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Democratic Republic of Congo

North-Kivu: Civilians pay the price for political and military rivalry

INTRODUCTION

This report addresses the current tense situation in the province of North-Kivu in eastern Democratic Republic of Congo (DRC). In Amnesty International's view, the tensions that are building in North-Kivu tend towards a renewal of widespread armed conflict. This in turn threatens to destabilise the fragile peace process in the DRC and to erode further the already poor human rights situation in North-Kivu and the country as a whole.

North-Kivu is among the most strategic of the DRC's provinces, situated on the DRC's border with Uganda and Rwanda, whose security concerns, as well as economic and political interests, have twice tipped the DRC into disastrous armed conflicts since 1996. The province contains the intersecting zones of control of different, largely ethnic-based, Congolese armed political groups, each sponsored at one time or another by the three governments and their national armies. The province is home to a mix of ethnic groups with historically troubled relations, focused particularly on the issue of land tenure. North-Kivu also is of prime economic importance, with lucrative customs revenues from the Uganda and Rwanda border-crossings, substantial mineral deposits and valuable agricultural and cattle-rearing concerns.

After several years of conflict in the DRC, a Global and All-Inclusive Peace Agreement signed in December 2002 led to the establishment, in June 2003, of a transitional power-sharing government, composed of representatives of the former government and a number of Congolese armed groups that had been involved in the DRC conflict. The government has the responsibility of uniting the country in preparation for national elections. The integration of around 120,000 members of former armed groups and members of the former army into a unified national army, the *Forces Armées de la République Démocratique du Congo* (FARDC), and the disarmament, demobilization and

reintegration (DDR) into civilian life of an estimated 180,000 others, is an essential part of this process. However, the transitional government has been beset by factionalism and a series of political and military crises. Progress towards unification has been slow on almost every front, including that of military integration, and the country remains divided into different zones of *de facto* military and political control. This lack of progress carries a terrible human cost: an estimated 31,000 Congolese are dying every month from direct violence or from preventable disease and starvation brought about by insecurity, displacement and lack of access to humanitarian and medical care.

North-Kivu is currently the stage on which national political and military antagonisms are being played out. Far from improving the security climate in North-Kivu, the DRC's transitional authorities at government and provincial levels have allowed a deterioration in the situation, including an inflammation of ethnic tensions, to take place. Rwanda and Uganda have also continued to have a detrimental influence on events in the province. As a result, the human rights situation has worsened. In December 2004 a large-scale military confrontation between different military units in North-Kivu, all of them officially part of the FARDC, almost brought about the collapse of the transition. In the course of the confrontation, hundreds of civilians in North-Kivu were victims of killings, acts of torture, rape and other human rights abuses, which in many instances amounted to crimes under international law. Many of these human rights abuses appeared to be ethnically-motivated, in apparent reprisal for the presumed support of a particular ethnic group for an opposing armed group. As has become typical of the DRC's tragic recent past, the perpetrators of the human rights abuses committed during the December fighting were left unchallenged and the victims quickly forgotten by political leaders.

The fighting, relatively short-lived, gave way to a grudging military stand-off, as the government and international community, not for the first time, tried to chart the DRC's way out of crisis. However, the underlying causes of the December confrontation have not been addressed and as the DRC's transition unsteadily approaches its end in June 2006, the political, economic and military stakes in North-Kivu are looming ever larger over the country's future. As tensions sharpen, the risk is deepening of mass human rights abuses in the province. At the same time, UN

peacekeeping (MONUC¹) resources are overstretched and directed mainly to other areas of insecurity in eastern DRC.

This report argues that urgent measures are needed to strengthen the protection of civilians in North-Kivu. Among these measures are ensuring that the military integration programme underway in the DRC excludes members of armed groups or government soldiers suspected of having committed human rights abuses; that steps are taken to calm ethnic tensions in the province; and that MONUC's capacity and will to intervene where necessary to protect civilians is reinforced. The rebuilding of the DRC's shattered justice system is also essential in order to end the cycle of impunity for human rights abuses, and because it is fundamental to the success of future peace-building and reconciliation.

NOTE

Many of the armed political groups referred to in this report are signatories to the DRC December 2002 Global and All Inclusive Peace Agreement and now form part of the national transitional power-sharing government. Their military forces are now officially designated as units of the national army, the FARDC. However, the FARDC in North-Kivu has little true unity and, pending military integration, FARDC units in the province are still structured along former armed group lines and largely follow former armed group chains of command. For the sake of clarity, therefore, this report refers to these military units by their former armed group identities. For example the *Armée Nationale Congolaise* (ANC), the military wing of the RCD-Goma armed political group, is referred to as the RCD-Goma (ANC). Where it is necessary to use their official FARDC unit designation, this is combined with their former armed group identity in brackets, e.g. the FARDC (ANC) 11th Brigade.

¹ The *Mission de l'Organisation des Nations Unies en République Démocratique du Congo*, United Nations Organization Mission in the Democratic Republic of the Congo was created in late 1999.

1. THE NATIONAL BACKGROUND: GROWING ANXIETY AS ELECTIONS APPROACH

In late 2002 and early 2003 a series of international and national peace agreements brought a supposed end to the conflicts that had ravaged the DRC since August 1996. The agreements provided for the withdrawal from the DRC of Rwandan and Ugandan government forces, which had occupied large parts of the east since August 1998, and the inclusion in a new power-sharing government of most of the Congolese belligerent forces and political groupings.

This new government took office in June 2003, dominated by three parties: the *Parti du peuple pour la reconstruction et la démocratie* (PPRD), People's Party for Reconstruction and Democracy, led by DRC President Joseph Kabila and closely associated with his former pre-transition government; the *Rassemblement Congolais pour la Démocraties - Goma* (RCD-Goma), Congolese Rally for Democracy – Goma, a primarily Tutsi-led and formerly Rwandan-backed armed group² based on North-Kivu, led by Azarias Ruberwa. The third is the *Mouvement pour la Libération du Congo* (MLC), Movement for the Liberation of the Congo, a formerly Ugandan-backed armed group, led by Jean-Pierre Bemba, based in Gbadolite, north-western DRC. A number of smaller political and/or former armed groups are also included in the transitional government, including two that are active in North-Kivu, the *Rassemblement Congolais pour la Démocratie – Mouvement de Libération* (RCD-ML), Congolese Rally for Democracy – Liberation Movement³, and the *mayi-mayi*, a militia force allied to the former DRC government. A number of representatives of political opposition parties and civil society make up the remainder of the government. Outside the transitional government are the *Union pour la Démocratie et le Progrès Social* (UDPS), Union for Democracy and Social Progress, a major political party of long standing, and other smaller political parties that refused to take part in, or were excluded from, the transitional institutions⁴.

² As noted at various points below, there is evidence that the Rwandan government and military continues to support a hardline faction of the RCD-Goma, although the Rwandan government denies this.

³ The RCD-ML and RCD-Goma are offshoots of an original *Rassemblement congolais pour la démocratie*, a Congolese armed group that was the main vehicle of the Ugandan and Rwandan “allied front” against the DRC government in the early stages of the DRC conflict that began in 1998. The interests of the two powers subsequently diverged sharply, leading to the formation of rival armed groups, the Uganda-backed RCD-ML and Rwandan-backed RCD-Goma. The RCD-ML later distanced itself from Ugandan support and struck an alliance with the Kinshasa government. The RCD-ML is also referred to as RCD-K-ML, the K standing for Kisangani, its former headquarter city.

⁴ The UDPS, in particular, represents a powerful future electoral threat to the PPRD, a fact which has made its activists and activities the target of increasing repression by the DRC's authorities.

Many of these groupings contain other, more concealed, forces and tendencies, two of which are of importance in relation to the situation in North-Kivu. Firstly, a shadowy “*clan katangais*” forms President Kabila’s inner circle of power and is believed to have an over-riding influence on national military and security matters. Profoundly nationalist and anti-Rwandan, to the extent that it allegedly harbours some extreme anti-Tutsi tendencies, the major strands of the “*clan katangais*’s” ambitions are allegedly to maintain the supremacy in national power of the Balubakat, an ethnic group from northern Katanga province from which the family of President Joseph Kabila hails, and the recovery of the DRC’s eastern provinces firmly to national rule. The clan appears to be driven by a deep antagonism towards Rwanda for that country’s previous occupation of and continuing influence over eastern DRC.

Secondly, the RCD-Goma is divided between a faction willing to keep faith with the DRC’s political transition and a faction that has become increasingly hostile to it. The latter “hardline” element has shown a willingness to resort to military force and is believed to maintain strong military links with the Rwandan government. The cleavage between these two wings became even more pronounced during reversals of the RCD-Goma’s fortunes in 2004. Driven by a deep mistrust of the government in Kinshasa and fears that the Banyarwanda (Congolese Hutu and Tutsi of Rwandan origin whose mother-tongue is Kinyarwanda) community in eastern DRC may be the target of Kinshasa-inspired ethnic violence, the hardline wing sees its interests lying in the maintenance of firm RCD-Goma military control over its last remaining bastion in North-Kivu and a close relationship with Rwanda, including by remaining under Rwanda’s military umbrella.

a. Elections, but at what (human rights) cost?

The transitional government had the task of leading the country through a two-year transitional period to a situation of political stability and national unity in which national democratic elections would be held by June 2005. However, in early 2005, the government was forced to acknowledge that more time would be needed for the organization of elections and that the transitional period would be extended by six months. A second six-month prolongation to June 2006 will also certainly be needed. The extension of the DRC’s transition by two additional six-month periods was anticipated by the December 2002 Global and All-Inclusive Peace Agreement. However, beyond

30 June 2006, described recently by a UN official as “the drop-dead date”⁵, the DRC would enter into dangerously uncharted territory, politically and constitutionally unforeseen.

The response of the government and the international community has been to move with greater effort to the organization of elections, now planned for early 2006. Nevertheless, it is still questionable whether meaningfully democratic and truly national elections can be organized in time, even despite the US \$272 million of international funding and considerable technical support that have so far been promised for the project. In a country the size of Western Europe, with an estimated electorate of 28 million people, where transport and communications are poor or non-existent, and where no accurate population records exist, the logistics involved are immense. On top of this, many areas of the country, especially in the east, remain implacably insecure, mainly because the government has not completed the key measure of military integration and demobilization (see next section).

Amnesty International fears that essential reforms and safeguards aimed at ensuring that the elections are capable of being held in free, fair and safe conditions may be overlooked, and that there is a risk that the protection of human rights will be jeopardized in the run-up to national elections. Human rights violations linked to the elections are already on the increase, with numerous recent arbitrary detentions of UDPS and other political opponents on apparently trumped-charges. The DRC security forces have twice used excessive and disproportionate force to break up public demonstrations around the issue of elections. In January 2005 scores of people in Kinshasa were killed or seriously injured by army and police units during protests against the postponement of elections. On 30 June, the notional end date of the transition, several protestors in a number of cities were reportedly shot dead by the government forces.

b. Military integration and military crisis: civilians pay the price

One reform which Amnesty International considers an essential prerequisite to enabling elections to take place in a context free of intimidation and other human rights abuses is the integration (in French, “*brassage*”) of former armed groups and former government forces into a new national army, the *Forces armées de la République Démocratique du Congo* (FARDC), and the

⁵ “The drop dead date has to be June 30, 2006. There is no plan B.” Ross Mountain, the UN Secretary-General’s Deputy Special Representative and Humanitarian Coordinator for the DRC, quoted by Reuters press agency, 1 June 2005.

demobilization of those who are surplus or unsuited to the needs of the new integrated army⁶. The successful formation of the integrated army is key to introducing greater security and stability in the east, and to promoting accountable government control of the security forces nationwide. Yet, despite signing the Global and All-Inclusive Peace Agreement which insisted on this measure, the former belligerents have displayed extreme reluctance to dismantle their military structures which are, for many of them, the main basis of their power.

Until early 2005, the government had made only limited steps towards military integration. These included the creation of a unified senior command structure, down to the level of regional (provincial) command and deputy-command positions. These steps have not yet altered the true military configuration of large parts of the east of the country, however, which remains split into different zones of *de facto* armed group control with only passing or no loyalty to central government. The troubled issue of military integration has also contributed to two major military and political crises centred on South-Kivu province in June 2004 (see below) and on North-Kivu in December 2004 (this last is the subject of Chapter 3 of this report).

The Bukavu crisis

In February 2004, RCD-Goma (ANC⁷) soldiers in Bukavu, the capital of South-Kivu province, mutinied against the government-appointed FARDC Regional Military Commander, General Prosper Nabyolwa, after the General instituted a series of searches for hidden arms in the city which uncovered a number of arms caches in the homes of senior RCD-Goma military and administrative personnel, including that of the then Governor of South-Kivu, Xavier Chiribanya. The mutiny was led by the General's deputy commander, Colonel Jules Mutebutsi. Renegade RCD-Goma (ANC) troops attacked General's Nabyolwa's residence, killing two of his guards and forcing the General to flee. None of the renegades was disciplined. Instead, General Nabyolwa was removed from his post and replaced by another Regional Commander, General Mbuza Mabe.

In late May another, more serious, confrontation occurred in Bukavu when Colonel Mutebutsi and RCD-Goma (ANC) combatants loyal to him took up arms against General Mbuza Mabe. Mutebutsi's force was quickly reinforced by a column of other renegade members of the RCD-

⁶ The eventual size of the integrated army is predicted to be around 150, 000. The total number of soldiers currently serving with the armed groups and armed forces is not known with certainty, but may be upwards of 300,000.

⁷ *Armee Nationale Congolaise*, Congolese National Army, the military wing of the RCD-Goma

Goma (ANC) from North-Kivu, led by General Laurent Nkunda, an officer who had been suspended by the transitional government for his refusal to take up a senior FARDC command⁸. Nkunda claimed that his action in support of Mutebutis was to prevent a “genocide” against the minority Congolese Tutsi (known as Banyamulenge) population of South-Kivu. Mutebutis and Nkunda’s forces embarked on a campaign of looting, rape and killing in the city⁹. They were supported by the Rwandan government, according to the UN Group of Experts investigating breaches of the DRC arms embargo¹⁰. The renegades also appeared to enjoy at least tacit support from the RCD-Goma authorities of North-Kivu, including the province’s FARDC regional commander, General Obed Rwibasira, and the RCD-Goma Governor of North-Kivu, Eugène Serufuli, both of whom took no action to prevent the march south to Bukavu of Laurent Nkunda and his military force. Some reports allege that Serufuli’s support went further, and included the provision of trucks and other equipment.¹¹

Nkunda’s forces withdrew from Bukavu on 10 June 2004, moving back to North-Kivu, where the bulk of them rejoined their units without sanction. Mutebutis’s withdrawal took him south of Bukavu and into Rwanda. Both sets of forces committed human rights abuses during their withdrawal. Transitional Government and FARDC military authority, this time without any RCD-Goma military component, was established throughout South-Kivu while that of the RCD-Goma became restricted solely to North-Kivu.

A later MONUC investigation found no evidence to support the allegations of massacres of Banyamulenge, although it noted that Mbuza Mabe’s FARDC troops had committed a number of abuses. The investigation team estimated military and civilian casualties in Bukavu at more than

⁸ Laurent Nkunda is accused of having committed crimes against humanity in Kisangani in May 2002. “Congo: War Crimes in Kisangani: the Response of Rwandan-backed Rebels to the May 2002 Mutiny”, Human Rights Watch, 20 August 2002.

⁹ “During the days that followed, heavy looting and violence, including rape, took place in Bukavu, instigated by Mutebutis’s troops...FARDC troops had retreated south to Walungu where they too carried out pillaging in the town.” *MONUC and the Bukavu Crisis 2004*, MONUC, March 2004, p.7.

¹⁰ For example “The Group of Experts concluded that Rwanda’s violations [of the UN sanctions’ regime] involved direct and indirect support, both in the DRC and Rwanda, to the mutinous troops of Jules Mutebutis and Laurent Nkunda during their armed military operations against the FARDC. Rwanda has also exerted a degree of command and control over Mutebutis’s forces.” UN Doc S/2004/551, para 66, 15 July 2004. The Rwandan government denied these allegations. Intense international pressure on Rwanda during this period did, however, coincide with the rapid collapse of the Bukavu insurrection.

¹¹ “Continuing Instability in the Kivus: Testing the DRC transition to the limit”, Institute for Security Studies, October 2004.

100, the majority being victims of troops belonging to Mutebutsi and Nkunda¹². However, no effective action has been taken by the Congolese or Rwandan authorities to bring the alleged perpetrators, including the two renegade commanders, to justice or to hold them accountable in any way. Colonel Mutebutsi and the remnants of his forces remain in Rwanda, where they were granted refugee status by the government on 18 August 2005¹³. A few days later, the DRC government announced that it would request Jules Mutebutsi's extradition from Rwanda¹⁴. The whereabouts of Laurent Nkunda himself are officially unknown, although according to local sources he is still present in North-Kivu, where he is able to move about and even to travel to Rwanda without interference by the authorities. On 25 August 2005, the Congolese press published extracts of a letter apparently from Laurent Nkunda in which he accused what he called the "Kabila clan" of sowing ethnic division in the Kivus, muzzling political opposition, and responsibility for multiple human rights abuses. The letter accuses the clan of organising a "plan for ethnic cleansing in North-Kivu under the cover of military integration"¹⁵ and goes on to urge "concrete acts of resistance" and the use of "all necessary means to force this government to step down"¹⁶. The government responded by promising "the removal of and legal action against Mr Nkunda"¹⁷

The renegades' claim of genocide against the Congolese Tutsi population worsened ethnic relations immensely and intensified the fears of the Banyarwanda populations in North- and South-Kivu. This was compounded by a number of human rights abuses committed by pro-government forces against Banyarwanda civilians during the Bukavu fighting and as they pursued the Nkunda/Mutebutsi forces south and north of the city. The Bukavu fighting reportedly led to the

¹² MONUC and the Bukavu Crisis 2004, MONUC, March 2004, p.7.

¹³ BBC news, UK edition, 29 August 2005. The UN High Commissioner for Refugees (UNHCR) has not yet accepted the Rwandan government decision, however, because Mutebutsi and his loyalists "must renounce their military status and their civilian character must be monitored over a long period to ensure they are not implicated in military activities. This control has never been carried out by an independent international source..." according to a UNHCR spokesperson. Quoted by AFP-BELGA, 19 August 2005.

¹⁴ "La RCD va solliciter l'extradition du Colonel Mutebutsi réfugié au Rwanda", AFP-BELGA, Kinshasa, 28 August 2005.

¹⁵ "...un plan d'épuration ethnique au Nord-Kivu sous couvert du brassage".

¹⁶ "...actions concrètes de résistance..."; "Nous estimons que le moment est pleinement et amplement arrivé de nous y employer, et ce par tous les moyens utiles, pour contraindre ce gouvernement à décrocher..." Letter from Laurent Nkunda Mihigo, Général de Brigade, 25 August 2005, received at Amnesty International by e-mail.

¹⁷ "...la déchéance et la poursuite en justice de M. Nkunda". *RDC: le gouvernement décide de poursuivre un général dissident (officiel)*, Agence France Press, 3 September, quoting a text signed by the DRC's Deputy Minister of Justice.

mass displacement of Tutsi, with thousands of them fleeing to Rwanda and Burundi. Although some have since returned to DRC, the majority remain beyond the border as refugees.

In August 2004, up to 160 Congolese Tutsi from South-Kivu were massacred in a refugee transit camp of Gatumba in Burundi in circumstances that remain unclear. A Burundian armed group, the *Forces Nationales de Liberation* (FNL), claimed responsibility for the killings, although the motive is unclear. The killings sparked a further political crisis in the DRC when the RCD-Goma, accusing DRC army units of having had a hand in the killings, withdrew temporarily from the transitional process in protest.

Recent steps to advance military integration

Since the events of December 2004, described later in this report, greater strides have been made to move army integration ("*brassage*") forward. A number of military integration sites ("*centres de brassage*") were opened across the country and accepted their first intake of military units in February and March 2005. However, the various military forces have been reluctant to enter wholeheartedly into the process and have kept their best forces away from the integration camps.

Military commanders are not revealing the real size or roll calls of their units, because they benefit financially from what is presumed generally to be a massive overstatement of (and thus overpayment for) the forces under their command. Commanders are therefore reportedly resisting the individual identification of soldiers coming forward for integration, although this is essential to the success of the programme, providing the needed reassurance that, for example, foreign fighters are not entering the DRC's national army. Rwanda and the RCD-Goma have regularly alleged that pro-government forces contain Rwandan insurgents, and continue to make these accusations of government units entering the *brassage* process (the reverse is also alleged: a number of Rwandan military personnel are reported to be in the ranks of the RCD-Goma). Fundamental requirements for human rights protection are also missing: many of those entering the integration process are suspected of having committed crimes under international law or other human rights abuses, or have been named as alleged perpetrators, yet no attempt has been made to establish an impartial vetting mechanism to ensure that those reasonably suspected of human rights abuses are screened out of the army integration process pending independent and impartial investigations.

Coordination between the integration process, led by the military, and the demobilization, disarmament and reintegration (DDR) process, led by a civilian governmental organization CONADER¹⁸ has also been poor. The integration and DDR processes are supposed to take place simultaneously. Yet, while the integration camps are open and accepting troops, facilities are absent or not yet operational for those soldiers who choose or are selected for demobilization and reintegration. Projects to support the re-entry of demobilized fighters into civilian life are also not yet fully identified or functional. No solution has yet been put forward for the lack of basic humanitarian provisions for the many women and children who accompany the armed groups, but who are not specifically catered for in the reintegration or DDR programmes.

The process also continues to be badly under-resourced, with non- or minimal payment of salaries to military personnel, and insufficient supplies of food, water, and medical equipment to the centres de *brassage*, many of which have poor facilities. These factors leave civilian populations around the camps at great risk of human rights abuses¹⁹.

The fact that such fundamental problems persist raises large doubts as to whether the DRC's political leadership and senior military command are committed to genuine integration of the armed forces. Yet a failure genuinely and professionally to integrate or to properly support the return to civilian life of demobilized fighters will have serious repercussions for the future of human rights in the DRC. In Amnesty International's view, both the DRC government and the international community, which is deeply involved through its financial and coordination efforts in moving the DRC's transitional process forward, need urgently to address the shortcomings in the DRC's army reform and demobilization programmes.

c. Unhelpful neighbours: Rwanda, Uganda and the FDLR

Rwandan and Ugandan governments have continued to provide support to Congolese armed groups in eastern DRC, in breach of the UN arms embargo on the DRC²⁰. As noted above, Rwanda has also reportedly launched occasional military incursions into the Kivus, most recently in November 2004. The continued involvement of these two states stems chiefly from the

¹⁸ *Commission Nationale de Désarmement et Réinsertion*

¹⁹ Risks associated with the two North-Kivu *centres de brassage* are discussed later in the text.

²⁰ For details see Amnesty International's May 2005 report, *Arming the East* (AI Index: AFR 62/006/2005) and the three reports of the UN Group of Experts monitoring the arms embargo of July 2004 (S/2004/551), January 2005 (S/2005/30) and July 2005 (S/2005/436).

presence in eastern DRC of Rwandan and Ugandan insurgent groups opposed to their governments, as well as continuing exploitation of the DRC's abundant mineral and other natural resources by Rwandan and Ugandan military and business networks²¹. In Rwanda's case, close ethnic ties with the vulnerable Congolese Tutsi population is also a factor, whereas Uganda's support for armed groups in eastern DRC has been mainly – if not solely- driven by its political and economic interests, regardless of the ethnic origin of their Congolese proxies. In the history of the DRC conflict, Ugandan military support has been granted to various armed groups of diverse ethnic bases.²²

The presence of Rwandan and Ugandan insurgent groups in eastern DRC is a longstanding cause of conflict in the region, invoked by both Rwanda and Uganda in justification for their 1996 and 1998 invasions of the DRC. Under the terms of the 2002 peace agreements between the three governments, the DRC government undertook to disarm and repatriate these foreign armed groups, although this task has not yet been accomplished. Today, the failure to resolve this issue definitively is perhaps the major impediment to the normalization of relations between the three states.

The major insurgent groups are the mainly Hutu Rwandan *Forces Démocratiques de Libération du Rwanda* (FDLR), Rwandan Democratic Liberation Forces²³, with an estimated strength of 8 – 10,000, based mainly in the two Kivu provinces, and the much less sizeable mainly Ugandan Allied Democratic Forces (ADF) and National Army for the Liberation of Uganda (NALU). The extent to which these groups represent a real threat to the security of Rwanda and Uganda, and the extent to which both Rwanda and Uganda are over-stating this threat, is debated. Over time, the Rwandan and Ugandan governments' claim to be merely exercising a right to self-defence has

²¹ There are a number of reports on Uganda and Rwanda's involvement in economic exploitation of the DRC, including Amnesty International report *"Our brothers who help kill us": Economic exploitation and human rights abuses in eastern DRC* (AI Index: AFR 62/010/2003, April 2003), a Human Rights Watch report, *The Curse of Gold*, June 2005, which details Ugandan interests in the exploitation of gold in Ituri, and a Global Witness report, *Undermining Peace: The Explosive Trade in Cassiterite in Eastern DRC*, June 2005, which documents current Rwandan involvement the cassiterite trade in the Kivus.

²² These groups include the MLC of Jean-Pierre Bemba, RCD-ML of Mbusa Nyamwysi, UPC of Thomas Lubanga, FNI of Floribert Njabu, FAPC of Jerome Kakwavu and PUSIC of Chief Khawa.

²³ The FDLR includes members of the *interahamwe* militia and *ex-FAR* (former Rwandan army) who organized or took a leading role in the 1994 Rwandan genocide. The majority of the FDLR however, are probably too young to have taken part in the genocide, although many are responsible for grave human rights abuses in the DRC. Throughout the conflict, the FDLR were supported by the former DRC government which provided the group with military supplies. This support officially ended in 2002, although some allege that covert support has continued.

been weakened by the systematic human rights abuses committed by their forces or by their client Congolese armed groups in eastern DRC, and by both countries' highly organized operations to exploit the DRC's mineral and other resources. Their armed forces failed to eliminate the insurgent threat during their extensive military occupations of eastern DRC. Nevertheless, security arguments continue to be used by Rwanda and Uganda as a basis to threaten the DRC.

Rwanda and Uganda's security concerns notwithstanding, the disarmament and repatriation of these foreign armed groups is essential to prevent further human rights abuses against Congolese civilians. The insurgent groups have been responsible for crimes under international law and other human rights abuses in eastern DRC. Abuses by the FDLR include probably thousands of unlawful killings, rapes, pillages, abductions and the use of child soldiers. Their presence in the Kivu provinces has also led to the impoverishment of the civilian population in the areas in which they operate, through pillage and the extortion. An offshoot of the FDLR, known as the Rastas, composed of Rwandese and Congolese Hutu, has also recently surfaced in South-Kivu province, specialising in the abduction of civilians for ransom. The FDLR deny any involvement or collaboration with the Rastas.

On 31 March FDLR political leaders issued a statement in which they condemned the 1994 genocide in Rwanda, renounced the use of force and all offensive operations against Rwanda, and agreed to return peaceably to Rwanda. The FDLR statement suggested that their return to Rwanda would be dependent on certain "modalities" and "measures of accompaniment" to be negotiated with the Rwandan and DRC governments and the international community. The FDLR overture has not, however, led to any appreciable change in the situation on the ground, where FDLR units reportedly continue to commit widespread human rights abuses. FDLR military commanders continue to resist repatriation and to prevent those among their forces willing to return to Rwanda from doing so. Their preference is to remain in the DRC, where they control an important trade in minerals and where lack of progress in or failure of the transition would serve their interests, as they have historically benefited from tensions between Rwanda and the DRC. FDLR commanders who participated in the 1994 genocide also fear facing justice on return to Rwanda²⁴.

²⁴ The Rwandan government publicly refused political negotiations with the FDLR on the basis that no official Rwandan delegates were present at the Rome meeting. The Rwandan government position is that those suspected of involvement in the 1994 genocide will be held accountable. The specific demands made by the FDLR negotiators

The FDLR or Rasta groups continue to commit atrocities. In the Walungu and Kabare territories of South-Kivu, local human rights organisations continue to document unlawful killings, rapes, beatings and hostage-taking of civilians, by both groups. During the night of 9-10 July 2005, 40 civilians, mostly women and children, were killed when members of an armed group, reported to be Rwandan, attacked the village. Several women were also raped. A MONUC human rights investigation team visiting the area found two freshly dug mass graves, containing up to 32 bodies.

The DRC government has made progressively greater, although still not entirely convincing, steps to address the issue of the FDLR, supported by MONUC. FARDC operations have been launched against the FDLR in North and South-Kivu, but the inadequate military capacity of the FARDC forces remains a drawback to the success of these operations, which are additionally hampered by the FDLR's greater experience of operating in the difficult terrain of eastern DRC.

2. NORTH-KIVU: POWER, LAND AND ETHNICITY

North-Kivu province comprises six territories and the provincial capital, Goma. Beni and Lubero territories, often referred to as the *grand nord*, lie in the north of the province, Walikale territory to the west; and grouped around Goma the three territories of Masisi, Rutshuru and Nyiragongo, collectively referred to as the *petit nord*.

The major ethnic groups in North-Kivu are the Hunde, the Nande, the Nyanga and Banyarwanda, with smaller populations of other ethnic groups, such as the Tembo. Goma has a mixed ethnic population. The Banyarwanda²⁵ form the majority of the population in Masisi, Rutshuru and Nyiragongo territories. The remainder of the population in these territories is primarily Hunde or Nande. The territory of Walikale, in the west of the province, is shared primarily between the Nyanga and Hunde, with only a small Banyarwanda population. The Nande predominate in Beni and Lubero territories.

that they should be given the opportunity to operate as a political party, and that Kigali recognize a "second genocide" against the Hutu have been rejected by Kigali.

²⁵ Banyarwanda are Congolese Hutu and Tutsi of Rwandan origin, and whose mother tongue is Kinyarwanda.

a. Political power built on an ethnic base

The mainly Tutsi-led RCD-Goma controls the capital Goma and the territories of Rutshuru (bordering Rwanda and a small area of Uganda), Nyiragongo and most of the territory of Masisi. Since December 2004 (see next chapter), Walikale and the western-most part of Masisi territory (formerly held by the RCD-Goma) is now under government control. Beni and Lubero territories, which along their eastern edge border Uganda, are controlled by the RCD-ML, headquartered on the city of Beni. The RCD-ML, which is primarily Nande-led, suffered major military reversals shortly before the beginning of the transition, has two ministerial posts in the transitional government, one of which is occupied by the RCD-ML President Mbusa Nyamwisi, himself a Nande.

Although both the RCD-Goma and RCD-ML aspire to a lasting national political role, both stem from a relatively narrow, if strong, regional ethnic base. Latterly, the RCD-Goma has also laid claim to represent and defend the interests of Hutu Banyarwanda population, although for the larger part of RCD-Goma rule over the Kivus the Hutu and Tutsi communities were deeply divided. Beyond the confines of their regional power base, both movements' prospects for anything other than local success in the forthcoming national elections are generally considered poor. Both, however, have a strong economic hold on the east: Goma and Beni represent the twin economic poles of North-Kivu and much of the rest of eastern DRC. These economic considerations weigh heavily on the current national and regional power politics.

The other two major ethnic groups in North-Kivu, the Hunde and Nyanga, have little in the way of political power or representation in North-Kivu, and are largely marginalized by the Nande and Banyarwanda communities. Before power politics became dominated by armed political groups, both groups used to hold a traditional, customary authority in the *petit nord*, through a system of tribal chieftaincies. This customary authority is slowly waning. Militarily, both groups are represented by relatively weak and incoherent mayi-mayi militia units. Their simmering sense of resentment is an added factor in North-Kivu's troubled ethnic mix.

The Banyarwanda Hutu and Tutsi are far from being a single, homogenous grouping. In North-Kivu, Hutu and Tutsi interests have coincided only occasionally. The concentration of political and economic power in Tutsi hands in both Rwanda and eastern Congo has exacerbated long-standing divisions between the two, and antagonisms at times at least as bitter as those between the

Banyarwanda and other Congolese ethnic groups. The Tutsi, in particular, have retained important kinship, patronage and business ties with Tutsi in Rwanda, identifying themselves closely with the current Tutsi-dominated Rwandan Patriotic Front (RPF) government there.

b. North-Kivu's Banyarwanda communities

The presence of populations of Rwandan descent in North-Kivu predates 1910 when parts of Kivu were ceded to the Belgian Congo²⁶ (present day DRC) from the German-ruled Ruanda-Urundi (present day Rwanda and Burundi). Between 1937 and the mid-1950s, the Belgian colonial administration transferred hundreds of thousands of Rwandans (Ruanda-Urundi being by then under Belgian rule) to the Congo, primarily to Masisi and Rutshuru territories. This resettlement was designed partly to ease demographic pressures in densely-populated Rwanda, but mainly to provide a ready workforce for large colonial agricultural and mining concerns in North-Kivu. Significant numbers of Rwandan migrants also came to Congo to seek land in the then relatively sparsely populated east of the country.

Between 1959 and 1963 several thousand Rwandan families, mainly Tutsi, settled in Congo fleeing pre- and post-independence insecurity in Rwanda. Other Rwandan, again mainly Tutsi, families sought refuge from persecution by the Hutu-dominated government and its supporters in Rwanda during subsequent years. In July 1994, the aftermath of the genocide in Rwanda and the victory of the Tutsi-led RPF over the then Hutu Rwandan government, led to the flight of over a million Rwandan Hutu refugees to eastern Zaire. The influx had a profoundly destabilizing effect on the region: much of the Hunde population was displaced and almost all the Tutsi population was forced to flee to Rwanda by violence perpetrated by elements among the Rwandan Hutu refugee and the Congolese Hutu populations. Many Tutsi were later encouraged to return to DRC in the course of RCD-Goma rule in the Kivus.

²⁶ What is now the DRC was first known in 1885 as the Congo Free State, a personal possession of Belgian King Leopold II. In 1907 the Belgian Government took over administration of the territory, renaming it the Belgian Congo. After independence on 30 June 1960, the country was renamed the Republic of the Congo. In 1965, Mobutu Sese Seko, then commander-in-chief of the army, seized control of the country and declared himself president. He renamed the country the Republic of Zaire in 1971. President Mobutu's rule lasted until May 1997 when he was overthrown by Laurent-Désiré Kabila, with Rwandan and Ugandan support. Laurent-Désiré Kabila declared himself president and renamed the country the Democratic Republic of the Congo (DRC). His presidency lasted until his assassination in January 2001. He was succeeded by his son and current President Joseph Kabila.

In August 1996 the Rwandan RPF government helped to form and gave their support to the AFDL (Alliance of Democratic Forces for the Liberation of Congo), a coalition of Zairian armed groups led by Laurent-Désiré Kabila and opposed to the Mobutu government. In September 1996, Rwandan government (Rwandan Patriotic Army, RPA) and AFDL forces invaded the Kivus, to eliminate Rwandan Hutu combatants, their bases and their known or suspected supporters. The RPA and the AFDL massacred tens of thousands of unarmed Hutu refugees and Congolese civilians in the process and also forced hundreds of thousands of Hutu refugees to return to Rwanda, while many more were scattered into the forests of Zaire, in appalling humanitarian circumstances.

c. Contradictory nationality laws

The question of the nationality of the Banyarwanda population has been a divisive issue in post-independence Congo, affecting the rights of members of these groups to hold land and political office, and thus impacting on the tenure of political and economic power in the east. In the course of the last 40 years, Congolese nationality laws have been amended four times, sometimes to the disadvantage of the Banyarwanda who have periodically been stripped of their entitlement to Congolese nationality. By and large, these changes have been driven by the competing political and economic interests of the leaders of the various ethnic groups.

In 1964, Congolese nationality was accorded to all persons whose ancestors were established in the territory of Congo before 1908. In 1972, it was also granted to persons originally from Ruanda-Urundi who had settled in the province of Kivu before 1 January 1950, a measure largely propelled by the then Zairean President Mobutu's "divide and rule" strategy, elevating the status of the vulnerable but economically important Tutsi elite in order to reinforce his political and economic hegemony over eastern DRC.

This law was in turn reversed by a new nationality law in 1981, largely arising from popular anti-Tutsi feeling, which restricted Zairian nationality only to those who could trace their ancestry within the country to 1885, the date of the establishment of the Congo Free State. This further marginalized the Banyarwanda communities and proved a powerful rallying cry for later Tutsi-led rebellions in the east.

Recognising the centrality of the issue of nationality to the successful pacification and reunification of the country, the transitional government, under international pressure, set about reforming this

law. In November 2004, after a hotly contested passage through the DRC's Parliament, a new nationality law was promulgated which confers the right to Congolese nationality on all people – and their descendants - who were resident in the DRC on or before 30 June 1960, the date of independence. Dual nationality is not permitted under the law.

Although this new law should put an end to debate about the status of the Banyarwanda – the majority of whom were present in the territory of DRC before June 1960 - the status of the Banyarwanda in the Kivus, and of Tutsi especially, remains precarious. The practical impact of the new law will be limited until much more has been done to calm strained ethnic relations in the Kivus, particularly in the context of forthcoming national elections where eligibility to vote is a key issue dividing the communities in North-Kivu (see below).

d. Land and ethnicity as a cause of conflict

Ethnicity in North-Kivu, as in other densely populated areas of the DRC, is closely linked to the issue of land tenure and political power. Throughout recent history, local authorities have manipulated the tension around ethnicity and land issues as a means of securing their power base and their control over economic resources, be this agricultural, forestry or mining land. Land or the lack of it remains the strongest factor governing the economic survival of most people in North-Kivu, and has contributed at different times to the creation of ethnic-based militia and outbreaks of ethnic violence.

Traditionally, the distribution of land was primarily in the gift of the local customary chief, who would extract some form of tribute from the tenant. Belgian colonial rule did not fundamentally alter this system, although the colonial scheme to transplant Rwandans to North-Kivu did disrupt traditional land-holding patterns by allocating the Rwandan newcomers plots of land within a specified area purchased from the local Hunde chief, and placing this area under the authority of a Rwandan chief. Towards the end of colonial rule, the Rwandan chieftdom was abolished and the Banyarwanda placed under Hunde tribal authority²⁷. This, and demographic growth over time,

²⁷ "The state and population mobility in the Great Lakes – What is different about post-colonial migrations?", Albert Kraller, Sussex Migration Working Paper n. 24, University of Sussex 2002.

combined to make land tenure increasingly uncertain, conflictual and bound up with ethnic identity²⁸.

Post-independence, these pressures led to a series of small-scale ethnic conflicts over land, most notably a 1963-65 conflict which pitted the Hunde, Nande and Nyanga against the Banyarwanda, who were seeking greater political autonomy in the zones in which they were established. A gradual shift in land use from crop agriculture to more extensive cattle-farming, especially in Masisi and Rutshuru territories, concentrating large areas of pasture in the hands of a small number of mainly Tutsi owners at the expense of (often Hutu) smallholders created additional resentments. A new land law in 1973, which finally abolished traditional customary control of land, further undermined the authority of mainly Hunde and Nyanga tribal leaders²⁹. These developments deepened tensions over land between the “indigenous” ethnic groups and the Banyarwanda, as well as between Hutu and Tutsi populations.

Ethnic tensions in North-Kivu became particularly inflamed as President Mobutu rule began to crumble. This was notably so after President Mobutu launched the “democratisation” process - a transition to multiparty democracy - in April 1990. Political office (which from the Mobutu period to the present day has generally served its holder for private profit) lay primarily in the hands of the Hunde and Nande. Alarmed at the prospect that democratisation might lead to loss of power, Hunde and Nande politicians moved to exclude the Banyarwanda from participating in national debate and elections by labelling them as “foreigners”. At the same time, Hutu Banyarwanda³⁰ began a campaign of resistance to Hunde and Nande political control. Ethnic-based militia were formed, and in March 1993 violence erupted when Hunde and Nyanga militias massacred Hutu and Tutsi civilians in Masisi and Walikale territories. Reprisal succeeded reprisal and by September the violence had left an estimated 7,000 dead and 200,000 displaced.

²⁸ There are a number of other studies of the relation between land, conflict and ethnic identity in North-Kivu, including: “Land, Migration and Conflict in Eastern D. R. Congo”, Koen Vlassenroot and Chris Huggins, African Center for Technology Studies (ACTS) and the Institute for Security Studies (ISS), December 2004; “A Reconfiguration of Political Order ? The State of the State in North Kivu (DR Congo), Denis M. Tull, African Affairs (2003), Royal African Society 2003; “La Question de la Nationalité au Kivu”, J-P Pabanel, Politique Africaine, n.41, 1991.

²⁹ However the ineffectiveness of the administration in implementing the law led to an informal sharing of authority over land issues between the official administration and the tribal leaders.

³⁰ At the time, many Hutu Banyarwanda leaders shared the extremist anti-Tutsi ideology then prevalent in Rwanda that was to lead to genocide. In the early stages of the 1993 conflict, Tutsi and Hunde were allied against Hutu.

In July 1994, the arrival of more than one million Hutu refugees from Rwanda further aggravated an explosive situation. Armed Hutu militias attacked Tutsi and other ethnic communities in North-Kivu, raiding cattle and agricultural property and establishing control over large areas which were once ethnically mixed. Much of this fighting appeared designed to drive out the remaining Tutsis from the area. The Zairian authorities failed to control the fighting and offered little protection to civilians. Landowners on all sides were reported to have hired armed groups and/or Zairean government forces to protect their land and property.

The situation changed again after the fall of President Mobutu and the subsequent Rwandan and Ugandan invasion in August 1998. During this period, the RCD-Goma, with Rwandan government assistance or acquiescence, organized the clandestine return of Congolese Tutsis living in refugee camps in Rwanda to North-Kivu. Years of violence and massive population displacement, however, had by this stage removed any certainty about who owned or held title to particular pieces of land. Among the non-Tutsi populations, many suspected the Tutsi returnees of harbouring Rwandan Tutsi and accused the Rwandan Government and RCD-Goma of masterminding a systematic, illegal Tutsi "land-grab" of areas of North-Kivu. A number of legal cases about land tenure were submitted to the North-Kivu courts during this time, but the judicial authorities, under the control or menace of the RCD-Goma, failed to resolve them.

During its rule, the RCD-Goma also ensured its officials controlled the civilian administration system, in the process replacing a number of customary tribal leaders with Banyarwanda. The RCD-ML similarly ensured that its loyalists controlled northern North-Kivu. The new structures ensured RCD-Goma and RCD-ML control over land, natural resources and lucrative customs revenues in their respective zones, all of which were directed towards the continuation of conflict and the private profit of leading officials.

3. DECEMBER 2004: NORTH-KIVU'S BLOOD-STAINED MONTH

In mid-December 2004, crimes under international law including unlawful killings, torture and rape, were committed against civilians at Kanyabayonga, Buramba and Nyabiondo in North-Kivu. In the course of the military operations in those locations, military forces carried out intentional attacks on civilians. The troops responsible for the killings, rapes and other abuses in these places were all officially part of the integrated national army, the FARDC, and theoretically subject to a single

command structure. However, in practice there has been little genuine integration of military units in the east, which largely retain their (former) armed group identities and loyalties.

The events described below highlight the continuing vulnerability of the civilian population to intentional attack, particularly in a context of heightened ethnic tensions and a lack of an integrated and accountable national army. The victims came almost exclusively from the Hunde and Nande ethnic groups. Many appear to have been deliberately targeted on the basis of their ethnicity and their supposed (ethnic) loyalty to an opposing military group.

The military operations and attacks on civilians took place in the context of an escalation of political and military antagonisms between Kinshasa and the RCD-Goma since the Bukavu events of June 2004. In late November, in response to an alleged rocket attack on its territory by the FDLR based in North-Kivu³¹, Rwanda protested that efforts by the DRC government and MONUC to disarm the FDLR had failed. The Rwandan President, Paul Kagame, said that Rwandan government forces might already be in DRC undertaking “surgical strikes” against the FDLR. In late November a Rwandan government force of unknown strength reportedly entered North-Kivu, crossing through the province apparently to attack FDLR positions and in the process allegedly reinforcing and re-supplying RCD-Goma (ANC) units. At least 13 civilians were reportedly killed and houses pillaged and burned in 21 villages by the Rwandan government forces. The Rwandan government has denied this incursion, but evidence provided by MONUC and the UN Group of Experts and local eyewitness accounts, indicates otherwise.

After an international outcry, the force apparently withdrew after a number of days, but not before DRC’s President Joseph Kabila had announced on 30 November the dispatch of a further 10,000 FARDC troops to the east to counter the threat³². These forces were deployed into a military operation which began on 11 December and consisted of a two-pronged offensive against RCD-Goma (ANC) positions in North-Kivu, one along a north-south axis from Beni and the second on a roughly west-east axis from Kisangani towards Walikale, with the capture of Goma its apparent ultimate objective. This offensive was called *Operation Bima*, a Lingala word which translates

³¹ The attack has never been independently investigated or confirmed.

³² The reason given publicly by the government for sending these troops was to “disarm the *interahamwe* and protect the national borders”. Many of the government troops sent to the fighting were apparently under the impression that they were being sent to camps for military integration. It is doubtful that 10,000 were actually sent: many of the government forces involved in the December fighting were already in the area.

approximately as “get out”. The FARDC forces comprised troops from the former DRC government (FAC), the MLC, the RCD-ML (APC), and mayi-mayi³³.

Operation Bima had as its stated end-objective to recover Congolese government control over North-Kivu and secure the frontier between the DRC and Rwanda. Operational orders asserted the continuing presence of Rwandan government forces in Rutshuru territory without interference from the FARDC (ANC-controlled) 8th Military Region. Its only major success was the capture of Walikale from RCD-Goma (ANC) forces. Along the northern front, at Kanyabayonga, the FARDC operation failed through a combination of mismanagement and alleged corruption at senior levels³⁴ as well as mistrust and poor coordination between the different units involved, each of which operated under separate chains of command³⁵. MLC forces were sent into the frontline at Kanyabayonga, although these were reportedly among the least well-equipped troops, while better-equipped FAC (former government) troops were held in reserve. RCD-ML (APC) units were reportedly marginalized, possibly because of fears of collaboration between the APC and the ANC.

The FARDC troops also suffered from a lack of equipment and food. Without transport, many units had to walk long distances to the front lines and a number of soldiers reportedly died *en route* from exhaustion and malnutrition. Government forces reportedly hijacked vehicles belonging to four international humanitarian NGOs operating in the region, for the transport of troops and munitions. Soldiers looted from the local population. According to soldiers wounded in the fighting and interviewed later by Amnesty International, many soldiers deserted and some units even fought each other for access to supplies, such as ammunition and food.

³³ The mayi-mayi are Congolese militia forces, operating under separate local commands, which together formed a major, if in cohesive, armed group opposed to Rwandan and Uganda presence in eastern DRC, as well as to armed groups supported by those countries. The mayi-mayi is represented in the transitional government, and some of the militia forces integrated in the FARDC.

³⁴ On allegations of corruption, see also the International Crisis Group report, “The Congo’s Transition Is Failing: Crisis in the Kivus”, Africa report No91, 30 March 2005. Similar allegations were also reported to Amnesty International in the course of its research, by military and other sources.

³⁵ Troop movements had reportedly to be negotiated at every stage at unit and officer level, with more serious disagreements forwarded up the different lines of command, even reportedly to the level of President Kabila and Vice-President and MLC leader Jean-Pierre Bemba. The failure of the offensive on the northern front has led some to question the seriousness of the operation, and to consider whether a partially successful operation served Kinshasa’s longer-term political objectives better.

The military build-up in the east dramatically worsened the already tense ethnic relations in North-Kivu. Some Banyarwanda leaders opposed the arrival of government forces in North-Kivu, accusing Kinshasa of planning the “expulsion” of the Banyarwanda³⁶, and alleging that the military forces sent by Kinshasa included Rwandan members of the FDLR. In turn, the non-Banyarwanda communities accused the Banyarwanda leadership of plotting genocide against them, citing an extensive operation to arm Banyarwanda civilians in the province that had been taking place since October 2004. Demonstrations organized along ethnic lines in Goma in early December became violent (see below in this report for discussion of the current ethnic tensions in North-Kivu).

a. Kanyabayonga

On 11 December 2004, fighting broke out between RCD-Goma (ANC) and other FARDC forces at Kanyabayonga, a strategic town straddling Lubero and Rutshuru territories, on the border of RCD-ML and RCD-Goma zones of control. The confrontation followed an attempt by pro-government FARDC forces to take control of the town from the RCD-Goma (ANC). Fighting continued for nine days until a cease-fire was agreed on 21 December.

Throughout the fighting and afterwards, systematic acts of rape and pillaging were committed by members of pro and anti-government forces. The human rights abuses and fighting spread north from Kanyabayonga to Kayna and Kirumba as government forces retreated or deserted. Inhabitants were chased out of their villages prior to the destruction or pillaging of property and the burning of their houses, schools and hospitals. A number of unlawful killings of civilians were also committed, including the apparently politically-motivated killing by RCD-Goma (ANC) soldiers of the 18-year-old son of an RCD-ML official at Kirumba.

Among the range of abuses committed by all forces, the majority of rapes appear to have been committed by RCD-Goma (ANC) against women and girls of mainly Hunde and Nande ethnicity. Both Hunde and Nande groups were considered by the RCD-Goma (ANC) to be supporters of the government forces. A subsequent MONUC investigation found that ANC forces had committed 81 rapes and that ANC forces “used rape as a means to terrorize the civilian population”.³⁷ A local

³⁶ When details of Kinshasa’s military plans emerged, their reading of the word “Bima” in the sense of an ethnic “clear out”, reinforced their alarm.

³⁷ MONUC Human Rights Section spokesperson, quoted in IRIN dispatch, “Army, rebels main suspects of looting, stealing”, 3 March 2005.

human rights organization reported to Amnesty International that they had documented around 160 cases of rape from Kanyabayonga and at least 44 from Kirumba. More than 150,000 civilians were displaced in appalling conditions, as humanitarian NGOs were also forced to withdraw from the area.

b. Buramba

On 17 December, RCD-Goma (ANC) forces belonging to the FARDC 123rd battalion of the 12th Brigade killed dozens of civilians, mainly Nande but also including some Hunde, in and around Buramba in Rutshuru territory.

In the days leading up to the massacre, RCD-Goma (ANC) troops in the area had reportedly been harassing civilians, stealing crops from the fields and robbing people at gunpoint along the roads. At around midday on 17 December, a group of 15 ANC soldiers entered Buramba, firing into the air, apparently to frighten locals into handing over their property. A unit of “Colonel” Jackson Kambale’s militia³⁸ heard the shooting and came running towards the village. In the ensuing engagement, three of the RCD-Goma (ANC) troops were killed. The remaining RCD-Goma (ANC) fled towards their base in Nyamilima, around 4 kilometres away.

Hearing of the fighting, many of Buramba’s population fled. One group heading in the direction of Nyalima were intercepted by a group of RCD-Goma (ANC) reinforcements returning to Buramba. The soldiers reportedly let the women in this group go but held the men. At least two of those held, **Nicolas** and **Tulirwagho**, were reportedly killed later that afternoon a short distance from Buramba. Shortly afterwards, gunfire erupted from all directions as RCD-Goma (ANC) troops came along different paths leading to Buramba. Some of the remaining population managed to flee, but others were trapped in their homes, where they were reportedly hunted down and killed by the soldiers, who then looted the houses. In all, at least 30 people, including women and children were killed and probably many more according to the findings of a subsequent MONUC investigation.

³⁸ This militia, known popularly as Jackson’s “mayi-mayi”, is not part of the official mayi-mayi and does not therefore form part of the FARDC. Militia groups like this, which are outside the national military integration and demobilization process, will continue to be a source of insecurity in eastern DRC.

One witness, **Thomas**³⁹, aged 57, spent the night of 17/18 December hiding close to the village. He told Amnesty International that the shooting in and around Buramba continued through the night. The next morning, after the gunfire had stopped, he emerged from his hiding place and started walking towards Nyamilima. He encountered group of around 15 ANC soldiers walking towards him who initially let him pass, but shortly afterwards a vehicle came past and an officer got out. He ordered the soldiers to turn back towards Nyamilima and then demanded to see Thomas' identification papers. Examining his identity documents, the officer (whose name Thomas identified to Amnesty International) remarked, "*How can a man of your age not know where Jackson is hiding?*" and ordered his arrest.

Shortly after, at around midday, they were joined by a further group of RCD-Goma (ANC) holding another civilian, **Théophile Kalilikene** (real name), whom Thomas knew. The enlarged group set off along the road to Nyamilima, but after a few hundred metres the officer gave another order and Thomas and Théophile Kalilikene were bundled off the road and towards a hut by an RCD-Goma (ANC) soldier. According to Thomas:

The soldier shouts at whoever is inside to open up. There's only an old sick man. The soldier asks his name. The soldier demands money, but the old man has none, so he pushes him down into a corner of the hut. Then Théophile and I are ordered to lie down on the bed, side-by-side, and I knew that our moment had come. The soldier shoots several times: at the level of my head, and at the heart. This was at almost point-blank range. By some miracle one bullet grazes my neck and the second goes through my arm. Then the soldier goes out, closing the door behind him. This was around midday. Théophile is hit, his body twisted over me and across the bed by the bullets. He is whimpering, then he cries out suddenly and I know that he is dead. I was covered in blood, and lost consciousness.

When he came round, Thomas broke out of the hut and walked to the hospital at Nyamilima, this time avoiding the road. Later that afternoon he saw the old man also being brought into the hospital. At around 5pm, the officer arrived with five RCD-Goma (ANC) soldiers and a local administrator, but did not recognize Thomas.

³⁹ This and most subsequent names in this chapter have been changed to protect the witnesses' identities.

c. Nyabiondo

“At first the mist saved us and most of the population was able to flee,” recalls a Nyabiondo community leader, *“but many were killed in the following days, as the soldiers hunted down people in the fields and forest, tying up the men, raping the women...”*

By mid-December, ethnic and military tensions had been rising in the area around Nyabiondo, a town in Masisi territory, for some time. A distribution of arms to Banyarwanda civilians in Masisi had given rise to armed incidents in the territory. For some days also, RCD-Goma (ANC) troops had been retreating eastwards from the government military offensive in Walikale. Villages in the path of this retreat, populated mainly by Hunde, had been attacked, looted and in some cases burned to the ground by the retreating RCD-Goma (ANC) forces. RCD-Goma (ANC) troops abducted civilians, forcing them to carry the looted goods⁴⁰. Mayi-mayi of the 13th FARDC Brigade, based in Nyabiondo, reportedly carried out reprisal attacks on Banyarwanda villages in the area and killed unarmed civilians.

The retreating RCD-Goma (ANC) were heading towards the headquarters of the 11th FARDC (ANC) Brigade in Masisi. In between lay Nyabiondo and its mayi-mayi battalion. The attack by the 11th FARDC (ANC) Brigade came from at least two directions in the early morning of Sunday 19 December. There were also reports that armed Banyarwanda civilians were amongst the attackers and that they took part in the killings and looting that followed. The initial attack claimed very few civilian lives, as under the protection of the dawn mist most of the population fled to the fields and forest. For several days afterwards, however, RCD-Goma (ANC) troops pursued civilians hiding in the villages, hills, forests and fields surrounding Nyabiondo, apparently searching for mayi-mayi soldiers but failing to make any distinction between them and civilians. Scores of civilians were killed in these operations. Local officials claimed that as many as 191 civilians were killed in the Nyabiondo area.

A man from Katale village, near Nyabiondo, told Amnesty International that RCD-Goma (ANC) soldiers had arrived in his village early on 21 December. He immediately fled with his wife **Stéphanie** and their four children, including a baby-girl, carried by Stéphanie. Stéphanie was shot dead in the back as they ran across the fields. The husband and the other children made it into

⁴⁰ In Mutakato, for example, a witness told Amnesty International delegates that he saw the ANC force about 50 people to carry their material as they were advancing toward Nyabiondo.

the forest. "Along the edge of the forest there were many bullet-riddled bodies. After a few hours I went back to the village to see my wife's body – I had to be sure she was dead - and find the baby," he told Amnesty International. He was able to recover the infant from a woman who had picked her up and sheltered her. Another witness described how Loashi, a town between Masisi-centre and Nyabiondo, at the border of the RCD-Goma and mayi-mayi zones of control, was "strewn with bodies". RCD-Goma (ANC) soldiers reportedly tied up and burned alive a young mayi-mayi they had captured.

Many of the killings by the RCD-Goma (ANC) in and around Nyabiondo appear to have been ethnically motivated. The victims were mostly civilians belonging to the Hunde community. The step-mother of one of the local Hunde chief, **Paul Baroki Mine'ene**, told Amnesty International delegates how close members of her family were killed.

When they attacked my village, I could not run, because I am too old. So, I stayed with my husband in the village. My husband went to plead with the soldiers. I suddenly saw him running back to us, shouting and gesturing at us to flee. While he was running, the soldiers shot him in the back. We fled into the bush but we wanted to go and bury the body of my husband. We went to ask to my husband's son, who is the local chief, to come and help us bury my husband. After six days, we heard that the RCD-Goma (ANC) soldiers had taken my step-son and some of his colleagues because he was a Hunde chief. This was told to us by some of his colleagues who managed to escape and who joined us in the forest. They told us that my step-son was killed after having been tortured...

A boy, **Willy**, aged 15, a Hunde from Bukombo, told Amnesty International:

The soldiers came in vehicles and on foot, killing and pillaging. Some were in uniform but others wore civilian clothes. Some came from the direction of Marambara, some from Nyange colline. The population fled straight to the forest. I was in a group of 15, with my mother, neighbours, and other relatives. The soldiers found us and made us lie on the ground, where we were beaten with rifle butts. Baroki, the *chef de localité*, (local chief) was with us. The soldiers came and took him away, I saw that. Then I

saw his body afterwards, a week later, on 25 December. He had taken a bullet in the head. Had been tied up and whipped. The body lay on the ground.

Several dozen women and girls as young as eight were also reportedly raped by RCD-Goma (ANC) troops. As the health centres in the region had been pillaged and destroyed, many victims were left for weeks without care and medical help.

A 10-year-old girl, **Joséphine**, was hiding in the forest with her family, two soldiers raped her. *“When they saw us in the forest, they first took my father and beat him. Then, while I was crying, they came after us, pushed my mother and grabbed me... They were two soldiers, it was horrible. Now, I still have a lot of pain, and at night, I cannot sleep, because I have nightmares. I am so afraid they will come back.”*

Grace and her 12-year-old daughter, **Colette**, were raped by 10 soldiers. After raping mother and daughter, the soldiers left, taking Colette with them. *“We had fled to the forest because of the fighting. On 21 December, 10 soldiers arrived and raped us, my daughter and me, in front of everybody. After they raped us, they said my daughter was theirs, and they took her with them. We looked for her for days. My neighbours say she must be dead. My body is still sick from the rape, and my heart is broken because they took my little girl.”*

The attack on Nyabiondo displaced more than 25,000 people, the majority of whom fled in the direction of Walikale territory, while thousands also found refuge in the forest and neighbouring hills. At constant risk of further attacks by RCD-Goma (ANC) forces, the living conditions of these displaced were extremely difficult. Many returned home only in late January. On return, many found that their belongings were gone and their houses had been destroyed.

Ursule, a young woman, and her children had to spend weeks in the forest:

We had to flee in the forest, but soldiers kept coming after us. They tied people to the trees and shot them. We were hunted down in the forest. I ran in the forest with my children, but we had no clothes, and no food. I was worried my baby would die of hunger so my aunt tried to go to the village for food, but they killed her. I was alone in the forest, with my children, and no food. We had no choice but to walk for days up to

Kichanga. In the forest, I was so scared to meet soldiers who would kill us that we even walked at night.

Nyabiondo and surrounding villages were systematically looted by RCD-Goma (ANC) troops, even to the extent of tiles being removed from the roofs of buildings. Schools and hospitals were treated similarly, including the CARITAS *Centre de Transit et d'Orientation* (CTO), a rehabilitation centre for former child soldiers⁴¹, most of them from mayi-mayi units. The children fled into the forest. The warehouse of the German humanitarian NGO *Agro Action Allemande* (AAA) in the town was looted of material and equipment worth an estimated US \$300,000. The looted goods were reportedly loaded onto vehicles and taken away.

The looting lasted until 26 January when, after negotiations, the RCD-Goma (ANC) were persuaded to abandon the town and the mayi-mayi brigade was reinstalled. Although the provincial governor, Eugène Serufuli, and the Administrator of Masisi territory, Paul Sebihogo, both of them officials from the RCD-Goma, were informed of the looting, neither appears to have taken any action to stop the thefts. On 1 March, the European Commission announced that it would suspend its aid projects in North-Kivu to protest against the authorities' failure to investigate and bring to justice those responsible for the looting of AAA property.

A number of individuals in Nyabiondo questioned the role played by the RCD-Goma territorial administration. Prior to the 19 December attack, many local people had taken to sleeping away from their homes because of the ANC activity in the area. On 16 December, a delegation from the territorial Administrator had visited Nyabiondo apparently to reassure the population that the fighting in the area had ended and they were not at risk. This encouraged many to return to their homes and, on 18 December, to hold the usual Saturday market that took place in Nyabiondo. As a result, on Sunday morning, when the attack came, there were many people in the town.

In a February 2005 interview with Colonel Bonane, Commander of the 11th FARDC (ANC) Brigade responsible for the attack Nyabiondo, the Colonel admitted to Amnesty International that his troops had attacked civilians and raped women and girls. He claimed that these abuses were committed by undisciplined troops.

⁴¹ For fuller background on child soldiers in the DRC, please see Amnesty International report, *DRC: Children at War* (AI Index: AFR 62/034/2003), September 2003.

d. MONUC peace-keeping response: inadequate and late

On 21 December, MONUC peace-keepers established a temporary “buffer zone” (*zone tampon*) between the FARDC and RCD-Goma (ANC) forces over a 10 kilometre radius between Kanyabayonga and Lubero, aimed at facilitating humanitarian access to the civilian population and preventing further violence and human rights abuses. However, this measure was inadequate. Amnesty International delegates were told during a visit to the region in February 2005 that the “buffer zone” was ineffective and porous, consisting only of scattered MONUC posts established along some roads, together with occasional daytime patrols between these points. One staff member of an international humanitarian NGO in the area commented that the “buffer zone” was no more than a “no-man’s land”. Soldiers from both sides were still reportedly entering the zone to commit rape and looting at the time of Amnesty International’s visit. Some groups of displaced people in Lubero territory later refused humanitarian assistance in protest at MONUC’s failure to protect civilian life and property during the Kanyabayonga fighting and after.

Many local people claimed that some of the looting had been conducted in the presence of a South African MONUC contingent which arrived in Nyabiondo in late December, but which failed to intervene. Only with the arrival of an Indian MONUC contingent in January did the situation improve, according to locals.

e. Impunity and a climate of continuing fear

None of the RCD-Goma (ANC) troops and officers allegedly involved in the abuses at Kanyabayonga, Nyabiondo and Buramba has been prosecuted, despite the fact that the units and their commanders involved have in most cases been identified. The abuses have been investigated by the UN (MONUC), whose findings have been submitted to the DRC government and military authorities at national and provincial levels. Although North-Kivu Governor Eugène Serufuli established a commission of enquiry into the killings at Buramba, composed of local security officials, the commission’s January 2005 report recommended no prosecution against those suspected of responsibility for the killings.

In February 2005, 29 FARDC (pro-government) military personnel were found guilty of offences ranging from looting, indiscipline, rape to murder in connection with the Kanyabayonga abuses. Twenty-one of these were sentenced to death after a summary and unfair military trial. Those

sentenced were all of low military rank, and were reportedly mainly from MLC forces. They have appealed against the sentences. There were allegations that these soldiers were punished in order to cover up for the mismanagement of the Kanyabayonga offensive by the senior FARDC command. The majority of the FARDC (pro-government) forces, including commanders, allegedly responsible for the abuses at Kanyabayonga have not been brought to justice.

4. ESCALATING TENSIONS: FACTORS TENDING TOWARDS A RENEWAL OF CONFLICT IN NORTH-KIVU

The human rights and humanitarian situation in North-Kivu has continued to deteriorate since December 2004. The political and military forces involved remain in a deeply uneasy and latently hostile stand-off. Ethnic tensions in North-Kivu persist. All these factors give rise to fears of further large-scale human rights abuses against civilians and rising ethnic violence.

The current situation in North-Kivu, delicately balanced between a continuation of conflict and a consolidation of peace, cannot be tenably sustained for much longer. Two developments currently in train threaten to disturb this fragile equilibrium, for better or worse. Either of them could improve the situation immeasurably or, if handled badly, tip the province and possibly the country into a renewed round of violence. One is the military integration and demobilization process. The other is preparations for national and local elections, which in North-Kivu are surrounded by considerable ethnic anxiety and suspicion. To be successful, both require genuine cooperation and a measure of good faith between the DRC's political and military leaders. Unfortunately, bad faith appears to be the prevailing dynamic, and with this in mind, Amnesty International is calling for urgent attention to be given to respecting humanitarian law and strengthening protection of civilians in North-Kivu

a. Bad faith: national political antagonisms are played out in North-Kivu

Far from improving the security climate in North-Kivu, the transitional authorities and various politico-military groupings, nationally and locally, have shown a readiness to promote a deterioration in the situation for their own factional ends. Rwanda and Uganda, too, with economic interests in the province, have continued to promote insecurity in the province.

It is no coincidence that ethnic pressures in North-Kivu, incited and manipulated by the political elite, are building up at a time when preparations for national and local elections and the process of army integration are underway. The various leaders, aware that these developments, if successful, would jeopardize the benefits they currently garner from military, political and economic control, have moved to consolidate and if possible extend their ethnic base. At the same time, attempts to sabotage both processes may be ongoing. Allegations of possibly organized fraud in the registration of electors in North-Kivu have already surfaced. Clear efforts have also been made to disrupt the *brassage* through non-compliance.

Unfortunately for the civilian population of North-Kivu, the DRC's political leaders have by and large shown themselves incapable of acting in the true interests of the Congolese people. The RCD-Goma and RCD-ML, intent on maintaining their military, political and economic hold over North-Kivu, but with little prospect for anything other than limited local success in the national elections, have resisted integration of national structures and unification of the country. The pro-Kabila "*clan katangais*" also fear a diminution, post-elections, of the Presidency's almost absolute supremacy over political and military affairs. All have some interest in delaying the electoral process or pushing it off track⁴².

In North-Kivu, RCD-Goma and RCD-ML leaders have enriched themselves with the natural resources of the province, have become owners of large tracts of land, or have vested themselves with profitable positions in state enterprises or the public administration. Revenues from taxation and economic exploitation have funded the RCD-Goma and RCD-ML's military and political growth, and have benefited from the trade network dominated by the RCD-Goma and their Rwandese connections, or the RCD-ML and their Ugandan connections⁴³. The hostile relationship between the pro-Rwandan RCD-Goma and the presidential "*clan katangais*" is perhaps the main factor driving insecurity in North-Kivu. However, the role of the RCD-ML, which holds effective control of the upper half of the province, is also an important element in the current poor human rights situation, not least because the two ethnic groups – the Nande and the Banyarwanda – with which the RCD-ML and the RCD-Goma respectively are aligned, are engaged in competition for the economic and political domination of the province.

⁴² Some commentators suggest that the debacle of Operation Bima and the failed Kanyabayonga offensive was intended to achieve precisely that.

⁴³ Despite their official divergence from Uganda to Kinshasa, the RCD-ML maintains important business links with Uganda.

For the Government in Kinshasa, the riches of North-Kivu also represent a powerful lure. The vested interest of the “*clan katangais*” close to President Kabila to maintain BalubaKat control of power in the DRC marries with a strong nationalist reflex. This taps in turn into the deep resentment felt towards Rwanda and the RCD-Goma by large sections of the Congolese population for their occupation of the east. However, unable to defeat the RCD-Goma militarily and wary of Rwandan military might, Kinshasa has instead resorted to a strategic erosion of the RCD-Goma’s hold on North-Kivu, aimed at undermining the RCD-Goma’s power base, military cohesion and political credibility bit by bit. This strategy takes a number of forms, including by paralyzing local decision-making through the recall to Kinshasa for long periods of RCD-Goma provincial administrative and military officials, and undermining the more moderate RCD-Goma leaders in the transitional government in decisions relating to security issues and reform of the army⁴⁴. On a more sinister level, it also includes demonizing ethnic Tutsi through pro-government media.

The main interests of the RCD-Goma are to retain political and military control of its remaining “bastion” in Masisi and Rutshuru territories, and the economic benefits accruing from this control. This involves maintaining the cohesion of its ethnic base and holding government forces as far as possible from the centre of its power, Goma. The group retains its commercial, political and military links to Rwanda. Many RCD-Goma members remain sceptical of, if not outrightly antagonistic to, the transitional process, and its hardline wing is inclined to rely on armed force as the guarantor of their political interests.

The controversial role of Governor Serufuli

RCD-Goma Governor Eugène Serufuli, a Hutu from Rutshuru, plays a central and not always beneficial role in North-Kivu and RCD-Goma politics. Identified closely with the Congolese Hutu “hardline” element, Governor Serufuli’s power and considerable independence in relation to both the official RCD-Goma leadership and the transitional government is an added factor in the problematic political and entrenched ethnic dynamics of North-Kivu.

⁴⁴ In the transitional government the RCD-Goma chairs the Political, Defence and Security Commission, and runs the Ministry of Defence. However, these institutions are reportedly frequently by-passed by the President’s entourage.

Appointed as Governor of the province by Rwanda in 2000, Serufuli has been central to the emergence of a politico-military organization, presenting itself as a development NGO, *Tous pour la paix et le développement* (TPD), All for Peace and Development, which reportedly has powerful sponsors among the Congolese Banyarwanda and Rwandan Tutsi elites. Initially established to promote the repatriation of Hutu refugees to Rwanda, the TPD has also allegedly been active in the clandestine repatriation to North-Kivu of Congolese Tutsi refugees in Rwanda, in arming a largely Hutu militia in North-Kivu, the Local Defense Forces (LDF), and more recently, in distributing arms to Banyarwanda civilians in North-Kivu.

The formation of the LDF, a paramilitary force numbering several thousands under the personal command of Governor Serufuli, was key to the rise of Eugène Serufuli's political fortunes and the establishment of his local Hutu power base. The existence of the LDF allowed Serufuli to hold a political position – and a potential military one – that was largely independent of the RCD-Goma leadership, and has enabled him to retain power as Governor throughout the transition, despite his often overtly hostile attitude towards the transition and despite being named by the UN Group of Experts as having violated the UN arms embargo on the DRC⁴⁵.

In interviews with Amnesty International, Governor Serufuli maintained that the LDF had been disbanded in 2003, in preparation for national unification, with members integrated into the ANC or disarmed⁴⁶. Former LDF members are today believed to comprise a significant part of the 11th and 12th FARDC (RCD-Goma ANC) Brigades in Masisi and Rutshuru. Governor Serufuli reportedly retains extensive influence over these troops, paying them, and organising logistics for their operations.

In many ways, the position of the RCD-ML is also pivotal to the evolution of the situation in North-Kivu. RCD-ML leader, Mbusa Nyamwisi, appears to be deeply ambivalent about the transition and the other partners in the transitional government. Beni's geographical and commercial links continue to tie the RCD-ML firmly to Uganda. On the other hand, the RCD-ML and Beni-Lubero's strategic position, located between the DRC, Uganda and Rwanda, and possessing the only sizeable airport outside Goma into which major military movements to the east can be made,

⁴⁵ For more information on illegal arms flows in the region, please see Amnesty International July 2005 report, DR Congo: Arming the East (AI Index: AFR 62/006/2005)

⁴⁶ However, an ANC officer in Masisi territory reported to Amnesty International that armed LDF were still present in some villages in the territory.

means that the RCD-ML is open to courtship by all sides, but means also that it is well placed to disrupt the transition should its primary interests (consisting mainly of control of revenues and the maintenance of Nande economic power) be threatened.

b. Inflaming ethnic fears

Ethnic tensions in North-Kivu are at their highest pitch for a number of years. The deliberate inflammation of these tensions by political leaders of different communities, through radio broadcasts, public meetings and street tracts or demonstrations, is itself intimately related to the question of who will hold ultimate political and military control over North-Kivu. The danger of this ongoing mobilisation of ethnic populations for political ends is that it has left North-Kivu teetering dangerously on the edge of ethnic conflict.

Ethnic manipulation is especially evident in the case of the RCD-Goma “hardliner” leadership, who have sought to co-opt a reluctant and largely suspicious Hutu population to their cause by fusing the Congolese Hutu and Tutsi communities in North-Kivu into a single ethno-political community under the “Rwandophone” label. This is widely viewed as a Tutsi stratagem to co-opt the larger Hutu population into a position of supporting RCD-Goma control in North-Kivu and thus to deter attack by Kinshasa. This view reflects a political mindset (on both sides) that is again separating Banyarwanda from Congolese national identity and allying it more closely with perceived Rwandan interests in eastern DRC. One aspect of the current “fusion” of Hutu and Tutsi identity is that the perceived threat of genocide against the Congolese Tutsi in the DRC, often stated by Tutsi spokespersons, may now be being extended to the Congolese Hutu, with clear attempts being made by Tutsi leaders to convince Hutu that forces in Kinshasa are intent on their “extermination” also. This in itself represents a dangerous deterioration in the ethno-political configuration of North-Kivu.

Manipulation is evident, too, amongst the Nande populations, where the RCD-ML is keen to maintain its economic and military control over the *grand nord*, and among Hunde customary leaders who relish the possible demise of Banyarwanda political leaders as a chance to recover lost privileges. Leaders in these communities are reinvigorating old fears about the creation of an autonomous Banyarwanda homeland in North-Kivu (if not an outright annexation of the province by Rwanda) and a Tutsi-Hema “empire” extending from the Kivus to Ituri.

On 9 December 2004, these tensions worsened sharply in Goma when an unauthorised “Rwandophone” protest march took a route through a district of the town inhabited primarily by people of non-Banyarwanda ethnicity⁴⁷. The march, which demanded that Kinshasa reverse its decision to send 10,000 troops to the east, was joined by a number of RCD-Goma officials and ANC soldiers, and also reportedly contained several civilian protestors brandishing firearms. A counter-demonstration in support of Kinshasa’s decision was organized, and the situation degenerated into violence in which two demonstrators were killed and a number wounded.

Many Banyarwanda moderates refused to take part in the “Rwandophone” march. Many Banyarwanda would reportedly welcome the extension of DRC state authority to North-Kivu and resent attempts at manipulation by some of their pro-Rwandan community leaders. On the other hand, badly treated since independence and deprived of effective political representation, many Banyarwanda, even those who are Congolese nationalist in outlook, have reason to doubt the sincerity of central government. They look forward to elections as an opportunity to choose representatives who faithfully reflect their position.

A disturbing element of this is that moderate RCD-Goma politicians, who see the transition as the only viable way forward to the satisfactory representation of their interests, appear to have lost ground in North-Kivu to the more hardline actors. In part, this failing is the government’s, since little has been done by the DRC’s political leadership to allay the genuine fears of the Banyarwanda community that a continuation of nationalist government policies will not again lead to the exclusion of and discrimination against the most vulnerable ethnic minorities.

Arming civilians

Large quantities of small arms were reportedly distributed to Banyarwanda civilians in numerous villages in Masisi territory from October 2004. A number of Banyarwanda administrative officials and community leaders, some of them close to provincial governor Eugène Serufuli, have been named by Congolese NGOs as the alleged local organizers of the distribution. However, the major organizers and the source of the arms remain unidentified.

⁴⁷ The Hutu moderate mayor of Goma, Francois-Xavier Nzabara Masetta, told Amnesty International he had refused permission for the march because authorization had not been sought in time and because of concerns at its planned route. The organizer of the march, Francois Gachaba, claimed in an interview with Amnesty International that this district lay unavoidably between the Banyarwanda areas and Goma city centre, where a rally was planned.

According to reports the arms included personal sidearms, bolt-action rifles, automatic rifles and smaller quantities of rocket propelled grenades and mortars, together with ammunition. One official interviewed by Amnesty International spoke of one rifle and 60 bullets being distributed to each recipient. The distributions were reportedly continuing, although on a smaller scale, at the time of an Amnesty International visit to Masisi in February 2005. Sources also allege that arms depots and arms training centres were established as part of the operation.

The organizers reportedly justified the arms distribution as necessary for the self-defence of the "Rwandophones" from FDLR attacks, but also from what they allege is the Kinshasa government and FARDC intent to drive the "Rwandophones" from North-Kivu. Other ethnic groups in the area, principally Hunde, have expressed fears that the arms will be used against them. According to several people interviewed by Amnesty International, the clear impression gathered by both Hunde and Banyarwanda communities was that the distribution of arms was in preparation for a sustained round of ethnic violence. These fears were given added focus by the killings by RCD-Goma (ANC) soldiers of primarily Hunde civilians at Nyabiondo in December 2004, where survivors alleged to Amnesty International that they saw armed Banyarwanda civilians with the RCD-Goma (ANC) at the time of the RCD-Goma (ANC) attack (see above).

Many Banyarwanda civilians appear to have been coerced into accepting the arms, and Amnesty International has received reports of civilians who were beaten or chased from their villages after refusing to take the arms. An 18-year-old male, **Ngesha**, was reportedly shot and wounded when he refused the arms. Jean, a Hutu villager from Masisi, told Amnesty International delegates that: *"I refused to take the weapon. They told me that the weapons were to protect ourselves against the FDLR, but there has been no FDLR threat here for a long time. I believed that they were distributed to drive us apart from the Hunde, and rumours were spreading that they themselves wanted to expel all Banyarwanda from North-Kivu. There are so many fears and rumours lately..."*

The distribution of military weapons has contributed to an apparently significant rise in insecurity and ethnic tensions in the province. A local police official interviewed by Amnesty International confirmed a rise in armed robberies and ambushes on the roads in his area, and a generally more aggressive stance by Banyarwanda towards the police, many of whom originate from outside North-Kivu.

In an interview with Amnesty International, Governor Serufuli denied that any organized distribution of arms had taken place. He explained it merely as a “proliferation”. RCD-Goma (ANC) officers in Masisi interviewed by Amnesty International did not deny the distributions, only insisting that these had nothing to do with the ANC and noting that arms were already present among the local Hutu population because of the LDF (which is certainly true). Nevertheless, growing insecurity had, they said, forced their FARDC (ANC) Brigade to confiscate weapons from some Hutu villages in the vicinity. One officer remarked that his own unit had recovered 17 arms from one village.

Forthcoming elections amplify ethnic fears

Much of the current ethnic tension in North-Kivu is centred on the forthcoming elections. The electoral program will take place in an environment which has been ethnically radicalised over the last year. This is likely to make preparations for the elections and the electoral process itself a dangerous period.

Added tension stems on the one hand from the apparently widespread suspicion amongst Hunde, Nande and other communities that the Banyarwanda in North-Kivu are intent on establishing the Masisi and Rutshuru territories as a “Rwandophone” and therefore de facto Rwandan-controlled homeland. In this optic, they suspect the Banyarwanda community of hosting many “interlopers” who came from Rwanda since 1960. They fear, too, that the elections results will be distorted by Rwandan nationals crossing the notoriously permeable border to register to vote illegally and later to take part in the elections.

On the other hand, the Banyarwanda complain that no provision has yet been made by the DRC national authorities which would allow the reportedly thousands of Congolese Banyarwanda living beyond the DRC’s borders (mainly in Rwanda) to return to the DRC to register to vote. The process of disentangling Congolese from non-Congolese nationality to determine eligibility to vote is likely to be a fraught one: a variety of identity documents⁴⁸ will be accepted as part of this process but over time many of these have been forged or acquired illegally. The expected return of thousands of Banyarwanda refugees from Rwanda to North-Kivu, could pose serious security risks during the registration and polling stage of the process.

⁴⁸ They include passports, nationality certificates, identity cards, driving licences, pension books, student or school identity cards. In case of dispute, identity can be confirmed by five people already accepted as eligible voters who have lived in the local area for five years or more.

c. The growth of “parallel structures” to maintain military, economic and social power

“The leaders of this country go along with the transition so far, but when it touches their primary interests, that they don’t accept” – senior revenue official, eastern DRC, interviewed by Amnesty International in February 2005.

Many areas of the east are subject to “parallel” or duplicate structures in the military and other areas of public administration, with one structure loyal to central government and the other to the locally dominant armed group. The phenomenon is especially marked in North-Kivu, where the lack of real national unification and continuing rivalry between the RCD-ML and RCD-Goma, and between these two groups and the government, prevents cooperation on almost every level.

This is especially pronounced among the military hierarchy in North-Kivu. The former FARDC commander of the 8th (North-Kivu) Military Region, General Obed Rwibasira, a Tutsi from North-Kivu, appeared to stall consistently on implementing orders from FARDC Headquarters in Kinshasa. Deputy Regional Military commanders drawn from pro-government contingents, whose authority was not respected by ANC troops in North-Kivu, were marginalized and left dangerously exposed. On more than one occasion, fighting has broken out in Goma between the deputy commanders’ bodyguards and ANC soldiers. General Obed Rwibasira was replaced after the December 2004 events by General Gabriel Amisi, also known as *Tango Fort*⁴⁹, who although also drawn from the RCD-Goma (ANC) officer corps, is apparently more well-disposed to military integration in North-Kivu. Nevertheless, his appointment has not entirely resolved the problems of parallel chains of command in North-Kivu. The 8th Military Region Command reportedly has only limited authority over some FARDC (ANC) units in North-Kivu, especially some located in Rutshuru territory.

The struggle for economic supremacy is also an important one in terms of the security situation in North-Kivu. The province’s territories are replete with mineral wealth and valuable timber, are agriculturally rich and home to large cattle-ranching concerns. Both Goma and Beni are important customs clearance points for goods arriving from Rwanda, Uganda and further afield in East Africa, and the import taxes and other duties collected in the two cities are substantial. Customs and

⁴⁹ General Gabriel Amisi was accused, with Laurent Nkunda, of war crimes including killings, summary executions and rapes in Kisangani in May 2002. “Congo: War Crimes in Kisangani: the Response of Rwandan-backed Rebels to the May 2002 Mutiny”, Human Rights Watch, 20 August 2002.

other taxes collected in Beni and Lubero territories, for example, reportedly amount to between US \$6 - 7,000,000 per annum according to local sources. Control or a share in the profit of these resources represents the economic lifeblood of armed groups in the area, who have used the money generated to equip their forces, prosecute conflicts and embed themselves in power. Control of the border posts has also greatly eased the armed groups' illicit acquisition of weaponry from abroad.

The transition and process of national (re)unification, which aims to place all these resources at the disposal of the national treasury, represents a real threat to the survival of the armed groups, and they have gone to considerable lengths to protect their sources of income. In late 2004, for example, the transitional government sent customs officers to Beni to wrest back control of collection of import duties from the RCD-ML. The customs officers were subject to a campaign of intimidation, including by being barricaded in their offices by RCD-ML soldiers, preventing them from doing their work and eventually forcing them back to Kinshasa.

Millions of dollars are at stake. As the process of national fiscal integration proceeded and gained strength, informed local sources reported "a visible reduction" in tax receipts being recorded from the RCD-ML controlled territories of Beni and Lubero, from \$6,500,000 in 2003 to \$4,500,000 in 2004, of which only \$3,500,000 was transferred to the national treasury, according to Amnesty International interviews. The rest, according to these sources, was "*canalisée*" (diverted) to RCD-ML political or military figures, for their private profit or for politico-military uses. A portion of the tax loss was also attributed to RCD-ML officers accepting bribes from traders to organize the passage of their goods through customs without paying duties. In February 2005 a customs official in Beni, **M.K.M.**, was abducted by four soldiers, who then beat him so severely that he spent several days in hospital. A RCD-ML major (who may, according to separate sources, be a Ugandan national) was believed to have been behind the attack after M.K.M. objected to the illegal importation of unspecified goods from Uganda by the major.

Overall, public life in North-Kivu is mired in a hopeless tangle of parallel administrative structures, all intent on making a financial profit at the expense of the Congolese population. North-Kivu, nominally under a unitary provincial authority in Goma, is financially split between north and south. For example, the RCD-Goma, through its *Office pour la Protection des Recettes Publique* (OPRP), Office for the Protection of Public Revenues, imposes "import" taxes on traders attempting to move

goods from the RCD-ML to the RCD-Goma zone. The OPRP exists to rectify the anomaly whereby revenues received in Beni and Lubero should be administered by the provincial authorities in Goma, something that the RCD-ML and Nande business elite have rejected. Salaries paid to public officials from central funds in Kinshasa are frequently delayed or do not arrive at all, and public officials such as judges working in the RCD-ML zone experience the additional problem that their salaries are sent to the provincial authorities in Goma, who then deduct arbitrary “transfer charges” from the salaries before forwarding them north.

It is alleged that some government officials have a hand in this corruption. Commissions of inquiry established to conduct financial assessments of tax receipts across the country have been blocked at senior government levels. “Kinshasa is not making much effort... As long as Kinshasa still gets its cut, everyone is satisfied with the status quo,” one official told AI, before remarking that the country could make so much greater progress if there was clear and accountable government control of public revenues.

5. MILITARY INTEGRATION AND CONTINUING HUMAN RIGHTS ABUSES IN NORTH-KIVU

a. Risks and fears associated with military integration in North-Kivu

The *brassage* process in North-Kivu began in February 2005 with the opening of two *centres de brassage* in Mushaki, close to Goma in RCD-Goma controlled territory, and Nyaleke, close to Beni in RCD-ML territory⁵⁰. The *brassage* process had until then been badly stalled, but was given impetus by the fighting of December 2004 and the arrival of General Gabriel Amisi as the new regional military commander. General Amisi has reportedly made considerable progress in bringing the various military contingents to agreement over the *brassage*, which is generally welcomed by the rank-and-file soldiery.

Nevertheless, the *brassage* in North-Kivu risks being undone by the conflictual politics of Kinshasa and Goma. For many among the RCD-Goma and RCD-ML, the *brassage* risks detaching them from their traditional military base and they are inclined to resist the process, suspecting that it is

⁵⁰ Amnesty International has visited both sites and interviewed the commanders and some of the soldiers there.

part of a Kinshasa strategy to erode their military strength. Some RCD-Goma hardliners have also maintained that the *brassage* in North-Kivu is simply a vehicle for the introduction of government forces into the RCD-Goma zone. The *centre de brassage* at Nyaleke, near Beni, also threatens RCD-ML interests since it lies on the commercially important Kasindi-Beni road, control of which the RCD-ML will reportedly not let go.

The *brassage* also risks being undone by strengthening ethnic tensions in the province and by the reluctance of many military commands to cooperate fully with the process. Some units have refused to enter the process. This in itself has not improved the human rights climate in the province, since these units often contain the most hardline elements and generally have the worst human rights records. The 5th FARDC (ANC) Brigade based in Goma refused the *brassage* in December 2004 and removed non-Banyarwanda soldiers in its ranks. The 12th FARDC (ANC) Brigade in Rutshuru has similarly resisted the process and continues to commit widespread human rights violations in that territory. In late August 2005, about 500 RCD-Goma (ANC) soldiers reportedly deserted their units because they opposed integration into the FARDC.

In general, none of the military contingents – government, ANC or APC – appear to be sending their best soldiers for integration. For example, one of the first RCD-Goma (ANC) brigades to be sent to Nyaleke was the 55th battalion, reportedly a mixed reserve unit which is composed of only very few Banyarwanda soldiers. Among those sent to Nyaleke by pro-government commanders were hundreds of mayi-mayi who had been deployed for several months in the nearby Mangango military camp. Most of these fighters, however, had come to Mangango on the promise that they would be demobilised and allowed to return to civilian life.

A further issue is that many of the battalions entering the *brassage* are noticeably under strength, some containing as few as 200 men against the notional 700, although it is not clear whether this is the result of “*soldats fictifs*” (illusory soldiers, corruptly entered on the pay rolls) or whether brigades were deliberately sending fewer soldiers. The rush to make up the numbers and at the same time to ensure that only the least suitable soldiers are put forward for *brassage*, led a pro-government commander to empty Beni Central Prison of 50 soldiers on 2 March 2005 and include them in a detachment being sent to Mushaki. Among the 50 were six men serving long prison sentences, or under sentence of death, for murder and another nine men serving sentences of between one and five years for other offences. The rest were imprisoned on “benign” military

offences such as insulting a superior officer or going absent without leave. The Beni military prosecutor strongly protested the release of the 15 men serving long sentences, but was overruled by the commander. In a later interview with Amnesty International in February 2005, the military prosecutor described the commander's action as "an insult to the rule of law"⁵¹

The *brassage* in North-Kivu also risks failure because of lack of resources and reported corruption amongst military commanders. Pay for the soldiers does not arrive or is corruptly diverted by senior officers. Living conditions in both camps are poor, with makeshift shelters and a lack of food, water and medical supplies. At Nyaleke, it has been alleged that military commanders sell food and medical supplies meant for their soldiers on the open market.

Poor conditions have led to disturbances in the camps, an increase in the number of desertions, and insecurity in surrounding areas, where civilian populations are subjected to looting of crops and other items. This is particularly so at Nyaleke, where a large population of soldiers' wives and children live in miserable conditions just outside the camps, many suffering from diarrhoea, malaria and other diseases. Many of these dependants come from the west of the country, and have no local support. They and the soldiers therefore rely on stealing foodstuffs from nearby fields. Insecurity has also affected civilian populations along the paths and roads being used by military units to travel to the camps, with soldiers pillaging or committing other human rights abuses⁵².

Among the Congolese people and the large majority of soldiers, there is enormous goodwill towards the *brassage*. One women's NGO worker told Amnesty International, "*We want proper identification of soldiers, to know if a soldier really is a soldier, with training, and not some bandit*".

⁵¹ On the morning of 2 March 2005, Colonel Bindu, Deputy Regional Commander of the 8th (North-Kivu) Military Region, accompanied by the Beni Military Prosecutor (Auditeur Militaire), a captain, arrived at Beni Central Prison to oversee the release of the 35 men serving "benign" sentences, according to a list already prepared with the agreement of the Military Prosecutor. The names of the 35 were read out and told they were to be released. Colonel Bindu, reportedly without consulting the Military Prosecutor, then announced that he required 50 men and proceeded to pick out a further 15 prisoners "au hasard" (arbitrarily), according to one witness. The 50 prisoners were then escorted to a waiting truck. As they boarded the truck, the prison director conducted a head-count of the prisoners, but failed to check their identities. One prisoner was left behind while another adopted his identity escaped. As the group left the prison, a near-riot erupted as other military and civilian prisoners, enraged by what had happened and seeking their own escape, tried to force open the prison gate. The Beni Military Prosecutor later submitted to official written complaints to the regional and national Military Judicial Commands. *Amnesty International interviews with military judicial officers, prison officials and prison inmates, Beni, February 2005.*

⁵² Although MONUC has taken a role in escorting some contingents to the *centres de brassage*, this does not apply to soldiers travelling to collection points for onward travel to the centres.

Women in eastern DRC in particular have suffered atrociously at the hands of the military and militia groups in the region and look to military integration to reduce the levels of sexual violence in the east⁵³. However, as the Beni prison incident demonstrates, those overseeing the *brassage* appear not to be especially concerned at putting forward men who are clearly unsuited to professional military service. The integration process is supposed initially to screen out those unsuited (“*inapte*”) for the army, whether by virtue of age (no under-18s may enter the national army), physical condition or for “moral” reasons. Yet many troops who are reasonably suspected of committing serious human rights abuses are being allowed to enter the *brassage* with no questions asked. These include elements of the 12th FARDC (ANC) Brigade at Mushaki camp who took part in the Nyabiondo killings. The training associated with the *brassage* is basic weapons instruction and military training: essential human rights and international humanitarian law programmes are not included.

While there is measured optimism about the process in North-Kivu, there is also a widespread fear that the *brassage* may fail, leading to a further deterioration of human rights and civilian protection. Great uncertainty also prevails on what will happen after the *brassage*, since many North-Kivu civilians fear losing the protection of “their” local military force, drawn from their own towns and villages and with strong ethnic ties to the people, to be replaced possibly by soldiers of an antagonistic ethnic group. The soldiers also fear being sent to areas of the country where they will not be accepted by the local population. Nevertheless, the creation of a genuinely integrated national army requires just this. The government has so far remained silent on the issue of future deployments of integrated brigades.

b. Ongoing human rights abuses

Largely as a consequence of armed groups failing properly to engage in the *brassage* process, North-Kivu as a whole remains the scene of ongoing human rights abuses on a daily basis, but the situation in Rutshuru territory is of particular mounting concern. Here the indiscipline of troops and ongoing fighting between the FDLR, the unaligned mayi-mayi militia of “Colonel” Jackson Kambale and the FARDC (ANC) 12th Brigade, commanded by Colonel Smith Gihanga, has led to a number of abuses.

⁵³ See Amnesty International report, *DRC: Mass rape – Time for remedies*, AI Index: AFR 62/018/2004, 26 October 2004.

Soldiers of the 12th Brigade frequently attack traders on the road between Goma and Butembo. During the night of 2 May 2005, FARDC (ANC) troops reportedly executed a trader at Kiwanja. In reaction to this killing, the local population barricaded the road to protest against the violence in the area, which prevents them from travelling on the roads. On 11 July, Jackson's mayi-mayi units reportedly attacked FARDC (ANC) positions in the areas of Nyakakoma, Ishasha and Nyamilima. During the fighting civilians were targeted, and several were reportedly killed, including a baby⁵⁴. After the civilians fled the villages, the mayi-mayi occupied and looted them. The FARDC regained control of Nyamilima the following day after the withdrawal of the mayi-mayi. On the night of 15 July, four men and an eight-year-old boy were reportedly killed and their houses looted in the course of a FARDC (ANC) 12th Brigade counter-insurgency operation in Nyakakoma. On 6 August, two civilians were killed during the fighting in Ishasha which erupted again between the mayi-mayi against the FARDC (ANC).

c. Human rights defenders in danger

Human rights defenders in DRC work in conditions of extreme danger. Many Congolese activists have been victims of torture, extrajudicial execution and arbitrary arrest. In most areas the local political and military authorities are hostile to the activities of the local NGOs, which they fear may expose their involvement in human rights violations. The activists are frequently called in by the authorities for questioning or to settle so-called "administrative matters" that are in reality thinly disguised acts of intimidation; their offices are subject to unannounced visits by security officials. In some cases, human rights activists have been threatened with death at gunpoint.

In North-Kivu, civil society and human rights NGO revelations of the arms distributions led to a spate of death threats against them and a number were forced to flee the DRC. On 6 January 2005 the Director General of the human rights organization *Action Sociale pour la Paix et le Développement* (ASPD), fled Goma after spending several days in hiding. He had received anonymous threatening phone calls and a visit to his home by security agents. He was reportedly told: "You have become a politician. Be careful because you risk paying dearly."

Another human rights defender, the Director General of the *Centre de Recherche sur l'Environnement, la Démocratie et les Droits de l'Homme* (CREDDHO) also fled in January 2005

⁵⁴ *Exactions contre des civils à Nyakakoma*, MONUC, 28 July 2005.

after receiving repeated threatening phone calls. One of these calls reportedly warned him in stark terms: "If you think you are protected you are wrong. We have a program to kill you". On 3 January 2005 three men, believed to be local military intelligence agents, visited his neighbourhood asking to be shown his house. A third activist and spokesperson for a coalition of human rights organizations was forced to flee after receiving repeated threats. One phone call threatened, "We will shut you up for good". His home was visited on 31 December 2004, while he was away, by three armed men who demanded to know his whereabouts.

Human rights and development activists in other provinces of DRC have also been targeted recently. These include in Bukavu, South-Kivu. On 31 July 2005, human rights activist Pascal Kabungulu Kibembi, the Secretary-General of *Héritiers de la Justice* (Heirs of Justice), a leading human rights organization, was extrajudicially executed at his home allegedly by FARDC soldiers. By September 2005 the official investigation into his killing had made little progress.

6. THE WAY FORWARD

The success of the transition will depend to a large extent on ensuring a peaceful solution to the underlying crisis in North-Kivu. This in turn involves ensuring that the military integration process includes human rights safeguards and that ethnic tensions are calmed. Civilian populations, and particularly the moderates on all sides, could be significantly reassured by properly investigating human rights abuses in the province and by removing the perpetrators from positions of power and bringing to justice those who have committed crimes under international law. Given the propensity for further violence in the province in the immediate future, civilian protection needs also to be strengthened as a matter of urgency.

a. The *brassage* process must include human rights safeguards

Successful military integration based on human rights principles is key to ending the large number of human rights abuses being committed by a range of unaccountable military forces in North-Kivu. It is essential to establishing a security climate that would enable elections to take place free of intimidation and widespread human rights violations. It is important that the formation of the integrated army is a process that is coordinated with efforts to halt impunity for crimes under international law and other human rights abuses. Perpetrators should not be placed in positions

where they could repeat the abuses. To help prevent this, the integration process should include an impartial mechanism to ensure that those reasonably suspected of crimes under international law or other human rights abuses are not recruited into the integrated army. Such a screening mechanism should work alongside independent and impartial investigations and other measures to bring perpetrators to justice (see below). As many of the recruits into the integrated army are to be drawn from former armed groups now in the transitional government, such measures form an essential component of the creation of a national army that can be an agent of support for human rights.

b. Calming ethnic tensions

Amid the presently strained ethnic relations of North-Kivu, the moderate Congolese voice (whether Banyarwanda, Hunde, Nande or other) needs to be heard much more clearly. The transitional authorities nationally and locally need to encourage a climate of much greater consensus and tolerance among North-Kivu's populations. The government and all political parties need to provide clear public reassurance that the post-transitional political climate will be a genuinely inclusive one which ensures respect for the human rights of members of all ethnic communities. Hence, the government in Kinshasa must take immediate steps to ensure that the vilification of the Banyarwanda community, which in some cases may amount to incitement to ethnic hatred, in sections of the national media is ended.

At the same time, the damage done by the distribution of arms to civilians needs to be undone. The RCD-Goma and FARDC (ANC) brigades in North-Kivu, in liaison with MONUC, could take a lead by mounting operations in Masisi and Rutshuru to recover these arms, handing recovered arms over to MONUC for destruction. Those who organized the illegal distribution should be brought to justice.

Also key to improving ethnic relations will be to ensure respect for the human rights of human rights defenders, development workers and other independent observers, such as journalists, in the province and across the country. Amnesty International believes that the transitional government should develop and implement an action plan for the protection of human rights defenders in line with the UN Declaration on Human Rights Defenders⁵⁵.

⁵⁵ UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms

c. Prepare the way for elections free from intimidation and other human rights abuses

Amnesty International believes that the DRC national authorities, as well as the international community, which has already made a substantial financial commitment to enable the elections to take place, should take effective steps to ensure an immediate end to human rights abuses in the context of the forthcoming elections, including the arbitrary arrest and detention of political activists, and an immediate improvement in the prevailing climate of political repression in the DRC. Amnesty International is particularly concerned about the cases of a number of individuals held in pre-trial detention, some of whom may be prisoners of conscience. These cases include a number of UDPS activists being held incommunicado in Tshatshi military camp in Kinshasa, UDPS/Kisangani President **Claude Ramazani Mwenyewe Diolase**, held in detention in Kisangani central prison, and other detainees from Lubumbashi held in Kinshasa's central prison in connection with a so-called separatist plot in Katanga⁵⁶.

d. Civilian protection: need for MONUC to implement its mandate unreservedly

In the Kivu provinces MONUC acts under a Chapter VII mandate of the UN Charter, which authorises it to use armed force to protect civilians. UN Security Council Resolution 1592 authorises MONUC it "to use all necessary means within its capacities and in the areas where its armed units are deployed, to deter any attempt at the use of force to threaten the political process and to ensure the protection of civilians under imminent threat of physical violence from any armed groups, foreign or Congolese...and *stresses* that in accordance with its mandate, MONUC may use cordon and search tactics to prevent attacks on civilians and disrupt the military capability of illegal armed groups that continue to use violence in those areas."⁵⁷

Despite the clarity of its mandate in the Kivus, MONUC has failed on several occasions to protect civilians from human rights abuses. All too often, its peacekeepers have either not intervened at all to avert attacks or have arrived too late on the scene to offer meaningful protection.⁵⁸ Some of

⁵⁶ See Amnesty International Urgent Action 142/05, AI Index: AFR 62/005/2005, 26 May 2005. Some of these detainees have since been released.

⁵⁷ United Nations Security Council Resolution 1592, 30 March 2005.

⁵⁸ In June 2004, in perhaps the most important example, MONUC failed to intervene to prevent the fighting in Bukavu, and the subsequent widespread killings of civilians and systematic looting of civilian property. Its operations during this time consisted only of isolated road and helicopter patrols. It did shelter a number of threatened people, including human rights activists, and on occasion mounted patrols to collect individuals at risk from their homes. It was reported that some MONUC peacekeepers in Bukavu wanted to intervene, but were instructed not to do so.

these failures to protect civilians from human rights abuses can be attributed to the lack of adequate numbers of peace-keepers, which has on occasion severely limited MONUC's capacity to react to events. By June 2005, MONUC numbered 15,946 troops for a country the size of Western Europe and DRC population of 56 millions, roughly the same amount of peacekeepers deployed in Liberia to protect a population of 2.5 million. However, MONUC has also been confronted with the dilemma of not wanting to alienate the various components of the transitional government.

MONUC has also increasingly been drawn into the middle of international debate about the efficacy and expense of UN peacekeeping operations. MONUC is one of the most expensive of these operations, although any meaningful comparison with other peace-keeping operations must also take account of the size of the DRC and the complexity of the conflict there. Moreover, MONUC has also suffered badly from allegations that some peacekeepers engaged in sexual exploitation or sexual violence in eastern DRC⁵⁹. These pressures have weakened MONUC's international and national standing, and led to a lowering of morale among MONUC staff members.

In this context, there is increasing speculation that the UN is considering a staged withdrawal of peacekeeping forces from the DRC once elections have successfully taken place. Senior MONUC commanders have recently been making stronger statements that FARDC and DRC government authorities need to assume greater responsibility for operations previously undertaken by MONUC. The latest UN Secretary-General's report on MONUC⁶⁰ asserts that "the MONUC exit strategy in [Ituri and the Kivus] depends on the capacity of FARDC and the Congolese national police to provide a minimally acceptable level of security" while also deploring the fact that "...FARDC operations continue to suffer from a severe lack of basic logistic resources. More importantly, command and control within FARDC ranks depends on the provision of food and salaries for its soldiers. These issues must be addressed on an urgent basis, keeping in mind the long-term development of the Congolese security forces"⁶¹.

⁵⁹ For more information, see Amnesty International report *Democratic Republic of the Congo: Mass Rape- time for remedies*, AFR 62/018/2004, 26 October 2004. See also the UN report "A comprehensive strategy to eliminate future sexual exploitation and abuse in the United Nations peacekeeping operations," (UNSG, A / 59, 710). This report was undertaken by the UN Secretary-General's adviser on sexual exploitation and abuse by UN peacekeeping personnel, HRH Prince Zeid Ra'ad Zeid Al-Husseini.

⁶⁰ Eighteenth report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo, S/2005/506, August 2005, para 36.

⁶¹ Ibid

Amnesty International has consistently advocated the strengthening of MONUC's mandate and the size of its peace-keeping personnel. While persistent and widespread violence against civilians in eastern DRC continues, Amnesty International would view with deep concern any prospect of a MONUC withdrawal from the country's most insecure areas. UN Secretary-General statements referring to possible withdrawal subject to a "minimally acceptable level of security" being provided by the DRC authorities are unlikely to assuage civilian fears in these areas and do not sit comfortably with MONUC's Chapter VII mandate. Particularly during the increasingly tense period leading up to the elections, the most pressing need is that civilians be protected from human rights abuses. MONUC should therefore step up its efforts and capacity to undertake more robust actions to fulfil its mandate of civilian protection. In order for MONUC to help the peace process to evolve, it is essential that MONUC capacity be reinforced in the Kivu provinces.

e. Justice: build an independent functioning judiciary

Since the beginning of the transition, the government, which comprises all the major former warring parties, has lacked the political will to investigate and bring to justice those former armed group leaders and military and security personnel from among their own ranks who are suspected of committing, ordering or condoning crimes under international law and other human rights abuses⁶². This has effectively encouraged soldiers of the FARDC (in all its guises and factions) and other DRC security forces to commit further crimes and abuses in the transitional period. Establishing greater respect for and protection of human rights in the post-transitional period relies on ending this cycle of impunity. Overcoming impunity contributes to the rehabilitation of victims. It helps to promote a public morality base on human rights values by emphasising that human rights violations must not go unpunished.

Persons allegedly responsible for crimes under international law and other human rights abuses have assumed key military and political positions in the transitional process at the local and national levels. In the DRC, virtually no trials have taken place of high profile individuals suspected of committing or ordering human rights abuses. The commanders and soldiers of the military forces allegedly responsible for abuses such as those committed at Kanyabayonga, Nyabiondo and Buramba also continue to enjoy impunity. Some officers have even been promoted despite allegations that they have committed crimes under international law.

⁶² Although a number of military commanders from Ituri, who are not represented in the transitional government, have been arrested and are held in Kinshasa central prison, they have not yet been brought to trial.

In most provinces, civil courts do not function properly. Although the DRC has many trained lawyers, magistrates and judges, the judiciary has become ineffectual as a result of decades of state neglect and the conflict. Non-payment of salaries to the judiciary, as to most state employees in the DRC, has an immensely demoralizing and corrupting effect on the judiciary. However, the reconstruction and reform of the justice system is not among the major priorities of the DRC transitional government⁶³. While much international financial and technical assistance is directed to the preparation of the elections, this assistance appears not to be available to the reconstruction of a genuinely independent and effective national judicial system.

Economic constraints are among the factors impeding justice for the thousands of victims of human rights abuses. Judicial institutions are starved of financial resources and even of basic legal texts, including national legal codes. The functioning of the judicial system in eastern DRC relies principally on complainants paying for paper and other materials used by the courts, and for the transport costs of prosecutors and magistrates to investigate cases. For want of funds, many legal actions are never brought. Many pre-trial detainees languish in prisons because there is no money for the costs involved in bringing them to trial, including transport for bringing detainees to court. This is the case, for example, with detainees held in Beni central prison, whose cases fall under the jurisdiction of the Butembo court, approximately 50 kilometres distant.

Moreover, the judiciary is also widely influenced by the national or *de facto* local political and military authorities. Judicial officials are appointed or promoted on the basis of their ethnic or political affiliation. Political or military pressure has also been exerted on judicial officials not to arrest, or to release without trial, people suspected of criminal offences or, on the other hand, to issue arrest warrants against or convict political opponents. In this context, potential witnesses have often refused to cooperate with the judiciary and few victims have had the confidence in the judicial system to lodge a legal complaint, even if they have the necessary funds. The continuation in power of many of the same local authorities in Goma and Beni (administrative, judicial and military) who were in power at the time when the abuses were committed, make the victims and witnesses fear reprisals. Moreover, political interference and release of perpetrators undermines the confidence of witnesses, victims or their families in the judiciary.

⁶³ In 2004, the transitional government allocated reportedly only 0.6 percent of the total budget to the needs of the judicial system.

Perpetrators must be brought to trial in accordance with international law and standards of fair trial, regardless of their position, nationality or the ethnic group to which they belong. There can be no genuine trust and reconciliation in the DRC, unless justice is done, the truth about human rights abuses established and full reparation is provided to the victims. In a previous report⁶⁴ Amnesty International encouraged the European Commission initiative to undertake a Joint Assessment Mission to review the criminal justice system and determine measures needed for its reconstruction. In May 2004 the “Joint Assessment Mission on the Justice System in the DRC⁶⁵” was completed and described the DRC judicial system as being in a state of devastation and dysfunction. Since then, however, little follow-up appears to have taken place at the national and international level and recommendations have not been implemented.

No independent, impartial and competent body exists in the DRC with the capacity to investigate the country-wide reports of human rights abuses. A national truth and reconciliation commission (TRC) and National Human Rights Observatory (ONDH) have been established in the DRC, but their mandates remain unclear and they lack resources, expertise and independence. MONUC has a human rights section which undertakes monitoring and reporting on human rights abuses, and a human rights special investigation team which investigates some of the most serious incidents of human rights abuse. However, in most cases, their reports are not made fully public and cannot adequately monitor the human rights situation with the insufficient resources at their disposal.

In July 2003 the Prosecutor of the International Criminal Court (ICC) announced a preliminary examination of crimes committed in the DRC since 1 July 2002 that could constitute genocide, crimes against humanity and war crimes⁶⁶. In March 2004 the President of the DRC referred to the Prosecutor of the ICC the situation of crimes allegedly committed in the DRC and in June 2004 the Prosecutor formally opened an investigation. Suspected perpetrators of the crimes under the jurisdiction of the Court are being investigated and, if there is sufficient admissible evidence, could be prosecuted before the ICC. However, the ICC’s jurisdiction relates only to crimes committed on

⁶⁴ “DRC-Addressing the present and building a future”, A Memorandum to the DRC transitional government of national unity, armed groups and foreign governments involved in the DRC conflict, and the international community, November 2003, AI Index: AFR 62/050/2003.

⁶⁵ “Audit organisationnel du secteur de la justice en RDC, Rapport d’Etat des Lieux, Synthèse”, May 2004.

⁶⁶ The Rome Statute of the ICC entered into force in July 2002. The DRC ratified the Rome Statute on 11 April 2002. The ICC has jurisdiction over crimes against humanity, war crimes and genocide committed after the entry into force of its Statute.

or after the entry into force of the Rome Statute in July 2002. Moreover, the ICC is likely to prosecute only a handful of suspected perpetrators. The work of the ICC cannot substitute a national comprehensive action plan developed in close consultation with civil society to end impunity for crimes under international law committed in DRC, no matter how long ago they were committed. The DRC authorities must draft such a plan which ensures fair trials without the death penalty, effective measures to determine the truth about the crimes that were committed, and which guarantees in national law the right of victims to full reparations and provides the effective means to obtain them. Such a plan should receive the full support of the international community and should be fully implemented. The DRC Parliament must still adopt effective legislation implementing the Rome Statute of the ICC into the domestic legal system and eliminate the death penalty from the list of applicable sanctions, as recommended by Amnesty International⁶⁷.

RECOMMENDATIONS

TO THE DRC TRANSITIONAL GOVERNMENT

1. Improve the human rights situation by:

a) Ensuring the respect and protection of human rights by FARDC personnel:

- Issue clear instructions to all FARDC forces to uphold international human rights law and standards and international humanitarian law, including to halt unlawful killings, acts of rape, torture or ill-treatment, or other human rights violations against civilians.
- Ensure that FARDC troops are properly trained, equipped and paid. Training should include instruction on international human rights law and standards and international humanitarian law.
- Suspend from positions in the FARDC, and exclude from the military integration process, any individual against whom there is a reasonable suspicion of having committed or participated in crimes under international law or other human rights abuses, until such time as the allegations can be independently and impartially investigated.
- Eliminate all parallel or unofficial chains of FARDC military command.

⁶⁷ See Amnesty International *International Criminal Court: Guidelines for effective implementation of the Rome Statute* (AI Index: IOR 40/013/2004, September 2004).

b) Curbing the proliferation of small arms:

- Respect and enforce the terms of the UN arms embargo on the DRC, ensuring in particular that no supplies of arms or related materiel are provided to military units in North or South-Kivu or Ituri until they have completed their process of integration and are operating under official FARDC command structures.
- Ensure an independent investigation is conducted into the distribution of weapons to civilians in North-Kivu in violation of the UN arms embargo. Suspend from duty any public official allegedly involved in this illegal distribution.
- Conduct FARDC operations to recover and destroy weapons distributed to civilians in North-Kivu.
- Ensure the strict implementation of the UN Security Council decision in Resolution 1596 that “all future authorized shipments of arms and related materiel ... shall only be made to receiving sites as designated by the Government of National Unity and Transition, in coordination with MONUC, and notified in advance to the [UN Sanctions] Committee”. Designated sites should be effectively policed and monitored by MONUC 24 hours a day, seven days a week.
- Ensure that all weapons collected in the *brassage* process are securely and properly stockpiled and inventoried.

c) Ensuring that the military integration and disarmament, demobilization and reintegration (DDR) processes are consistent with human rights principles:

- Ensure that all military forces in North-Kivu enter into the military integration or DDR process without further delay.
- Establish an independent vetting mechanism to prevent entry to the integration process by individuals against whom there are reasonable suspicions of having committed or participated in crimes under international law or other human rights abuses, until such time as the allegations have been independently and impartially investigated.
- Ensure that those entering the integration process are individually identified, as essential to promoting accountability, preventing corruption and ensuring that foreign nationals are not entering the program.
- Provide the military integration sites with adequate resources to ensure that troops are properly fed, sheltered and paid, as essential in preventing human rights abuses against civilian

populations living in the vicinity of the integration sites. Ensure that training given in the integration process includes instruction on international human rights law and standards and international humanitarian law.

- Implement without further delay the DDR process for those individuals not wishing or considered unsuitable to join the integrated army, ensuring that this programme is properly resourced with funding, personnel, and effective community reinsertion projects.
- Ensure that MONUC and other relevant UN agencies and NGOs have unrestricted access to all military installations to identify child soldiers and properly coordinate their prompt release from the armed forces or groups and their reintegration into civilian life.
- Ensure that the DDR process for former child soldiers takes into account their special status and needs, and that it caters adequately for their long-term care and reintegration, including by providing appropriate psychological rehabilitation, educational and vocational opportunities.

d) Disarming, Demobilizing, Repatriating, Reintegrating, and Resettling (DDRRR) foreign armed groups

- Accelerate, in conjunction with MONUC, the DDRRR of foreign armed groups in the DRC, and ensure that this process is carried out with full respect for international human rights law and standards and international humanitarian law.

e) Protecting human rights defenders

- Develop an action plan for the protection of human rights defenders in light of the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

f) End arbitrary arrests of political opponents

- Take effective steps to ensure an immediate end to human rights violations in the context of the forthcoming elections, including the arbitrary arrest and detention of political activists.
- Promptly bring to trial, in compliance with international law and standards of fairness, or release those UDPS and other political activists held in pre-trial detention. Ensure that these individuals are brought promptly before a judge or other judicial officer, to review the lawfulness of

their detention, assess whether detention before trial is necessary, safeguard the well-being of the detainee and prevent human rights violations. Ensure that these individuals have their case heard by a competent, independent and impartial tribunal, in a trial providing all necessary international guarantees of fairness.

2. Defuse ethnic tensions by:

- a) Taking immediate action to prevent incitement to ethnic discrimination, hostility or violence in the media and in other public forums, and to investigate those instances where this has taken place. Suspend from their office any public official reasonably suspected of having incited ethnic discrimination, hostility or violence, pending an independent and impartial investigation. Prosecute those against whom enough evidence is gathered.
- b) Drawing up an action plan to counter ethnic intolerance and hostility in North-Kivu, in consultation with provincial civil society and members of parliament, to combat discrimination and guarantee equal rights.

3. Promote justice by:

- a) Undertaking prompt, thorough and impartial investigations into allegations of crimes under international law and other human rights abuses and, if enough evidence is gathered, prosecute the suspected perpetrators. In particular, impartial investigations into the unlawful killings of civilians and other human rights violations by FARDC forces in North-Kivu, including at Kanyabayonga, Buramba, and Nyabiondo must be conducted. Those conducting the investigations and prosecutions should be provided with the necessary material and financial resources to conduct such investigations and prosecutions promptly and effectively.
- b) Making the rehabilitation and reform of the national justice system a government priority, now and over the longer term. This involves ensuring that national courts and other relevant bodies have the necessary independence, competence and resources (including of training, personnel and finances) to work impartially.
- c) Promptly enact effective implementing legislation for the Rome Statute of the International Criminal Court, as recommended in Amnesty International's comments and recommendations on the July 2003 draft law implementing the Rome Statute of the International Criminal Court (AI Index: AFR 62/008/2004).

- d) Fully cooperate with the investigation by the Prosecutor of the International Criminal Court into crimes under international law committed in DRC after July 2002.

TO THE GOVERNMENTS OF RWANDA AND UGANDA

- 1) Immediately end all political, military and other support to armed groups or militia responsible for crimes under international law and other human rights abuses in the DRC.
- 2) Use their influence over armed political groups to cease killings of civilians, sexual violence, the recruitment and use of child soldiers, torture and other crimes under international law and human rights abuses.
- 3) Comply with the UN arms embargo on the DRC and cooperate fully with the UN Group of Experts investigating alleged breaches of the embargo.
- 4) Cooperate fully to accelerate the DDRRR of foreign fighters based in the DRC.
- 5) Ensure that minerals and other resources from the DRC entering their territory have not been obtained in a manner that contributes to human rights abuses.

TO FOREIGN ARMED GROUPS IN EASTERN DRC

- 1) Halt crimes under international law and other human rights abuses against the civilian population including killing, torture, rape, the recruitment and use of child soldiers.
- 2) Cooperate fully with the DDRRR programme.

TO MONUC

- 1) Deploy sufficient peacekeeping forces to ensure the protection of the civilian population in areas where the situation is volatile and civilians are at risk of human rights abuses, including especially North-Kivu.
- 2) Ensure the full and decisive implementation by MONUC of its mandate to protect civilians under Chapter VII of the UN Charter.
- 3) Ensure the strict implementation of the UN Security Council decision in Resolution 1596 that “all future authorized shipments of arms and related materiel ... shall only be made to receiving sites as designated by the Government of National Unity and Transition, in coordination with MONUC, and notified in advance to the [UN sanctions] Committee”.

Designated sites should be effectively policed and monitored by MONUC 24 hours a day, seven days a week.

- 4) Accelerate, in conjunction with the DRC government and receiving states, the DDRRR of foreign fighters in the DRC, and ensure that this process is carried out with full respect for international human rights law and standards and international humanitarian law.
- 5) Investigations by MONUC Human Rights Section into alleged human rights abuses should continue and be expanded, with all necessary UN material and political support. The result of these investigations – including of any recommendations made to the DRC authorities - should be made public.
- 6) In joint operations with the FARDC, MONUC should ensure that these operations are carried out in full respect for international human rights law and standards and international humanitarian law.
- 7) Make the protection of human rights defenders a MONUC priority, ensuring that defenders at risk of human rights abuses are adequately protected.

TO THE UN SECURITY COUNCIL AND UN MEMBER STATES

- 1) Urgently reinforce MONUC's presence in regions at risk of escalation of violence to ensure the protection of civilian populations.
- 2) Ensure that MONUC fulfils its Chapter VII mandate to protect civilians, in North-Kivu and elsewhere, and ensure that peacekeepers are given the necessary resources and political backing to do so.
- 3) Focus greater international attention, resources and energy to advance security sector reform in the DRC, particularly military integration and the DDR processes. This should include:
 - a) a renewed and strong signal to the DRC government that all parties must as a matter of priority show full commitment to the processes;
 - b) insistence on proper individual identification of fighters;
 - c) insistence that an independent vetting mechanism is established to prevent entry to the integration process by individuals against whom there are reasonable suspicions of having committed or participated in crimes under international law or other human rights abuses, until such time as the allegations have been independently and impartially investigated;

- d) assistance to the DRC government and MONUC in ensuring that FARDC units are fully instructed on international human rights law and standards and international humanitarian law.
- 4) Focus greater international attention, resources and energy to the creation of a genuinely independent, competent and adequately resourced national DRC justice system, based on respect for the rule of law and the promotion of human rights for all. Insist that the DRC authorities conduct prompt, thorough and impartial investigations into allegations of crimes under international law and other human rights abuses and, if enough evidence is gathered, prosecute the suspected perpetrators.
- 5) No arms or related materiel intended for delivery to the government forces of the DRC, Rwandan and Uganda should be permitted if there is a likelihood that those arms will be directly or indirectly transferred in violations of the UN arms embargoes on the DRC and Rwanda or directly used for crimes under international law or other human rights violations or abuses.
- 6) Put pressure on the DRC government to ensure an immediate end to human rights abuses in the context of the forthcoming elections, including the arbitrary arrest and detention of political activists.
- 7) Reinforce with all necessary and material political support the monitoring and investigative capacity of MONUC into past and continued alleged human rights violations. The result of these investigations should be made public.

GLOSSARY OF ACRONYMS

ANC	<i>Armée nationale congolaise</i> , military wing of the RCD-Goma.
APC	<i>Armée populaire congolaise</i> , Congolese People's Army, military wing of RCD-ML.
DRC	Democratic Republic of the Congo
FAC	<i>Forces armées congolaises</i> , Congolese Armed Forces. The FAC is the former DRC government army.
FARDC	<i>Forces Armées de la République Démocratique du Congo</i> , DRC government armed forces. In practice, these forces are drawn from a variety of former government and armed group units and have not yet been fully integrated into a coherent national army.
FDLR	<i>Forces Démocratiques de Libération du Rwanda</i> , Rwandan insurgent force based in eastern DRC and opposed to the current Rwandan government. The FDLR is partly composed of members of the <i>interahamwe</i> and <i>ex-Forces Armées Rwandaises</i> (ex-FAR) which perpetrated the 1994 genocide in Rwanda.
<i>Mayi-Mayi</i>	Congolese militia, allied to the DRC government. Now a constituent of the DRC transitional government.
MONUC	<i>Mission de l'Organisation des Nations Unies au Congo</i> , United Nations Organization Mission in the Democratic Republic of the Congo.
MLC	<i>Mouvement de libération du Congo</i> , Movement for the Liberation of the Congo, headed by Jean-Pierre Bemba. An armed group previously backed by Uganda and now a major component party of the DRC's transitional government.
PPRD	<i>Parti du peuple pour la reconstruction et la démocratie</i> , People's Party for Reconstruction and Democracy. Political party of DRC President Joseph Kabila and a major component party of the DRC's transitional government.
RCD-Goma	<i>Rassemblement congolais pour la démocratie-Goma</i> , Congolese Rally for Democracy-Goma, headed by Azarias Ruberwa. An armed group previously backed by Rwanda and now a major component party of the DRC's transitional government.
RCD-ML or RCD-K/ML	<i>Rassemblement congolais pour la démocratie-Mouvement de libération</i> , Congolese Rally for Democracy-Liberation Movement, also known as RCD-K/ML, led by Mbusa Nyamwisi. Armed group formerly backed by the Ugandan government before allying itself more closely with the former DRC government. Now a constituent of the DRC transitional government.
RDF	<i>Rwandan Defence Forces</i> , Rwandan government army. Previously known as Rwandese Patriotic Army.
TPD	<i>Tous pour la paix et le développement</i> , All for Peace and Development, an organization closely linked to the RCD-Goma in North Kivu.