

Seeking Justice: The Prosecution of Sexual Violence in the Congo War

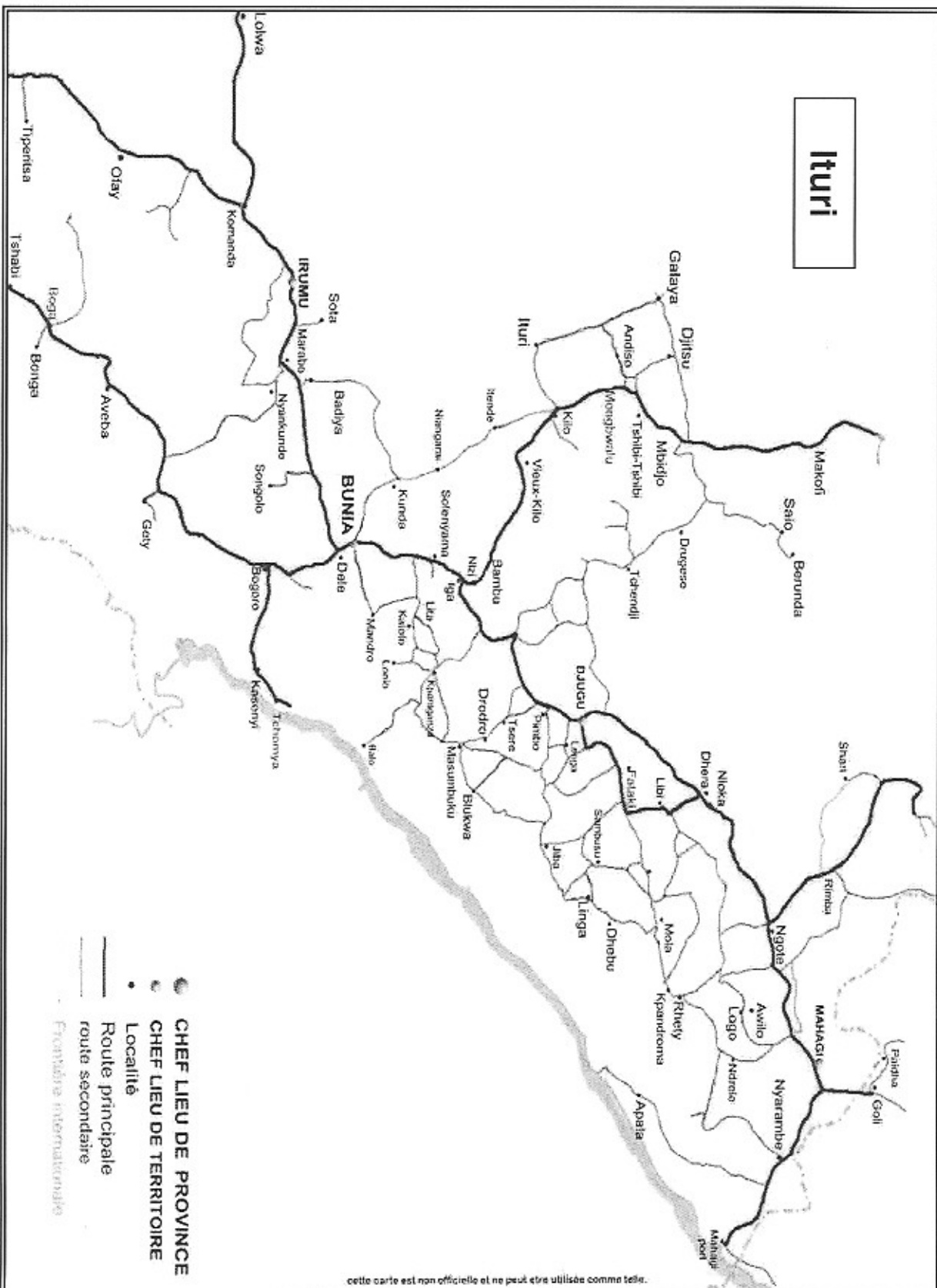
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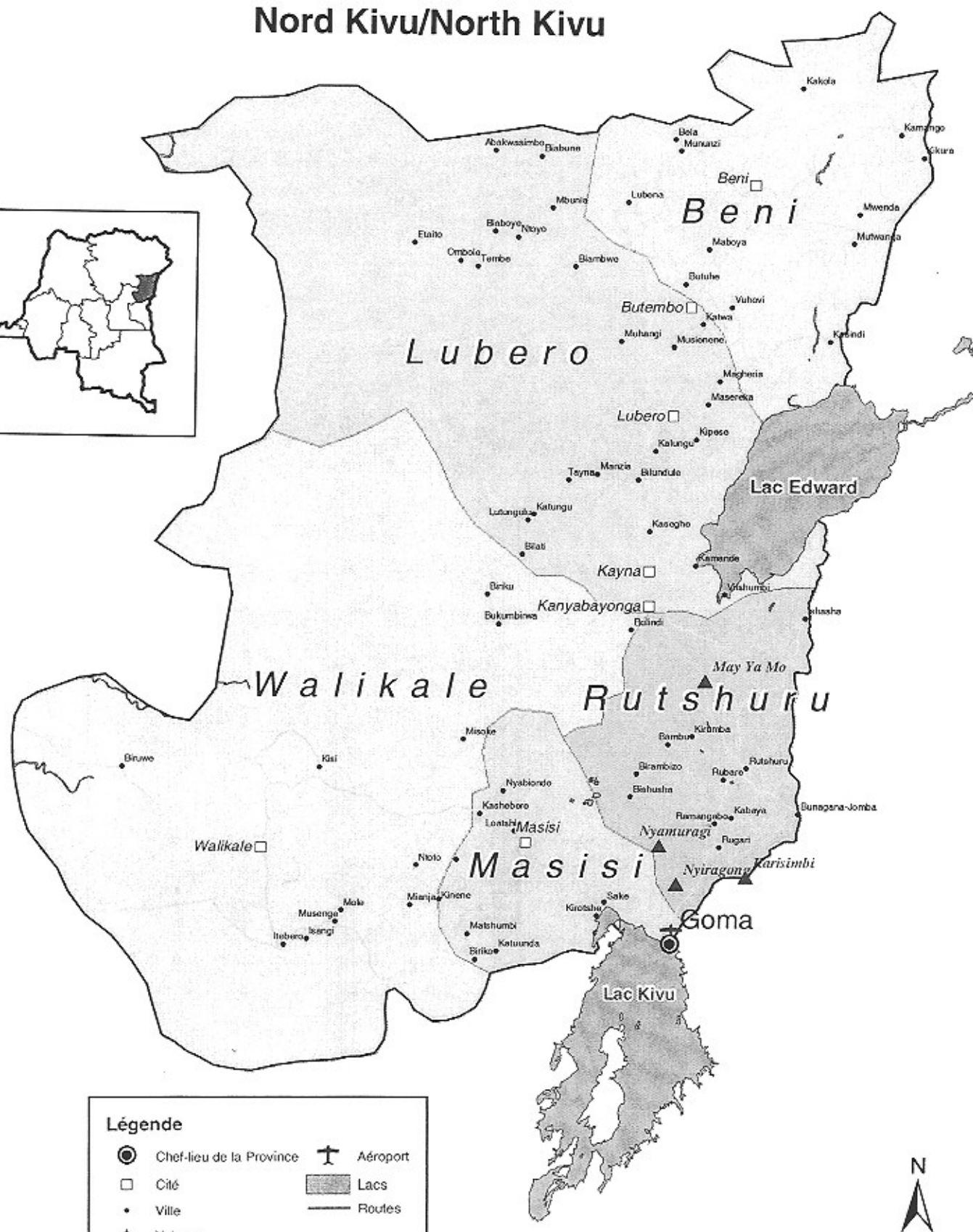
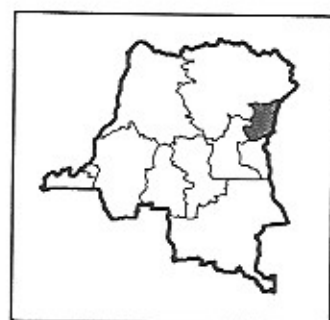
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Ituri



Nord Kivu/North Kivu



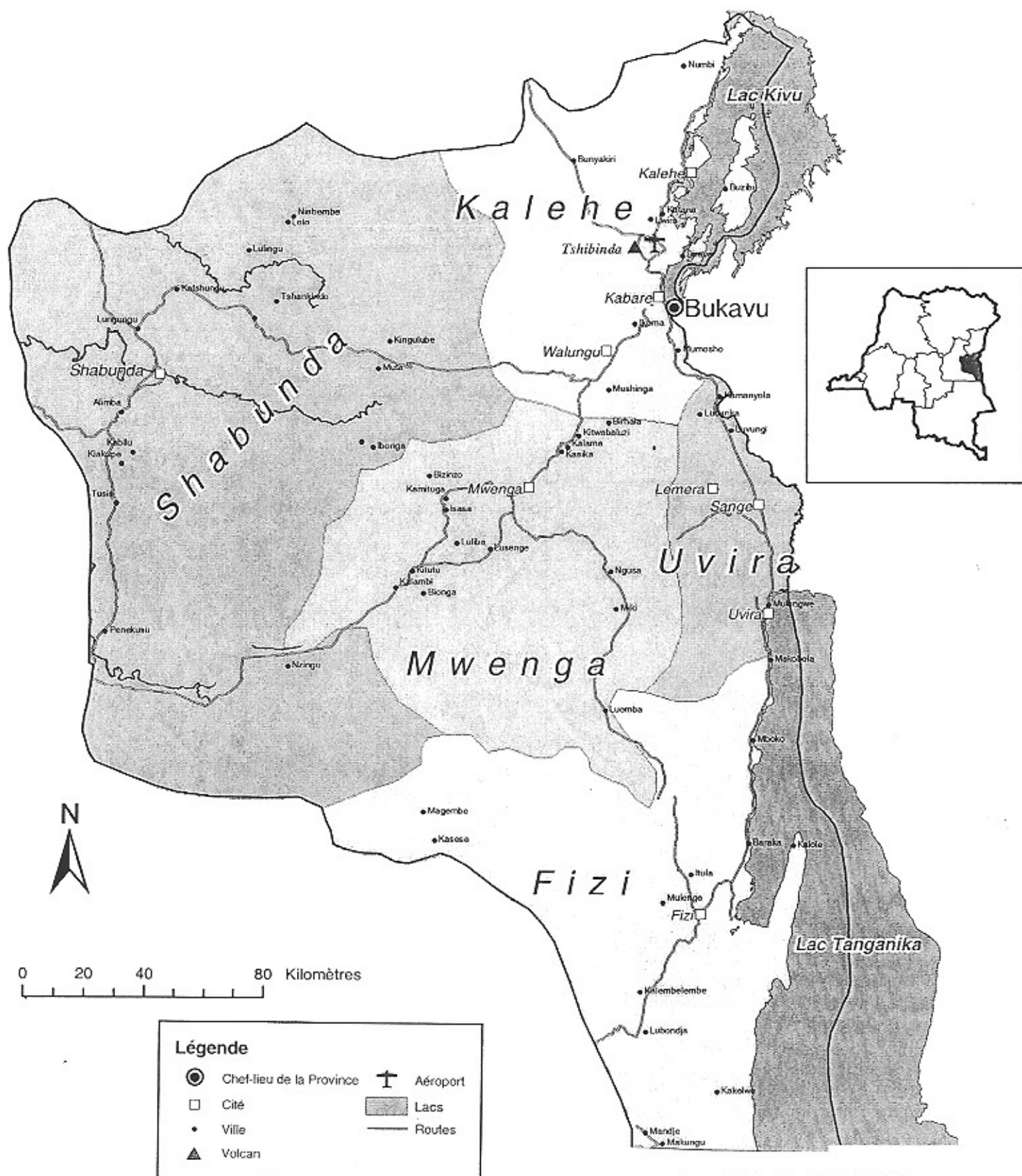
Légende

- Chef-lieu de la Province
- Cité
- Ville
- ▲ Volcan
- ✈ Aéroport
- Lacs
- Routes

Map created by the United Nations Office for the Coordination of Humanitarian Affairs, April 2002.

0 25 50 100 Kilomètres

Sud Kivu/South Kivu



Summary

During five years of armed conflict in the Democratic Republic of Congo, tens of thousands of women and girls in the eastern part of the country have suffered crimes of sexual violence. The signing of a peace agreement in 2002 and the installation of a transitional government in 2003 raised hopes that both the military conflict and related abuses would end. But in eastern Congo women and girls – as young as three years old – continue to be targeted for crimes of sexual violence. Some have been gang-raped or abducted by combatants for long periods of sexual slavery. Some have been mutilated or gravely injured by having objects inserted into their vaginas. Some who fought back when attacked have been killed. In a number of cases men and boys have also become victims of crimes of sexual violence.

As detailed in this report, perpetrators of sexual violence are members of virtually all the armed forces and armed groups that operate in eastern Congo. Such crimes were committed by the former Congolese Rally for Democracy-Goma (RCD-Goma), a Rwandan-supported armed group that controlled large parts of eastern Congo during the war. The RCD-Goma and its Rwandan allies had a number of adversaries – Mai Mai rebels, and Burundian and Rwandan Hutu armed groups – who also committed widespread acts of sexual violence. Further to the northeast, other armed groups fought for control over territory, and also carried out frequent acts of sexual violence. Among those were the Congolese Rally for Democracy – Kisangani – Liberation Movement (RCD-ML), the Movement for the Liberation of Congo (MLC), and the Union of Congolese Peoples (UPC) and the Front for National Integration (FNI) in the Ituri region. Members of the former government army, the Congolese Armed Forces (FAC), and of the new national army known as the Armed Forces of the Democratic Republic of Congo (FARDC) are also guilty of sexual abuses.

Victims of crimes of sexual violence have enormous needs for medical, psychological and social support; unless such needs are met, they have difficulty beginning and persevering in efforts to bring the perpetrators of the crimes to justice. Congolese nongovernmental organizations (NGOs) were the first to assist the victims but growing support now comes from various international agencies and international NGOs. Among the services now offered in a few communities is assistance in initiating legal action against those suspected of responsibility for the sexual violence.

In the past women and girls who had been raped generally kept silent, fearing stigmatization by those who blame the victim. Many feared reprisals from perpetrators if they reported the crimes. But in the last two years, a small number of victims of sexual

violence have sought justice from the Congolese judicial system. This report documents such efforts and the reasons why they often failed, including deficiencies in the law, the unwillingness of military and other officials to treat sexual violence as a serious offense, lack of protection for the victims, and various logistical and financial impediments linked to the dilapidated state of the judicial system.

The report also examines the handful of prosecutions that ended in the conviction of persons accused of crimes of sexual violence and describes deficiencies that resulted in violations of the rights of the accused to a fair trial. In addition, there was insufficient attention to the needs of the victim, and no protection for victims and witnesses. The report also addresses the failure of military prosecutors to examine the culpability and command responsibility of superior officers when sexual violence was part of ongoing crimes under their command.

The Congolese government, faced with the overwhelming task of delivering justice for the many crimes committed during the war, has started to rebuild its fractured judicial system. Its' most notable success thus far was the restoration of a functioning court in Bunia, in Ituri district of Orientale province. The report discusses prosecutions that resulted in ten convictions on rape charges by this court. It examines reforms needed in laws and in the operation of the judicial system, including providing adequate protection to victims and witnesses.

As a party to the Rome Statute of the International Criminal Court (ICC), Congo has referred crimes under the Court's jurisdiction to the ICC prosecutor who has begun an investigation. This development constitutes a real hope for justice for the Congolese people. The huge scale of serious crimes involving sexual violence should be a priority concern of that investigation. However, the ICC will be able to investigate only a very small number of people bearing the greatest responsibility for serious crimes in Congo and the national courts will have to deal with the majority of the crimes committed during the war.

International donors and the United Nations (U.N.) have provided assistance to victims, although not sufficient to meet the overwhelming needs of the crisis. The European Union (E.U.) has supported reforms in the judicial system, particularly the effort to re-open the court in Ituri.

A U.N. peacekeeping operation known as the United Nations Mission in the Democratic Republic of Congo (MONUC) has been sent to monitor the peace process and protect civilians. In recent months MONUC human rights staff have documented and made

public grave cases of human rights violations and have in some instances assisted victims of crimes of sexual violence to institute judicial proceedings. However MONUC has often failed to protect civilians, including those targeted for sexual violence. Worse, some MONUC peacekeepers and civilian staff have discredited the operation and the U.N. more generally by committing crimes of sexual violence and by sexually exploiting women and girls.

This report is based on research carried out in North Kivu, South Kivu, and Ituri during 2003 and 2004, including interviews with victims of sexual violence, relatives of victims, judicial authorities, political authorities, and lawyers. The report draws also on extensive consultations with the staff of local and international nongovernmental organizations and of various U.N. agencies. The names of all victims and their families are pseudonyms, to protect their security.

Recommendations

To the Congolese government:

Enforce compliance with international humanitarian law (the laws of war) among all members of the armed forces, especially regarding the treatment of civilians.

Ensure that the military justice system fully investigates and prosecutes allegations of sexual violence by members of the armed forces. Refer cases to the civilian courts when they are better able to provide competent, independent, and impartial justice.

Prosecutions should not only examine those directly responsible for offenses, but the complicity and command responsibility of superior officers.

Dismiss perpetrators of sexual violence from the army and vet nominees to posts of command responsibility to ensure that they have not committed violations of international humanitarian law, including crimes of sexual violence.

Provide training to members of the armed forces on human rights law, humanitarian law and on the prevention of HIV/AIDS.

Develop a public health policy with regards to sexual violence:

Establish a Cabinet Committee on Sexual Violence, composed of the ministers of Women's Condition, Human Rights, Health, Defence, and Justice to draft and adopt a national plan to address the issue of sexual violence in a comprehensive manner.

Provide victims of sexual violence with appropriate and timely health services. These services should include appropriate counseling, voluntary testing, and treatment for those affected with HIV/AIDS. Develop clear criteria for the selection of beneficiaries and design professional support services. Cooperate with donors in their efforts to provide coordinated and professional medical and psychological assistance to victims of sexual violence.

Take action to prevent the spread of HIV/AIDS among victims of sexual violence, and treat those who are infected. In particular ensure that post-exposure prophylaxis (PEP) and drugs for the prevention of mother-to-child transmission are available to clients in a timely manner. Provide information about HIV/AIDS, the medical services available, and offer voluntary and confidential HIV testing and counseling. Improve treatment of opportunistic infections of HIV/AIDS patients.

Develop a national standard protocol for medical examinations following sexual attack, in line with the World Health Organization (WHO) standard protocols for adults and children. Require hospitals and health centers to follow the defined procedure.

Reform the judiciary to enable fair prosecution of crimes of sexual violence:

Train police, prosecutorial, and judicial staff on gathering and analyzing evidence, including forensic evidence, in cases of sexual violence; ensure personnel have adequate funds to carry out their duties effectively.

Increase the number of personnel among judges, magistrates, and investigating officers (*Officiers de police judiciaire*), with expertise in investigating and prosecuting crimes of sexual violence. Consider creating special units for women's rights within the judicial police and the Prosecutors' offices.

Ensure that all trials are held in accordance with internationally recognized standards of due process. Police, prosecutorial, and judicial personnel must take all necessary measures to assure the security of victims and witnesses, including holding *in camera* (non-public) proceedings, if necessary, and the provision of police protection.

Ensure that police, prosecutorial, and judicial personnel are trained in working with traumatized victims and witnesses and that they provide timely information about the proceedings.

Ensure that all minors are tried in Juvenile Justice Chambers (*Chambres d'enfance délinquante*) and that the chambers give priority to social reintegration programs, rather than prison sentences, for minors who have committed acts of sexual violence.

Make rebuilding and reforming the justice system a priority and ensure that it cooperate with international authorities investigating violations of international humanitarian law. Create mobile investigative teams to facilitate prompt prosecution of crimes.

Create a legal framework that addresses sexual violence in conflict as an international crime:

Urgently adopt the ICC implementing law into Congolese domestic legislation. The law codifies crimes against humanity and war crimes, including sexual crimes, and expands the jurisdiction of the civilian judiciary to include war crimes and crimes against humanity committed by members of the armed forces.

Revise the law on rape in the Congolese Criminal Code or adopt legislation that addresses sexual violence more comprehensively, to include sexual crimes such as penetration with objects and male rape.

Incorporate war crimes and crimes against humanity into the Congolese Criminal Code, including by specifying as war crimes sexual violence and other gender-based crimes.

Revise the Congolese Criminal Code to provide specific protective measures to victims of crimes of sexual violence, such as ensuring confidentiality of victims and witnesses and establishing a system of physical protection before, during and after the trial.

Address sexual violence against men:

Assess the scope of sexual crimes committed against men and boys and devise a strategy to raise awareness of the problem, assist the victims medically and psychologically, and prosecute such crimes.

To armed groups operating in eastern Congo:

Take all necessary steps to ensure that all combatants and others under your command act in full accordance with international humanitarian law. Deliver combatants suspected of crimes, including acts of sexual violence, to Congolese judicial personnel.

To the United Nations, multilateral donor agencies and donor governments:

Provide greatly increased support for medical, psychological, social, and legal support to victims of sexual violence.

Provide assistance to the Congolese government to reform and rebuild the justice system, and to assist women and girls victims of sexual violence in taking their cases to Court. Insist that members of Congolese civil society participate in making decisions about judicial reform.

Ensure that a vetting process is implemented in all military integration programs supported by donors' funds.

Ensure that military training supported by the donors includes training in international humanitarian law, including the prohibition of crimes of sexual violence.

Support efforts by the Congolese government to provide medical and psychological assistance to victims of crimes of sexual violence, including to those coping with HIV/AIDS, and to children born of pregnancies that resulted from rape.

To the United Nations Security Council:

Establish a mixed Group of Experts, appointed by the U.N. Secretary-General, to recommend possible justice mechanisms to investigate and prosecute war crimes and crimes against humanity committed before the Rome Statute of the ICC entered into force in July 2002.

Ensure that MONUC, under its expanded Chapter VII mandate, does everything in its power to protect civilians against attacks, including sexual assaults.

To the ICC:

Ensure that crimes of sexual violence committed in eastern Congo that constitute war crimes or crimes against humanity are made a priority of investigations and prosecutions.

Sexual Violence in the Congo War: A Continuing Crime

During five years of armed conflict in the Democratic Republic of Congo (DRC, or Congo), tens of thousands of women and girls¹ were raped or otherwise subjected to sexual violence.² Victims whose cases Human Rights Watch documented were as young as three years old. In a number of cases men and boys were also raped or sexually assaulted. The World Health Organization investigated the incidence of rape in the two provinces of South Kivu and Maniema and in the two cities of Goma (North Kivu province) and Kalémie (Katanga province) and concluded that some forty thousand persons had been raped.³

Combatants of most armies and armed groups in eastern Congo committed acts of sexual violence both before and after the establishment of the transitional government.⁴ Alleged perpetrators include fighters of the former rebel movements, the RCD-Goma, the MLC, and RCD-ML, and soldiers of the former national army, the FAC, now all supposedly part of an integrated Congolese army. Perpetrators also include combatants of local armed groups, Mai Mai (groups resisting outside control), Burundian and Rwandan Hutu armed groups, and the ethnically-based UPC and FNI based in Ituri.⁵ Civilian and military judicial authorities and leaders of armed groups rarely punished perpetrators of these crimes. On occasion military commanders and the heads of armed groups seem to have encouraged the use of sexual violence as a way to terrorize civilians.

¹ In this report, consistent with the Convention on the Rights of the Child, the terms girl, boy and child are used to describe someone under eighteen years of age.

² The term "sexual violence" is used in this report to refer to all forms of violence of a sexual nature, such as rape, attempted rape, sexual slavery, enforced prostitution, sexual assault and sexual threat.

³ IRIN, DRC: Focus on rampant rape, despite end of war, March 8, 2004. The report found that there were about 25,000 victims in South Kivu province, 11,350 in Maniema province, 1,625 in Goma, and 3,250 in Kalémie.

See <http://www.reliefweb.int/w/rwb.nsf/0/253bfc93b573d42885256e51006c20e4?OpenDocument>. (accessed on June 4, 2004). Other reports have confirmed the seriousness of the problem in areas not treated by this report. See Initiative conjointe de lutte contre les violences sexuelles faites à la femme et à l'enfant (fille et garçon), *Rapport de mission effectuée dans les villes de Kalémie, Bukavu et Goma du 5 au 18 aout 2003*, August 2003 ; Médecins Sans Frontières, *Mass rape, looting widespread in southeast DR Congo*, September 12, 2003; and 14th Report of the Secretary-General on the United Nations Mission in the Democratic Republic of Congo. S/2003/1098, November 17, 2003.

⁴ Combatants are members of any armed force participating in a conflict. Members of regular government forces are soldiers. In this report, members of the RCD-Goma, which was highly organized and at times operated under the command of the Rwandan army, are also described as soldiers. Members of other armed groups are described as fighters or rebels. For sexual abuses committed by the Rwandan army, see Human Rights Watch, *Democratic Republic of Congo: The War Within The War. Sexual Violence Against Women and Girls in Eastern Congo*. (New York: Human Rights Watch), June 2002.

⁵ While Mai Mai groups under commander Padiri have been integrated into the new national army, other Mai Mai groups are operating entirely outside the FARDC.

Following protracted negotiations, the war was declared over and a transitional government was installed in June 2003. But military operations continued in eastern Congo and as recently as December 2004, civilians still suffered from attacks, including acts of sexual violence. By late 2004, the cumbersome arrangement for sharing power among former belligerents faltered and two of the major partners showed readiness to quit. Military forces continue to be loyal to the rebel movements that spawned them and remain only nominally integrated into the new national army, the FARDC. Mutinous forces of the RCD-Goma rebelled in June and again in December 2004 against their nominal commanders. Local armed groups generally continue to command their home areas, paying little heed to officials of the national government. In Ituri, a much contested district of Orientale province,⁶ ethnically-based armed groups continue to fight against each other as well as against soldiers of the national army and the U.N. peacekeeping force MONUC. According to U.N. expert panels – one on resource exploitation, one on violations of a U.N.-imposed arms embargo on eastern Congo – officials of neighboring Rwanda and Uganda assist several of these armed groups, thus promoting the continuing armed conflict.⁷

The cases presented here illustrate different kinds of sexual violence as well as the widespread nature of the crimes, both in terms of geography and in terms of the numbers of groups whose combatants have committed these crimes.

Patterns of sexual violence

There were several patterns of sexual abuse against civilians.⁸ Soldiers and rebel fighters engaged in acts of sexual violence in the context of military confrontations, to scare the civilian population into submission, punish them for allegedly supporting enemy forces or to provide gratification for the fighters, sometimes after a defeat. In Ituri where armed groups of different ethnicity have fought each other for years, combatants often used sexual violence to target persons of ethnic groups seen as the enemy.⁹ According to the October 2004 estimate of humanitarian agencies, eight to ten persons were being

⁶ Between 1999 and 2003, the Ugandan government controlling Ituri attempted to make Ituri a separate province, and a governor was nominated. However, Ituri was never recognized as a province.

⁷ Report by the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo. S/2003/1027, October 2003. Report by the Experts Group on the Application of the Arms Embargo Measures imposed by the Security Council in the Democratic Republic of Congo. S/2005/30, January 2005.

⁸ For details, see Human Rights Watch, *Democratic Republic of Congo: The War Within The War. Sexual Violence Against Women and Girls in Eastern Congo*. (New York: Human Rights Watch), June 2002.

⁹ Human Rights Watch, *Ituri: Covered in Blood. Ethnically Targeted Violence in Northeastern DR Congo*, vol.15, No.11 (A), July 2003.

raped each day in the town of Bunia and a limited number of other locations in Ituri.¹⁰ As the representative of one women's NGO commented, "We could write a whole library about the use of rape here in Ituri. It is just too awful. We now have to live with the legacy of all this and I don't know how we will cope."¹¹

Combatants, singly or in small groups, engaged in opportunistic attacks, targeting women and girls in their homes or who were going about their daily business, walking to the market or tending their fields. Cases of sexual violence became so frequent in some areas that women and girls stopped working in the fields or going to the market, took to hiding in the forest at night instead of sleeping in their homes, and sometimes fled their home area altogether.

Combatants living in the forest abducted women and girls and kept them, sometimes for months at a time, in their camps to provide sexual and other services traditionally considered "women's work" – cooking, cleaning, and fetching water or wood.¹² For example, during the war, Mai Mai rebels held large numbers of women in the Shabunda region of South Kivu and in Masisi in North Kivu. Rwandan Hutu rebels abducted women and girls and took them to their bases in the Kahuzi-Biega forest, and Burundian rebels of the Forces for the Defense of Democracy (FDD) held women and girls at Rukoko forest in the Rusizi valley of South Kivu.

Waiting for peace to come: sexual violence after June 2003

Despite the establishment of a supposedly unified transitional government, the violence in eastern Congo continues. Women and girls, still waiting for the promised peace, continue suffering sexual assaults by combatants. In addition, they have been preyed upon by common criminals who are reportedly increasingly perpetrating acts of sexual violence in some areas of North Kivu.¹³

In September 2004, Centre Olame, a Catholic women's center in Bukavu, was receiving over two hundred new cases of sexual violence each month from different parts of South Kivu, a sharp rise from late 2002 when the center received about fifty cases a

¹⁰ Statistics from Cooperazione Italiano (COOPI), Bunia, provided on October 9, 2004.

¹¹ Human Rights Watch interview, women's NGO representative, Bunia, October 10, 2004.

¹² Abductions for such purposes are a form of gender-based violence, i.e. violence based on the victim's (perceived) gender role in society.

¹³ Synergie pour l'Assistance Judiciaire aux Victimes des Violations des Droits Humains (SAJ), Rapport sur la situation des droits humains: cas de violences sexuelles identifiées de janvier à juin 2004 au Nord Kivu, June 2004.

month.¹⁴ Between January and May 2004, Panzi hospital, also in Bukavu, treated 1,124 victims of sexual violence.¹⁵ Between August 2003 and January 2004 the hospital of Médecins Sans Frontières in the small town of Baraka treated more than 550 rape victims, many of whom had been sexually assaulted after June 2003.¹⁶ Baraka is located in Fizi territory, South Kivu province, the scene of heavy fighting and grave abuses during the war.

Dissident RCD-Goma forces under Colonel Mutebutsi and General Nkunda, May-June 2004

On May 26, 2004, a renegade commander, Col. Jules Mutebutsi, rose up against the newly created government army. Together with another renegade, Gen. Laurent Nkunda, and – according to a U.N. report – backed by officers of the Rwandan army, Mutebutsi led his forces to take control of Bukavu on June 2, 2004.¹⁷

The mutinous fighters went from house to house in Bukavu, raping and looting. Many women and girls who feared rape went into hiding. In the Bukavu neighborhood of Kadutu, some one hundred women and girls took refuge in a local church, wearing extra layers of clothing to hinder potential rapists.

On June 3 the fighters entered a home where four teen-aged girls were hiding. They found the girls, demanded money, and then raped them, each more than one time. In another incident the same day, six renegade RCD-Goma soldiers gang-raped a woman in front of her husband and children, while another soldier raped her three-year-old daughter. After the rape, the fighters looted the house taking most of the family's possessions. In another case, on June 4, six fighters raped two three-year-old girls who were in hiding with ten other women and girls. They reportedly told the women, "We're going to show you that these girls are women like you."¹⁸

One hundred and sixty-nine women and girls who had suffered sexual violence in the May-June combat sought help from the Centre Olame between June and September

¹⁴ Human Rights Watch interview with representative of Centre Olame, Bukavu, October 14, 2003, and telephone interview, October 6, 2004, 2004.

¹⁵ Human Rights Watch interview with staff at Panzi Hospital, Bukavu, July 23, 2004. The women and girls received treatment for sexually transmitted diseases, including HIV/AIDS, and/or surgery.

¹⁶ Médecins Sans Frontières, *I have no joy, no peace of mind. Medical, psychological and socio-economic consequences of sexual violence in eastern Congo*. (MSF Amsterdam: 2004).

¹⁷ Both government and dissident forces committed abuses against civilians. See Human Rights Watch, *Democratic Republic of Congo: War Crimes in Bukavu*, June 2004.

¹⁸ Human Rights Watch, *Democratic Republic of Congo: War Crimes in Bukavu*, June 2004.

2004. One hundred and seventeen said they had been attacked by combatants of Mutebutsi's and Nkunda's forces.¹⁹ Fifty-eight victims of sexual violence in May and June sought help from Panzi hospital by the end of July, according to staff there.²⁰

Renegade forces under Nkunda's command, based in the Goma region, also committed acts of sexual violence in villages outside Bukavu in the days before their assault on the city. Léonie W.,²¹ a middle-aged woman from Minova, a small town on the road from Goma to Bukavu, described the abuses against her nieces at the end of May:

My older sister was killed in the crossfire. Her three daughters were raped in the field, they were thirteen, fourteen, and eighteen-years-old. The thirteen-year-old died. Four men raped her. They had spread her arms and legs and held her down. I had been with her but hid in a banana tree and watched what happened. Afterward she started to vomit blood, we brought her to Kirotshe hospital and she died two days later. We have \$18 debt at the hospital but don't know how to pay it. The other two were brought to Bunia by the church for medical care. They had been raped elsewhere; when they came home they had already been raped.²²

On May 30, 2004, three women who were in Katana town, about thirty kilometers north of Bukavu, were raped by Nkunda's forces, one woman by five combatants. The men also systematically looted houses in and near Katana.²³ According to residents of Minova, Nkunda's forces raped other women and girls when they withdrew from Bukavu back to Minova.²⁴ In one case they raped a mother and her eight-year-old child. The child died several days later of her injuries.²⁵ Another woman was gang-raped by four fighters.²⁶ Some women were too afraid to sleep in their own homes at night and others fled to the larger town of Goma in search of security.

¹⁹ Other victims said they had been sexually assaulted by FARDC forces; see section below. Human Rights Watch interview with representative of Centre Olame, July 21, 2004. Additional information in an email by representative of Centre Olame, October 21, 2004.

²⁰ Human Rights Watch interview with staff of Panzi hospital, Bukavu, July 23, 2004.

²¹ All names of victims and witnesses in this report are complete pseudonyms.

²² Human Rights Watch interview with Léonie W., Goma, July 16, 2004.

²³ Promotion and Support for Women's Initiatives (Promotion et Appui aux Initiatives Féminines, PAIF), *Rapport sur les violations des droits de l'homme à Katana*, June 2004.

²⁴ Human Rights Watch interview with victim, Goma, July 16, 2004.

²⁵ Human Rights Watch interview, Goma, June 2004.

²⁶ Human Rights Watch interview with victim, Goma, July 16, 2004.

Asked about the many reports of rapes by his forces, General Nkunda denied that he had heard of any such cases.²⁷ There have been no investigations or arrests reported of any of his fighters for the crimes committed in Bukavu.

Other sexual violence and exploitation by former members of the RCD-Goma

On August 31, 2003, an RCD-Goma soldier assaulted and raped twenty-year-old Marianne L. in Bunyakiri town, northwest of Bukavu.²⁸ He first approached her on the street at about 7:00 p.m. and asked her to have sex with him. When she refused, he shot her twice in the leg. As she fell down, he shot in the air to scare away any observers and then raped her and afterwards threatened to kill her. Marianne grabbed his gun and other people came to help her. The soldier fled, leaving his gun and military beret behind. Marianne L. was taken to the hospital where her leg had to be amputated below the knee.

In mid-2003, RCD-Goma was training girls and boys at a military training centre called Nyamunyunu in South Kivu. Some of the girls, who came from very poor families, had joined the RCD-Goma in a search for security. But RCD-Goma forces raped some girls. In other cases the girls were coerced into having sexual relations out of fear, or in an effort to ensure the means necessary to survive. Anne M., a fourteen-year old girl, told a Human Rights Watch researcher that she was pregnant as a result of having been raped by an RCD-Goma commander. She said,

He sent me to his house to get some food. Then he came in and asked me to help him make the bed. Then he closed the door and caught me. Then other soldiers came behind to shut the door so he could finish his business. That was the first and only time. He didn't say anything to me after it happened. Before this time the commander had always said he would marry me after the training. I had told him he would have to give a dowry to my family. The MONUC people had come [to arrange for demobilization of minors], after that he took me by force because he realized we would be leaving soon....

²⁷ Telephone interview with General Nkunda, June 9, 2004.

²⁸ Human Rights Watch interviews with Marianne Land local NGO staff, Bukavu, October 15 and 16, 2003.

There was another girl at the camp who had the same problem with her commander, but then when the training ended they married. She was eighteen. She was satisfied with that; she's still at the camp. One of the other girls was also taken by force.²⁹

In August 2003 MONUC arranged for the release of children under eighteen years of age from the training camp.³⁰

Sexual violence by Local Defense Forces in North Kivu

Local Defense Forces (LDF) were established as an auxiliary force of the RCD-Goma in 1999. Under the transitional government, they continued to operate in North Kivu as a private militia under the control of current Governor Eugène Serufuli. Many of them were children and received only rudimentary training from RCD-Goma soldiers. They were nominally under the command of civilian authorities named by Serufuli. In February 2004 Serufuli announced that the LDF would be dissolved and its forces would be integrated into the army and the national police or would be demobilized. But many LDF appear to continue to operate under the command of civilian authorities and even those supposedly integrated into the army are said to retain their loyalty to the governor.³¹

Residents of North Kivu complain of many abuses by members of Local Defense Forces, including rape. On the morning of August 28, 2003, five LDF members attacked Marie T., a seventeen-year old dressmaking student, as she walked to a funeral in her neighborhood in Goma. She said the five men, whom she identified as LDF by their khaki uniforms and plastic boots, hit and kicked her before raping her. She said,

I was a first-year student in dressmaking but I left school because of what happened. I was ashamed because my classmates all knew what had happened. My friends gossiped a lot about what had happened. I feel okay now, but I'm sad.³²

²⁹ Human Rights Watch interview with Anne M., Bukavu, October 15, 2003.

³⁰ Human Rights Watch interviews with MONUC staff and local NGOs, October 2003. Some of the victims were then sent to a center for disadvantaged children where they received psycho-social support.

³¹ Human Rights Watch interviews, Goma, July 2004.

³² Human Rights Watch interview with Marie T., Goma, November 18, 2003.

Sexual abuses by government armed forces, May-June 2004

According to local sources, government soldiers of the 10th military region under Commander Mbusa Mabe also committed acts of sexual violence at the time of the Mutebutsi-Nkunda uprising. Many of these soldiers came from different former forces, such as the FAC, including Mbusa Mabe himself, the MLC and Mai Mai. Fifty-two women who sought care at the Centre Olame in Bukavu said they had been raped by government forces during these weeks. The troops reportedly raped many of the women in Walungu, where they were based while Mutebutsi and Nkunda's fighters controlled the town of Bukavu. In some cases, they caught women who were fleeing Bukavu and in other cases, they attacked the women and girls as the troops were returning to resume control of Bukavu.³³

Sexual violence by members of the former RCD-ML in Lubero, North Kivu

In June 2003, the RCD-Goma took control of Lubero territory, North Kivu, from the RCD-ML. The defeated RCD-ML then committed grave abuses against civilians between June 19 and 22 in and near Musienene, about thirteen miles south of Butembo. According to reports received by the Center for Applied Legal Studies (CEJA), a human rights organization based in Butembo, RCD-ML forces committed twenty-two cases of sexual violence at this time, many of them against children.³⁴ Many more cases of rape may not have been reported.

Sexual violence by former MLC forces in Ituri and Equateur

MLC forces have committed numerous acts of sexual violence. In a particularly egregious case of sexual abuse, forces of the former MLC gang-raped about 120 women and girls in two villages in Mongala district, Equateur province, on December 21 and 22, 2003.³⁵ These former MLC fighters had recently been integrated into the new Congolese army, the FARDC, and had revolted against their commander, whom they suspected of having stolen the money meant to pay their salaries. In April 2004, MONUC visited the villages and assisted the Military Prosecutor of the Congolese armed forces in starting an investigation. In two days investigators received 119 complaints of rape and eighty-six complaints of looting. So far, no one has been arrested or prosecuted for these crimes.³⁶

³³ Human Rights Watch interviews, Bukavu, July 20 and 21, 2004.

³⁴ CEJA, RCD-ML et RCD-Goma, *Attaques contre la population civile dans le territoire de Lubero. Rapport sur les abus des droits de l'homme commis par les troupes rebelles à Musienene en juin 2003*, August 2003.

³⁵ Third Special report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of Congo, Annex 1, paragraph 3. S/2004/650, August 16, 2004.

³⁶ Third Special report of the Secretary-General.

Attacks by Rwandan Hutu combatants

Some ten thousand Rwandan Hutu combatants continue sporadic military activity in eastern Congo, a substantial number of them organized into the Democratic Liberation Forces of Rwanda (FDLR).³⁷ Combatants of many of these groups carry out human rights abuses against Congolese who live in their vicinity including, rape, pillaging, and forcible occupation of property. FDLR fighters have also sometimes been blamed for crimes they did not commit as local authorities charge them with responsibility for attacks committed by their own forces.

In the second half of 2003, Rwandan combatants based in the Kahuzi Biega forest in South Kivu appear to have stepped up attacks on Congolese living nearby. In October 2003, 35 percent of cases of sexual violence registered at Panzi hospital (the most well-equipped hospital in South Kivu) came from Walungu, an area adjacent to the forest.³⁸ Ten women reported having been raped by these combatants near Ninja. One of them, Térèse K., a forty-three year old widow and mother of eight told a representative of the Center Olame,

It was July 15, 2003, at about 1 pm. I was at home. The Hutu came. They were looking for something to eat. I told them I have nothing, neither at home nor at the banana plantation. They discovered a heap of fresh earth and thought that I was hiding my treasure there. I told them it was the body of my child that I had buried there three days ago. But they did not believe me. They started to dig until they took out the child. Then they saw that it was really a body and nothing else in there. When I saw it I started to cry and so did my other children. ... Later, I went to the field to get some manioc. ... They assaulted me, I tried to resist but they were stronger. One of them managed to rape me. The other one kicked me with his foot with disgust, as if to get some dirt out of the way. I fled leaving my basket and manioc behind.³⁹

Térèse K. and the other women from Ninja also reported that Rwandan Hutu rebels had permanently occupied some houses and forcibly evicted the owners.

³⁷ Sometimes called "Interahamwe," (a militia that participated in the 1994 Rwandan genocide) or ex-FAR, (members of the former Rwandan army), many of these combatants were too young to have participated in the genocide and have been recruited more recently.

³⁸ Human Rights Watch interview with staff at Panzi Hospital, Bukavu, October 16, 2003.

³⁹ Centre Olame interview notes provided to Human Rights Watch, November 17, 2003 (translation by Human Rights Watch).

Rwandan Hutu combatants raped women and girls in North Kivu as well. Evelyne M., a middle-aged widow, was attacked and raped in December 2003 by FDLR in Masisi Territory of North Kivu. She said,

It was around Christmas. I was making a trip on foot of about forty kilometers to sell a basket of flour. They were ten at least who raped me. I knew some of them by face because they often come to our village; but I don't know their names. I have a six-year-old son who was there when I was raped. We were both beaten a lot with sticks and he still has medical problems. I even fell unconscious, and spent several days in the bush on the same spot without moving. Some people then came along, alerted the local chief, and he sent people to transport me to a health center. They carried me and my son on their backs. I had been really badly beaten, and my clothes were taken. I was naked, so those who carried me gave me clothes. Since then my uterus has collapsed, it moves around and water and blood comes out, especially when I carry heavy jugs of water. It burns.⁴⁰

It was only three months after the attack that Evelyne M. reached Goma where she received care at a center run by a Congolese NGO for torture victims. She had lacked the money to pay for the two-hour trip by car.⁴¹

In the first months of 2004, sixty-one victims of sexual violence sought help from a center for victims run by the Congolese NGO, Promotion and Support for Women's Initiatives (Promotion et Appui aux Initiatives Féminines, PAIF) in Kalehe territory, north of Bukavu. All said they had been attacked by Rwandan combatants.⁴²

Attacks by Mai Mai

Women and girls in Shabunda territory, South Kivu, complained of widespread rape by Mai Mai fighters in the past. There continue to be reports of sexual violence by Mai Mai forces that have not been integrated into the FARDC.⁴³

⁴⁰ Human Rights Watch interview with Evelyne M., Kitshanga, March 18, 2004.

⁴¹ Human Rights Watch interview with Evelyne M., Kitshanga, March 18, 2004.

⁴² PAIF statistics, provided to Human Rights Watch.

⁴³ Human Rights Watch interview with local NGO representative from South Kivu, Goma, September 24, 2004.

In July 2003, Sophie M., a thirty-nine year old mother of five, and eleven other women were attacked by about thirty Mai Mai fighters as they made their way to their fields about 140 kilometers from Shabunda town. She said,

I was raped by them in front of my husband. They held him down while they did it. I was released afterwards because my husband and children pleaded with them, and cried saying “They will kill maman.” I was raped by more than three men. I cannot remember the exact number because I lost consciousness. Afterwards a neighbor helped me, because I was bleeding. She boiled water and some herbs for me.⁴⁴

Sophie M. reported that the Mai Mai abducted the other eleven women after having raped them. Mai Mai fighters told her that the women would serve other men in the villages while they are without women in the forest. Sophie M. said that four of the eleven later escaped from the Mai Mai. She continued,

The women told me about their stay with [the Mai Mai]. They were raped all the time. Some were held in huts so that they could not flee. The four that came back have health problems.⁴⁵

Asked how she knew the attackers were Mai Mai, Sophie M. explained that they were wearing animal skins rather than uniforms, which is typical for Mai Mai. After the rape, she was bleeding heavily due to an internal injury. She was taken to a medical center in Bukavu where she received treatment. While her health has now improved, and she has tested negative for HIV/AIDS, her marriage seems destroyed:

My husband does not want to live together any more because I had sex with Mai Mai. The perpetrators must be punished. The leader of the Mai Mai can be identified and should also be punished.⁴⁶

Mai Mai groups are also active throughout North Kivu. Christine D. was abducted during combat between two competing groups around Pinga in January 2003:

⁴⁴ Human Rights Watch interview with Sophie M., Bukavu, October 16, 2003.

⁴⁵ Human Rights Watch interview with Sophie M., Bukavu, October 16, 2003.

⁴⁶ Human Rights Watch interview with Sophie M., Bukavu, October 16, 2003.

They took me by force because I was alone. My mother had fled in another direction. There were three: one raped me and the others were with him. I stayed with them for a long time in the forest, one year. I became pregnant and lost the baby. I became pregnant again, so I fled here. There was another girl with me, from a different family, who was also raped by the same man. Four months along in her pregnancy she died; there was no medical care.... Every time we tried to run away, we were beaten.⁴⁷

Christine D. knew the name of her attacker, and said she would like to see him arrested. “But it would be hard to catch him because he’s hidden in the forest,” she said.

In mid-2003, Mai Mai combatants, just defeated by RCD-ML forces, raped women and girls and looted and destroyed property as they abandoned villages to the advancing RCD-ML forces. According to an inquiry done by the human rights group CEJA, six of their victims were raped in Vuyinga, about sixty miles west of Butembo, between July 8 and July 10, 2003.⁴⁸

As part of the process of creating a new national army, rebel forces and armed groups have been cantoned in a number of areas where they are to be either retrained or demobilized. According to local women’s groups, Mai Mai combatants quartered at Mangango camp, some ten miles outside Beni, committed at least sixteen rapes in the immediate vicinity of the camp during the first nine months they were based there.⁴⁹

Sexual violence by Lendu armed groups and their allies in Ituri

According to local human rights advocates and medical staff in Ituri, widespread rape of women and girls has become frequent with the growth of armed groups in the region. Human Rights Watch has documented widespread acts of sexual violence committed by Lendu armed groups and their allies, in particular Ngiti armed groups.⁵⁰ According to one representative of a women’s group:

⁴⁷ Human Rights Watch interview with Christine D., Kitshanga, March 18, 2004.

⁴⁸ CEJA, RCD-ML et Mai Mai, *Attaques contre la population civile dans le territoire de Lubero. Rapport sur les abus massifs des droits de l’homme par les troupes rebelles du RCD-ML et les combattants Mai-Mai à l’ouest de Butembo de juillet à septembre 2003*, October 2003.

⁴⁹ Group meeting with human rights NGOs, Beni, February 24, 2004.

⁵⁰ Human Rights Watch, *Covered in Blood*, pp.45-46.

[Lendu combatants] come to houses at night and rape the women, sometimes in front of their husband. Sometimes they stop women as they go to fetch water or go to the fields. They also stop girls coming back from school. When they rape them in their houses, they steal as well.⁵¹

A medical professional in Ituri told a Human Rights Watch researcher that more than 650 women were raped between the end of 2002 and January 2004. He described one early 2004 case in which twelve FNI combatants attacked two women of another ethnic group and raped them and then further injured them by inserting sticks into their vaginas.⁵²

Because of lack of money to pay the costs or because of fear of being known as a rape victim, many women and girls fail to get the necessary medical treatment. One girl, Claudine N., seventeen years old, was raped in January 2004 and became pregnant. Afraid the rape would become public knowledge, she tried to abort the pregnancy by taking traditional medicines. She became ill and went to a health center ten miles away, where she was not known. But it was too late and she died.⁵³

In a few cases FNI leaders have punished combatants accused of rape. FNI President Floribert Njabu told a Human Rights Watch researcher that four FNI fighters were arrested in Kpandruma in early 2004. Although there was apparently neither formal investigation nor trial, two of the accused were executed and the two others imprisoned. “We kill people who rape,” said Njabu. “If we arrest them and do nothing then people will say we let them go and did not punish them.”⁵⁴ President Njabu seemed unconcerned about the illegality of summary executions, saying “Congolese law does not apply here. This is the Republic of Ituri.”⁵⁵

Attacks by the UPC in Ituri

Hema UPC combatants have been guilty of widespread rape of women and girls in Bunia and other parts of Ituri. In the one month of May 2003, for example, when the

⁵¹ Human Rights Watch interview with NGO representative, Rethy, March 4, 2004.

⁵² Human Rights Watch interview with hospital staff, Rethy, March 3, 2004.

⁵³ Human Rights Watch interview with representative of NGO, Rethy, March 4, 2004.

⁵⁴ Human Rights Watch interview with FNI President Floribert Njabu, Mongbwalu, May 7, 2004.

⁵⁵ Human Rights Watch interview with FNI President Floribert Njabu, Mongbwalu, May 7, 2004.

UPC sought to re-establish control over Bunia and outlying areas, 125 women and girls were raped.⁵⁶ Twenty-five year old Cécile W. said,

In May 2003 UPC combatants entered my house at 9:00 p.m. one night. There were four of them and I was alone in the house. They all took turns raping me. They told me not to shout and said they would kill me if I did. They looted everything from my house. As one was raping me the others would be going through the house taking what they wanted. It was dark and I couldn't see their faces. I didn't dare to tell anyone. I was scared so I fled the next day and went away from that place. I now suffer from problems each month when I menstruate. I was treated by MSF [Médecins Sans Frontières] but they cannot cure me. They said they have done everything they can but I still suffer.⁵⁷

Brigitte K., a frail fifteen-year-old girl told a Human Rights Watch researcher that she was raped in May 2003. She said,

I was sent by my family to get an axe in town. When I was coming back I met a group of UPC combatants in Mudzipela near the Radio Candip station. One of them took me by force into a nearby house. The people who were in the house ran out as soon as they saw him. He tore my clothes off and then he raped me. It was my first time. He told me he would shoot me if I shouted. I went home and told my mother. She took me with her to the military camp and I recognized the man who had raped me, but he fled. The officer told my mother he would give her some money to take me to hospital but he never did. I suffered from headaches after this and I feel a constant pain in my stomach.⁵⁸

The combatant identified by the girl was not arrested, nor has this or other cases of alleged rape by UPC combatants been investigated.

Male rape

Men and boys in increasing numbers are also reporting having been raped and otherwise sexually assaulted by combatants; however there are no figures available. Some have

⁵⁶ Statistics from Cooperazione Italiana (COOPI), Bunia, provided on October 9, 2004.

⁵⁷ Human Rights Watch interview with Cécile W., Bunia, October 10, 2004.

⁵⁸ Human Rights Watch interview with Brigitte K., Bunia, October 10, 2004.

sought help from centers that assist victims of sexual violence, such as the medical program run by Médecins Sans Frontières in Baraka, South Kivu.⁵⁹ Few victims give detailed statements about attacks they have suffered. But Charles B., a man from Ituri told a Human Rights Watch researcher:

I was arrested on August 31, 2002 in Bunia along with my father. The UPC arrested us as they thought we were against them because of our ethnicity. I did not understand it as I had done nothing wrong. I spent one month and ten days in prison. When they first arrested us they interrogated us, sometimes every two days. We stood nude in front of UPC officials; one of them was Rafiki Saba [UPC Chief of Security]. I was so shocked. I had never seen my father this way. In our culture, it is not right. First they molested us ... then they raped us. Even today I cannot really talk about this. It is too awful. After the interrogations we were sent to different prison areas. To this day I don't know what happened to my father, whether he is dead or alive. I am still traumatized by what happened to me and I have a lot of health problems.⁶⁰

The UPC combatants later took Charles B. and some twenty other prisoners out in a van. They stopped the van at intervals and each time removed several prisoners and shot them. The victim was one of the last group. Those with him were shot but he was saved when one of the executioners recognized him.⁶¹

With the increase in victims who are men or boys, local NGOs and international agencies will need to find ways to offer medical, psychological, and legal assistance that address the specific needs of male victims.

⁵⁹ Médecins Sans Frontières, *I have no joy, no peace of mind. Medical, psychological and socio-economic consequences of sexual violence in eastern Congo* (MSF Amsterdam: 2004).

⁶⁰ Human Rights Watch interview with Charles B., Europe, June 24, 2004.

⁶¹ Human Rights Watch interview with Charles B., Europe, June 24, 2004. Other cases in Médecins Sans Frontières, *I have no joy, no peace of mind: Medical, psychological and socio-economic consequences of sexual violence in eastern Congo*, MSF Amsterdam: 2004; Initiative conjointe de lutte contre les violences sexuelles faites à la femme et à l'enfant (fille et garçon), *Rapport de mission*.

The Legal Framework for Prosecution

The Congolese justice system has to date failed to address the egregious problem of sexual violence in the country. In Congo, military courts (court-martials) have jurisdiction over all criminal offenses perpetrated by members of the national armed forces. Members of local armed groups that are not integrated into the national army fall under the jurisdiction of the civilian courts. Prosecutions of sexual violence in both military and civilian courts in Congo are hindered by outdated laws, the widespread impunity of combatants from justice, a refusal to recognize the serious nature of sexual offenses and insufficient attention to the needs of the victims.

International humanitarian law

The armed conflict in Congo has both an internal and an international dimension.⁶² International humanitarian law, also known as the laws of war, sets out protections for civilians and captured combatants during both types of conflicts. The four Geneva Conventions of 1949 and its Additional Protocols implicitly and explicitly condemn rape and other forms of sexual violence as serious violations of humanitarian law.⁶³ In international armed conflicts – that is, conflicts between two or more states – such crimes are grave breaches of the Geneva Conventions and are considered war crimes. Violations involving direct attacks on civilians during internal armed conflicts are increasingly recognized as war crimes.

The Fourth Geneva Convention on the protection of civilians in international armed conflicts also provides a basis for defining the protections during an internal armed conflict. Article 27 on the treatment of protected persons states that "women shall be especially protected against any attack on their honor, in particular against rape, enforced prostitution, or any form of indecent assault."⁶⁴ Article 147 specifies that "torture or inhuman treatment" and "willfully causing great suffering or serious injury to body or health" are grave breaches of the conventions.⁶⁵ The International Committee of the

⁶² For sexual crimes by foreign armed forces in Congo, see Human Rights Watch, *The War Within The War*.

⁶³ See the four Geneva Conventions of 1949 and the two 1977 Protocols Additional to the Geneva Conventions (Protocols I & II). Other sources of international humanitarian law are the 1907 Hague Convention and Regulations, decisions of international tribunals and customary law. Congo ratified the 1949 Geneva Conventions in 1961, Protocol I in 1982, and Protocol II in 2002.

⁶⁴ Geneva Convention IV, Article 27. Article 76 of Protocol I extends this protection of protected persons to all women. Protocol I, Article 76.

⁶⁵ Fourth Geneva Convention, article 147.

Red Cross (ICRC) considers rape and other forms of sexual violence to be grave breaches, and even a single act of sexual violence can constitute a war crime.⁶⁶

Situations of armed conflict internal to a state are regulated by Article 3 common to the four Geneva Conventions and by the Second Protocol Additional to the Geneva Conventions (Protocol II). Common Article 3 and Protocol II apply to all parties to the conflict, nongovernmental armed groups as well as government forces. It prohibits attacks on those taking no active part in hostilities including civilians. Among the acts prohibited are "(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; (b) taking of hostages; (c) outrages upon personal dignity, in particular humiliating and degrading treatment."⁶⁷ Acts of sexual violence fall squarely within this definition as they can be considered cruel treatment, torture, and outrages upon personal dignity.

Congo has been a party to Protocol II since December 2002. Article 4 of Protocol II expressly forbids "violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment, such as torture, mutilation or any form of corporal punishment" and "outrages upon personal dignity, in particular humiliating and degrading treatment, rape and enforced prostitution and any form of indecent assault" as well as "slavery and the slave trade in all their forms."⁶⁸ According to the ICRC Commentary, this provision "reaffirms and supplements" Common Article 3 because it "became clear that it was necessary to strengthen ... the protection of women ... who may also be the victims of rape, enforced prostitution or indecent assault."⁶⁹

As the above language highlights, crimes of sexual violence under international humanitarian law have been mischaracterized as attacks against the honor of women or an outrage on personal dignity, as opposed to attacks on physical integrity. This approach diminishes the serious nature of the crime and contributes to the widespread misperception of rape as an attack on honor that is an "incidental" or "lesser" crime relative to crimes such as torture or enslavement.⁷⁰

⁶⁶ Theodor Meron, "Rape as a Crime Under International Humanitarian Law," *American Journal of International Law* (Washington D.C.: American Society of International Law, 1993), vol. 87, p. 426, citing the International Committee of the Red Cross, Aide Mémoire, December 3, 1992.

⁶⁷ Geneva Conventions, article 3.

⁶⁸ Protocol II, article 4 (2) (a), (e) and (f).

⁶⁹ ICRC Commentary on the Additional Protocols of June 1977 to the Geneva Conventions of 12 August 1949 (Geneva: Martinus Nijhoff, 1987), p. 1375, para. 4539.

⁷⁰ See Catherine N. Niarchos, "Women, War and Rape: Challenges facing the International Criminal Tribunal for the former Yugoslavia," *Human Rights Quarterly* (Baltimore: The John Hopkins University Press, 1995), vol. 17, pp. 672, 674.

Acts of sexual violence committed as part of a widespread or systematic attack against civilians in Congo can be classified as crimes against humanity and prosecuted as such. There is no single international treaty that provides an authoritative definition of crimes against humanity, but such crimes are generally considered to be serious and inhumane acts committed as part of a widespread or systematic attack against the civilian population, during peacetime or armed conflict, and that result from the persecution of a specific group.⁷¹ Both state and non-state actors can be held accountable for crimes against humanity.

The Rome Statute of the ICC, which Congo ratified in April 2002, specifies “rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization,” or any other form of sexual violence of comparable gravity as war crimes and crimes against humanity.⁷² An individual case of serious sexual violence can be prosecuted as a crime against humanity if the prosecution can make the link between the single violation and other violations of basic human rights or international humanitarian law that have been committed as a widespread or systematic attack against the civilian population.⁷³

International human rights law

Congo is party to international human rights instruments that provide safeguards for women and girls at all times, including during armed conflict. These include protection from rape as torture and other mistreatment; slavery and forced prostitution; and discrimination based on sex. Armed groups, particularly those in control of territory, have increasingly been under an obligation to respect international human rights standards.⁷⁴

The International Covenant on Civil and Political Rights (ICCPR)⁷⁵ and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture)⁷⁶ prohibit torture and other cruel, inhuman or degrading

⁷¹ See, e.g. “Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808,” 32 I.L.M. at 1159 (1993), para. 48.

⁷² Rome Statute of the International Criminal Court, July 17, 1998, U.N. Doc. A/CONF.183/9.

⁷³ “It is sufficient to show that the act took place in the context of an accumulation of acts of violence which, individually, may vary greatly in nature and gravity.” Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic (Foca case), Appeals Chamber Judgment, June 12, 2002, IT-96-23 and IT-96-23/1, para. 419.

⁷⁴ Nigel S. Rodley, “Can Armed Opposition Groups Violate Human Rights?” in P. Mahoney and K. Mahoney (eds.) *Human Rights in the 21st Century: A Global Challenge* (Dordrecht: Martinus Nijhoff, 1993), pp. 297-318, and International Council on Human Rights Policy, “Hard Cases: Bringing Human Rights Violators to Justice Abroad-A Guide to Universal Jurisdiction,” (Geneva: International Council on Human Rights Policy, 1999), p. 6.

⁷⁵ Congo acceded to the treaty on November 1, 1976.

⁷⁶ Congo ratified the Convention against Torture in 1996.

treatment by officials or persons acting in an official capacity. The Convention on the Rights of the Child (CRC) provides for the right to freedom from torture, sexual exploitation and abuse as well as liberty and security of person.⁷⁷ Article 15 of Congo's interim Constitution prohibits torture and cruel, inhuman and degrading treatment.⁷⁸

The United Nations Special Rapporteur on Torture has recognized that rape can constitute torture: "[R]ape is a traumatic form of torture for the victim."⁷⁹ The International Criminal Tribunal for the former Yugoslavia in the *Furundžija* case noted that "[i]n certain circumstances ... rape can amount to torture and has been found by international judicial bodies to constitute a violation of the norm prohibiting torture."⁸⁰ The International Criminal Tribunal for Rwanda in the *Akayesu* case stated that "Like torture, rape is used for such purposes as intimidation, degradation, humiliation, discrimination, punishment, control or destruction of a person. Like torture, rape is a violation of personal dignity, and rape in fact constitutes torture when it is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."⁸¹

Sexual violence generally violates women's rights to be free from discrimination based on sex as provided for under the ICCPR.⁸² Under Article 1 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),⁸³ the definition of discrimination is considered to include "gender-based violence precisely because gender-based violence has the effect or purpose of impairing or nullifying the enjoyment by women of human rights" on a basis of equality with men.⁸⁴ The CEDAW Committee enumerated a wide range of obligations for states related to ending sexual violence, including ensuring appropriate treatment for victims in the justice system, counseling and support services, and medical and psychological assistance to victims.⁸⁵ In a 1993 resolution, the U.N. General Assembly declared that prohibiting gender discrimination

⁷⁷ Congo ratified the CRC in 1990. Article 34 protects the child from sexual exploitation and sexual abuse. Article 37 provides for the freedom from torture or other cruel, inhuman or degrading treatment or punishment as well as liberty and security of person.

⁷⁸ Constitution of the transition, adopted April 1, 2003.

⁷⁹ United Nations, Report of the U.N. Special Rapporteur on Torture, Mr. Nigel S. Rodley, submitted pursuant to the Commission on Human Rights Resolution 1992/32, E/CN.4/1995/34, Paragraph 19, January 12, 1995.

⁸⁰ *Prosecutor v. Anto Furundžija*, Judgment, IT-95-17/1-T, December 10, 1998, para. 171.

⁸¹ *Prosecutor v. Jean-Paul Akayesu*, Judgment, ICTR-96-4-T, September 2, 1998 (the *Akayesu* Trial Chamber Judgment), para. 687.

⁸² See ICCPR, Articles 2(1) and 26.

⁸³ Congo ratified CEDAW in 1986.

⁸⁴ Women, Law and Development International, *Gender Violence: The Hidden War Crimes* (Washington D.C.: Women, Law and Development International, 1998), p. 37.

⁸⁵ Committee on the Elimination of All Forms of Discrimination Against Women, "Violence Against Women," General Recommendation no. 19 (eleventh session, 1992), U.N. Document CEDAW/C/1992/L.1/Add.15.

includes eliminating gender-based violence and that states "should pursue by all appropriate means and without delay a policy of eliminating violence against women."⁸⁶ The CRC also provides for freedom from discrimination on the basis of gender (Article 2), and the right to enjoyment of the highest attainable standard of health (Article 24). Under Article 39, states shall take all appropriate measures to promote physical and psychological recovery and social integration of a child victim of any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. The CRC also calls upon states to provide special protection and assistance to a child "temporarily or permanently deprived of his or her family environment." A child's right to "such measures of protection as are required by his status as a minor" is also guaranteed by the ICCPR.⁸⁷

Under both the ICCPR and CEDAW, slavery and forced prostitution in times of armed conflict constitute a basic violation of the right to liberty and security of person.⁸⁸ Furthermore, slavery is prohibited under Article 8 of the ICCPR, which also prohibits forced labor, and by the 1926 Slavery Convention.⁸⁹ The right to freedom from slavery is also provided under article 18 of the Congo interim Constitution.

The African Charter on Human and Peoples' Rights, to which Congo is a party, guarantees the "elimination of every discrimination against women ... and protection of the rights of the woman and the child"⁹⁰ as well as the right to integrity of one's person, and the right to be free of "[a]ll forms of exploitation and degradation ..., particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment."⁹¹

Congolese military justice

Until late 2002, the national government used the Military Justice Code of 1972 to define and punish crimes committed by members of the armed forces, including acts of sexual

⁸⁶ United Nations General Assembly, "Declaration on the Elimination of Violence against Women," A/RES/48/104, December 20, 1993 (issued on February 23, 1994). See Article 4, in particular. 224 CRC, article 20(1).

⁸⁷ Although the masculine pronoun is used, the ICCPR is applicable without any discrimination to sex as stated in Article 24(1).

⁸⁸ Article 9 of the ICCPR provides for the freedom from arbitrary arrest, detention or exile, while Article 23 prohibits forced marriage. Under Article 6 of CEDAW, states are required to take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

⁸⁹ Slavery Convention, United Nations, *Treaty Series*, vol. 212, p. 17. July 7, 1955.

⁹⁰ Article 3 of the African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, Organization of African Unity Doc. CAB/LEG/67/3 rev. 5. Congo ratified this treaty on July 20, 1987.

⁹¹ African Charter on Human and Peoples' Rights, articles 4 and 5.

violence.⁹² Rebel movements aspiring to national control, such as the RCD-Goma, the MLC, and the RCD-ML, also applied, at least in theory, the 1972 code to their forces.⁹³ When the government adopted a new Military Justice Code and Military Criminal Code in November 2002, the rebel movements continued to rely on the older code.⁹⁴ Whatever the code in use, however, very few prosecutions for crimes of sexual violence were undertaken against either the regular armed forces or rebel groups.⁹⁵

As a party to the 1949 Geneva Conventions and the Rome Statute of the ICC, the Congolese government is obligated to ensure that its criminal codes prosecute war crimes and crimes against humanity, including rape and sexual violence, in accordance with the treaty provisions.⁹⁶

The 1972 Military Justice Code does not have a specific provision on sexual violence, but it states that the Congolese Criminal Code is also valid for members of the armed forces.

The Military Penal Code of 2002 does not have a basic provision on sexual violence, but such crimes can be punished under the Criminal Code, as discussed below. Provisions on “violence or severe abuses” (*“violences ou sévices graves”*) during war or a state of emergency (carrying the death penalty) and “arbitrary acts and rights violations” (*“actes arbitraires ou attentatoires aux droits et libertés”*) (up to four years imprisonment) could conceivably be a basis for prosecuting perpetrators of sexual violence.⁹⁷ Article 173 on war crimes broadly states that a war crime is an offense committed during wartime that is not in accordance with customs or laws. Article 175 establishes the principle of command responsibility.

⁹² Loi no. 72/060 du 25/09/1972 portant institution du code de justice militaire.

⁹³ The MLC decided that the 1972 Military Justice Code and the ordinary Penal Code were to be applied before these tribunals: Décret No 037/PRES/MLC/11/02 du 16 novembre 2002 portant organisation des juridictions de l'Armée de Libération du Congo. The RCD-G also applied the 1972 Military Justice Code in its military trials.

⁹⁴ The new legislation was composed of two separate laws, one on the military justice system and one on criminal procedure. Loi no. 023/2002 du 18/11/2002 portant code judiciaire militaire; Loi no.024/2002 du 18/11/2002 portant code penal militaire. The new code abolished a much-criticized Military Order Court set up by President Laurent-Desiré Kabila.

⁹⁵ In the RCD-Goma controlled areas, some more prosecutions took place for other crimes, such as murder.

⁹⁶ To give effect to the general obligation under article 86 of the Rome Statute to cooperate with the ICC, article 88 specifically requires states parties to “ensure that there are procedures available under their national law for all of the forms of cooperation which are specified” under the relevant section. States should therefore review, and where necessary amend, their national laws and procedures to ensure that there are no obstacles to its meeting requests for assistance or cooperation from the ICC. The four Geneva Conventions provide that state parties “undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention.”

⁹⁷ Military Penal Code, 2002, articles 103 and 104.

The Military Penal Code does include sexual violence in its provision on crimes against humanity. Article 169 on crimes against humanity states that acts of “rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization, and other forms of sexual violence of comparable gravity” constitute a crime against humanity if committed as part of a generalized or systematic attack against the civilian population or “the Republic”.

The 2002 military code nonetheless remains incompatible with the Rome Statute of the ICC and the Geneva Conventions, by failing to fully incorporate their criminal provisions into Congo law. A proposed draft law implementing the statute of the ICC would bring Congolese law into conformity with these international instruments. It is currently being reviewed by the Minister of Justice. If this law is passed, Congo will have made a significant step towards a comprehensive definition of war crimes, crimes against humanity, and genocide, consistent with the Rome Statute. The new legislation also expands the jurisdiction of civilian tribunals to members of the armed forces when they are accused of crimes against humanity or war crimes. This is of a particular importance to assert the primacy of the civilian justice system and create a coherent and unified jurisprudence.

The Congolese Criminal Code

During the armed conflict, Congolese criminal law and Criminal Code were in force throughout the territory of the Congo. This included those areas controlled by rebel groups or which were occupied by foreign troops.⁹⁸

The Congolese Criminal Code – which applies in both civilian and military courts – prohibits rape, defined as forcible sexual penetration of a female, and indecent assault, defined as sexual assault without penetration.⁹⁹ Rape is punishable by a prison sentence of five to twenty years, and indecent assault is punishable by prison terms between six months and twenty years. Length of punishment may depend on the age of the victim and whether violence, ruse, or threats were used in committing the crime. Any sexual relations (“*rapprochement charnel des sexes*”) with a girl under the age of fourteen is statutory rape.¹⁰⁰

⁹⁸ Under a military occupation, the existing laws remain in effect unless the occupier imposes different rules.

⁹⁹ Article 170 reads: “Est puni d’une servitude pénale de cinq à vingt ans, celui qui aura commis un viol, soit à l’aide de violences ou menaces graves, soit par ruse, soit en abusant d’une personne qui par l’effet d’une maladie, par altération de ses facultés ou par toute autre accidentelle, aurait perdu l’usage de ses sens ou en aurait été privée par quelque artifice. Est réputé viol à l’aide de violences, le seul fait du rapprochement charnel des sexes commis sur les personnes désignées à l’article 167.”

¹⁰⁰ For a conservative legal interpretation see Général Likulia Bolongo, *Droit Pénal Spécial Zaïrois*, 1985, p. 328-344.

Kidnapping or detaining a person using violence, ruse, or threat is also punishable under the Congolese Criminal Code. If the victim is subjected to physical torture, the punishment is five to twenty years. If the torture leads to the death of the victim, the death sentence or a life prison sentence are applicable.¹⁰¹

The criminal code does not specifically deal with acts of sexual violence such as inserting objects into the vagina and rape within the marriage. It also does not criminalize male rape. Finally, the law allows considering information about the past conduct of the victim, such as “loose morals,” as attenuating circumstances in judging whether a criminal offense has been committed.

The inadequacies of the rape law reflect traditional notions of rape, especially the weak legal and social status of women in Congo. This second-class status of women is reflected throughout Congolese law. For instance, the Congolese Family Code defines the husband as the head of the household and requires his wife to obey him. The women also has to move wherever the husband chooses to live, and has to seek her husband’s authorization to go to court.¹⁰² These laws violate international standards of equality between women and men.

In Search of Justice for Rape and other Sexual Crimes

Very few of the tens of thousands of victims of sexual violence in eastern Congo attempt to initiate judicial proceedings for the crimes committed against them and even fewer—only a handful in recent years—have actually seen perpetrators convicted and punished. Years of war and the ensuing political disorganization, economic stagnation, and destruction of infrastructure have considerably weakened the judicial system. In addition, judicial authorities, virtually all of whom are men, rarely give priority to crimes of sexual violence. The prosecutions of combatants that have taken place have been marred by procedural faults, failure to seriously investigate command responsibility for crimes, and insufficient attention to the needs of the victim.

A presidential decree promulgated in April 2003 granted amnesty to members of former rebel movements and armed groups for acts of war and political offenses, but it

¹⁰¹ Article 67.

¹⁰² Code zairois de la famille, art. 444, 448 and 454. Art. 444 reads: “The husband is the head of the household. His duty is the protection of his wife; his wife owes her obedience to her husband.” (Unauthorized translation). In practice, women do not always abide by art. 448, requiring the husband’s authorization to initiate legal proceedings.

appropriately excluded war crimes, crimes against humanity and genocide from the amnesty. The amnesty therefore does not protect perpetrators who committed crimes of sexual violence that would fall under these categories. The parliament has for some time considered passing an amnesty law, but to date has not done so. Human Rights Watch opposes all amnesties for serious war crimes, crimes against humanity and genocide.

Prosecution of sexual violence in Ituri

The Gbadolite trial

In October and November 2002 MLC forces committed widespread crimes against civilians, including rapes and killings, during military operations against the RCD-ML.¹⁰³ Known as “Effacer le Tableau” (Erase the Blackboard), these operations were carried out in Mambasa territory, Ituri district. In November 2002, Jean-Pierre Bemba, the president of the MLC set up a military court that was known as the *Conseil de guerre de garnison* of Gbadolite (Bemba’s headquarters) in Equateur province. In February 2003 the court heard cases against twenty combatants, two of them charged with rape, David Biaruhanga and Sergeant Andonisi Metele. According to a MLC report issued February 26, 2003, the two were found guilty with David Biaruhanga sentenced to one year and Andonisi Metele to ten months in prison.¹⁰⁴ The tribunal concluded that Biaruhanga’s being “drunk at the time of the commission of the facts” was an attenuating circumstance.

The prosecution’s investigation into the crimes was superficial, which may have led to the short sentences. There was apparently no investigation at the scene of the crime, some one thousand miles distant from the place of the trial. Victims were not approached to see if they would testify. Only fellow soldiers testified in these trials. Without an in-depth investigation, the prosecutor also failed to examine seriously the culpability of commanding officers for the numerous crimes. Colonel Freddy Ngalimo, who was in direct command of the operations, was found guilty only of permitting insubordination by forces under his control and was sentenced to three-years imprisonment.¹⁰⁵

¹⁰³ Human Rights Watch, *Covered in Blood*, pp.36-37, 44-45.

¹⁰⁴ MLC, Secrétariat Général, Rapport sur le déroulement du procès des militaires de l’Armée de Libération du Congo, ALC, impliqués dans les violations des droits de l’homme dans l’Ituri (February 26, 2003).

¹⁰⁵ See political analysis of the trial in Human Rights Watch, *Covered in Blood*, pp. 37-38.

Prosecution of rape by the new tribunal of Bunia

In an effort to show dramatic progress in attacking the legacy of impunity and restarting judicial operations, Congolese authorities re-opened the Tribunal de Grande Instance¹⁰⁶ in Ituri in February 2004. The court had been closed since May 2003, unable to function because of insecurity in the region. Backed by financial support from the European Commission (E.C.), judicial authorities were able to issue more than 150 indictments by September 2004.¹⁰⁷ Rather than handing over cases involving combatants to a military tribunal, the civilian court asserted its jurisdiction over such cases since the perpetrators did not belong to recognized armed forces.¹⁰⁸ Prosecutors brought cases against some important mid-level and senior-level leaders of local armed groups, thus demonstrating a commitment to break with the impunity that had protected such men in the past.¹⁰⁹

From February to September 2004 the court handed down ten judgments in cases of rape, and a further nine cases are currently under investigation. Adults found guilty were sentenced to three to ten years imprisonment.¹¹⁰ To Human Rights Watch's knowledge, there has been no effort by responsible authorities in Bunia to investigate whether superior officers have been complicit or tolerated acts of sexual violence by forces under their command.

Of the ten persons convicted of crimes of sexual violence, only three might be linked to an assault committed by an armed group. All were convicted of having participated in a gang rape, involving ten perpetrators in all, of two women near the Bunia airport on March 20, 2004. Two of the three convicted were adults and were sentenced to four years imprisonment each. The third was a minor of an unspecified age whose case was heard at the Juvenile Justice Chamber (*Chambre d'Enfance Délinquante*), which performs investigative and counseling functions rather than strictly criminal proceedings. He was also found guilty, was "reprimanded" and handed over to his family for "follow-up."¹¹¹

¹⁰⁶ The civilian judiciary consists – from the lowest level up to the highest – of peace tribunals (*tribunaux de paix*), tribunals of major jurisdiction (*tribunaux de grande instance*), Courts of Appeal and the Supreme Court.

¹⁰⁷ Human Rights Watch, *Making Justice Work: Restoration of the Legal System in Ituri, Democratic Republic of Congo*, September 2004.

¹⁰⁸ Human Rights Watch interview with the President of the Tribunal de Grande Instance, Bunia, October 8, 2004.

¹⁰⁹ For example, the conviction of Commander Rafiki Saba Aimable the former UPC Chief of Security, who was found guilty of arbitrary arrests, aggravated by torture and sentenced to 20 years in prison, August 17, 2004.

¹¹⁰ Court Register, Tribunal de Grande Instance, Bunia. Three of the ten judgments concerned the same case.

¹¹¹ Court Register, Tribunal de Grande Instance, Bunia.

Four other cases judged by the Ituri court dealt with acts sexual violence committed by minors. In one case, the perpetrator was allegedly nine or ten years old. All cases were tried at the Juvenile Justice Chamber (*Chambre d'enfance délinquante*).

The re-opened court in Ituri has produced more convictions on charges of crimes of sexual violence than any other jurisdiction currently operating in eastern Congo, but given the scale of crimes of sexual violence committed by armed groups in Ituri, it is disappointing to see how few prosecutions address this enormous problem.

The prosecution of an RCD-Goma soldier: precedent or human rights abuse?

On February 18, 2003, eight-year old Lisette K., was allegedly raped by a RCD-Goma soldier as she was walking home from school near the town of Kabare, north of Bukavu, in South Kivu.

According to Lisette K.'s testimony in court, the soldier took her to a field, forced her to remove her clothes and then raped her. He threatened to kill her if she resisted.¹¹² Before leaving he gave her 40 Francs Congolais (about \$0.10). When the girl came home she was deeply disturbed and refused to eat. She also did not want to sit down, presumably from the pain. Her mother asked what had happened and the girl told her. The next morning the girl's father informed a local official and together they went to the local military commander who claimed that such a thing could not happen.¹¹³ But he did present several soldiers to the girl and she identified Djems Kakule Kambale, age twenty, as the rapist.¹¹⁴ The local official then sent the girl to a nearby hospital, where a doctor examined the injuries, including vaginal tears and external wounds caused by thorns on which the girl had lain. On February 20 the doctor certified that the girl had been raped.¹¹⁵ The same day, the military commander arrested Kakule Kambale and transferred him to the military prosecutor at Bukavu. According to the report of the pre-trial investigation, Kakule Kambale admitted his guilt under questioning and apologized for what he had done.

¹¹² Human Rights Watch interview with lawyer of Lisette K., Bukavu, October 15, 2003.

¹¹³ Human Rights Watch interview with father of Lisette K., Bukavu, October 16, 2003.

¹¹⁴ Documents on the case from AED, Bukavu. In the initial interrogation, Kakule Kambale appears to have given the age of twenty. However later in court, he declared that he was fifteen years old. Under Congolese law, sixteen is the age of criminal responsibility. It seems that the defendant tried to change his age in order to avoid harsh punishment. His defense lawyer confirms that he was twenty years old.

¹¹⁵ Human Rights Watch interview with father of Lisette K., Bukavu, October 16, 2003. A later test showed the girl had not been infected by HIV.

A Catholic priest urged the family to prosecute the case and put them in touch with Centre Olame, where staff in turn contacted Action for Rights Education (AED), an organization which provides legal assistance for victims of sexual violence. In addition to providing the lawyer for the victim, AED, together with Centre Olame and other NGOs campaigning against sexual violence in Bukavu, made the case publicly known. Probably as a result of this public attention to the case, the governor's office pushed the military prosecutor to act. The military prosecutor in South Kivu, Colonel Gaston Shomari, had also been a prosecutor in civilian life and was apparently very ready to take this case of sexual violence seriously.

During the trial, held on June 5, 2003, the defendant denied having raped Lisette K. He said that he had had sexual relations with someone else, a fourteen-year old girl. After the military prosecutor contested this claim, citing the accused's confession, the court found Kakule Kambale guilty of statutory rape under the Criminal Code which prohibits sexual contact with a girl under the age of fourteen years old.¹¹⁶ The judgment also referred to the 1972 Military Justice Code, as the new 2002 Military Code had not been applied by the RCD-Goma in eastern Congo. The court sentenced Kakule Kambale to five years in prison and a fine of \$500. The military prosecutor appealed the decision, asking for a more severe punishment. On June 14, 2003, the military court sentenced Kakule Kambale to ten-years' imprisonment and \$5,000 of damages to the victim. He was also dismissed from the army.¹¹⁷

Local human rights and womens' organizations applauded the military prosecutor and the lawyer for the victim (*partie civile*). The human rights organization Heirs of Justice saw the case as a precedent in the larger fight against sexual violence:

The particularity observed in this trial is that the lawyer of the civil party¹¹⁸ founded his argument in national and international legal instruments that contain clear prohibitions of sexual violence. This exemplary judgment starts, we hope, a fight against the impunity

¹¹⁶ In French: "Avoir par le seul fait du rapprochement charnel des sexes commis un viol à l'aide des violences sur une fille de moins de 14 ans...". Audience Publique du 5 juin 2003, Conseil de Guerre, Jugement RP 081, Bukavu. RMP.0508/AM_020/OPS/MBJ/SHOF.

¹¹⁷ Ministère public et partie civile Kahasha Cizungu contre militaire Djems Kakule Kambale. RPA 009. RMPA. 013/AM_020/ops/SHOF03.

¹¹⁸ Under the Congolese justice system, inherited from the Belgian (Roman civil law) legal tradition, victims can join the prosecution as *partie civile*, alongside the public prosecutor, to seek the payment of damages by the accused.

that surrounds the problem, because several cases of rape have reportedly been denounced but this is the only trial of this type.¹¹⁹

Local NGOs videotaped the trial. When they showed the tape to a group of victims of sexual violence, they said “So justice is possible.” They were particularly impressed because the victim was a child and one from a poor family. Several who saw the tape said they too would be ready to press charges if they were given support in doing so.¹²⁰ Some local observers were encouraged by the father having joined the complaint as a civil party because they saw this as an example of victims taking control of their own situation.¹²¹

Kakule Kambale, serving his term in prison in Bukavu, escaped along with many other prisoners during the disorder caused by the Mutebutsi-Nkunda uprising in June 2004.

Lack of due process: violating the rights of the defendant

Hailed as a victory by many civil society organizations, the trial of Kakule Kambale was marred by grave procedural faults that turned the trial itself into a scene of right abuse.

In an interview after the trial with a Human Rights Watch researcher, Kakule Kambale claimed he had not raped Lisette K. and did not even know her. He said that he had had sexual relations with a fourteen-year-old girl. Believing this was the charge, he admitted to it and believed that he would be able to end the problem by marrying the girl. He claimed that his relations with the fourteen-year-old had been consensual.¹²²

The rights of the defendant were violated in a number of ways. He did not have an opportunity to choose his own lawyer nor even to speak with his counsel at length before the trial began. Of his two lawyers, he met one the day before the trial, the other the day of the trial itself.¹²³ From viewing the videotape, mentioned above, and interviews with two of the lawyers involved, it is clear that there were other serious

¹¹⁹ Heirs of Justice (Héritiers de la Justice), *Coup de Chapeau au Conseil de guerre opérationnel de Bukavu*, June 2003.

¹²⁰ Representative of Centre Olame, at a consultation with local NGOs on sexual violence and justice, Bukavu, October 14, 2003.

¹²¹ Human Rights Watch interview with women's rights activist, Bukavu, October 14, 2003.

¹²² Human Rights Watch interview with Djems Kakule Kambale, Bukavu Central Prison, October 16, 2003. According to Kakule Kambale, the 14-year old girl visited him in his tent and consented to having sex with him, and took off her own clothes.

¹²³ Human Rights Watch interview with Djems Kakule Kambale, Bukavu Central Prison, October 16, 2003. Telephone interview with lawyer in Bukavu, October 20, 2004.

procedural flaws during the proceedings.¹²⁴ The court accepted the pre-trial report of the military prosecutor without question. In many countries that use the civil law system, the conclusions of the investigative magistrate are subject to review by another organ, such as the *chambre d'accusation*, but in the Congo the same magistrate conducts the investigation and carries on as the trial judge. The defense should therefore be permitted to investigate fully and present the results of investigation during the trial. In this case, the legal representatives for the accused had no time to prepare a case in depth and all their attempts to call witnesses - including two who were supposedly present at the time of the crime - were rejected by the court at the request of the prosecutor. The court also refused to question Kakule Kambale about the circumstances of his arrest and the interrogation at which he was said to have confessed to the crime.¹²⁵ As a result the defense was unable to challenge the prosecutor's contention that Kakule Kabale had confessed to having raped Lisette K. rather than to having had sexual relations with another girl.

The victim, scared and stigmatized

Lisette K. came out of the trial further traumatized by having had to face a crowded and noisy courtroom and many cameras.¹²⁶ In part because the trial was hastily announced with little notice, in part because there were no local counselors available to help prepare her for giving testimony, the young child was bewildered and frightened by the experience.¹²⁷ No one from the judicial system made any effort to understand the psychological situation of the child or to provide support to her and her family. Lisette K., who at first believed that the soldier was going to be executed because he had done something bad, was still afraid of any man in uniform months later. According to her father, "If she so much as sees a soldier, she wants to run away."¹²⁸ Asked to come to town six months later to talk about the case, the girl started to cry and refused to go. In comments to a Human Rights Watch researcher, her father indicated that he too failed to understand the depth of his daughter's trauma and to see how to help her. The family had also suffered the burden of medical expenses for Lisette K.'s care, expenses they had originally told would be paid for them.¹²⁹

¹²⁴ The following analysis is based on the video of the trial, on an interview with the defense lawyer (telephone interview with defense lawyer in Bukavu, October 20, 2004) and the lawyer of the victim, October 15, Bukavu, 2003.

¹²⁵ Under Congolese rules of procedure, there is no direct or cross examination; all questions to which the prosecutor and the defense want answers are suggested to the judges who then ask them to the witness.

¹²⁶ Human Rights Watch interview with lawyer of Lisette K., Bukavu, October 15, 2003.

¹²⁷ Human Rights Watch interview with father of Lisette K., October 16, 2003.

¹²⁸ Human Rights Watch interview with father of Lisette K., October 16, 2003.

¹²⁹ Human Rights Watch interview with father of Lisette K., October 16, 2003.

Other convictions for crimes of sexual violence in areas held by RCD-Goma

On August 29, 2002, thirteen-year-old Violette J. was assaulted and raped by an RCD-Goma soldier on the outskirts of Bukavu town. The girl told her mother and was taken to the hospital, where a doctor examined her and certified that she had been raped. Several days later the family filed a complaint at the office of the military prosecutor.¹³⁰ The alleged perpetrator was arrested and brought to trial soon after.¹³¹ On November 27, 2002, the *conseil de guerre* (court martial) found him guilty of rape and sentenced him to five years imprisonment. A soldier who had accompanied the rapist and had driven away the victim's brother was acquitted. According to the military prosecutor, the convicted perpetrator, like Kakule Kambale, escaped from prison in June 2004.¹³²

According to Violette's mother, the girl remained traumatized and was obliged to change schools because of public attention concerning the rape. She also contracted a sexually transmitted disease, although she was not infected by HIV.¹³³

Human Rights Watch researchers were able to document one case of a member of the Local Defense Force tried for a rape committed in Goma. Although supposedly a civilian and not actually a member of the armed forces, the accused was tried by the military court, the *conseil de guerre*. He was found guilty and sentenced to twenty years in prison.¹³⁴

The Obstacles to Prosecution

Most perpetrators of crimes of sexual violence go unpunished, often because victims do not file charges against them. Victims keep silent for many reasons:

- Often the victims are not able to identify the perpetrators or know where to find them. This is especially true when perpetrators are Mai Mai or Rwandan Hutu combatants.

¹³⁰ Human Rights Watch interview with mother of Violette J., Bukavu, July 21, 2004.

¹³¹ Information from AED, Bukavu.

¹³² Human Rights Watch interviews with Military Prosecutor, October 15, 2003 and July 21, 2004, Bukavu. The Military prosecutor also provided a table with pending and closed cases. The parents of the victim had actually heard that the rapist escaped before June 2003 and committed another rape, but Human Rights Watch was unable to confirm this information.

¹³³ Human Rights Watch interview with mother of Violette J., Bukavu, July 21, 2004.

¹³⁴ Information from *Action Sociale pour la Paix et le Développement*, Goma, October 17, 2003. The conviction seems to have taken place in 2003.

- They fear retribution or have been specifically threatened with harm if they seek to have the assailant prosecuted.
- They do not know about the possibility of going to court, or they feel justice is for others, not for them.
- They feel ashamed or guilty and fear being stigmatized by others in the community.
- They have been told by authorities—usually men—to stay silent.¹³⁵

Government officials in eastern Congo frequently argue that inaction by victims is an important obstacle to prosecution of crimes of sexual violence. In October 2003, the military prosecutor of North Kivu said that in three-quarters of all cases, victims do not bring charges against those guilty of crimes of sexual violence. He concluded, “When you don’t have the information you can’t send a file to court.”¹³⁶ The prosecutor of the court in Ituri also explained the small number of rape convictions as partly due to the reluctance of victims to report the rape.¹³⁷

Judicial authorities have an obligation to investigate crimes once they learn of them, regardless of whether the victim files a complaint or not. They also have an obligation to create conditions conducive to victims filing charges. This includes ensuring that investigations and prosecutions are executed with due diligence in order to maximize the possibility of the guilty being convicted.

Against all odds: victims want justice

While the majority of victims do not consider taking their case to court, more and more victims are eager to do so. According to a counselor working with victims of sexual violence:

¹³⁵ Sometimes a rapist seeks to end blame and avoid legal action by marrying the victim. Community leaders can mediate such arrangements that mostly take place among a civilian perpetrator and a young girl or woman. It is difficult for the victims to reject such an option.

¹³⁶ Military Prosecutor of North Kivu, at meeting on sexual violence co-organized by PAIF and HRW, October 17, 2003, Goma.

¹³⁷ Telephone interview with the prosecutor of Bunia, September 24, 2004.

Many women I speak to want to take their case to justice. They say, “I wish he would be punished today.” When you explain to them that they can conceal their identity in court, they say: “I have nothing to lose. I am ready to stand in court and say openly what happened.”¹³⁸

Victims have gathered to learn about seeking justice from women who have done so, from human rights activists, or by a videotape of the trial mentioned above. In many cases they have gone away determined to take action themselves.¹³⁹ After such an occasion in September 2004 in Sange, South Kivu, representatives of a human rights NGO heard from four women the week after seeking help, from thirteen more the week after that, and from twenty-three in the third week. As a representative from the NGO concluded, “There is a will to go to justice.”¹⁴⁰

The statistics bear out the anecdotal information: according to one NGO, twelve cases of sexual violence were brought in Goma courts in 2002 and twenty-six in 2003.¹⁴¹ Another NGO documented thirty cases before the civilian and military courts in Goma in the first half of 2004; another thirty-one cases were being investigated by the prosecutor of the Tribunal de Grande Instance.¹⁴²

In many instances it was easier for parents to file complaints involving crimes against their children than it was for adult victims to do so. Often a woman who has been raped is seen as someone who has brought shame on her community but young children are not subject to the same stigma. Communities often act together in speaking out against sexual violence committed against children.

Officials fail to deliver justice

Women and girls who seek justice must have at least the cooperation, if not the support, of authorities. As the cases below show, some victims who wanted their assailants prosecuted got neither. Although in some of these cases authorities were open to

¹³⁸ Human Rights Watch interview with staff of Centre Olame in Bukavu, Brussels, March 11, 2004.

¹³⁹ Human Rights Watch interview with staff of Centre Olame in Bukavu, Brussels, March 11, 2004.

¹⁴⁰ Human Rights Watch interview with representative of Congolese Initiative for Justice and Peace, Goma, September 22, 2004.

¹⁴¹ Information provided by PAIF, a women's association.

¹⁴² Synergie pour l'Assistance Judiciaire aux Victimes des Violations des Droits Humains (SAJ), Rapport sur la situation des droits humains: cas de violences sexuelles identifiées de janvier à juin 2004 au Nord Kivu, June 2004.

receiving complaints, in every case but one the effort failed because others with power or official position obstructed the effort to bring those responsible to justice.

In April 2003, Simone B., a young woman working with a humanitarian agency in a refugee camp south of Bukavu, was sexually assaulted by two RCD-Goma soldiers. They followed her, grabbed her and forced her to the ground. As they started to pull off her clothes, she screamed. When others came to help her, the two fled. The victim filed a complaint with the military prosecutor. A cooperative local military commander tried to find the men, whose names were known. But the suspects were never arrested and, according to local observers, the victim had to leave the area after being threatened by other RCD-Goma soldiers.¹⁴³

On June 28, 2003, two RCD-Goma soldiers came to the house of twelve-year-old Rosette T. and her companion Elise K., another twelve-year-old near Kalonge, north of Bukavu. They took chicken and guinea pigs and forced the girls to carry the loot. At a river, where they stopped for water, the soldiers raped the girls. They then forced them to wash their clothes. Parents of the girls complained to the commander at the Cihimba RCD-Goma military camp. He promptly presented a line-up of his combatants and the girls were able to identify one of the suspects, but did not see the other. The suspect denied everything; the commander ordered him to be beaten but did not arrest him. The girls went to a medical clinic in Bukavu, where a doctor confirmed that they had been raped. While in town, the girls saw the other suspect. The parents, backed by local NGOs, pushed for a prosecution, but the military prosecutor, citing logistical and security reasons, never went to Kalonge to investigate the crime or to arrest the suspects.¹⁴⁴

Marianne L. was raped and shot by an RCD-Goma soldier in August 2003, as described above.¹⁴⁵ Local people who had heard of the crime stopped the suspect as he was trying to flee to Bukavu and brought him back to the military camp. The commander interrogated him and the suspect confessed to the crimes.¹⁴⁶ But he was not arrested at that time, apparently because he was protected by his superiors. It took pressure from the military prosecutor – and advocacy by local NGOs – to get the suspect arrested two

¹⁴³ Human Rights Watch interviews, Bukavu, October 15, 2003 and July 21, 2004.

¹⁴⁴ Human Rights Watch interviews with local NGOs, October 15 and 16, 2003, Bukavu and Human Rights Watch interviews, Bukavu, July 21, 2004.

¹⁴⁵ See Chapter III, subheading “Other sexual violence and exploitation by former members of the RCD-Goma”.

¹⁴⁶ Human Rights Watch interviews with Marianne L. and staff of local NGO, Bukavu, October 16, 2003.

months later. He escaped with others during the attack on Bukavu in June 2004 and has not been tried.¹⁴⁷

On July 5, 2003, Laure N., on her way home from market, was raped by a local commander of the Local Defense Forces on the outskirts of Goma. Her father complained to a local official and the superior of the suspect had him detained at the communal offices. According to a local NGO that investigated the case, the suspect confessed to the crime. However, the mayor, who has the powers of a judicial investigating officer as well as of senior administrative authority in the commune, released the suspect, ended the investigation, and turned down requests for a meeting with the victim's family. The family of the victim, threatened by members of Local Defense Force, left the neighborhood.¹⁴⁸

The above-mentioned case of Marie T.,¹⁴⁹ the dressmaking student raped by several Local Defense Forces in August 2003, is another example of civilian authorities blocking prosecutions. Although Marie could not identify the perpetrators by face, she had heard the name of one of them. Her family asked local authorities and police to find the LDF posted to the neighborhood on the day of the attack. But authorities insisted there were no Local Defense Forces assigned to patrol that neighborhood, and so the family felt compelled to let the case drop.¹⁵⁰

On January 27, 2004, Francine G. went to find her fifteen-year-old son who had been jailed for not having done obligatory community labor in Rutshuru, North Kivu. She herself was then arrested and that night she was raped by a police officer in the jail.¹⁵¹ The police officer was arrested and transferred to the custody of the military prosecutor in Goma, where a year later he was still detained without having been tried.¹⁵²

In the single example of a prosecution leading to a conviction among these cases, the readiness of MONUC officers to intervene may have been an important factor. In mid-2004 in Bunia the grandmother of a young girl, four-year-old Nadine L., came back from

¹⁴⁷ Human Rights Watch interview with staff of local NGO, Bukavu, July 21, 2004.

¹⁴⁸ Human Rights Watch interview with local NGO, Goma, October 16, 2003. The age of the girl could not be established.

¹⁴⁹ See Chapter III, subheading "Sexual violence by Local Defense Forces in North Kivu".

¹⁵⁰ Human Rights Watch interview, Goma, November 18, 2003.

¹⁵¹ "Salongo," or collective labor, is still required in many areas of the DRC. People without the "jeton" or small certificate proving they have performed this labor are often arrested.

¹⁵² Human Rights Watch interviews with Congolese human rights organizations and with military prosecutor, Goma, February and March 2004.

the field to find her granddaughter being raped by an adult male neighbor. According to local sources, she reported the matter to the chief but nothing happened. A local woman's group was informed of the incident and through the assistance of MONUC helped the grandmother to report the matter to the police who subsequently arrested the alleged perpetrator.¹⁵³ Shortly after the arrest the grandmother was threatened by armed combatants, reportedly family members of the accused, who arrived at her house with guns. She was forced to flee with Nadine L. to another part of town where she felt safer; no police protection was provided to her. Despite these difficulties the case was brought before the court on June 17, 2004, and the perpetrator convicted on July 29, 2004, with a sentence of ten years of imprisonment.¹⁵⁴ The young victim was asked to come to the court to identify her rapist. A woman who knows Nadine L. says, "Today she really suffers from trauma. She cannot remember the simplest things and although she is a little girl, she speaks like an adult."¹⁵⁵

As discussed below, prosecuting soldiers and other combatants implicated for crimes in Congo is extremely difficult. These difficulties are multiplied in cases involving sexual violence. Commanding officers often arranged for combatants accused of sexual violence to be quickly transferred elsewhere, making prosecution far more difficult and often impossible. In a meeting with NGOs, international agencies and victims on sexual violence, the military prosecutor of North Kivu said:

There is impunity on the front. When there is a case of rape, it often takes organizations time to respond. It takes time for a case [of rape] to arrive here. We lose track of the soldiers... We know the problem of transfers [of suspects] in Kindu, Kisangani, Bukavu.¹⁵⁶

Reluctance to prosecute accused soldiers also hampers prosecution in areas controlled by the former rebel movements. When RCD-ML fighters committed a series of acts of sexual violence and other crimes against civilians in Musienene in June 2003, for example, RCD-ML leaders did not prosecute anyone, despite complaints by some families of victims.¹⁵⁷ The reluctance to arrest fellow soldiers or to investigate them thoroughly continues into the trial process as well. Few of the cases that reach military

¹⁵³ Human Rights Watch interview with women's NGOs, Bunia, October 10, 2004.

¹⁵⁴ Information from Court Register, Tribunal de Grande Instance, Bunia, consulted on October 9, 2004.

¹⁵⁵ Human Rights Watch interview, NGO representative, Bunia, October 10, 2004. Human Rights Watch does not have information about the fairness of the trial.

¹⁵⁶ Meeting on sexual violence co-organized by PAIF and HRW, Goma, October 17, 2003.

¹⁵⁷ CEJA, RCD-ML et RCD-Goma, *Attaques contre la population civile dans le territoire de Lubero. Rapport sur les abus des droits de l'homme commis par les troupes rebelles à Musienene en juin 2003*, August 2003.

court end in conviction, in part because those prosecuting are from the same institution as the accused.

The lack of protection

Persons seeking justice are often threatened and sometimes drop their cases as a result, as illustrated above. In order to increase the number of complaints brought and followed to a successful conclusion, authorities must provide protection for victims and witnesses. According to Article 23 of the interim Constitution currently in force, courts can sit in closed session if necessary to protect public order and good morals (*ordre public et bonnes mœurs*), but there are no other provisions specifically providing for taking closed-court testimony from witnesses or victims who fear reprisals. Nor are there any regulations or agencies dedicated to providing for the safety of those who are threatened with harm if they testify. According to a representative of one NGO in Bunia, her organization had assisted over 2,000 victims of rape and the vast majority of them would agree to appear in court only if their identity is shielded from the public.¹⁵⁸ One woman in Bunia who was considering seeking justice for crimes against her asked a Human Rights Watch researcher:

Who will protect me if I say who it was who raped me? The men with guns still rule here. The U.N. only protect a small part of town and they will not help me if these men come to my door.¹⁵⁹

General problems with the judicial system

Persons seeking justice for crimes of sexual violence face many of the same problems faced by all citizens seeking to bring complaints for crimes committed. Corruption is widespread in the justice sector, and it is common practice to bribe judges or other judicial officials to influence the outcome of an investigation or a trial. Because of the years of war and economic stagnation, the judicial system suffers from the logistical and financial problems that trouble other sectors of government.

Lack of qualified staff, logistical support and efficient organization

Most persons staffing military and civilian courts are poorly trained. Investigators often do not know how to gather the facts so they can be used in court, including in cases of crimes of sexual violence. There are no forensic specialists in eastern Congo nor do

¹⁵⁸ Telephone interview with the Prosecutor of Bunia, September 24, 2004.

¹⁵⁹ Human Rights Watch interview with victim, Bunia, October 9, 2004.

prosecutorial or judicial staff have training in dealing with severely traumatized victims of sexual violence. Most judicial staff are male. The military prosecutor in Bukavu recently hired some female investigating officers, which might be a step forward; however, the hiring of female staff as such is no guarantee for improved quality of investigations.

Military and civilian prosecutors in eastern Congo lack vehicles and money to pay for travel to outlying areas to conduct proper investigations. Courts and prosecutors also lack basic material such as stationery, let alone computers.

Some recent cases from Walungu, South Kivu, illustrate these problems. Several RCD-Goma soldiers were accused of rape. The victims contacted the military commander in place and urged him to take action. But investigators working on the cases were so poorly trained that they submitted reports lacking some essential information, such as the names of the victims. The military prosecutor in Bukavu, better able to manage an investigation, had no money to pay for transport to Walungu. When investigators from Bukavu finally reached the scene, they failed to find the original investigators and so could not locate the victims. As a result, several suspects had to be released for lack of evidence against them.

In another case in April 2004, the rape of an eight-year-old girl in Kanyola in Walungu was reported to the military prosecutor. According to the Military Prosecutor, the victim recognized the perpetrator. However, four months later, the Military Prosecutor's Office had still not begun its investigation, in part because transport to this area is difficult to organize.¹⁶⁰

Obstacles linked to the transition process

Shortly after the transitional government was established in June 2003, it suspended the operations of courts set up under the 1972 Military Justice Code in order to clear the way for courts operating under the code adopted in 2002. However very little has been done to set up the new military courts, install judges, and start the work. A national Military Prosecutor (*Auditeur Général*) was finally named in late June 2004. By September 2004, more than a year after the start of the transition, judicial staff – magistrates and judges – had been named for the military courts but had not taken up their posts. This delay has blocked investigations and prosecutions of crimes allegedly committed by RCD-Goma fighters and combatants of other armed groups. In some cases, suspects

¹⁶⁰ Human Rights Watch interviews with Military Prosecutor, Bukavu, October 14, 2003 and July 21, 2004.

end up in prolonged military detention without trial – a violation of their rights. In North Kivu, for example, the military prosecutor detained at least twelve men on charges of rape between November 2003 and June 2004 but none had been tried, and some remain in detention. In other cases suspects simply went free.¹⁶¹ A lawyer from Bukavu said:

This state of things paralyses and blocks the prosecution of sexual violence... This situation gives the victims the impression of impunity [for the perpetrators] and this traumatizes them even further.¹⁶²

The way forward

An important step towards promoting prosecution of crimes of sexual violence would be the government's creation of a legal framework for implementing for the Rome Statute of ICC. The draft implementing law prepared by an expert commission in October 2002 contains a comprehensive definition of crimes of sexual violence as war crimes and crimes against humanity. Further legal changes are needed to protect victims and others who agree to testify against possible reprisals, particularly from men with guns—soldiers and members of armed groups. An amendment to Criminal Code should make it possible for a victim to file for specific protective measures with the prosecutor or the president of the tribunal, including having her identity protected and receiving police protection before, during, and after the trial.

In addition to legal changes, authorities must provide training for investigators, including specialized training on investigating crimes of sexual violence and on dealing with traumatized persons. The number of female personnel among judges, magistrates, and investigating officers (*Officiers de police judiciaire*) should be increased.¹⁶³ The police and the courts have a duty to inform victims and their families about the functioning of the criminal justice system, and to accompany them throughout the judicial proceedings, preferably by assigning one contact person who regularly reviews the victim's judicial progress. If possible they should also employ forensic medical experts and provide trauma counseling for victims who testify about sexual violence.

¹⁶¹ Synergie pour l'Assistance Judiciaire aux Victimes des Violations des Droits Humains (SAJ), Rapport sur la situation des droits humains: cas de violences sexuelles identifiées de janvier à juin 2004 au Nord Kivu, June 2004.

¹⁶² E-mail from lawyer in Bukavu to Human Rights Watch, February 28, 2004.

¹⁶³ In South Africa, the creation of special police units dealing with sexual violence is seen by some as a positive development; this should be considered in Congo.

Finally, the judiciary and prosecution need to be strengthened with sufficient resources to properly carry out their functions. In particular, court officials must be able to travel to remote areas to investigate and prosecute cases, or even hold trials in remote rural locations.

Help for the Victims

The destructive impact of sexual violence on individuals as well as on society as a whole is overwhelming. In the last few years, local organizations have drawn attention to the extent of the crisis in eastern Congo and have been the first to offer help to victims. Congolese civil society is vibrant and has long been a major support to affected populations in eastern Congo. With the war and the erosion of official services, these groups have often offered the only help available to those in need, including to those who had suffered crimes of sexual violence.

Medical emergency

Women and girls who have suffered crimes of sexual violence must have their medical and psychological needs met both to relieve their immediate distress and to give them strength to pursue judicial redress. A person who is in pain, is incontinent, or depressed is unlikely to take a case to court.

Women and girls who have been victims of sexual violence suffer from fistulas and other injuries as well as from infections and sexually transmitted diseases, including HIV/AIDS. Some get pregnant and suffer from rape-related complications during the pregnancy or birth. Abortion is illegal in Congo.¹⁶⁴ Some victims have attempted to get abortions and suffered complications from these unsafe procedures.

The prevalence of HIV/AIDS in Congo is unknown, but it is likely that many women and girls raped by soldiers and combatants have contracted HIV/AIDS. The prevalence

¹⁶⁴ In Congo, abortion is outlawed except when a doctor considers that the pregnancy could be fatal for the mother. Human Rights Watch believes that decisions about abortion belong to a pregnant woman without interference by the state or others. The denial of a pregnant woman's right to make this decision violates or poses a threat to a wide range of human rights. Governments should take all necessary steps, both immediate and incremental, to ensure that women have informed and free access to safe and legal abortion services as an element of women's exercise of their reproductive and other human rights. Government responsibilities relating to women's access to abortion that are founded on economic, social, and cultural rights must be implemented according to the principle of progressive realization to the maximum of available resources. Abortion services should be in conformity with international human rights standards, including those on the adequacy of health services.

of the infection among combatants is generally above the average infection rate of the Congolese population, and violent assault increases the risk of infection through tears and injuries to genital tissue. UNAIDS estimates that the nationwide prevalence rate is at about 4.2 percent, but the National Program to Combat AIDS (Programme nationale de lutte contre le SIDA) estimates the prevalence in eastern Congo to be much higher, between 20 and 22 percent.¹⁶⁵

Most victims of sexual violence have no medical examination or treatment after their assault. They live in rural areas where medical services are not available, they lack money for treatment and even to pay for transport to a clinic, or they fear that a medical visit will make the rape publicly known. Already before the war, the Congolese health system was in a dilapidated state and during the war, many health centers and hospitals were looted and destroyed. In places where buildings are still standing, staff to deliver services or needed drugs and equipment are in short supply or even lacking altogether. Centers to test and treat HIV/AIDS are especially needed and there are few of them, mostly located in urban centers. Only one program in eastern Congo, based in Bukavu, provides anti-retrovirals to HIV/AIDS infected persons and it treated only 127 patients by October 2004.¹⁶⁶ Post-exposure prophylaxis drugs – a course of drugs that can prevent HIV infection if taken within 72 hours after the rape – and drugs preventing mother-to-child transmission of HIV are also not widely available. Church-related health agencies offer some limited medical aid in rural areas and some local NGOs such as Solidarity for Social Support and Peace (SOPROP), PAIF and Centre Mater Misericordiae provide primary care in Goma, Kitshanga, Butembo, Katana, and Bukavu.

Given the widespread reports of sexual violence and the devastating consequences of becoming infected with HIV/AIDS as a result of sexual violence, medical clinics should screen for sexual violence, routinely provide information to all patients regarding transmission, voluntary testing and counseling, and treatment for HIV/AIDS.

¹⁶⁵ Programme national de lutte contre le SIDA, Plan stratégique de lutte contre le VIH/SIDA/MST (1999-2008). September 2003; UNAIDS/WHO, Epidemiological fact sheets on HIV/AIDS and sexually transmitted diseases – Democratic Republic of Congo (www.unaids.org/EN/Geographical+Area/by+country/democratic+republic+of+congo.asp, accessed on January 17, 2005).

¹⁶⁶ Médecins Sans Frontières, *Kinshasa and war-torn Bukavu region, DRC, celebrate first year of ARV treatment*, (<http://www.msf.org/countries/page.cfm?articleid=6142E492-A180-4608-87CCBF0F0A0B812B>, accessed on January 17, 2005).

Psychological and social rehabilitation

Beyond the physical consequences of the crimes, women, girls and their communities have to deal with the psychological and social effect. Many victims of sexual violence are depressed, suffer from psychosomatic illnesses or even commit suicide. If the rape resulted in pregnancy, most women and girls have given birth to the babies, in part because abortion is not just illegal but seen by many as immoral. Mothers of these children struggle to find ways of living with these children born out of rape, and they and their children are often rejected by their families. Consequences of such rejection are serious since families in the Congo are often the only safety net for assuring protection and survival to the vulnerable.

By mid-2004 there was a wide range of organizations in eastern Congo providing psychological counseling, practical assistance such as vocational training or micro-credit programs, and general support in overcoming the stigma and isolation connected to having been a victim of sexual violence. But widespread rape has torn apart individual lives as well as communities and the help offered thus far falls short of meeting the need.

Legal assistance

Several local NGOs have sought to offer legal help to victims seeking justice. A relatively recent development, the provision of these services may well grow as increasing numbers of victims seek legal redress. In South Kivu, AED and Congolese Initiative for Justice and Peace (Initiative Congolaise pour la Justice et la Paix, ICJP) provide legal advice and assistance to women and girls who are victims of sexual violence while in North Kivu, SAJ in Goma, and CEJA in Butembo provide legal assistance to these victims.

Since the transitional government entered office, it has taken only very limited steps to dealing with the problem of sexual violence. It delegated representatives to participate in a U.N.-led mission to assess the problem of sexual violence in eastern Congo and it announced that the national Social Fund would pay for urgent medical assistance to victims of sexual violence.¹⁶⁷ Efforts being undertaken to make the military and civilian justice systems operate efficiently will, of course, facilitate prosecution of perpetrators of crimes of sexual violence.

¹⁶⁷ Speech of President Joseph Kabila, March 8, 2004, accessed on May 6, 2004 on <http://www.digitalcongo.net/fullstory.php?id=34987>.

International Response

With growing press and public attention to the crisis of sexual violence in eastern Congo, international leaders and various agencies are beginning to understand the scale of the problem. One important step to ending crimes of sexual violence by armed forces would be to reform the army and enable the military hierarchy to better discipline soldiers. Reluctant to become directly involved in such efforts, international leaders have focused on providing assistance to victims. Such assistance increased in 2004 but was still far less than what is needed.

Medical assistance

Following the 2003 U.N. assessment mentioned above, U.N. agencies identified work on sexual violence as one of four priority areas for the 2004 Consolidated Appeal Process (CAP) for the Congo. Meant to raise a total of US\$ 187 million, it had received pledges of about half that amount by October 2004.¹⁶⁸ In March 2004, the World Bank granted US\$102 million to combat HIV/AIDS in Congo and the Global Fund has dedicated \$35 million to AIDS care over the next two years in Congo.¹⁶⁹ Some of these funds will necessarily assist women who have contracted HIV/AIDS as a result of having been raped.

By mid-2004 several international agencies were providing help for the medical, psychological, social and legal rehabilitation of the victims in eastern Congo, but most were based in North and South Kivu with far fewer working in Ituri. UNICEF supported Panzi hospital in Bukavu with two gynecologists on staff; the international NGO Doctors on Call for Service (DOCS) ran a clinic treating victims of sexual violence in Goma; the International Rescue Committee (IRC) funded several clinics that provide medical care, including for victims of sexual violence; Aide Médicale Internationale (AMI) helps victims of sexual violence in Uvira and Médecins Sans Frontières offers similar help in Shabunda. The German development agency Gesellschaft für Technische Zusammenarbeit (GTZ) carries out a program of community counseling in South Kivu, helping communities to address the issue of sexual violence and reintegrate victims.

¹⁶⁸ The four main target groups are IDPs and returnees, children, demobilized soldiers, and women and girls victims of sexual violence. Accessed on October 27, 2004 on www.ocha.unog.ch/fts/reports/pdf/OCHA_1_628.pdf.

¹⁶⁹ www.theglobalfund.org/search/portfolio.aspx?lang=en&countryID=ZAR#HIV/AIDS (accessed January 17, 2005).

Given the enormity of the task at hand, this can only be a starting point. Tens of thousands of women and girl victims remain in acute medical need. Despite the important efforts by individual agencies, the international response to the mass rape of eastern Congo has been devastatingly slow.

Legal assistance and reform of the justice sector

Faced with the enormity of trying to make the justice system function, key donors came together under the leadership of the European Commission to develop a coordinated strategy of assistance. A group of experts tasked with assessing the problem reported to the E.C. in May 2004. They went beyond providing advice on how to organize and rebuild the judiciary, and made recommendations on impunity, how to deal with violations of international humanitarian law, and transitional justice. They called for the adoption of the ICC implementing legislation and for modifications in the Criminal Code provisions concerning crimes of sexual violence and other international crimes. The experts also recommended changing the family code to give women full legal capacity and recommended that judicial personnel be trained in how to investigate violations of international humanitarian law. The report is meant to become a basis for donor funding.

As mentioned above, the E.C. funded efforts to restore the judicial system in Bunia, Ituri district, was a generally successful program that may serve as a model for restoring judicial operations elsewhere in the country.

International justice: the ICC investigation in Congo

On June 23, 2004, the ICC Prosecutor announced that his office was beginning an investigation into violations of international humanitarian law committed in the Congo. The first investigation undertaken by the ICC, this was triggered by a Congolese government request. The prosecutor's office can investigate crimes where national courts are unable or unwilling to do so, and its authority can be triggered by a formal request from the state involved. The prosecutor's office has started its investigations in the conflict-ridden Ituri region, but has made clear that crimes in other parts of Congo might also be investigated.

Given the scale of crimes of sexual violence in the Congo, it will be important for the ICC to investigate and prosecute crimes of this nature. Such investigation will need to focus on those bearing the greatest responsibility within the armed groups as well as those backing them, including actors outside Congo's borders.

Human rights monitoring and civilian protection by MONUC

MONUC started out with a narrow technical mandate in Congo, focused on monitoring the compliance with the Lusaka peace agreement, and reporting on military activities by all sides. In July 2003, the U.N. Security Council broadened this mandate to include the protection of civilians, a major task in the Congo conflict. This means that MONUC troops can and should use force when necessary to protect civilians. Unfortunately MONUC has not fully implemented this mandate; in many areas of eastern Congo, civilians continue to be at the mercy of armed groups as before and have failed to get the protection needed, as was the case with victims raped and killed during the uprising led by Mutebutsi and Nkunda in June 2004. Nevertheless, in some instances MONUC has indeed intervened in order to protect the civilian population, for example in Bunia town, signaling to armed groups that their abusive behavior will no longer be tolerated.

MONUC's role in monitoring human rights abuses and assisting victims has also changed significantly over the past two years. At its inception MONUC's civilian component was small, and human rights monitoring did not take place systematically. However, more recently MONUC has managed to place human rights monitors in many parts of the country, including areas that are remote and the scene of grave abuses. MONUC has carried out investigations into grave abuses promptly and, in some cases, published the results. Increasingly, MONUC has also documented crimes of sexual violence and taken steps to assist the victims in taking cases to court, as in the example described above.

Such efforts are undermined when MONUC and other U.N. staff themselves abuse and exploit women and girls in Congo. In interviews with victims, Human Rights Watch has found that MONUC peacekeepers from different military contingents as well as civilian staff have sexually exploited Congolese women and girls who were in desperate need of food, money or other items.¹⁷⁰ In some cases MONUC staff have also sexually assaulted or raped women and girls. The U.N. reaction to this situation has been slow and inadequate. Information about these abuses has been available within the U.N. since mid-2004, when an internal investigation was conducted. It was only in January 2005 that these abuses were vigorously condemned by the U.N. Secretary-General. Only a handful of cases has been subject to an internal disciplinary procedure, and even fewer cases have been tried in home countries of the suspects.

¹⁷⁰ Human Rights Watch interviews with victims and witnesses, Bunia and Kisangani, October 6 and 9, 2004.

Annex: Who is who among the combatants in eastern Congo?

Armed Forces of the Democratic Republic of Congo (FARDC)

The new, nominally integrated Congolese army, formed from the forces of the former Kabila government and several rebel movements that signed the Pretoria Agreement in 2002. Despite allegations of war crimes and crimes against humanity, some commanders from armed groups were granted senior ranks.

Congolese Armed Forces (FAC)

Former Congolese government army during the Congo war. It has now become part of the FARDC.

Congolese Rally for Democracy – Goma (RCD-G)

Leader: Azarias Ruberwa. Rwandan-backed rebel group which makes up a major component of the transitional government in Kinshasa. Ruberwa was appointed as one of the Congo's four Vice Presidents in its new transitional government in June 2003. The headquarters were in Goma, North Kivu.

Congolese Rally for Democracy – Kisangani – Liberation Movement (RCD-ML)

Leader: Mbusa Nyamwisi, now Minister of Regional Cooperation. The RCD-ML was launched in 1999 as a breakaway faction of the RCD-Goma. Backed at the start by Uganda, the RCD-ML has been fractured by leadership struggles and infighting. Their headquarters were Kisangani, then Bunia, and are now in Beni.

Mai Mai

Local Congolese combatants who took up arms to fight against what they saw as foreign occupation. They operate in many parts of eastern Congo but did not have a centralized command structure. One of the key leaders, Padiri, is now Head of the Military region of Orientale province.

Movement for the Liberation of Congo (MLC)

Leader: Jean-Pierre Bemba, now Vice-President. Based in Gbadolite, the MLC has been backed by Uganda since the start of the war. The MLC is now a powerful player in the transitional government.

Local Defense Forces (LDF)

The Local Defense Forces were created as auxiliary force of the RCD-G, and then operated as a private militia of current North Kivu Governor Eugène Serufuli. The group was officially dissolved in February 2004 but many its combatants seem to show continued loyalty to Serufuli.

People's Armed Forces of Congo (FAPC)

Leader: Jérôme Kakwavu. An Ituri armed group based in northeastern Congo (Aru and Ariwara), established in 2003 with the support of Uganda. Despite serious allegations of war crimes carried out on the order of Jerome Kakwavu, he was integrated into the FARDC as General in January 2005.

Union of Congolese Patriots (UPC)

The UPC is an armed group in Ituri promoting the interests of the ethnic Hema. It took control of Bunia in August 2002 with the help of Uganda. Soon after, it received support from Rwanda. In early 2004 the UPC split into two factions under Kisembo (known as UPC-K) and Lubanga (known as UPC-L).

Democratic Liberation Forces of Rwanda (FDLR)

A Rwandan Hutu armed group based in Kivu. It has in its ranks Rwandans dissatisfied with the current regime, former refugees, and former members of the Rwandan army and individuals some of whom may have been involved in the 1994 Rwandan genocide.

Forces for the Defence of Democracy (FDD)

Leader: Pierre Nkurunziza. Formerly the largest Burundian Hutu rebel group. They signed a ceasefire with the Burundian government in December 2002. Nkurunziza is standing as a strong presidential candidate in the upcoming elections. During the Congo war, the FDD had bases in Congo, and the government of Laurent-Désiré Kabila supported and supplied the FDD.

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