



**DEMOCRATIC REPUBLIC OF THE CONGO**  
**PRIORITIES FOR CHILDREN**  
**ASSOCIATED WITH ARMED FORCES**  
**AND GROUPS**

**Presented to the**  
**Working Group of the Security Council on children and**  
**armed conflict**

**July 2007**



**COALITION TO STOP THE USE OF CHILD SOLDIERS**

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**Cover: Child at event to stop the use of child soldiers, Goma, Eastern DRC, 12  
February 2007. © Coalition to Stop the Use of Child Soldiers**

**The Coalition to Stop the Use of Child Soldiers unites national, regional and international organizations and Coalitions in Africa, Asia, Europe, Latin America and the Middle East. Its Steering Committee members are Amnesty International, Defence for Children International, Human Rights Watch, International Federation Terre des Hommes, International Save the Children Alliance, Jesuit Refugee Service, and the Quaker United Nations Office-Geneva.**

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**CHILD SOLDIERS  
CHILDREN ASSOCIATED WITH ARMED FORCES AND GROUPS**

**A NOTE ON TERMINOLOGY**

**Coalition to Stop the Use of Child Soldiers**

While there is no precise definition, the Coalition considers a child soldier any person under the age of 18 who is a member of or attached to government armed forces or any other regular or irregular armed force or armed political group, whether or not an armed conflict exists. Child soldiers perform a range of tasks including: participation in combat, laying mines and explosives; scouting, spying, acting as decoys, couriers or guards; training, drill or other preparations; logistics and support functions, portering, cooking and domestic labour. Child soldiers may also be subjected to sexual slavery or other sexual exploitation.

**The Paris Principles and guidelines on children associated with armed forces or armed groups**

“**Child**” refers to any person less than 18 years of age in accordance with the Convention on the Rights of the Child.

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

**DEMOCRATIC REPUBLIC OF THE CONGO**  
**Priorities for children associated with**  
**armed forces and groups<sup>1</sup>**

**Presented to the Working Group of the Security Council**  
**on children and armed conflict**

**July 2007**

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**Introduction**

This briefing is presented in advance of the Working Group's consideration of the second country report on children and armed conflict in the Democratic Republic of the Congo (DRC). It is intended to complement presentations by members of the DRC Coalition to Stop the Use of Child Soldiers (DRC Coalition) during a meeting with members of the Working Group on 17 July 2007. Not all the issues discussed fall under the Working Group's mandate to address abuses against children affected by armed conflict under Security Council Resolution 1612. The issues are nevertheless relevant to a consideration of the plight of current and former child soldiers in the DRC. The document is therefore also intended to support the work of the Congolese government, national and international non-governmental organizations (NGOs), as well as UN entities and others working to protect and assist child soldiers in the DRC. The recommendations have largely emerged through discussions with member organizations of the DRC Coalition.

The briefing highlights priority issues to be addressed to stop child recruitment, assist reintegration and assure long term stability. The document provides a brief summary of the context in which some 6,000 children remain in armed forces and groups in the eastern DRC. They are mainly in Ituri, Katanga, North and South Kivu, as well as in northern Equateur and Maniema. The document goes on to address the following issues:

- **Recruitment and use of children by armed forces and groups:** Children continue to be recruited and used by newly-formed "mixed" army brigades in North Kivu, and by other armed forces and groups, despite international and national laws proscribing the recruitment and use of children in hostilities.
- **Children from refugee camps in Rwanda:** Children continue to be recruited by various armed forces and groups.
- **The situation of girls associated with armed forces and groups:** The recruitment and use of girls was widespread throughout the conflict and has continued in the post-conflict period. Prosecutions for sexual violence are few, and returning girls, many with children, have been unable to access training or income generation projects. Sexually abused girls face rejection and stigmatization by their communities, increasing their difficulties; yet a focused, coordinated donor strategy has failed to materialize.

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<sup>1</sup> The terms child soldier, child associated with, and child recruited and used by armed forces and groups are used interchangeably in this document. See previous page for an explanation of terms.



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- **Impunity:** The weak, under-funded and poorly-managed justice system is ill-equipped to address child recruitment and other crimes committed against child soldiers, including rape and sexual violence. Prosecutions for such crimes are rare and concerns remain over the independence of the judiciary. Some former armed group leaders have been indicted and prosecuted for human rights violations, including child recruitment and use, but remain at large.
- **Detention and trials by military courts:** Child soldiers have been arrested, detained and tried before military courts for military offences such as desertion. Children have been sentenced to death for alleged crimes committed while unlawfully recruited or used by armed forces or groups. The draft Child Protection Code, to be presented to parliament later this year, could introduce important juvenile justice mechanisms to more fully protect child soldiers (and other children) from arbitrary detention and unfair trials, but support will be required for its effective implementation.
- **Reintegration:** There is an urgent need for sustained, coordinated community-based reintegration programs - to include all children associated with armed forces and groups - to provide education, vocational and skills training and income generation projects, as well as healthcare and psychosocial support. Failings in the reintegration program act as a catalyst for further child recruitment and fuel political instability.

The report concludes with a series of recommended actions for the international community, donors, the Congolese government and the armed forces. Research and consultation for this report reflected a remarkable consensus among UN and non-governmental human rights and child protection entities, on current problems and action needed to address them. The recommendations include:

- Children serving in newly-formed government “mixed” brigades in north Kivu should be immediately identified and demobilized. Military commanders of the national army, *Forces Armées de la République Démocratique du Congo* (FARDC) should be instructed to inform child protection agencies of the names and ages of children within their units and allow child protection workers into military camps to identify and release such children. All children in integrated FARDC units should be demobilized.
- Recruitment from Rwanda refugee camps should immediately cease and steps taken to protect children in the camps.
- Efforts must be renewed to demobilize children from armed groups operating in Ituri, Katanga, North and South Kivu and elsewhere in the eastern DRC. These include armed groups resisting the unification process, as well as Mai Mai militias, and the Rwandan *Forces démocratiques pour la libération du Rwanda* (Democratic Forces for the Liberation of Rwanda, FDLR).
- Armed groups should provide UN child protection staff and NGOs with guarantees for their safety when undertaking legitimate work to identify and release children from armed groups.
- International support is needed to strengthen judicial capacity to investigate and bring to trial individuals responsible for recruiting and using child soldiers, as well as those accused of rape and other crimes of sexual violence against girl soldiers.



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- Individuals, such as Laurent Nkunda, who has been charged with war crimes and Jean-Pierre Biyoyo, found guilty of child abduction, should be immediately apprehended (if necessary with support from UN peacekeepers) to stand trial or to serve out their terms of imprisonment.
- International standards of juvenile justice should be reflected in the treatment of former child soldiers in the military and civilian criminal justice systems. No child should be detained for military offences such as desertion. All children currently detained for military offences should be released and provided with reintegration support. Death sentences against former child soldiers alleged to have committed criminal offences should be immediately commuted.
- A coordinated donor strategy and renewed financial support for sustained reintegration programs are urgently required. Programs to identify and address the particular needs of returning girls and their children should be a priority.

### The military context

All parties to the armed conflict in the Democratic Republic of the Congo (DRC) recruited and used children, with an estimated 33,000 in need of demobilization by late 2003. The official demobilization, disarmament and reintegration (DDR) program for children began in earnest in mid-2005; by mid-2007 about 31,000 children had been officially demobilized. A further 11,000 children were estimated to have escaped or independently left armed forces and groups.<sup>2</sup> There has been a significant reduction in the recruitment and use of children over the past two years. Among the reasons are the creation of a unified national army; a decreasing number of active fighting zones; a national-level DDR program for children; persistent lobbying by the UN and by international and national NGOs to stop the involvement of children in hostilities; and some limited progress by judicial authorities in prosecuting child recruiters.<sup>3</sup>

Despite these advances, UN child protection staff and NGOs estimated that as of June 2007, some 6,000 children were associated with armed forces and groups, mostly in Ituri, Katanga, North and South Kivu and in northern Equateur and Maniema provinces.<sup>4</sup>

The continued involvement of children in hostilities is occurring in the context of a delayed and problematic army unification process, known as “*brassage*” which combines former government soldiers (from the now defunct Congolese Army, the *Forces Armées Congolaises*, FAC) and armed groups into integrated brigades, intended to create a unified, non-partisan professional army. Under *brassage*, former combatants undergo a 45-day process in which they are retrained and deployed throughout the country (away from territories in which they had previously operated or controlled). Adults who choose not to join the armed forces enter the DDR program under a national “operational framework” established in 2004. Provision was made for child soldiers (those below the age of 18) to be identified and to enter a separate DDR program for children.<sup>5</sup>

Army unification was supposed to have been completed before national elections (which eventually took place in 2006), but did not begin in earnest until early 2005. Since 2005, several armed groups have negotiated settlements with the government and the FARDC and entered the army unification or

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<sup>2</sup> UNICEF, *Report of the national workshop on the children’s demobilization, disarmament and reintegration (DDR) program*, Goma 12-14 April 2007.

<sup>3</sup> UN, *Report of the Secretary-General on children and armed conflict in the DRC*, 13 June 2006, S/2006/389.

<sup>4</sup> UNICEF, *Report of the national workshop on the children’s DDR program*, Goma, 12-14 April 2007.

<sup>5</sup> Amnesty International, *DRC: Children at War: Creating hope for their future*, October 2006, [www.amnesty.org](http://www.amnesty.org).



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DDR process.<sup>6</sup> Some settlements have included “amnesties” for members of armed group accused of serious human rights violations and some leaders have been awarded command positions in the new army, undermining efforts to end impunity for the perpetrators of human rights violations.<sup>7</sup> As of mid-2007, some former armed groups which had agreed to enter the unification program, had yet to be integrated through the *brassage* program (they are known as non-integrated units or brigades) and some were actively resisting the unification process.

Pockets of armed conflict have persisted, and in mid-2007 were most serious in North Kivu and parts of South Kivu. Ituri had been largely pacified and Katanga was quiet, although some armed groups and Mai-Mai groups had yet to enter the unification process.<sup>8</sup> Armed activity continues by foreign armed groups, including the Rwandan *Forces démocratiques pour la libération du Rwanda*, (Democratic Forces for the Liberation of Rwanda, FDLR), the Allied Democratic Forces (ADF) and the National Army for the Liberation of Uganda (ADF-NALU) from Uganda, adding to insecurity, violence and displacement.<sup>9</sup>

### Children in government “mixed” brigades in North Kivu

In January 2007, following months of negotiation, armed group units loyal to Laurent Nkunda entered the FARDC under a new process known as “*mixage*” (mixing) rather than through the established national *brassage* process. Under *mixage*, Nkunda’s forces in North Kivu were combined with government forces into five “mixed” brigades which remained in the province rather than being deployed elsewhere in the country as for the “*brassage*” program. The *mixage* process was a compromise designed to reduce hostilities which broke out in November 2006 in Sake between combatants loyal to Laurent Nkunda, and other FARDC brigades stationed in the province.

Nkunda argued that armed operations were needed to confront the threat posed to the rwandaphone community (both Hutu and Tutsi) by the FDLR and other armed groups operating in the region. In exchange for continued deployment in North Kivu, the “mixed” brigades came under the authority of the national army chain of command. In early 2007, Nkunda threatened to withdraw his forces from the “mixed” brigades, claiming they were not being properly supplied, trained or led by the army. This was perceived as a threat to return to active rebellion. Attempts to calm the situation proved unsuccessful and North Kivu remained tense in mid-2007.<sup>10</sup>

In practice, the informal nature of the “*mixage*” has enabled Nkunda to retain his parallel chains of command over many of these units.<sup>11</sup> The UN and international and national NGOs have repeatedly stated that the presence of “mixed” brigades has contributed to rising insecurity, ethnic tension and

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<sup>6</sup> MONUC Human Rights Division, *The Human Rights Situation in the DRC, July to December 2006*, 8 February 2007, [www.monuc.org](http://www.monuc.org).

<sup>7</sup> Human Rights Watch, *World Report 2007*, “Democratic Republic of the Congo, Country Summary”, January 2007, [www.hrw.org](http://www.hrw.org). See also “DRC – accelerate prison reforms, urges UN High Commissioner”, 17 May 2007, [www.irinnews.org](http://www.irinnews.org).

<sup>8</sup> Coalition sources, July 2007.

<sup>9</sup> See MONUC, “MONUC concerned by increasing attacks on civilians and humanitarians in eastern DRC”, 27 June 2007, [www.monuc.org](http://www.monuc.org). These foreign armed groups are excluded from the peace process and the DDR program, but are subject to a separate UN-led DDR program.

<sup>10</sup> Coalition sources, July 2007.

<sup>11</sup> International Crisis Group, *Congo: Consolidating the Peace*, Africa Report no 128, 5 July 2007, [www.crisisgroup.org](http://www.crisisgroup.org).





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human rights abuses in the province.<sup>12</sup> It has certainly contributed to ongoing child soldier recruitment and use in both the “mixed” army brigades and armed groups opposing them.

During the initial stage of *mixage*, no provision was made by the FARDC to identify and release children from the units being integrated and the process was presented by some FARDC officials as a purely military exercise.<sup>13</sup> UN child protection staff and NGOs were initially denied access to military camps where *mixage* was being carried out. After intense lobbying, they were allowed to identify children but not to effect their release. Despite reassurances by FARDC officials that access to child protection workers would be permitted, UN and other child protection workers have continued to report difficulties in gaining access to “mixed” brigades; threats to and obstruction of child protection workers have continued to be reported.

By April 2007, Human Rights Watch reported that 300-500 children, some as young as 13 years old, were serving in newly-formed “mixed” brigades loyal to Nkunda in North Kivu.<sup>14</sup> International NGOs and local observers reported that the brigades were deploying the children in military operations against local armed groups including Mai-Mai and the FDLR.<sup>15</sup> Recruitment and re-recruitment of children has been ongoing from early 2007 and has continued throughout the *mixage* process.<sup>16</sup> Recent information suggests that forcible recruitment is ongoing in Ngungu and Rutshuru (North Kivu), and that many children are still being hidden by troops loyal to Nkunda in these and other zones. Children have been told to lie about their age (to state they are adults) and those who manage to escape return to their villages where they remain at risk of re-recruitment. Some sources have reported that military commanders instructed child protection workers not to protest about the children, stating they would be released at a later stage. In fact, as noted, the children are used to fight against Mai Mai and FDLR.<sup>17</sup>

An increase in the recruitment of children from refugee camps in Rwanda from January 2007 has been documented by the UN Organization Mission in the Democratic Republic of Congo (MONUC) and by international and local NGOs.<sup>18</sup> Children have reported to the UN and local NGOs that they have been offered money and employment if they return to North Kivu, but on arrival, have been recruited into “mixed” brigades loyal to Nkunda.<sup>19</sup> Other sources have reported that children in the camps are also being recruited by the FDLR, Mai-Mai and others.<sup>20</sup> Some Rwandan child soldiers repatriated to Rwanda have reportedly been arrested and beaten by the authorities.<sup>21</sup>

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<sup>12</sup> HRW, “Army should stop use of child soldiers”, 19 April 2007, [www.hrw.org](http://www.hrw.org); *RDC-Humanitaire* “Implications of the *mixage* for the demobilisation of children associated with armed groups”, February 2007, [www.rdc-humanitaire.net](http://www.rdc-humanitaire.net); Coalition sources, eastern DRC, June 2007.

<sup>13</sup> Coalition sources, eastern DRC, March/April 2007.

<sup>14</sup> Laurent Nkunda was a military officer in the Congolese Rally for Democracy-Goma (RCD-Goma), a Rwanda-backed armed group which entered the transitional government in the wake of the 2002 peace accords. In July 2006, Nkunda, a Congolese Tutsi, launched a new political movement, the National Congress for the People’s Defence in North Kivu, and said he would resist efforts to exclude minority groups from the new government. (See below for further details). MONUC Human Rights Division, *The Human Rights Situation in the DRC, July to September 2006*, 8 February 2007, [www.monuc.org](http://www.monuc.org).

<sup>15</sup> Mai Mai groups are locally-based armed militias. Mainly active in the eastern provinces of Maniema, Katanga and the Kivus, they were backed by government forces during the armed conflict but entered opportunistic alliances with opposing forces. Some have entered the unification process but others remain outside and engage in armed activity against FARDC units.

<sup>16</sup> Op. cit. HRW; op. cit. *RDC-Humanitaire*; Coalition sources, eastern DRC, June 2007.

<sup>17</sup> Coalition sources, June 2007.

<sup>18</sup> Coalition sources, eastern DRC, April 2007.

<sup>19</sup> op. cit. HRW.

<sup>20</sup> Coalition sources, July 2007.

<sup>21</sup> Coalition sources, July 2007.



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On the positive side, NGOs have continued to emphasize that some FARDC commanders support the release of child soldiers and continue to alert child protection workers to the presence of children in the ranks of FARDC units.<sup>22</sup>

### Child soldiers in armed forces and groups

Several thousand children remain in the ranks of FARDC integrated brigades across the region, armed groups resisting the unification process (*brassage*); and in militias and foreign armed groups. Among the non-state groups responsible for recruiting and using children are the FDLR and Mai Mai militias in North Kivu; groups such as the *Front des nationalistes et intégrationnistes* (Nationalist Integrationist Front, FNI) in Ituri;<sup>23</sup> Banyamulenge (local militias) in South Kivu and Mai Mai across the eastern region.<sup>24</sup>

The situation in North Kivu remains tense, and the deployment of “mixed” brigades loyal to Nkunda from January 2007 has exacerbated tensions between “mixed” brigades hostile to Mai-Mai and FDLR, contributing to ongoing recruitment by all sides.<sup>25</sup>

Local NGOs have stated that armed groups’ resistance to army unification, failure to disarm and the retention of child soldiers is occurring against a backdrop of ethnically-based divisions and lack of confidence in the unification and peace processes. The need to build up troop strength, fear of prosecution (in the wake of the arrest of Thomas Lubanga Dyilo, see below), and perceptions of child soldiers as the personal property of military commanders are among the explanations for the continued use of child soldiers. Some commanders are resistant to releasing girls, since as “wives” of commanders, they often possess detailed knowledge of the groups’ military strategy and activities.<sup>26</sup>

NGOs have reported difficulties in monitoring the existence of children in armed groups, particularly in isolated rural areas.<sup>27</sup> Commanders of armed groups often do not respect the demobilization certificates (*attestations de sortie*) given to returning child soldiers, putting them at risk of re-recruitment. In the context of a stalled national DDR program for children, informal negotiations between armed groups and child protection workers are often undertaken to identify and release children, in the course of which both UN staff and NGO members have been subjected to harassment and intimidation.<sup>28</sup>

### The particular needs of girls

Tens of thousands of girls were recruited and used by armed forces and groups during and after the armed conflict and girls continue to be associated with armed forces and groups in the eastern DRC. Girls have been involved in a variety of tasks including combat duties, portering, providing medical

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<sup>22</sup> Coalition sources, July 2007.

<sup>23</sup> RDC Peter Karim, *dernier chef milicien d’Ituri, a rendu les armes*, Agence France-Presse, 7 April 2007.

<sup>24</sup> For a detailed description see UN, *Report of the Secretary-General on children and armed conflict in the DRC*, 28 June 2007, S/2007/391; Coalition sources, June 2007.

<sup>25</sup> OCHA Humanitarian Crisis Watch, *République démocratique du Congo*, avril 2007, rdc-humanitaire.net; Coalition sources, July 2007.

<sup>26</sup> Coalition sources, June 2007.

<sup>27</sup> Coalition sources, April 2007.

<sup>28</sup> UNICEF, *Report of the national workshop on the children’s DDR program*, Goma, 12-14 April 2007.



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assistance, cooking and for sexual purposes. Thousands were raped or otherwise sexually abused and many had children as a result of rape.<sup>29</sup>

The existence of girl soldiers has been largely overlooked by the government and the donor community. No specific demobilization process was established to respond to the needs of girl soldiers and most girls have not entered the official DDR program. A World Bank official told Amnesty International in March 2006 that very little was being done for girl soldiers, adding that, “we have no good profile of who these girls are.” Military commanders and fighters frequently assume possession of the girls, claim them as “wives” and see no obligation to identify or release the girls for demobilization.<sup>30</sup>

Only 12 per cent of formally demobilized children are girls, despite estimates that girls may have comprised up to 40 per cent of the total number of child soldiers (estimated at 33,000 in 2003).<sup>31</sup> The national DDR Commission (*Commission Nationale de Désarmement, Démobilisation et Réinsertion*, CONADER), reported in May 2006 that of the 18,500 demobilized children at that date, only 2,900 (15 per cent) were girls.<sup>32</sup> In April 2007, DRC Coalition members identified 415 girls in the ranks of armed forces and groups in Fizi, Uvira and the Plaine de la Ruzizi, South Kivu. All the commanders denied the presence of girls in their ranks, alleging they were dependents or “wives”. Local sources have reported that many girls are still with the 115<sup>th</sup> brigade of the FARDC, Mai Mai groups and the FDLR in North Kivu.<sup>33</sup>

The near-universal practice of raping girl soldiers, and their subjection to other forms of sexual violence, has been well documented over the past five years. Yet girls continue to be marginalized from DDR programs, their complex medical and psychosocial needs remain largely unmet, and few educational, vocational training or income generation projects exist to support them. Programs to assist girl mothers and children they bore in the ranks, remain virtually non-existent.<sup>34</sup> Such provision, where it does exist, has been largely provided by NGOs working at the community level.<sup>35</sup>

The vast majority of girls who manage to leave armed forces and groups do not pass through the official DDR program, fearing the stigmatization which might result. As they do not obtain exit certificates they remain vulnerable to re-recruitment and do not gain access to reintegration programs. Those who return home are often rejected because of their involvement in sexual activity, despite its being forcible. Girls are therefore subjected to multiple forms of discrimination and exclusion – during involvement in hostilities, at the point of demobilization and after returning home.<sup>36</sup> As a consequence, many join prostitution networks, become beggars or return to the armed groups.

The government ratified the Rome Statute of the International Criminal Court (ICC) on 11 April 2002.<sup>37</sup> Under the statute “rape, sexual slavery, enforced prostitution, forced pregnancy ... or any other

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<sup>29</sup> Coalition to Stop the Use of Child Soldiers, *Child Soldiers Global Report*, November 2004; UN *Report of the Secretary-General on children and armed conflict in the DRC*, 13 June 2006, S/2006/389. Information has begun to emerge on the rape of boy soldiers, but this remains relatively undocumented. Further research is needed, and eventually programs to assist boy victims of sexual violence.

<sup>30</sup> AI, *Democratic Republic of the Congo, Children at War: Creating Hope for the Future*, October, 2006, [www.amnesty.org](http://www.amnesty.org).

<sup>31</sup> op. cit. AI.

<sup>32</sup> op. cit. UN.

<sup>33</sup> Coalition sources, DRC, April 2007.

<sup>34</sup> The NGO COOPI, based in Bunia, reported that 70 per cent of the girl soldiers assisted since 2003 returned with a child, Coalition interviews, March 2007.

<sup>35</sup> See for example Save the Children UK, *The forgotten casualties of War*, April 2005, [www.savethechildren.org.uk](http://www.savethechildren.org.uk); Beth Verhey, *Reaching the Girls, Study on girls associated with armed forces and groups in the DRC*, Save the Children and NGO Group: CARE, IFESH, IRC, April, 2005.

<sup>36</sup> See for example, War Child, *Don't tell us where we belong*, October/November 2005, [www.warchild.org.uk](http://www.warchild.org.uk).

<sup>37</sup> On 3 July 2007 the government ratified the Agreement on Privileges and Immunities thus finalizing the ratification process.



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form of sexual violence of comparable gravity" are crimes against humanity and war crimes, within the jurisdiction of the International Criminal Court.<sup>38</sup>

Sexual violence against girls, including those recruited or used by armed forces and groups is also a violation of international human rights law. Article 19 of the Convention on the Rights of the Child, which the government has also ratified, imposes an obligation on state parties to take "appropriate legislative, administrative, social and educational measures to protect" girls from "sexual abuse". Article 19(2) enjoins states to put in place "effective procedures for the establishment of social programs to provide necessary support for the child ... as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up ... and, as appropriate, for judicial involvement."<sup>39</sup>

Congolese law criminalizes a range of sexual offences in a law passed on 20 July 2006, which amends the Congolese criminal code.<sup>40</sup> Despite these obligations under international and national law, there has been no systematic attempt to investigate or prosecute sexual violence crimes against girl soldiers in the DRC. The continuing climate of near-total impunity for those responsible for rape, sexual slavery, enforced prostitution, forced pregnancy, and other forms of sexual violence against girls recruited or used by armed forces and groups is a matter of urgent concern. The investigation and prosecution of sexual violence crimes against girl soldiers must be brought from the periphery to the centre of child protection and accountability efforts in the DRC.

### Justice and impunity

Despite some encouraging developments, including a handful of prosecutions by military courts and initiatives to reinforce the national justice system, prosecutions of child recruiters have been few and far between.<sup>41</sup> The justice system in the DRC remains weak, under-funded and poorly managed. Serious concerns remain over the independence of the judiciary and its ability to operate without political and military interference. Armed group commanders accused of war crimes and other human rights violations have assumed national government or military posts, undermining efforts to end impunity. The failure to arrest Laurent Nkunda is of particular concern. Numerous investigations have pointed to his involvement in summary executions, rape and child soldier recruitment. Nkunda was charged with war crimes and a warrant for his arrest was issued by the Congolese government in September 2005 but he remains at large.<sup>42</sup>

The indictment and arrest of former armed group leader Thomas Lubanga Dyilo in March 2006 and his transfer to the ICC in The Hague was a significant development.<sup>43</sup> Lubanga was formally charged on 28 August 2006 with war crimes, specifically "conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities", under Article 8(2) (b) (xxvi) and Article 8(2)(e)(vii) of the Rome Statute of the ICC. Civil society

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<sup>38</sup> Rome Statute of the International Criminal Court 1998, Article 7(1)(g), Article 8(2)(b)(xxii), and Article 8(2)(e)(vi).

<sup>39</sup> Convention on the Rights of the Child, www.ohchr.org. The government ratified the Convention on 27 September 1990.

<sup>40</sup> Law no 06/018, 20 July 2006. Article 2(2) defines rape and Article 3(5) defines sexual slavery, modifying Article 170 and Article 174c of the Congolese criminal code respectively.

<sup>41</sup> For detailed discussion of developments see MONUC Human Rights Division, *The Human Rights Situation in the DRC, July to September 2006*, 8 February 2007, www.monuc.org.

<sup>42</sup> *op. cit.* MONUC.

<sup>43</sup> Thomas Lubanga Dyilo was the leader of a group active in Ituri, the *Union des Patriotes Congolais* (Union of Congolese Patriots, UPC). He is allegedly responsible for a range of war crimes and crimes against humanity, including massacres, rape and torture. The ICC has confirmed charges against him and the case is in the pre-trial Chamber: ICC-01/04-01/06 *Case The Prosecutor v. Thomas Lubanga Dyilo*, www.icc-cpi.int.

<sup>44</sup> UN, *Report of the Secretary-General on children and armed conflict in the DRC*, 13 June 2006, S/2006/389.



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organizations and NGOs have welcomed the charges, but emphasize the need to try other military commanders (FARDC and armed groups) accused of these and other crimes under international law. Without a more even-handed approach, violators will remain undeterred and anti-impunity efforts will risk losing credibility.

National authorities successfully prosecuted Jean-Pierre Biyoyo (a member of the FARDC and former leader of the Mudundu 40 armed group). He was tried by a military court and sentenced in March 2006 to five years' imprisonment for the arbitrary arrest and illegal detention of children (*de facto* child recruitment) committed in South Kivu in April 2004.<sup>44</sup> However, Biyoyo escaped from prison in June 2006 and the following February, returned to Bukavu as part of an official military delegation tasked with "awareness-raising" (*sensibilisation*) of military units resisting the army unification process in Minembwe (South Kivu).<sup>45</sup>

The prosecution of Biyoyo remains an exception despite the government's ratification of treaties prohibiting child soldier recruitment and use, and Congolese laws which criminalize children's involvement in armed groups. The government ratified the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts on 11 November 2001 and set 18 as the minimum voluntary recruitment age under Article 3(2).

Article 190 of the new Constitution, approved in February 2006, prohibits the organization of military or paramilitary formations, private militias, or the formation of a youth army. It does not specify a minimum age for recruitment into armed groups or use in hostilities, but Article 41 defines a child ("*l'enfant mineur*") as any person below the age of 18. Article 41 also requires that all forms of exploitation of children be severely punished by the law. Article 42 confers on public authorities the obligation to protect young people from all threats to their health, education and development. Article 41 of the Defence and Armed Forces law 2004 prohibits the maintenance of a youth army or youth subversive group. Article 10 prohibits the individual requisition of one or more children aged under 18 years in the event of a mobilization. Article 25 confers responsibility for demobilizing child soldiers and other former combatants to the Minister of National Defence, Demobilization and Former Combatants.<sup>46</sup>

These provisions are further reinforced by a previous decree-law passed on 9 June 2000, which orders the demobilization of children below the age of 18 from armed forces and groups. A circular issued by the *auditeur général* (military prosecutor) in May 2005 further instructs *auditeurs supérieurs* and *auditeurs de garnison* to prosecute all those accused of child recruitment or use in military operations. The same circular instructs military prosecutors to refer illegally recruited children accused of crimes to a competent civilian court, or to CONADER for demobilization.<sup>47</sup>

The recruitment of children into the national armed forces is not explicitly defined as a criminal offence under Congolese law. This shortcoming should be addressed by the proposed Child Protection Code, scheduled for approval by parliament in late 2007. If implemented, the Code will substantially enhance legal protection against children's involvement in hostilities; it criminalizes the recruitment and use of persons below the age of 18 by armed forces, armed groups and the police force, and specifies prison terms of between ten and 20 years for these offences. The Code additionally provides for a number of additional structures to improve the treatment of children in conflict with the law,

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<sup>45</sup> *Le Potentiel*, Kinshasa, 1 March 2007; Agence France-Presse, "RDC: un officier condamné au sein d'une mission officielle, l'ONU préoccupée", 1 March 2007.

<sup>46</sup> *Loi No 04/023 du 12 novembre 2004 portant organisation générale de la défense et les forces armées*, Journal officiel de la République démocratique du Congo, 13 November 2004.

<sup>47</sup> Circular No. AG/0631/D8a/2005, 19 May 2005, cited in MONUC Child Protection Section, *Arrestations et détentions dans les prisons et cachots de la RDC et La détention des enfants et la justice pour mineurs*, March 2006, www.monuc.org.



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including the establishment of juvenile courts and non-judicial proceedings for children accused of criminal offences.<sup>48</sup>

### **Arrest, detention and military trials of illegally recruited children**

Children have been arrested, detained and tried in military courts for military offences and other crimes allegedly committed while in armed forces or groups. The trials contravened Article 114 of the Military Justice Code, which stipulates that persons below the age of 18 years do not fall under military jurisdiction.<sup>49</sup> A decree-law passed in 2000, orders the demobilization of children illegally recruited or used by armed forces and groups. This provision was reinforced in May 2005 by the circular issued by the military prosecutor instructing military prosecutors to refer illegally recruited children accused of crimes to a competent civilian court or to CONADER for demobilization.<sup>50</sup>

At least nine child soldiers (persons below the age of 18) are known to have been sentenced to death since 2003 in violation of the government's obligations under the Convention on the Rights of the Child (Article 37(a)) and other international treaties ratified by the government.<sup>51</sup> The Coalition has been informed that executions are no longer carried out in the DRC and this is a welcome development.<sup>52</sup> However, at least three children were believed to remain in detention under sentence of death in July 2007 in the eastern DRC after being convicted by military courts, two of them apparently child soldiers.<sup>53</sup> The legal status of these children should be immediately clarified and the death sentences imposed on them formally commuted.

The arrest and detention of child soldiers on charges of desertion and other military offences (such as abandonment of duty and disobeying orders) appears to have decreased over the last two years but cases of children detained for desertion have continued to be identified.<sup>54</sup>

### **Coordinate and revitalize reintegration**

Ongoing impunity for human rights violations, including widespread sexual violence, has hindered the successful reintegration of former child soldiers with their families, communities and society. Efforts by the government, international community, donors and NGOs have also been hampered by the context of extreme poverty, weak or non-existent state institutions and an infrastructure devastated by war.

CONADER and its implementing partners have proved only partially successful in providing reintegration packages for children. While difficult to estimate the number of children who have benefited from educational or vocational programs, CONADER reported that by December 2006 some 30,000 children had been demobilized and of these some 14,000 had yet to receive support for reintegration. These figures appeared to be mirrored at the provincial level. For example, of 7,000 children demobilized by child protection agencies in North Kivu since 2003, only half had received

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<sup>48</sup> UN Security Council, *Report of the Secretary-General on children and armed conflict in the Democratic Republic of the Congo*, 28 June 2007, S/2007/391, www.un.org.

<sup>49</sup> Article 114, Military Justice Code, Law no. 023/2002 of 18 November 2002.

<sup>50</sup> Circular No. AG/0631/D8a/2005, 19 May 2005, cited in MONUC Child Protection Section, *Arrestations et détentions dans les prisons et cachots de la RDC et La détention des enfants et la justice pour mineurs*, March 2006, www.monuc.org.

<sup>51</sup> op.cit. MONUC.

<sup>52</sup> Coalition sources, July 2007.

<sup>53</sup> Coalition sources, July 2007.

<sup>54</sup> MONUC, *Human Rights Section, Monthly report on human rights, March 2007*, 16 April 2007.



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full reintegration support.<sup>55</sup> By mid-2007, CONADER was winding down and international funding had virtually ceased.<sup>56</sup> In the meantime, tens of thousands of former child soldiers have no access to reintegration programs.

Delays in implementing the official DDR program for children and mismanagement of funds, along with poor coordination and timetabling meant that throughout 2005 CONADER and NGOs were forced to respond on an emergency basis to urgent needs to identify, demobilize, transport, shelter and feed thousands of children. Planning a coordinated strategy for reintegration was thus delayed and most reintegration programs did not start until 2006 (a year or so before CONADER was being wound down). Child protection agencies concur that many former child soldiers have not been supported by sustained reintegration activities. In the eastern DRC, local NGOs reported in early 2007 that reintegration programs have been entirely absent in the areas of Nyamilima, Walikale, Beni, Lubero, Mweza and Shabunda.<sup>57</sup>

A further 11,000 children are estimated to have escaped or left armed forces and groups without going through the formal DDR program (these children are frequently referred to as *auto-démobilisés* or “self-demobilized”).<sup>58</sup>

In the DRC these issues are of immediate concern. Children, many of them used in frontline combat, have seen adults receive demobilization packages and support for a one-year period, while they return home without any material support, training or other assistance. Under these conditions, some children and youth try to identify themselves as adults in order to enter the adult program.<sup>59</sup> One recent report indicated that in Uvira (South Kivu) three per cent of once-demobilized children were either forcibly re-recruited or re-enlisted “voluntarily” in the face of a dearth of alternatives.<sup>60</sup> Experience has shown that if reintegration support is not sustained, former child soldiers may be forced to re-enlist, resort to violent crime, prostitution or other criminal activities.

Despite the fact that national and local NGOs have been closely involved in community-based efforts to stop child soldier recruitment and use, and have extensive experience in this domain, CONADER was slow to approve funding for NGO-based reintegration projects. Reintegration activities at the community level have relied almost entirely on international and local NGO initiatives which are often woefully under-funded. Most have been focused in urban centres and are therefore inaccessible to the majority of former child soldiers who come from rural areas.

Moreover, because of inadequate funding, reintegration initiatives are often short-term “stop gap” solutions that do not guarantee long-term, sustainable reintegration of children. For example, one NGO providing carpentry training in Bukavu said that though the training was useful, without development and program support in the community, the hammers, nails and other tools and materials supplied to the former child soldiers would quickly run out or be sold on.<sup>61</sup> One survey found that former child soldiers regretted most their loss of access to formal education,<sup>62</sup> yet both international and local NGOs have continued to report that insufficient attention has been paid to providing opportunities for

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<sup>55</sup> IRIN, “North Kivu, DRC: Living on the fringes of society: What future for young ex-combatants”, 23 February 2007, [www.irinnews.org](http://www.irinnews.org).

<sup>56</sup> Coalition sources, July 2007.

<sup>57</sup> Coalition sources, eastern DRC, April 2007.

<sup>58</sup> UNICEF, *Report on national workshop on children’s DDR program*, Goma 12-14 April 2007.

<sup>59</sup> Under the adult DDR program, fighters receive a monetary sum upon demobilization followed by a monthly allowance for one year.

<sup>60</sup> Jesuit Refugee Service, *Understanding the phenomenon of child soldiers*, February 2007 The study showed that the average age for recruitment is 12 years old and that children spent about three years with the armed force or group.

<sup>61</sup> AI, *DRC: Children at war – Creating hope for their future*, October 2006, [www.amnesty.org](http://www.amnesty.org).

<sup>62</sup> Jesuit Refugee Service, *Understanding the phenomenon of child soldiers*, February 2007.



former child soldiers to return to school.

Returning child soldiers need education, training and income generation activities, along with access to health care and psychosocial support. While hostilities continue, failure to ensure these basic children's rights fuels further recruitment and is likely to have a long-term impact on the country's political stability.

## RECOMMENDATIONS

The following recommendations are aimed in particular at the Congolese government and armed forces, armed groups, MONUC, and the donor community.

### Demobilize children from government armed forces

- The FARDC, with support from MONUC, should demobilize and protect all children serving in "mixed" FARDC brigades in North Kivu, as well as any other children serving in FARDC units.
- FARDC commanders should be instructed to inform UN, international and local child protection agencies of the names and ages of any children (under-18s) in their units; they should permit child protection workers to gain immediate access to military camps to identify and release children serving in "mixed" and other brigades.
- The Rwanda government should act to protect children in refugee camps from recruitment into armed forces and groups in the DRC. It should work with the UN High Commissioner for Refugees (UNHCR) to establish child protection mechanisms within the camps. The DRC and Rwanda governments should work with UN agencies to develop family reunification procedures for children from DRC and Rwanda.

### Renew efforts to stop the recruitment and use of children by armed groups

- Efforts must be renewed to stop the recruitment of children by non-integrated armed group units, FDLR, Mai Mai and other armed groups operating in the eastern DRC.
- UN child protection agencies and NGOs should be permitted to enter camps, identify and release children, without fear of violence, threats or any other arbitrary action aimed at preventing them from carrying out their legitimate work.
- Further efforts are needed to ensure that armed groups respect demobilization certificates (*attestation de sortie*) issued to children.

### Coordinate and revitalize reintegration

- Renewed coordinated support and sustained funding are required for reintegration programs across the eastern DRC. These should include education, vocational training and income generation projects. Programs should be community-based to avoid stigmatization of former





child soldiers and to ensure that the needs of other vulnerable children are met.<sup>63</sup>

- Efforts are needed by the government, in partnership with the UN and NGOs, to identify and support “self-demobilized” children to access community reintegration programs.

### **Meet the particular needs of girls**

- The FARDC should issue instructions to all regional commanders for all girls as well as boys to be identified, and for child protection agencies to be informed of their presence to assure their release and reintegration.
- The government and the FARDC should widely disseminate information to all military units, and affected communities, on international and Congolese laws prohibiting rape and sexual violence.
- Government efforts to investigate and prosecute military personnel from both armed forces and armed groups suspected of rape or other forms of sexual violence must be strengthened. International initiatives to strengthen the justice system should include training on investigation and prosecutions for acts of sexual violence against girls associated with armed forces and groups.
- Donors should prioritize support for the development and implementation of coordinated community-based programs to identify former girl soldiers, including girl mothers and their children. Provision is needed for income generation projects, health care and psychosocial support for returning girls who have suffered sexual violence.
- Government and international donors should support efforts by NGOs and others to address stigma and prejudice against these girls and their children in the wider community.

### **Investigate and prosecute the recruitment and use of children in hostilities**

- Individuals such as Laurent Nkunda and Jean-Pierre Biyoyo, who have already been indicted or prosecuted for war crimes and other serious human rights violations, should be immediately arrested (if necessary with support from UN peacekeepers) and either brought to trial or imprisoned for the remainder of their prison term.
- In accordance with the DRC government’s obligations under international and national law, strenuous efforts must be made to investigate and prosecute those responsible for recruiting and using children. Reported incidents of concealment of children during the *mixage* process, obstruction of efforts to identify and release child soldiers, and threats or harassment of child protection workers, should be investigated and those responsible brought to justice.

### **Protect child soldiers from arbitrary arrest and detention and unfair trials**

- Immediately commute all death sentences imposed on individuals accused of crimes committed when they were below the age of 18 in compliance with Article 37 (a) of the Convention on the Rights of the Child.

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<sup>63</sup> See, UNICEF, *The Paris Principles and guidelines on children associated with armed forces or armed groups*, February 2007, [www.unicef.org](http://www.unicef.org).



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- The authorities should seek technical assistance from MONUC's human rights and child protection sections to address the cases of child soldiers (including the above) tried by military courts which did not have jurisdiction. If charges against them cannot be substantiated they should be immediately released. In determining the most appropriate processes for these children, consideration should be given to the charges and evidence against them, time already spent in detention, their experience as child soldiers and in the military justice system, and the fact they were children when the alleged crimes were committed. Wherever possible, alternatives to judicial proceedings should be sought with a view to promoting their rehabilitation and reintegration into society.
- End the illegal practice of arresting and detaining children associated with armed forces and groups for military offences such as desertion and disobeying orders (*violation des consignes*).
- Circulate to all military authorities, the summary of international standards and national laws relevant to juvenile justice published by MONUC's child protection section.<sup>64</sup> Practical training should be provided to the military on the implementation of these and other relevant standards.
- Support provisions contained in the Child Protection Code for improved juvenile justice mechanisms.

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<sup>64</sup> MONUC, Child Protection Section, *Normes internationales sur la justice pour enfants*, February 2006, [www.monuc.org](http://www.monuc.org).