** (1) Lt. Col. Sadoke Kikunda Mayele (died in Munzenze prison) (Provisional Arrest Warrant including charges (MAP): 6 October 2010), (2) Ntabo Ntaberi Cheka (MAP: 6 January 2011), (3) Maj. Alphonse Karangwa Musemakwel (escaped) (MAP: 6 January 2011), (4) Maj. Pumuzika Wango, alias Alpha (MAP: 31 May 2011), (5) Maj. Jean-Marie Rwasibo Sabira (MAP: 31 May 2011), (6) Maj. Bizimana Mukengezi, alias Madoadoa (MAP: 31 May 2011), (7) Lionso Séraphin (MAP: 6 January 2011), (8) Evariste Kanzeguhera, alias Sadiki (died) (MAP: 6 January 2011). **Arrest:** • On 5 October 2010, Lt. Col. Mayele (Mai Mai Sheka) was arrested with the support of MONUSCO,[104] which then facilitated his transfer to Goma. Lt. Col. Mayele died in prison in August 2012. • In September 2012, Maj. Alphonse Karangwa, from FARDC, was apprehended, but escaped a few weeks later. • FDLR and Mai-Mai Sheka remain active in Eastern DRC. This has made arrests and prosecutions more difficult.[105] **Provisional arrests (including charges issued):** • Against Lt. Col. Sadoke Kikunda Mayele on 6 October 2010; • Against Ntabo Ntaberi Cheka, Maj. Alphonse Karangwa Musemakwel, Lionso Séraphin, and Evariste Kanzeguhera, alias Sadiki, on 6 January 2011; • Against Maj. Pumuzika Wango, alias Alpha, Maj. Jean-Marie Rwasibo Sabira,	**UNJHRO:** Deployment of a team to the area to investigate the alleged violations on 13-17 August 2010; deployment of a fact-finding team in the area on 25 August-2 September 2010; publication of a preliminary report on 24 September 2010; deployment of a team to further investigate allegations and assess implementation of the preliminary report on 16-21 October 2010;[109] publication of a final report on fact-finding mission in July 2011.[110] **MONUSCO and UNDP (and other international partners):** Supported a team of military investigators deployed in Walikale, 28 October-29 November 2011 to collect victims' and witness' testimonies.[111] The investigation, however, was interrupted for security reasons.[112] **PSC:** Following a support request approved by PSC on 5 April 2012 provided technical support in investigation planning and techniques.

			Maj. Bizimana Mukengezi, alias Mado adoa, on 31 May 2011.	**Charges:** Crimes against humanity by rape, pillage, murder, and other inhumane and degrading acts, participating in an insurrectional movement, and terrorism. **Investigations:** on 28 October 2010, despite a difficult security situation, AMO conducted on-site interviews of more than 150 victims in Walikale. The investigation was suspended on 30 November 2010 for security reasons.[105] In total, around 250 victims were identified. **Detention extension:** On 29 September 2011 (prior to transferal from AMO to MOC), a hearing was held to identify the accused. **Transfer:** By a decision in October 2011, the case was transferred to the MOC. However, due to security issues, the MOC could not sit in Walikale and the trial was delayed.[107] **Registration at the MOC:** 25 October 2011. **Trial:**[108] • The first hearing was held on 10 November 2011 to identify the accused; • The second hearing for the trial in Walikale, on 6 December 2011, was suspended due to insecurity in the area.	
RMP 0261/ MLS/11	Mutongo case Janvier Buingo Karairi (APCLS) and Ntabo Ntaberi Sheka (NDC)	10-16 June 2011[113] Mutongo, Kaseke, Misoke, Ntaka, Mahinge, and Misaho in Walikale territory, North Kivu	From 10 to 16 June 2011, there were confrontations between Mai Mai Sheka and APCLS in 23 villages in the Ihana groupement, including Mutongo, in the Walikale territory. During these confrontations, at least 50 people were victims of sexual violence, including 12 minors and one adult male, and 40 people were victims of inhuman and degrading treatment.[114] Tens of thousands were displaced in the direction of Pinga and Kibua. UNJHRO also reported that from July to August 2011, following the confrontations, rapes were allegedly committed on a large scale in Mutongo and surrounding villages. Eighty cases of rape and sexual violence, including 12 children and one man, were reported. More than 40 people were subjected to cruel, inhuman or degrading treatment.[115]	**Registration at the AMO:** 15 August 2011. **Arrest:** • On 20 September 2014, provisional arrest warrants, including charges, were issued. They were never executed.[116] • Col. Karara Mukandirwa, who had been a commander, deserted and was killed in Pinga in 2012.[117] **Charges:** Crimes against humanity by rape, murder, torture, and pillage. **Civil parties:** 88 victims expressed their willingness to complain by signing a judicial mandate with ABA and Dynamiques Femmes Jurists (DFJ). **Investigations:** On 26 September 2011, an investigation was led by a joint team of AMO, Judicial Police Office, inspectors, UNJHRO, PSC, and DFJ. Forty-nine victims (including 17 victims of pillage, 27 victims of rape, two in relation to murder victims, and three victims of torture) were interviewed. An additional 43 victims were identified but not interviewed, due to a lack of time.	**UNJHRO:** Led investigations on alleged violations in Mutongo, Pinga and Kibua in July and August 2011.[118] **MONUSCO, PSC, UNJHRO, ABA, and Dynamiques Femmes Juristes (DFJ):** Supported and participated in joint investigation team in Pinga in September 2011.[119]

RMP 0297/ BBM/ 2012	M23 Rutshuru case Col. Makenga Sultani, et al.	June-August 2012 Rutshuru, North Kivu	From June to August 2012 M23 combatants launched attacks against the civilian population of Rutshuru. They deliberately killed at least 15 civilians, injured 14 others, and raped at least 46 women and girls in areas under their control. At least 13 victims of rape were children. By the end of September 2012, the UN established that 46 cases of rape had been committed by M23 elements.[120] It was also documented that M23 arbitrarily executed at least 20 prisoners of war,[121] and conscripted and enlisted more than 250 children.[122] Some of the civilians were attacked because they resisted forced recruitment or refused to give food to M23. Others were targeted because they were suspected of being hostile to M23 or fled to government controlled areas and tried to return to find food.[123]	**Registration at AMO:** 27 June 2012. **Arrest warrant:** issued on 23 January 2014. **Charges:** Participation in an insurrectional movement, desertion, war crimes of rape, murder, and child recruitment. **Accused:** As per the information available the registry, the accused are: Col. Makenga Sultani, Saddam, Col. Masozera, Col. Kazaram Vianney, Seraphin Mirindi, Jimmy Nazamuyenyi, Kayina Innocent, Neck. Innocent Zimurinda, Bedi Rusagara, Xavier Tshiribani, Baudoin Ngaruye, and Col. Munyakazi, Lt. Col. Makiese.	
RMP 0363/ BBM/12	Ufamandu/ Masisi case	April-September 2012 Ufamandu I, Ufamandu II and Kibiti in Masisi territory, North Kivu	During the night of 5 April 2012, Raia Mutomboki launched an attack against the village of Nyalipe, Ufamendu II. Nine women, including four minors, were raped, 19 people were killed, and at least 29 houses were burned down during this attack.[124] From 5 to 28 May, 2012, a coalition of Raia Mutomboki and Mai Mai Kifuafua launched 20 attacks against 11 villages in the area of Ufamandu II, Masisi. Three hundred and forty-three people, mostly children and women of the Hutu ethnic group, were killed.[125] Between August and September 2012, during a period of three weeks starting from 27 August 2012, Raia Mutomboki, under M23 leaders, launched attacks against the civilian population of Hutu communities in Masisi, including Ngungu and Luke.[126] More than 800 houses were looted and hundreds of civilians were killed during these attacks.[127] At least 112 civilians were killed in Katoyi during this period.[128] From May until September 2012, more than 75 attacks were	**Registration at AMO:** 12 July 2013. Based on a complaint of 16 November 2012 (BCNUDH/080/12) and 30 November 2012 (letter No AG/080/12). **Arrest warrants:** Issued 23 January 2014. **Accused:** 1) Commander of the Mai Mai Kifuafua armed group, 2) Commander of the Nyatura armed group, and 3) commander of the Raia Mutomboki armed group **Charges:** Crimes against humanity by rape, murder, and other inhumane and degrading acts, and war crimes.	

			launched against civilians, mostly led by Raia Mutomboki.[129]		
RMP 0364/ BBM/13 RP 001/013	Salomon case Sub. Lt. Salomon Bangala Urbain and Lubamba Kuyangisa (PNC/ APP)	16 July 2013 Kanyarachina, Nyiragongo territory, North Kivu.	On 16 July 2013, at the same time as confrontations between FARDC and M23 in Kanyarachina, M23 members allegedly mutilated half naked corpses with weapons.[130]	**Registration at AMO:** 20 July 2013. Based on a complaint (No 029/EM/First Bde URR Cdo Cmdt/13). **Accused:** Salomon Bangala Urbain and Lubamba Kuyangisa. **Arrest:** on 18 July 2013. **Provisional arrest warrant including charges:** On 8 November 2013. **Charges:** Corpse mutilation (requalified as the war crime of committing outrages upon personal dignity, in particular, humiliating and degrading treatment, as per art. 8(2)(c)(ii) of the Rome Statute). **Transfer:** Transferred to the MOC on 20 July 2013 (letter No AMS OPS NK/0003/D'5/13). **Verdict and sentence:** On 19 August 2014, convicted both defendants and sentenced Salomon Bangala Urbain to two years' imprisonment and Lubamba Kuyangisa to one year imprisonment.	
RMP 0412/ BBM/014 RP 019/014	Birotsho case Lt. Col. Birotsho Nzanzu Kossi, Kakule Makambo Richard, Lubangule Ndele Emmanuel, Katembo Kalisha Gervais		No information available and the decision is not available. Manuscript of the decision is with the MOC First President.	**Registration at AMO:** 11 November 2014. **Charges:** War crimes of murder, pillage, terrorism, and participation in an insurrectional movement. **Accused:** Lt. Col. Birotsho Nzanzu Kossi, Kakule Makambo Richard, Lubangule Ndele Emmanuel, and Katembo Kalisha Gervais. **Verdict and sentence:** On 17 November 2014, the MOC: • Convicted Kakule Makambo Richard and sentenced him to death for war crimes by murder, pillage, terrorism, and participation in an insurrectional movement; • Convicted Katembo Kalisha Gervais and sentenced him to four years' imprisonment for participation in an insurrectional movement; • Acquitted Lt. Col. Birotsho Nzanzu Koss for war crimes by murder, pillage, terrorism, and participation in an insurrectional movement; and • Acquitted Emmanuel Lubangule Ndele for participation in an insurrectional movement.	

ITURI DISTRICT[131]					
RP 071/09, 009/010 and 074/010 RMP 885/ EAM/08 RMP 1141/ LZA/010 RMP 1219/ LZA/010 RMP 1238/ LZA/010	Kakado case Kakado Barnaba Yonga Tshopena	5 September 2002 Bahiti, Tscheletshel and Tsheyi, Nyakunde groupement, Loy Banigaga, Chini Ya Kilima groupement, Sidabo groupement, Marabo Musedzo groupement and Mayaribo groupement, Andisonma Chefferie and Mobala Chefferie, Nyakunde, Ituri	On 5 September 2002, Ngiti Force de Résistance patriotique de l'Ituri (FRPI) militiamen launched an attack called "Operation Polio" at 9 a.m. This attack was launched with the agreement of Kakado Barnaba Yonga Tshopena, under the command of Kandro Ndekote, Cobra Matata, and Faustin Paluku. Militiamen came from four different directions – from Songola, Bavi, Tsheyi, and Baitilooting. They destroyed and burning buildings and infrastructure in 28 localities on their way towards Nyankunde center, and committed killings and rapes. In the groupements of Loy Banigaga, Chini Ya Kilima, and Sibado, 949 civilians were killed. In the groupements of Marabo Musedzo and Mayaribo, 260 civilians were killed. Following this attack, the FRPI occupied the area for 15 months, until 4 December 2003.[132] This attack was retaliation against the population that FRPI accused of complicity with the Union des Patriotes Congolais (UPC).[133] It was followed by occupation of Nyakunde for 15 months. Between 2002 and 2007, the FRPI committed a series of crimes against the population. Kakado Barnaba is part of the tribal militia of Ngiti combatants. He subsequently became a member of an armed politico-military called FRPI, of which he became the supreme leader.	**Registration at AMG Bunia:** 11 November 2009. **Arrest:** Kakado Barnaba Yonga Tshopena arrested on 5 August 2007. **Registration at the MGT Bunia:** 12 January 2010. **Charges:** Participation in an insurrectional movement, war crimes of murder, attack against civilians, attack against protected property, pillage, rape, cruel and inhumane treatment, attacks against undefended towns, other inhumane acts, and sexual slavery. **Trial:** Commenced 18 January 2010. **Joinder of cases:** The MGT joined the cases on 5 February 2010 (RP No 071/09 and 009/010, RNP RMP No 885/EAM/08 and 1141/LZA/010). **Civil parties:** Only 12 civil parties;[134] with 1309 victims of murder identified.[135] **Verdict and sentence:** On 9 July 2010, MGT Bunia sentenced Kakado Barnaba Yonga Tshopena to life in prison for insurrection, war crimes of murder, rape, sexual slavery, other inhumane treatments, attacks against undefended towns, pillage, attacks against protected properties, and attacks against civilians. He was convicted as a "superior" under art. 28 of the Rome Statute.[136] **Appeal:** Kakado Barnaba Yonga Tshopena appealed the MGT Bunia's decision, but died before it was taken further.	**ASF:** Legal assistance to victims.
RP 175/12 RMP 1699/ MML/012 RMP 1699/ KNG/12 RMP 1703/ KNG/ 12[137]	Cobra Matata case Irizo Muzungu Barakiseni and Baluku Utugba Bahati	20 June 2011-20 May 2012 Mangava, Singo, Tcheyi, Tchekele, Ovusoni, Matse, Nyakeke, Ngida, Kelegpese, Bavi, Walendu-Bindi, Avebu, Kelekpese, Talolo, Kasomaka, Be tho, Bute, Kato-	Between July 2011 and April 2012, Cobra Matata militiamen and militiamen associated with Front populaire pour la justice au Congo (FPJC) and FRPI launched a series of attacks against the civilian population in Irumu territory. Militiamen committed murders, rapes, pillage, and burned down 50 houses.	**Registration at the AMG Bunia:** 15 March 2012. **Accused:** • Irizo Muzungu Barakiseni and Baluku Utugba Bahati (RMP 1699/KNG/12); • Masumbuko Kazi (RMP 1703/ KNG/12). **Arrest:** On 4 March 2012 at État Major Safisha. Provisional arrest warrant (including charges) issued on 19 March 2012.	**MONUSCO:** Punctual recommendations; two investigations; one mobile trial.[139] **UNDP:** Logistical and material support for the trial. **ASF:** Legal assistance to witnesses and victims.

		rogo, Nginda, Talolo, Badjanga, Katorogo, Boninga, Kalibugongo, Tangamatafu, Irumu territory, Ituri district		**Charges:** Participation in an insurrectional movement and possession of armed weapons and ammunition. The allegations, however, were described as war crimes in the referral decision (26 October 2010)[138] and in the support request sent by AMS to the PSC (support request letter No AMG/ITI/0124/D8a/12, dated 28 August 2012) **Investigations:** • 150 victims and 120 witnesses were identified during the investigations. • From 17 to 18 May 2012, an investigatin was undertaken in South Irumu of severe crimes committed between 4 March and 10 May 2012 by Cobra Matata and his troops. Twenty-four victims were interviewed. • Investigations were subsequently suspended for security reasons. **Trial:** • On 4 February 2013, the AMG of Bunia suspended the prosecution against Cobra Matata, in the name of peace, as the militia leader had expressed his willingness to integrate into FARDC under the rank of general. • The trial, however, resumed on 18 April 2014.	
RPA 274/013 RP 153/012 RMP 1818/KNG/13 (against the accused: (1) Moussa Oredi, (2) Mumbere Makasi, (3) Gaston Awawungo, (4) Delphin Mumbere Mulimirwa, alias Le Blanc, (5) Kambale Kahese, (6) Mumbere Sumbadede,	Morgan/Epulu Reserve Carnage/ Mambasa I case Moussa Oredi, Mumbere Makasi, Gaston Awawungo, Delphin Mumbere Mulimirwa, alias Le Blanc, Kambale Kahese, Mumbere Sumbadede, and Sébastien Katembo Mukandirwa Paul Sadala, alias Morgan, et al.	24-25 June 2012 Mambasa, Lubero and Bafwasende territories, Ituri	On 10 March 2012, the Mai-Mai Morgan militia launched an attack against the civilian population of Pangoyi in Mambasa territory. Another attack was launched against the population of Epulu, Mambasa territory, at about 5am on the morning of 25 June 2012. The perpetrators committed murder, rape, and pillage.[140] Several attacks have involved the Mai-Mai Morgan militia under the command of Paul Sadala. Paul Sadala, alias Morgan, is a poacher operating in the territories of Mambasa Lubero and Bafwasende, Province Orientale. In 2012, he launched violent attacks against FARDC and the Institut Congolais pour la conservation de la nature (ICCN) while committing violations against the population, including mass rape and subjugation of prisoners into sexual slavery.[141] Between 1 and 5 November 2012, members of Mai Mai Morgan alleg edly committed 150 rapes and sexual mutilations.[142]	**Registration at the AMG Bunia:** 3 July 2012. **Arrest:** On 29 June 2012. Provisional arrest (including charges) on 3 July 2012. **Transferal:** on 11 December 2012 it was transferred to MGT Bunia from AMG Bunia. **Charges:** (for referral decision RP153) Participation in an insurrectional movement, possession of weapons of war and ammunitions, war crimes by rape, pillage, murder, population displacement, enslavement, persecution of a group, destruction of fauna and flora, soil and sub-soil, and destruction of cultural patrimony.[143] **Registration at the MGT Bunia:** 11 August 2012 (RP153/012) and 18 October 2012 (RP155/012). **Trial:** Commenced 15 November 2012 (the trial start date had been fixed for 9 November 2012). C**ivil parties:** 66 at trial and 30 at the Appeal. **Accused:** • **RP153:** (1) Moussa Oredi, (2) Mumbere Makasi, (3) Gaston Awawungo,	**UNJHRO, PSC and UNDP:** Logistical and financial support, advice and recommendations. Also supported investigation missions and the mobile court. **ASF:** Legal assistance to victims.

(7) Sébastien Katembo Mukandirwa) RP 155/012 RMP 1915/ KNG/12 (against Paul Sadala, alias Morgan)				(4) Delphin Mumbere Mulimirwa, alias Le Blanc, (5) Kambale Kahese, (6) Mumbere Sumbadede, and (7) Sébastien Katembo Mukandirwa; • **RP 155:** Morgan Sadala. **Charges (revised):** After revisions during the trial for RP153 by MGT Bunia, charges were amended to participation in an insurrectional movement, crimes against humanity by rape, other forms of sexual violence, pillage, murder, illegal displacement of population, extermination, imprisonment or other severe deprivation of physical liberty, torture, enslavement, persecution of a group, enforced disappearance, severe destruction of fauna and flora, soil and sub-soil, and destruction of cultural patrimony.[144] **Verdict and sentence:** **RP 155:** on 28 November 2012, MGT Bunia declared itself to not be seized by the Morgan Case (RP 155/2012). Morgan Sadala had died on 14 April 2014, two days after his rendition to FARDC under obscure circumstances.[145] AMS Bunia announced an investigation into the circumstance of his death.[146] **RP 153:** MGT Bunia delivered the following verdict on 28 November 2012: • (1) Moussa Oredi convicted and sentenced to 20 years' imprisonment for illegal possession of war weapons and ammunitions; • (2) Delphin Mumbere Mulimirwa and (3) Kambale Kahese convicted and sentenced to life imprisonment for participation in an insurrectional movement, and for all charges of crimes against humanity; • MGT Bunia found (4) Sébastien Katembo Mukandirwa and (5) Mumbere Makasi not guilty of participation in an insurrectional movement and crimes against humanity; • Declared itself to not be seized of the case of (6) Mumbere Makasi; • Closed the case of (7) Gaston Awawungo, following his death and • MGT Bunia ordered all those convicted, jointly with the state, to pay 100,000 CDF to each civil party. **Appeal:** CMS Kinsangani upheld all provisions of the first instance case. -	
RPA 341/14 RP 246/13 RMP 2030/ KNG/012	Mambasa II case Paul Sadala, alias Morgan, Papy Masumbuko, Philipo Tegere, Mun	5-9 January 2013 Itembo, Pangoyi and Masikini, Mambasa territory, Ituri District.	Between 5 and 9 January 2014, on Mambasa territory, Mai Mai Simba members, commanded by Paul Sadala, alias Morgan, organized and launched an attack against the civilian population of Mambasa. Murder, rape,	**Registration at the AMG Bunia:** (date not available). **Arrest:** (date not available). **Transfer:** sent from AMG Bunia to MGT Bunia on 19 August 2013.	**UNDP and PSC:** logistical support and punctual recommendations. **ASF:** legal assistance to victims.

	bere Emmanuel, Katembo Mastaki, et al.		looting, and expulsion of the civilian population were committed. In June 2012, Mai-Mai Simba launched an attack against the population of the Okapi Fauna Reserve, of Elota, Kalemi, Mandima, Masikini, Mandulu, Maroc, Endjewe, Zalana Bangu, and Bandengaido, on their way to Epulu. The Mai Mai Simba committed pillage in various locations, displaced populations, committed rape, torture, and murder of civilians, including killing of Okapis and burning people alive. On 2 November 2012, carriers went through Masikini, Pakwa, and Kalemie before regaining Pangoy-Itembo. In Pangoy-Itembo, there were 559 victims identified, including 28 victims of pillage, five victims of rape, two victims of deportation, one victim of torture. In the village of Masikini, there were 40 victims of pillage and three victims of rape. In the village of Mabukusu, there were 34 victims of pillage, five victims of rape, and four victims of deportation. In the village of Mambasa Center, there were 23 victims of pillage and one victim of murder. In Bandikalo, there were 12 victims of pillage, two victims of rape, one victim of murder, and 12 victims of deportation. There were four pillage victim in Badisende. There were also 85 pillage victims, seven rape victims, and four deportation victims in the PK 47 and PK 51 localities. Finally, in Badengayido, there were ten victims of pillage and eight victims of rape.	**Registration at the MGT Bunia:** 18 October 2013. **Accused:** (1) Paul Sadala, alias Morgan, (2) Papy Masumbuko, (3) Philipo Tegere, (4) Munbere Emmanuel, (5) Katembo Mastaki, (6) Kasereka Kashapo, (7) Gaston Mahamba, (8) Mussa Djeff, (9) Gabriel Asobe, (10) Adoul Kombe, (11) Djafari Bendera, (12) Jacques Manvota Taduma, (13) Alphonse Matantu Manvota, (14) Dieudonné Aduma, (15) Musavuli Kantshura, (16) Mathieu Paluku, (17) Masika Kavira, (18) Albertine Paluku, (19) Ivio Ivio Milimomwana, (20) Elua Sengi, (21) Basomaka Abundu, (22) Désiré Mbula, and (23) Kazadi Mutombo. **Arrest:** following the attack, 23 members of Mai Mai Simba were captured by the FARDC and delivered to judicial authorities. **Civil parties:** 451, including 6 minors (even though 559 victims were identified). **Trial:** Commenced 1 March 2014 (start date set on 28 February 2014). **Verdict and sentence:** on 16 April 2014, MGT Bunia determined the following: • Convictions for (1) Masika Kavira, (2) Dieudonné Adouma, (3) Matthieu Paluku, (4) Elya Sengi, (5) Basomaka Abundu, (6) Kasereka Kashapo, (7) Alphonse Mantatu, (8) Musamvuli Kantshura, (9) Mamvota Taduma, (10) Gabriel Asobe, (11) Désiré Tika, (12) Kazadi Mutombo, and (13) Musa Djeffto. All sentenced to life imprisonment for war crimes of pillage, crimes against humanity of rape, deportation, and torture; • Declaration that investigations should be made to arrest (14) Désiré Mbula; • Acquittal, on all charges, for (15) Albertine Paluku, (16) Djafari Bendera, (17) Emmanuel Mumbere, (18) Abdoul Kombe, (19) Ivio Ivio Molimomwana, and (20) Papy Masumbuko; • Declaration of the end of proceedings against (7) Gaston Mahamba, following his death; • Order that all persons convicted pay	
				the respective amounts claimed by all civil parties individually. **Appeal:** the 14 individuals convicted requested an appeal. The appeal is to be organized in a mobile court in Mambasa, subject to support from partners.	

RP 347/2014 RMP 2611/ KNG/ 2014	Morgan case Fiston Mohindo Kakome		Same facts as for the Mambasa II case (RP 246).[147]	**Registration at the MGT Bunia:** 17 September 2014. **Accused:** Fiston Mohindo Kakome. **Charges:** crimes against humanity.	
RMP 2456/ KNG/013	Sud Irumu FARDC case Lt. Col. Simon Boande Belinga, Maj. Golf Terengbana Moyanzi, Capt. Foudre Grégoire Batafe, et al.	September-December 2013 Walendu, Bindi, Ituri Distict.	Violations were committed in Geti between August and September 2013, and again in December 2014, during the military operations against the FRPI of Cobra Matata. The former 807th regiment (which then became the 407th regiment) killed ten individuals at the hospital, and then they also pillaged the Walendu-Bindi collectivity.	**Registration at the AMG Bunia:** 2 January 2014. **Investigations:** An AMG Bunia investigation from 6 to 11 January 2011, and an AMS Oriental Province investigation from 15 to 30 July 2014. **Transfer:** Date unknown for transfer from AMG Bunia to AMS Kisangani. **Accused and arrests:** • 1) Lt. Col. Simon Boande Belinga arrested 20 December 2014; provisional arrest warrant, including charges, 23 January 2014; • 2) Maj. Golf Terengbana Moyanzi, provisional arrest warrant, including charges, 23 January 2014; • 3) Capt. Foudre Grégoire Batafe arrested 11 September 2014; provisional arrest warrant, including charges, 9 October 2014; • 4) Capt. Musafiri Kalinda Kandolo arrested 15 January 2014; provisional arrest warrant, including charges, 23 January 2014; • 5) First Sgt. Mbiombio Yota arrested 18 January 2014; provisional arrest warrant, including charges, 21 January 2014; • 6) Sgt. Eyamba Ayembe arrested 19 January 2014; provisional arrest warrant, including charges, 21 January 2014; • 7) Capt. Salumu Saliboko, arrested 18 January 2014; provisional arrest warrant, including charges, 22 January 2014; • 8) Lt. Mpiana Mukungu arrested 10 January 2014; provisional arrest warrant, including charges, 22 January 2014; • 9) Sgt. Kabwela Mutombo arrested 10 January 2014; provisional arrest warrant, including charges, 15 January 2014; • 10) Capt. Swedi Mwinyi Longo arrested 19 January 2014; provisional arrest warrant, including charges, 23 January 2014; • 11) Sub. Lt. Kaninda Twite arrested 9 January 2014; provisional arrest warrant, including charges, 23 January 2014; • 12) Sgt. Alfano Assumani arrested 10 January 2014; provisional arrest warrant, including charges, 23 January 2014; • 13) Sgt. Bakateya Kicha arrested 10 January 2014; provisional arrest warrant,	**PSC:** Technical support on investigation techniques and planning, logistical support, transport, and equipment.

				including charges, 24 January 2014; • 14) Cpl. Ramazani Kitoko arrested 25 January 2014; provisional arrest warrant, including charges, 7 February 2014; • 15) Capt. Tshibangu Wathibangu arrested 14 January 2014; provisional arrest warrant, including charges, 23 January 2014; • 16) First Sgt. Maj. Mboyo Elima Janvier arrested 10 January 2014; provisional arrest warrant, including charges, 15 January 2014; • 17) Adj. Lomboto Mboyo arrested 26 January 2014; provisional arrest warrant, including charges, 22 March 2014; • 18) Lt. Vasongia Kavokwa Patrick, • 19) Mogbolu Mongamba, • 20) Voloyo Adama, • 21) Paluku Muhima, and • 22) Yula Dimandja arrested 2 August 2014; provisional arrest warrant, including charges, 15 August 2014; and • 23) Kalikililo Morota arrested 2 August 2014; provisional arrest warrant, including charges, 30 September 2014. **Charges:** War crimes by murder, pillage, rape, and arbitrary arrest	
RMP 2778/ YBK/014	FRPI of Cobra Matata case			**Registration date:** 9 March 2012. **Arrest:** on 4 January 2015; provisional arrest warrant, including charges, 4 January 2015. **Investigations:** Commenced March 2012. During a mission between 18 September and 3 October 2014, 474 victims (239 men, 233 women, and two children) were interviewed. Twelve witnesses were also interviewed. **Charges:** War crimes of murder, pillage, rape, and child recruitment, crimes against humanity, constitution of an insurrectional movement, desertion with war weapons, and an evasion attempt. **Transfer:** Transferred to Auditorat Général of FARDC on 6 January 2015.	**UNJHRO, PSC, and UNDP:** Logistical and financial support, and punctual recommendations. **ASF:** Lgal assistance to victims.

End Notes

1. Name by which the case is commonly known in the judicial sector. It is usually either the name of the place where crimes were committed, the name of the accused, or the name of the armed group involved in the crimes.

2. There were two additional serious crimes cases initiated before the military jurisdiction of South Kivu that were not included in this table due to insufficient information about the context and nature of the crimes committed: AMS SK, Col. Gwigwi Busogi, et al. (Jun. 5, 2013), RMP 1473/BKL/13 ["Gwigwi case"]; and AMS SK, Lt. Col. Maro Ntumwa, (Aug. 11, 2014), RMP 1539/ BKL/2014 ["Maro case"].

3. Interview with judicial actors involved in the process.

4. AMS SK registry; U.N. Joint Human Rights Office, "Progress and Obstacles in the Fight against Impunity for Sexual Violence in the Democratic Republic of the Congo" (2014), para. 41; U.N. General Assembly and Human Rights Council, "Report of the United Nations High Commissioner for Human Rights on the situation of human rights and the activities of her Office in the Democratic Republic of the Congo," U.N. Doc. A/HRC/24/33 (Human Rights Council, 24th session, Jul. 12, 2013), para. 50; U.N. Security Council, "Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo," U.N. Doc. S/2013/388 (Jun. 28, 2013), para. 47.

5. See referral decision transferring the case to CMS SK.

6. There is some uncertainty as to the accuracy of this date. The referral decision and the appeal decision refer to events of 18 August 2009, however, the prosecutor referred to 8 August 2009 during the trial. See MC SK, MGT Bukavu, First Sgt. Christophe Kamona Manda, et al. (Oct. 30, 2010; Nov. 17, 2011), RPA 180, RP 0132/10, RMP 0933/KMC/10 (Trial), RMP 0802/BMN/010 (Appeal) ["Mulenge/Lemera case"]. In the trial decision: "Surtout que dans son réquisitoire du 19 octobre 2010, le Ministère public requiert des peines pour les faits commis le 08 août 2009 et non le 18 août 2009 comme contenu dans ses décisions de renvoi, faits autres que ceux dont chacun des prévenus est poursuivi. […] En plus quant à la date de commission des faits, le juge est saisi des faits et non de la date, peu importe qu'il s'agisse du 08 ou 18 août 2009, l'essentiel est que c'était à une date non encore couverte par le délai légal de la prescription"; and in the appeal decision: "La Cour constate que toutes les pièces du dossier (D.R, citation, PV des auditions des parties civiles et des témoins, certificats médicaux correspond officielles et jugement a quo) indiquent la date du 18/08/2009 comme celle des faits. Le réquisitoire du ministère public, qui n'est pas l'aveu du juge, a repris une date, celle du 8/08/2009. Pour la Cour il s'agit d'une erreur matérielle parce que les faits sont été instants devant le premier juge comme ayant été commis le 18, date reprise dans tous les exploits."

7. MC SK, MGT Bukavu, First Sgt. Christophe Kamona Manda, et al. (Oct. 30, 2010; Nov. 17, 2011), RPA 180, RP 0132/10, RMP 0933/KMC/10 (Trial), RMP 0802/BMN/010 (Appeal) ["Mulenge/Lemera case"].

8. MC SK, MGT Bukavu, First Sgt. Christophe Kamona Manda, et al. (Oct. 30, 2010; Nov. 17, 2011), RPA 180, RP 0132/10, RMP 0933/KMC/10 (Trial), RMP 0802/BMN/010 (Appeal) ["Mulenge/Lemera case"].

9. MC SK, MGT Bukavu, First Sgt. Christophe Kamona Manda, et al. (Oct. 30, 2010; Nov. 17, 2011), RPA 180, RP 0132/10, RMP 0933/KMC/10 (Trial), RMP 0802/BMN/010 (Appeal) ["Mulenge/Lemera case"]; Avocats Sans Frontières, "Recueil de Jurisprudence Congolaise en Matière de Crimes Internationaux: Edition Critique" (2013), 65-67, 91-92.

10. MC SK, MGT Bukavu, First Sgt. Christophe Kamona Manda, et al. (Oct. 30, 2010; Nov. 17, 2011), RPA 180, RP 0132/10, RMP 0933/KMC/10 (Trial), RMP 0802/BMN/010 (Appeal) ["Mulenge/Lemera case"].

11. MC SK, MGT Bukavu, First Sgt. Christophe Kamona Manda, et al. (Oct. 30, 2010; Nov. 17, 2011), RPA 180, RP 0132/10, RMP 0933/KMC/10 (Trial), RMP 0802/BMN/010 (Appeal) ["Mulenge/Lemera case"].

12. See MC SK, MGT Bukavu, First Sgt. Christophe Kamona Manda, et al. (Oct. 30, 2010; Nov. 17, 2011), RPA 180, RP 0132/10, RMP 0933/KMC/10 (Trial), RMP 0802/BMN/010 (Appeal) ["Mulenge/Lemera case"]; Avocats Sans Frontières, "Recueil de Jurisprudence Congolaise en Matière de Crimes Internationaux: Edition Critique" (2013), 82.

13. See MC SK, MGT Bukavu, First Sgt. Christophe Kamona Manda, et al. (Oct. 30, 2010; Nov. 17, 2011), RPA 180, RP 0132/10, RMP 0933/KMC/10 (Trial), RMP 0802/BMN/010 (Appeal) ["Mulenge/Lemera case"]; MC SK, Lt. Col. Balumisa Manasse, et al. (Mar. 9, 2011), RP 038, RMP 1427/NGG/2009, RMP 1280/MTL/09 ["Balumisa case"]; Avocats Sans Frontières, "Recueil de Jurisprudence Congolaise en Matière de Crimes Internationaux: Edition Critique" (2013), 96.

14. MC SK, MGT Bukavu, First Sgt. Christophe Kamona Manda, et al. (Oct. 30, 2010; Nov. 17, 2011), RPA 180, RP 0132/10, RMP 0933/KMC/10 (Trial), RMP 0802/BMN/010 (Appeal) ["Mulenge/Lemera case"].

15. See MC SK, Lt. Col. Balumisa Manasse, et al. (Mar. 9, 2011), RP 038, RMP 1427/NGG/2009, RMP 1280/MTL/09 ["Balumisa case"].

16. "Pour ces deux dernières infractions, à savoir l'enlèvement d'un enfant de quatre mois et les destructions des écoles, le Ministère Public ainsi que les parties civiles ont, in limine litis, sollicité de cette Cour qu'elles soient poursuivies en tant que crime contre l'humanité par autres actes inhumains de caractère analogue commis dans le cadre d'une attaque généralisée lancée contre la population civile, prévu et puni par les articles 7, para. 1, litera k et 77 du Statut de Rome de la Cour Pénale Internationale." See MC SK, Lt. Col. Balumisa Manasse, et al. (Mar. 9, 2011), RP 038, RMP 1427/NGG/2009, RMP 1280/MTL/09 ["Balumisa case"].

17. The date of the referral decision of AMS Bukavu is noted as 31 August 2010. See MC SK, Lt. Col. Balumisa Manasse, et al. (Mar. 9, 2011), RP 038, RMP 1427/NGG/2009, RMP 1280/MTL/09 ["Balumisa case"].

18. MC SK, Lt. Col. Balumisa Manasse, et al. (Mar. 9, 2011), RP 038, RMP 1427/NGG/2009, RMP 1280/MTL/09 ["Balumisa case"].

19. MC SK, MGT Bukavu, Sub. Lt. Kabala Mandumba, Emmanuel Ndahisaba and Donat Kasereka (Oct. 15, 2012; Oct. 20, 2013), RP 708/12, RMP 1868/TBK/KMC/1012 (Trial), RPA 230, RMP 1868/KMC/11 (Appeal) ["Mupoke Market case"].

20. MC SK, MGT Bukavu, Sub. Lt. Kabala Mandumba, Emmanuel Ndahisaba and Donat Kasereka (Oct. 15, 2012; Oct. 20, 2013), RP 708/12, RMP 1868/TBK/KMC/1012 (Trial), RPA 230, RMP 1868/KMC/11 (Appeal) ["Mupoke Market case"].

21. See MC SK, Sub. Lt. Kabala Mandumba, Emmanuel Ndahisaba and Donat Kasereka (Oct. 15, 2013; Oct. 20, 2013), RP 708/12, RMP 1868/TBK/KMC/1012 (Trial), RPA 230, RMP 1868/KMC/11 (Appeal) ["Mupoke Market case"]; Avocats Sans Frontières, "Recueil de Jurisprudence Congolaise en Matière de Crimes Internationaux: Edition Critique" (2013), 197-198.

22. Avocats Sans Frontières, "Recueil de Jurisprudence Congolaise en Matière de Crimes Internationaux: Edition Critique" (2013), 225-227.

23. MC SK, MGT Bukavu, Sub. Lt. Kabala Mandumba, Emmanuel Ndahisaba and Donat Kasereka (Oct. 15, 2012; Oct. 20, 2013), RP 708/12, RMP 1868/TBK/KMC/1012 (Trial), RPA 230, RMP 1868/KMC/11 (Appeal) ["Mupoke Market case"].

24. Ibid. It should be noted, however, that the provisional arrest warrant only included charges of violation of orders, violence against the population, pillage, rape, and aggravated assault and injury.

25. Ibid.

26. Ibid.

27. MC SK, MGT Bukavu, Sub. Lt. Kabala Mandumba, Emmanuel Ndahisaba and Donat Kasereka (Oct. 15, 2012; Oct. 20, 2013), RP 708/12, RMP 1868/TBK/KMC/1012 (Trial), RPA 230, RMP 1868/KMC/11 (Appeal) ["Mupoke Market case"]; Avocats Sans Frontières, "Recueil de Jurisprudence Congolaise en Matière de Crimes Internationaux: Edition Critique" (2013), 228.

28. U.N. Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO), "Répertoire des Jugements en Audiences Foraines du Sud Kivu en 2012" (2012).

29. Interview with the Secretary of the AMS; Avocats Sans Frontières, "Tableau de suivi des dossiers: crimes internationaux," (YEAR).

30. Human Rights Watch, "Ending Impunity for Sexual Violence: New Judicial Mechanism Needed to Bring Perpetrators to Justice" (2014), 8, www.hrw.org/sites/default/files/related_material/DRC0614_briefingpaper_brochure%20coverJune%209%202014.pdf

31. MC SK, Lt. Col. Daniel Kibibi Mutuare, et al. (Feb. 21, 2011), RP 043/11, RMP 1337/MTL/2011 ["Fizi I/Baraka case"].

32. MC SK, Lt. Col. Daniel Kibibi Mutuare, et al. (Feb. 21, 2011), RP 043/11, RMP 1337/MTL/2011 ["Fizi I/Baraka case"].

33. MC SK, Lt. Col. Daniel Kibibi Mutuare, et al. (Feb. 21, 2011), RP 043/11, RMP 1337/MTL/2011 ["Fizi I/Baraka case"].

34. See MC SK, Lt. Col. Daniel Kibibi Mutuare, et al. (Feb. 21, 2011), RP 043/11, RMP 1337/MTL/2011 ["Fizi I/Baraka case"].

35. U.N. Security Council, "Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo," U.N. Doc. S/2011/298 (May 12, 2011), para. 12.

36. U.N. Joint Human Rights Office, "Progress and Obstacles in the Fight against Impunity for Sexual Violence in the Democratic Republic of the Congo" (2014), para. 31.

37. U.N. Security Council, "Letter dated 29 November 2011 from the Chair of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo addressed to the President of the Security Council," U.N. Doc. S/2011/738 (Dec. 2, 2011), para. 642.

38. U.N. Security Council, "Letter dated 29 November 2011 from the Chair of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo addressed to the President of the Security Council," U.N. Doc. S/2011/738 (Dec. 2, 2011), para. 642; U.N. General Assembly and Human Rights Council, "Report of the United Nations High Commissioner for Human Rights on the human rights situation and the activities of her Office in the Democratic Republic of the Congo," U.N. Doc. A/HRC/19/48 (Human Rights Council, 19th session, Jan. 13, 2012), para. 59.

39. CSNU, final report of the Group, prepared in pursuance of paragraph 5 of Security Council resolution 1952 (2010), UN

Doc, S/2011/738, UN Doc., S/2011/738, 2 décembre 2011, para. 642, www.un.org/french/documents/view_doc.asp?symbol=S/2011/738&TYPE=&referer=/french/&Lang=E

40. U.N. Security Council, "Letter dated 29 November 2011 from the Chair of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo addressed to the President of the Security Council," U.N. Doc. S/2011/738 (Dec. 2, 2011), para. 642.

41. Ibid.

42. Ibid., para. 641.

43. U.N. Security Council, "Letter dated 29 November 2011 from the Chair of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo addressed to the President of the Security Council," U.N. Doc. S/2011/738 (Dec. 2, 2011), para. 641.

44. U.N. Security Council, "Letter dated 29 November 2011 from the Chair of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo addressed to the President of the Security Council," U.N. Doc. S/2011/738 (Dec. 2, 2011), para. 641.

45. U.N. Security Council, "Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo," U.N. Doc. S/2011/656 (Oct. 24, 2011), para. 44.

46. U.N. Security Council, "Letter dated 29 November 2011 from the Chair of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo addressed to the President of the Security Council," U.N. Doc. S/2011/738 (Dec. 2, 2011), para. 641.

47. CSNU, final report of the Group, prepared in pursuance of paragraph 5 of Security Council resolution 1952 (2010), UN Doc, S/2011/738, UN Doc., S/2011/738, 2 décembre 2011, para. 157, www.un.org/french/documents/view_doc.asp?symbol=S/2011/738&TYPE=&referer=/french/&Lang=E

48. U.N. Security Council, "Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo," U.N. Doc. S/2011/656 (Oct. 24, 2011), para. 44.

49. U.N. Security Council, "Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo," U.N. Doc. S/2010/512 (Oct. 8, 2010), para. 13.

50. See Letter No 0055/AMS/SK/2014 (Jan. 27, 2014).

51. Interview with Secretary of the AMS.

52. MC SK, Kyat Hend Dittman, et al. (Oct. 15, 2012), RP 036-039, RMP 1303/MTL/2010, 1308/MTL/2010 ["Kyat Hend Dittman case"].

53. Ibid.

54. The decision (RP 036-039) refers to the list of accused as detailed in this Annex where the accused Wabula Kalenga, alias Nadia, figures twice. Yet, Capitaine Abeli Biluma Dumbo, another accused should also figure on this list of 28 accused. It is apparently a transcription error in the decision. Capitaine Abeli Biluma Dumbo was however acquitted by MC, as per the decision and mentioned below.

55. MC SK, Kyat Hend Dittman, et al. (Oct. 15, 2012), RP 036-039, RMP 1303/MTL/2010, 1308/MTL/2010 ["Kyat Hend Dittman case"].

56. See Human Rights Watch, "DR Congo: Army, UN Failed to Stop Massacre" (2014), www.hrw.org/news/2014/07/02/dr-congo-army-un-failed-stop-massacre

57. MC SK, MGT Bukavu, Jean Bosco Maniraguha, alias Kuzungu or Petit Bal, et al. (Aug. 16, 2011; Oct. 29, 2011), RP 275/09 and 521/10, RMP 581/TBK/07 and 1673/KMC/10 (Trial), RPA 0177 (Appeal) ["Kazungu case"].

58. Ibid.

59. Ibid.

60. Ibid.

61. As provided in information available the registry of MGT Bukavu.

62. MC SK, MGT Bukavu, Jean Bosco Maniraguha, alias Kuzungu or Petit Bal, et al. (Aug. 16, 2011; Oct. 29, 2011), RP 275/09 and 521/10, RMP 581/TBK/07 and 1673/KMC/10 (Trial), RPA 0177 (Appeal) ["Kazungu case"].

63. Ibid.

64. Ibid.

65. Ibid.

66. Ibid.

67. Ibid.

68. As per the registry.

69. Information shared by judicial actor.

70. U.N. Security Council, "Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo," U.N. Doc. S/2012/65 (Jan. 26, 2012), para. 24.

71. U.N. Security Council, "Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo," U.N. Doc. S/2012/65 (Jan. 26, 2012); U.N. Security Council, "Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo," U.N. Doc. S/2012/355 (May 23, 2012), para. 45.

72. U.N. Security Council, "Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo," U.N. Doc. S/2012/355 (May 23, 2012), para. 45.

73. There were five additional serious crimes cases initiated before the military jurisdiction of North Kivu that were not included in this table due to confidentiality matters, insufficient information about the context and nature of the crimes committed, or lack of corroborated information on legal proceedings initiated: AMS OPS NK, Maj. Bwete Landu, et al. (Sept. 6, 2012), RMP 0155/MLS/09 ["Kasuho Case"]; AMS OPS NK, unknown FARDC (no RMP available) ["Lukopfu/Kaniro, Masisi case"]; Confidential case; Kimia II case (jurisdiction and RMP not available); and AMG Beni NK, Mbau, Kamango, Watalinga, Beni territory, RMP 1405/HKK/014 ["Mbau, Kamango, Watalinga case"]. Also important to note is that in the case AMS OPS NK, Habarugira Rangira Marcel, RMP 0407/BBM/2014 (Nyatura case) which was initially looking into charges of ordinary crimes (conspiracy, armed robbery, looting) charges of child recruitment were added following the sharing of a report from the Child Protection Unit of MONUSCO on 9 April 2015; information shared by judicial actors.

74. Human Rights Watch, "DR Congo: Hold Army to Account for War Crimes" (2009), www.hrw.org/news/2009/05/19/dr-congo-hold-army-account-war-crimes

75. Human Rights Watch, "DR Congo: Hold Army to Account for War Crimes" (2009), www.hrw.org/news/2009/05/19/dr-congo-hold-army-account-war-crimes

76. See U.N. Security Council, "Letter dated 29 November 2011 from the Chair of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo addressed to the President of the Security Council," U.N. Doc. S/2011/738 (Dec. 2, 2011), para. 634.

77. U.N. Joint Human Rights Office, "Report on the Investigation Missions of the United Nations Joint Human Rights Office into the Mass Rapes and Other Human Rights Violations Committed in the Villages of Bushani and Kalambahiro, in Masisi Territory, North Kivu, on 31 December 2010 and 1 January 2011" (2011), para. 1.

78. U.N. Joint Human Rights Office, "Report on the Investigation Missions of the United Nations Joint Human Rights Office into the Mass Rapes and Other Human Rights Violations Committed in the Villages of Bushani and Kalambahiro, in Masisi Territory, North Kivu, on 31 December 2010 and 1 January 2011" (2011), para. 3, 20-23, 26; U.N. Security Council, "Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo," U.N. Doc. S/2011/298 (May 12, 2011), para. 44.

79. U.N. Joint Human Rights Office, "Report on the Investigation Missions of the United Nations Joint Human Rights Office into the Mass Rapes and Other Human Rights Violations Committed in the Villages of Bushani and Kalambahiro, in Masisi Territory, North Kivu, on 31 December 2010 and 1 January 2011" (2011), para. 3, 27-29.

80. Ibid., para. 8, 30-32, 636.

81. Ibid., para. 44.

82. U.N. Joint Human Rights Office, "Report on the Investigation Missions of the United Nations Joint Human Rights Office into the Mass Rapes and Other Human Rights Violations Committed in the Villages of Bushani and Kalambahiro, in Masisi Territory, North Kivu, on 31 December 2010 and 1 January 2011" (2011); U.N. Security Council, "Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo," U.N. Doc. S/2011/656 (Oct. 24, 2011), para. 46.

83. U.N. Security Council, "Letter dated 19 July 2013 from the Chair of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo addressed to the President of the Security Council," U.N. Doc. S/2013/433 (Jul. 19, 2013), para. 132.

84. U.N. Joint Human Rights Office, "Progress and Obstacles in the Fight against Impunity for Sexual Violence in the Democratic Republic of the Congo" (2014), para. 40.

85. See MC OPS, MOC NK, Affaire Retrait des FARDC of Goma, Minova-Bweremana (May 5, 2014), RP 003/2013, RMP 0372/BBM/01 ["Bweremana–Minova case"].

86. Ibid.

87. Ibid.

88. CSNU, Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo, UN Doc. S/2013/388, 21 June 2013, para. 43.

89. U.N. Security Council, "Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo," U.N. Doc. S/2013/388 (Jun. 28, 2013), para. 43.

90. U.N. Security Council, "Letter dated 19 July 2013 from the Chair of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo addressed to the President of the Security Council," U.N. Doc. S/2013/433 (Jul. 19, 2013), para. 121-124, 128.

91. Human Rights Watch, "Democratic Republic of Congo: UPR Submission September 2013" (2013 with 2014 update), www.hrw.org/news/2013/09/24/democratic-republic-congo-upr-submission-september-2013

92. U.N. Security Council, "Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo," U.N. Doc. S/2013/388 (Jun. 28, 2013), para. 43; information shared by judicial actor; U.N. Security Council, "Letter dated 19 July 2013 from the Chair of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo addressed to the President of the Security Council," U.N. Doc. S/2013/433 (Jul. 19, 2013), para. 128.

93. Ibid., para. 122.

94. Information shared by judicial actor.

95. U.N. General Assembly and Human Rights Council, "Report of the United Nations High Commissioner for Human Rights on the situation of human rights and the activities of her Office in the Democratic Republic of the Congo," U.N. Doc. A/HRC/16/27 (Human Rights Council, 16th session, Jan. 10, 2011), para. 4.

96. Human Rights Watch, "DR Congo: Arrest Candidate Wanted for Mass Rape" (2011), www.hrw.org/news/2011/11/02/dr-congo-arrest-candidate-wanted-mass-rape

97. Human Rights Watch, "DR Congo: Arrest Candidate Wanted for Mass Rape" (2011), www.hrw.org/news/2011/11/02/dr-congo-arrest-candidate-wanted-mass-rape; U.N. Joint Human Rights Office, "Final Report of the Fact-Finding Missions of the United Nations Joint Human Rights Office into the Mass Rapes and Other Human Rights Violations Committed by a Coalition of Armed Groups Along the Kibua-Mpofi Axis in Walikale Territory, North Kivu, from 30 July to 2 August 2010" (2011), para. 25, 27-28.

98. U.N. Security Council, "Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo," U.N. Doc. S/2010/512 (Oct. 8, 2010), para. 8; U.N. Joint Human Rights Office, "Final Report of the Fact-Finding Missions of the United Nations Joint Human Rights Office into the Mass Rapes and Other Human Rights Violations Committed by a Coalition of Armed Groups Along the Kibua-Mpofi Axis in Walikale Territory, North Kivu, from 30 July to 2 August 2010" (2011), para. 30.

99. U.N. Joint Human Rights Office, "Final Report of the Fact-Finding Missions of the United Nations Joint Human Rights Office into the Mass Rapes and Other Human Rights Violations Committed by a Coalition of Armed Groups Along the Kibua-Mpofi Axis in Walikale Territory, North Kivu, from 30 July to 2 August 2010" (2011), para. 31; see U.N. Joint Human Rights Office, "Progress and Obstacles in the Fight against Impunity for Sexual Violence in the Democratic Republic of the Congo" (2014), para. 37.

100. U.N. Joint Human Rights Office, "Final Report of the Fact-Finding Missions of the United Nations Joint Human Rights Office into the Mass Rapes and Other Human Rights Violations Committed by a Coalition of Armed Groups Along the Kibua-Mpofi Axis in Walikale Territory, North Kivu, from 30 July to 2 August 2010" (2011), para. 32.

101. Ibid., para. 18-24.

102. Ibid., para. 18-19.

103. Ibid., para. 26.

104. MC OPS NK, Lt. Col. Mayele, et al., RP 055/2011, RMP 0223/MLS/10 ["Kibua–Mpofi/Walikale case"]; U.N. Security Council, "Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo," U.N. Doc. S/2010/512 (Oct. 8, 2010), para. 10.

105. U.N. Joint Human Rights Office, "Progress and Obstacles in the Fight against Impunity for Sexual Violence in the Democratic Republic of the Congo" (2014), para. 37.

106. U.N. Joint Human Rights Office, "Final Report of the Fact-Finding Missions of the United Nations Joint Human Rights Office into the Mass Rapes and Other Human Rights Violations Committed by a Coalition of Armed Groups Along the Kibua-Mpofi Axis in Walikale Territory, North Kivu, from 30 July to 2 August 2010" (2011), para. 45.

107. MC OPS NK, Lt. Col. Mayele, et al., RP 055/2011, RMP 0223/MLS/10 ["Kibua–Mpofi/Walikale case"].

108. See U.N. Security Council, "Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo," U.N. Doc. S/2012/65 (Jan. 26, 2012), para. 50.

109. U.N. Joint Human Rights Office, "Final Report of the Fact-Finding Missions of the United Nations Joint Human Rights Office into the Mass Rapes and Other Human Rights Violations Committed by a Coalition of Armed Groups Along the Kibua-Mpofi Axis in Walikale Territory, North Kivu, from 30 July to 2 August 2010" (2011), para. 2-3.

110. Ibid.

111. U.N. Security Council, "Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo," U.N. Doc. S/2011/20 (Jan. 17, 2011), para. 63.

112. Ibid., para. 41.

113. As indicated in the investigation report of the AMO.

114. See U.N. Security Council, "Letter dated 29 November 2011 from the Chair of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo addressed to the President of the Security Council," U.N. Doc. S/2011/738 (Dec. 2, 2011), para. 639.

115. U.N. Security Council, "Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo," U.N. Doc. S/2011/656 (Oct. 24, 2011), para. 42.

116. As per the AMO registry.

117. U.N. Security Council, "Letter dated 21 June 2012 from the Chair of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo addressed to the President of the Security Council," U.N. Doc. S/2012/348 (Jun. 21, 2012), para. 170.

118. U.N. Security Council, "Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo," U.N. Doc. S/2011/656 (Oct. 24, 2011), para. 42.

119. U.N. Joint Human Rights Office, "Progress and Obstacles in the Fight against Impunity for Sexual Violence in the Democratic Republic of the Congo" (2014), para. 39.

120. U.N. Security Council, "Letter dated 12 November 2012 from the Chair of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo addressed to the President of the Security

Council," U.N. Doc. S/2012/843 (Nov. 15, 2012), para. 147; see Human Rights Watch, "DR Congo: War Crimes by M23, Congolese Army" (2013), www.hrw.org/news/2013/02/05/dr-congo-war-crimes-m23-congolese-army

121. U.N. Security Council, "Letter dated 12 November 2012 from the Chair of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo addressed to the President of the Security Council," U.N. Doc. S/2012/843 (Nov. 15, 2012), para. 151.

122. U.N. Security Council, "Letter dated 12 November 2012 from the Chair of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo addressed to the President of the Security Council," U.N. Doc. S/2012/843 (Nov. 15, 2012), para. 153, 156; Human Rights Watch, "DR Congo: War Crimes by M23, Congolese Army" (2013), www.hrw.org/news/2013/02/05/dr-congo-war-crimes-m23-congolese-army

123. Human Rights Watch, "RD Congo: Les rebelles du M23 commettent des crimes de guerre" (2012), www.hrw.org/fr/news/2012/09/10/rd-congo-les-rebelles-du-m23-commettent-des-crimes-de-guerre

124. U.N. Security Council, "Letter dated 12 November 2012 from the Chair of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo addressed to the President of the Security Council," U.N. Doc. S/2012/843 (Nov. 15, 2012), annex 56(A)(1)(b).

125. U.N. Security Council, "Letter dated 12 November 2012 from the Chair of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo addressed to the President of the Security Council," U.N. Doc. S/2012/843 (Nov. 15, 2012), annex 56(B)(2)(d); U.N. Joint Human Rights Office, "Report of the United Nations Joint Human Rights Office on Human Rights Violations Perpetrated by Armed Groups During Attacks on Villages in Ufamandu I and II, Nyamaboko I and II and Kibabi Groupements, Masisi Territory, North Kivu Province, Between April and September 2012" (2012).

126. U.N. Security Council, "Letter dated 12 November 2012 from the Chair of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo addressed to the President of the Security Council," U.N. Doc. S/2012/843 (Nov. 15, 2012), para. 148, annex 56(B)(2)(e).

127. U.N. Security Council, "Letter dated 12 November 2012 from the Chair of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo addressed to the President of the Security Council," U.N. Doc. S/2012/843 (Nov. 15, 2012), 3, para. 148, annex 56(B)(2)(e), 166.

128. U.N. Security Council, "Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo," U.N. Doc. S/2012/838 (Nov. 14, 2012), para. 14.

129. Ibid., para. 51.

130. Based on information available in the AMO registry.

131. There were two additional serious crimes cases initiated before the military jurisdiction of Ituri that were not included in this table due to insufficient information about the context and nature of the crimes committed: AMG Ituri (Apr. 29, 2014), RMP 2542/YBK/14; and AMG Ituri, Salumu bin Amisi (PNC Officer) and Lunzolo Mayitiki (civil) (Jun. 14, 2012), RMP 1810/KNG/12.

132. MGT Bunia, Kakado Barnaba Yonga Tshopena (Jul. 9, 2010), RP 071/09, 009/010 and 074/010, RMP 885/EAM/08, RMP 1141/LZA/010, RMP 1219/LZA/010, RMP 1238/LZA/010, para. 31-34 ["Kakado case"].

133. MGT Bunia, Kakado Barnaba Yonga Tshopena (Jul. 9, 2010), RP 071/09, 009/010 and 074/010, RMP 885/EAM/08, RMP 1141/LZA/010, RMP 1219/LZA/010, RMP 1238/LZA/010, para. 32-33 ["Kakado case"].

134. MGT Bunia, Kakado Barnaba Yonga Tshopena (Jul. 9, 2010), RP 071/09, 009/010 and 074/010, RMP 885/EAM/08, RMP 1141/LZA/010, RMP 1219/LZA/010, RMP 1238/LZA/010 ["Kakado case"].

135. Number of murder victims identified in the Loy Banigaga groupement: Loy Batine village (23), Gambali village (18), Loy Banigaga village (86), Nzarahohe village (18), Bubongo village (20), Kakaludza village (21), Nongo village (14), Nsingoma Talolo village (25), Mbandi village (31), N'Singoma village (63), Ngobu village (35), Gambili village (67), Chekedele 1 village (20), Chekedele 2 village (38), Ndete village (56), Hamado village (51), Balumbata village (34), Mboppo 1 village (21), Mboppo 2 village (23); number of murder victims identified in the ChiniYa Kilima groupement: Mudze village (40), Ndugu village (41), Malumbabo village (9), Guna village (19), Babadu village (18), Nginda village (35), Rusa 1 village (40), Sezabo 1 village (82); number of murder victims identified in the Sibado groupement: Bagabila village (37); number of murder victims identified in the Marabo Musedzo groupement: Gangu 2 village (76), Lawa village (18), Bakoso village (43), Kpesa village (3), Kikale village (4), N'Kimba village (39); and number of murder victims identified in the Mayaribo groupement: Mambeso village (28), Kudaya Musedzo village (9);

MGT Bunia, Kakado Barnaba Yonga Tshopena (Jul. 9, 2010), RP 071/09, 009/010 and 074/010, RMP 885/EAM/08, RMP 1141/LZA/010, RMP 1219/LZA/010, RMP 1238/LZA/010, para. 22-61 ["Kakado case"].

136. MGT Bunia, Kakado Barnaba Yonga Tshopena (Jul. 9, 2010), RP 071/09, 009/010 and 074/010, RMP 885/EAM/08, RMP 1141/LZA/010, RMP 1219/LZA/010, RMP 1238/LZA/010, para. 135 ["Kakado case"]; see, generally, Avocats Sans Frontières, "Recueil de Jurisprudence Congolaise en Matière de Crimes Internationaux: Edition Critique" (2013), 135-184.

137. Another file is dated from the end of 2011; the two cases were joined.

138. Interview with justice stakeholder.

139. Interviews with MONUSCO justice support section.

140. MC Kisangani, MGT Ituri, Moussa Oredi, Mumbere Makasi, Gaston Awawungo, Delphin Mumbere Mulimirwa, alias Le Blanc, Kambale Kahese, Mumbere Sumbadede, and Sébastien Katembo Mukandirwa (Aug. 11, 2012; Nov. 28, 2012), RPA 274/013, RP 153/012, RMP 1818/KNG/13 ["Morgan/Epulu Reserve Carnage/Mambasa I case"].

141. U.N. Security Council, "Letter dated 19 July 2013 from the Chair of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo addressed to the President of the Security Council," U.N. Doc. S/2013/433 (Jul. 19, 2013), para. 76-78, 133-135.

142. U.N. Security Council, "Letter dated 19 July 2013 from the Chair of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo addressed to the President of the Security Council," U.N. Doc. S/2013/433 (Jul. 19, 2013), para. 133.

143. See MC Kisangani, MGT Ituri, Moussa Oredi, Mumbere Makasi, Gaston Awawungo, Delphin Mumbere Mulimirwa, alias Le Blanc, Kambale Kahese, Mumbere Sumbadede, and Sébastien Katembo Mukandirwa (Aug. 11, 2012; Nov. 28, 2012), RPA 274/013, RP 153/012, RMP 1818/KNG/13, 1-7 ["Morgan/Epulu Reserve Carnage/Mambasa I case"].

144. MC Kisangani, MGT Ituri, Moussa Oredi, Mumbere Makasi, Gaston Awawungo, Delphin Mumbere Mulimirwa, alias Le Blanc, Kambale Kahese, Mumbere Sumbadede, and Sébastien Katembo Mukandirwa (Aug. 11, 2012; Nov. 28, 2012), RPA 274/013, RP 153/012, RMP 1818/KNG/13, 17, 41-56 ["Morgan/Epulu Reserve Carnage/Mambasa I case"].

145. See Timo Mueller, "The Death of Rebel Leader Paul Sadala – Questions Remain," Timo Mueller: Political Analysis on DRC (July 15, 2014), http://muellertimo.com/2014/07/15/the-death-of-rebel-leader-paul-sadala-questions-remain/

146. Radio Okapi, "'On nous a remis Paul Sadala déjà décédé', precise la Monusco", Radio Okapi (April 14, 2014), http://radiookapi.net/actualite/2014/04/14/nous-remis-paul-sadala-deja-decede-precise-la-monusco/#.U4H_YpR5PUQ; Sonia Rolley, "RDC: information judiciaire ouverte sur la mort du chef maï-maï Morgan", RFI (April 29, 2014), www.rfi.fr/afrique/20140429-rdc-justice-militaire-information-judiciaire-mort-morgan-sadala/

147. Fiston Mohindo Kakome was arrested along with the other defendants in the Mambasa II case (MC Kisangani, MGT Ituri, Paul Sadala, alias Morgan, Papy Masumbuko, Philipo Tegere, Munbere Emmanuel, Katembo Mastaki, et al. (Apr. 16, 2014), RPA 341/14, RP 246/13, RMP 2030/KNG/012 ["Mambasa II case"]). However, authorities essentially forgot about him in prison at the time of the trial of the other accused. He was not noticed until the AMG inspected the central prison and realized the situation. Thus the AMG opened a separate case before MGT Ituri for this accused: MGT Ituri, Fiston Mohindo Kakome (Sept. 17, 2014), RP 347/2014, RMP 2611/KNG/2014 ["Morgan case"].

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ANNEX 7.4

Evaluation of the military damage suffered by the DRC armed forces and caused by the Ugandan army and its allies, Kinshasa, 31 August 2016

Evaluation of the military damage suffered by the DRC armed forces and caused by the Ugandan army and its allies, Kinshasa, 31 August 2016

[Translation]

No.	Periods and regions	Losses sustained Men in the DRC armed forces	§	Unit value	Evaluation
1	Pont de Télé (24 September 1998)	159 dead	2.45	US$18,913.00	US$3,007,167.00
2	Mindembo (October-December 1998)	202 dead	2.48	US$18,913.00	US$3,820,426.00
3	Mozamboli (November-December 1998)	40 dead	2.50	US$18,913.00	US$756,520.00
4	Pima (May 1999)	major losses	2.51		
5	Libanda (June 1999)	several dozen victims	2.52		
6	Libenge (August 2000)	300 dead	2.54	US$18,913.00	US$5,673,900.00
7	Ubangi (August 2000)	800 dead	2.55	US$18,913.00	US$15,130,400.00
	Total deaths recorded	**1,501 dead**			**US$28,388,413.00**
9	**Estimated total number**	**2,000 dead**			**US$37,826,000.00**
		Arms and munitions			
1	May 1998, Pima	2 82mm mortars 4 60mm mortars 1 75mm gun 4 machine guns 10 rocket-launchers (estimate)		US$5,432.00 US$5,432.00 US$13,000.00 US$400.00 US$900.00	US$10,864.00 US$21,728.00 US$13,000.00 US$1,600.00 US$9,000.00
2	November and December 1998, Mindembo	1 battle tank 1 munitions truck destroyed		US$60,000.00 US$40,000.00	US$60,000.00 US$40,000.00
3	June-July 1998, Gbadolite	400 tonnes equipment and munitions destroyed		US$30,000.00	US$12,000,000.00
4	3 December 1998, Mindembo	1 tank and a munitions truck		US$110,000.00	US$110,000.00
5	9 August 2000, Ubangi	8 trucks 2 heavy artillery (75mm guns) 100 Kalashnikovs 500 AKM assault rifles 800 tonnes munitions 2 boats 5 armoured jeeps		US$20,000.00 US$13,000.00 US$400.00 US$500.00 US$65,000.00	US$160,000.00 US$26,000.00 US$40,000.00 US$250,000.00 US$8,000,000.00 US$48,350,000.00 US$325,000.00
					US$ 69,417,192.00

Cost of military equipment

No.	Description	Unit	Unit price in US$	Comments
	1. ARMS			
1	AKM assault rifle	Piece	500	
2	7.62 mm RPD machine gun	Piece	400	
3	PKMS	Piece	1,700	
4	12.7 mm machine gun	Piece		
5	14.5 mm machine gun	Piece		
6	RPG 7 portable rocket-launcher	Piece	900	
7	60 mm mortar	Piece	5,432	
8	82 mm mortar	Piece		
9	120 mm mortar	Piece	13,500	
10	75 mm gun	Piece		
11	T-55 tank	Piece	60,000	
12	BMP-1 armoured vehicle	Piece	65,000	
13	T-64 tank	Piece	390,000	
14	Praga armoured vehicle	Piece	190,000	
15	BTR-60	Piece	480,000	
	2. BOAT	Piece	24,175,000	Cfr EM log
	3. MUNITIONS AND MORTARS			
1	7.62 x 39 mm cartridges	Round	0.28	
2	7.62 x 54 mm cartridges	Round	0.32	
3	12.7 x 108 mm API cartridges	Round	6.5	
4	14.5 x 114 mm API cartridges	Round	0.53	
5	100 mm HEAT shells	Round	398	
6	100 mm HE shells	Round	355	
7	40 mm RPG 7 rockets	Round	215	
8	107 mm rockets	Round	83.95	
9	60 mm HE mortars	Round	1.9	
10	82 mm HE mortars	Round	90	
11	120 mm HE mortars	Round	110	

[Seal] Done at Kinshasa, 31/08/2016

[Signed]

Vice-Admiral Damas KABULO,

Sec-Gen for Defence.