CONGO, Democratic Republic of the

Democratic Republic of the Congo

Population: 57.5 million (31.0 million under 18)
Government armed forces: 51,000
Compulsory recruitment age: no conscription
Voluntary recruitment age: 18
Voting age: 18
Optional Protocol: ratified 11 November 2001
Other treaties ratified (see glossary):
CRC, GC AP I and II, ICC, ILO 138, ILO 182

An estimated 7,000 child soldiers remained in government forces and armed groups, including foreign armed groups mostly to be found in the eastern provinces of Equateur, Ituri, Katanga, North and South Kivu, and Maniema. They were used as combatants, porters, guards and sexual slaves. Children were recruited from refugee camps in Rwanda and used by armed groups in North Kivu.

Context

Nearly 5.5 million people were estimated to have died in the Democratic Republic of the Congo (DRC) since the beginning of the armed conflict in 1998. Exploitation of mineral and other economic resources fuelled the conflict, which was characterized by systematic human rights abuses and population displacement, particularly in the east and north-east. Following an agreement in 2002 a government of national unity took office in July 2003, composed of representatives of the former government, major armed groups, opposition political parties and civil society.

Priorities for the transition included restoring security and the extension of state authority throughout the national territory, the creation of a unified national army and the demobilization and reintegration of combatants, including children. The UN mission in the DRC (MONUC) maintained a peacekeeping force of 16,000 troops across the country.

Delayed presidential and legislative elections were held in July and October 2006. In December President Joseph Kabila was inaugurated and became head of the DRC’s first democratically elected government. However, parts of the country remained under the control of different armed forces and groups, with some military commanders resisting army unification and operating parallel chains of command. Tensions were exacerbated by delayed and poorly managed army unification, which left thousands of former combatants without reintegration support.

Armed activity by foreign armed groups continued, causing insecurity, violence and displacement in the east. These groups included the Rwandan Democratic Forces for the Liberation of Rwanda (Forces démocratiques pour la libération du Rwanda (FDLR)), and the Ugandan Allied Democratic Forces and National Army for the Liberation of Uganda (ADF-NALU). A small number of Ugandan Lord’s Resistance Army troops were located in the remote Garamba Park area. By late 2007 about 15,300 foreign fighters, primarily from the FDLR, had been repatriated. However, regional relations continued to be characterized by tension and mistrust. In 2004 Rwanda threatened three times to renew military operations in the DRC, citing the need to protect Congolese Tutsi and to counter the threat posed by the FDLR.

Hostilities continued in several areas, particularly Ituri, Katanga, and North and South Kivu provinces, where ethnic tensions were manipulated for political ends or control of economic resources in politically or militarily strategic areas. Human rights abuses against civilians, including rape and murder, were widely committed by armed forces and groups involved in hostilities. Those suspected of committing abuses continued to enjoy near-total impunity. A handful of military and armed-group leaders were arrested and prosecuted, but dozens of others were promoted to senior military or government positions.

Children were recruited and used by all parties to the armed conflict for combat and support roles, and thousands of girls were used as sexual slaves. An estimated 30,000 children were awaiting demobilization from armed forces and other parties to the armed conflict at the end of 2003. Child recruitment by the former Congolese army officially ended in 2003, although some children remained in individual units. National army unification and the national disarmament, demobilization and reintegration (DDR) programs did not begin in earnest until 2005; some 30,000 children had been demobilized by mid-2007. Thousands of others, including many girls, escaped, were abandoned or left the armed forces without being officially demobilized. From 2005 the UN reported an overall reduction in child-soldier recruitment and use by armed forces and groups – a consequence of a decrease in the number of active fighting zones, the progressive incorporation of armed groups into the national army and the associated demobilization process for adults and children.

However, some 7,000 child soldiers remained in armed groups and the Armed Forces of the DRC (Forces armées de la République démocratique du Congo, FARDC). Active recruitment continued in some areas in 2007, particularly in North Kivu.
Government

National recruitment legislation and practice

The February 2006 constitution defined a child as any person below the age of 18. All forms of exploitation of children were punishable by the law (Article 41), and public authorities were under obligation to protect young people from threats to their health, education and development (Article 42). The organization of military or paramilitary formations, private militias or youth armies was prohibited (Article 190).

The 2004 Defence and Armed Forces Law prohibited the individual requisition of one or more children below the age of 18 in the event of a mobilization (Article 10) and the maintenance of a youth army or youth subversive group (Article 44). Responsibility for child-soldier demobilization was held by the Minister of National Defence, Demobilization and Former Combatants (Article 25). A previous decree-law, of 9 June 2000, ordered the demobilization of children below the age of 18 from armed forces and groups. A May 2005 circular issued by the military prosecutor instructed regional and local military prosecutors to initiate proceedings against all those accused of child recruitment or use in military operations. The same circular instructed military prosecutors to refer illegally recruited children accused of crimes to a competent civilian court, or to the official DDR program for demobilization.

A comprehensive Child Protection Code was awaiting approval by parliament in October 2007. The code prohibited the forced recruitment of children or their use in armed conflict (Article 50a), as well as the enlistment or use of children in the national armed forces, the police and armed groups (Article 73). Prison terms of between ten and 20 years were specified for these offences (Article 193). The code criminalized rape, (Article 175) and sexual slavery (Article 189), with prison terms of 7–25 and 10–25 years respectively. A wide range of other acts of sexual violence and exploitation were criminalized by the code.

Child recruitment and deployment

Children remained in FARDC units which had completed the army unification program (known as integrated units) and in those awaiting unification (non-integrated units). In mid-2006 more than 26 cases of child recruitment and other violations by FARDC were brought to the attention of FARDC chief of staff by MONUC. Children were seen in FARDC brigades in Kasai Occidental, Katanga and South Kivu. FARDC troops undergoing redeployment in Ituri and the Kivus abducted children to carry equipment and belongings. In mid-2007 local sources reported seeing children used as guards and “wives” in integrated and non-integrated units in the Fizi area, South Kivu. Children interviewed complained of lack of food and harsh conditions. Some child soldiers were abandoned by commanders en route to unification centres in several locations, including South Kivu and Katanga, possibly for fear of prosecution. Children captured from armed groups were detained by FARDC members in order to gather information on armed groups or to extort money from family members. Some had been beaten while in detention. Former child soldiers faced intimidation and harassment by FARDC members, including non-respect for their official demobilization certificates.

Armed groups

Child recruitment in armed units loyal to Laurent Nkunda

Child soldiers were actively recruited and used in hostilities by FARDC brigades and other armed units loyal to Laurent Nkunda, predominantly in North Kivu. Recruitment intensified in late 2006 and continued throughout 2007. Nkunda, a former military officer of the armed wing of the Rwanda-backed Congolese Rally for Democracy (Rassemblement Congolais pour la Démocratie-Goma, RCD-Goma), remained hostile to the army unification process and exerted control over troops and territory. Troops loyal to Nkunda clashed with the FARDC in Bukavu in 2004 and in Sake in August and November 2006, after Nkunda mobilized his troops, ostensibly to confront threats posed by the FDLR. An arrest warrant for Nkunda, widely accused of human rights abuses, was issued by the government in September 2005, but he remained at large as of October 2007.

In January 2007 some armed units loyal to Nkunda agreed to enter the FARDC following Rwanda-facilitated talks under an informally agreed process known as mixage, under which Nkunda-affiliated troops combined with government forces into five “mixed” brigades which remained in North Kivu. In practice Nkunda retained command over the newly formed FARDC units and his own troops, and controlled parts of North Kivu. Troops loyal to Nkunda were deployed to fight against the FDLR and Mai Mai militias, especially in Masisi and Rutshuru, throughout 2007, contributing to rising insecurity, ethnic tension and human rights abuses in the province. In July 2006 Alphonse Batibwira, a non-governmental organization (NGO) staff member, was killed while trying negotiate the release of child soldiers. A member of the non-integrated 81st brigade, loyal to Nkunda, was accused of the killing. Commanders of mixed brigades denied the presence of children, obstructed access to
Armed groups in Ituri

Numerous armed groups, often formed along ethnic lines, continued to operate in Ituri, an area of considerable natural wealth. Tensions between Hema and Lendu (pastoralist and agriculturalist respectively) and associated communities, over land use, arms smuggling and other resources, persisted throughout 2004. The groups carried out killings, rape and abductions of the civilian population, as well as burning property and looting. All the groups recruited and used children. Some groups signed an “act of engagement” with the government in May 2004. They committed to joining the transitional process and agreed to take part in a pilot DDR program initiated in September. However, disarmament was repeatedly delayed as commanders attempted to negotiate amnesties and to secure senior FARDC posts.

Several leaders of armed groups were arrested in March 2005 after nine UN peacekeepers from Bangladesh were killed in the Bunia area. They included Thomas Lubanga, head of the Union of Patriotic Congolese (Union des patriotes congolais, UPC/L), and Germain Katanga, head of the Ituri Patriotic Resistance Front (Front de résistance patriotique en Ituri, FRPI). The two were subsequently indicted by and handed over to the International Criminal Court (ICC). From 2005 the FARDC and MONUC increased their efforts to compel the groups to disarm and to protect the civilian population. The Congolese Popular Armed Forces (Forces armées populaires congolaises, FAPC) was completely dismantled in 2006 and hundreds of children, including numerous girls, joined the DDR program. Some children could have remained with remnants of the group, which crossed the border into Uganda.

While militarily weakened, the FRPI and the Nationalist and Integrationist Front (Front des nationalistes et intégrationnistes, FNI) continued to operate, and in 2005 they attempted to consolidate their remaining forces under a new alliance, the Congolese Revolutionary Movement (Mouvement révolutionnaire congolais, MRC). Children continued to be recruited and re-recruited by the FNI, led by Peter Karim Udaga throughout 2005. In July 2006 Karim agreed to disarm and enter the DDR program, and 87 children were demobilized from his forces. By late August the UN reported that the FNI was again recruiting children, including by force. Several dozen children were released from these groups or escaped during the first months of 2007, but some FNI commanders actively obstructed the release of children. Local sources estimated that as of April 2007 several hundred children remained in these groups. They included children forced to remain unless amnesty conditions for disarmament were met by the authorities.

Forces démocratiques pour la libération du Rwanda (FDLR)

Rwandan armed groups opposed to the Rwandan government had been present in the eastern DRC since shortly after the 1994 genocide, and the Rwandan FDLR had been active in North and South Kivu from about 2004. While officially opposed to the Rwandan government, it primarily engaged in criminal activities in the Kivus, including extortion and trading in minerals. Reports persisted of Congolese government assistance in the form of weapons and military support to the FDLR, and in early 2007 some FARDC brigades might have been assisted by the FDLR in fighting troops loyal to Laurent Nkunda. Killings, abductions and looting by the FDLR were reported throughout 2006 and 2007. Numerous cases of rape were reported, including the rape of a four-year-old girl in South Kivu in 2006. In at least one case a group of abductees was released after a ransom was paid. The FDLR recruited and used a number of children, some of whom were deployed to fight against Nkunda-affiliated troops in 2007, although numbers were difficult to establish.
Other armed groups

Mai-Mai militias – local defence groups – were active in the eastern provinces of Katanga, the Kivus and Maniema during the armed conflict. They received direct military support from the armed forces, as well as entering opportunistic alliances with adversary groups. Some Mai-Mai groups entered the transitional process in 2003. Others, particularly in Katanga and North and South Kivu, were not eligible for, or remained hostile to, army unification and the DDR program.47 Seventy-six children were released from one group in Katanga in May 2006 when Mai-Mai leader Kyungu Mutanga surrendered, but children probably remained among the 2–4,000 remaining militia members.48 Children were deployed by Mai-Mai to fight troops affiliated with Laurent Nkunda in North Kivu from 2006, and recruitment was ongoing in 2007. Children were recruited and used by Banyamulenge (Congoese Tutsi) militias in South Kivu.49

Disarmament, demobilization and reintegration (DDR)

Ongoing impunity for human rights violations, including for sexual violence, hindered the successful reintegration of former child soldiers. Efforts by the government, the international community, donors and NGOs were hampered by a context of poverty, weak or non-existent state institutions and an infrastructure devastated by war.

Funding for adults’ and children’s DDR was established by the World Bank and the Multi-country Demobilization and Reintegration Program in 2002. In the absence of a national body, DDR was initially carried out by UNICEF and NGOs with assistance form MONUC child protection advisers.50 A national body, the Commission Nationale de Désarmement, Dépomobilisation et Réinsertion (CONADER), was established in December 2003 to oversee a DDR program for an estimated 150,000 adult fighters and 30,000 children. An operational framework for children’s DDR was adopted by CONADER in March 2004.51 By December 2006 CONADER stated that 30,000 children had been released from armed forces and groups.52 Four thousand children were released between October 2006 and August 2007, mainly from “mixed” brigades and armed groups.53

Implementation of the children’s DDR program was delayed, owing to continued hostilities, lack of political and military will, mismanagement of funds and poor co-ordination and timetabling.54 Throughout 2005 CONADER, the UN and NGOs were forced to respond on an emergency basis to urgent needs to identify, demobilize, transport, shelter and feed thousands of children. Most reintegration programs did not start until 2006.55

Reintegration support was consistently underfunded or entirely absent. In December 2006 CONADER said that of the 30,000 demobilized children some 14,000 had yet to receive reintegration assistance. By mid-2007 CONADER was winding down and international funding had virtually ceased.56 CONADER was slow to approve funding for NGO-based reintegration projects. Most programs were established in urban centres and inaccessible to the majority of child soldiers, who were based in rural areas.57

An estimated 11,000 children escaped or left the armed forces and groups without being officially demobilized.58 Children, many of them used in frontline combat, saw adults receive demobilization packages and support for a one-year period, while they returned home without material support, training or other assistance. Some reportedly resorted to identifying themselves as adults to enter the adult program.59 Others were either forcibly re-recruited or re-enlisted “voluntarily” in the face of a dearth of alternatives.

Thousands of girls were recruited and used by armed forces and groups during and after the armed conflict, and girls continued to be associated with armed forces and groups in the eastern DRC. They performed combat duties and portering, provided medical assistance and carried out domestic labour. Thousands were raped, resulting in serious and permanent injuries; many had children as a result of rape.60 Girl soldiers were initially largely overlooked by the government and the donor community. Most girls did not enter the official DDR program, fearing stigmatization by their communities if they were identified as child soldiers. Others remained with their military “husbands” for fear of violence and recrimination if they left.61 Only 12 per cent of formally demobilized children were girls, despite estimates that girls might have comprised up to 40 per cent of the total number of child soldiers during the armed conflict. CONADER reported in May 2006 that of the 18,500 demobilized children at that date, only 2,900 (15 per cent) were girls. A World Bank official told Amnesty International in March 2006 that very little was being done for girl soldiers, adding that “we have no good profile of who these girls are”.62

In April 2007 DRC Child Soldiers Coalition members identified 415 girls in the ranks of armed forces and groups in South Kivu. All the commanders denied the presence of girls in their ranks, alleging that they were dependents or “wives”. Local sources reported that many girls remained with the 115th brigade of the FARDC, Mai Mai groups and the FDLR in North Kivu.63 Military commanders and fighters frequently assumed possession of the girls, claimed them as “wives” and saw no obligation to identify or release them.64
Community-based initiatives were established from 2004 to respond to the needs of girls in some regions, but thousands of girls received no reintegration support. Despite well-documented evidence of widespread sexual violence against girls, their complex medical and psychosocial needs remained largely unmet. Programs to assist girl mothers and their children remained virtually non-existent. Existing provision was largely provided by NGOs working at the community level. Returning girls were rejected by their communities because of their involvement in sexual activity.

Other treatment of child soldiers

Children were arrested, detained and tried in military courts for military offences and other crimes allegedly committed while they were in armed forces or groups. The trials contravened Article 114 of the Military Justice Code, which stipulated that persons below the age of 18 did not fall under military jurisdiction. A decree-law passed in 2000 ordered the demobilization of children illegally recruited or used by armed forces and groups, and the provision was reinforced in May 2005 by a circular issued by the military prosecutor (auditeur général) instructing military prosecutors to refer illegally recruited children accused of crimes to a competent civilian court or the national body responsible for DDR for demobilization.

At least 12 children were known to have been sentenced to death since 2003. The Child Soldiers Coalition was informed in mid-2007 that executions were no longer carried out in the DRC, but at least five children were believed to remain in detention under sentence of death in July 2007 in prisons in the eastern DRC.

The arrest and detention of child soldiers on charges of desertion and other military offences (such as abandonment of duty and disobeying orders) appeared to have decreased over the previous two years, but cases of children detained for desertion continued to be identified. Captured child soldiers were also held by the FARDC so that information on the activities of armed groups could be extracted from them.

Developments

Impunity

On 29 January 2007 the ICC confirmed three charges against Thomas Lubanga Dyilo, head of the UPC, for conscripting and enlisting children under the age of 15 and for using them to participate actively in hostilities in Ituri from September 2002 to 13 August 2003. His trial, the first in the ICC's history, was scheduled to begin in early 2008. Germain Katanga, of the Ituri-based FRPI, was indicted by the ICC in June on three counts of crimes against humanity, including murder, inhumane acts and sexual enslavement, and six counts of war crimes, including child-soldier recruitment and use. Katanga was transferred to The Hague in October 2007.

A Mai-Mai militia leader based in Katanga province, Kyungu Mutanga, also known as “Gédéon”, surrendered to MONUC in 2006 and was subsequently held by the FARDC along with his wife and four child soldiers previously with his group. He was charged with “insurrection, crimes against humanity, war crimes and terrorism”, and his trial, which began in August 2007, was ongoing in October. National authorities prosecuted Jean-Pierre Biyoyo, a FARDC member and former leader of the Mudundu 40 militia. He was tried by a military court and sentenced in March 2006 to life imprisonment for insurrection and to five years’ imprisonment for the arbitrary arrest and illegal detention of children (de facto child recruitment) carried out in South Kivu in April 2004. Biyoyo escaped from prison in June 2006 and the following February returned to Bukavu as part of a military delegation to address military units resisting the army unification process in Minembwe (South Kivu).

Laurent Nkunda remained at large despite being widely accused of serious human abuses, including responsibility for a massacre in K 나라 for a massacre in Kasaï in May 2002, summary executions, torture, rape and looting following hostilities in Bukavu in 2004, as well as forced recruitment and use of children in hostilities. In September 2005 the government issued an international arrest warrant for Nkunda on charges of insurrection, war crimes and crimes against humanity.

Impunity for rape and other acts of sexual violence contributed to the widespread and continued commission of these crimes, with children (girls and boys) comprising a high proportion of the victims. A handful of prosecutions was successfully carried out. In one important case, in April 2006, seven FARDC members were convicted of crimes against humanity for mass rapes carried out in Equateur province in 2003. The court applied the Rome Statute of the ICC, which qualified rape as a crime against humanity. A further dozen or so FARDC soldiers were convicted by military courts and sentenced to prison terms of between eight and ten years in 2006 and 2007.

Other developments

At a February 2007 ministerial meeting in Paris, the DRC and 58 other states endorsed the Paris Commitments to protect children from unlawful recruitment or use by armed forces or armed groups and the Paris Principles and guidelines on children associated with armed forces or armed groups. The documents reaffirmed international standards and operational principles for
protecting and assisting child soldiers and followed a wide-ranging global consultation jointly sponsored by the French government and UNICEF.

Mrs Radhika Coomaraswamy, the UN Special Representative of the Secretary-General for children and armed conflict, visited the DRC in March 2007. She urged the authorities to take timely and decisive action against the violators of children’s rights, including the arrest of Laurent Nkunda, and called for measures to demobilize children still in the FARDC and armed groups. Mrs Coomaraswamy expressed concern at the extent of sexual violence in the eastern DRC and the prevailing climate of impunity for such crimes. She noted that long-term development strategies were required along with adequate donor support for the work of child-protection agencies.

The FARDC and numerous armed groups (including many of those named above) were repeatedly listed as parties responsible for recruiting and using children between 2002 and 2007 in the annex to the Secretary-General’s annual reports on children and armed conflict. She noted that timely and decisive action against the violators of children’s rights, including the arrest of Laurent Nkunda, and called for measures to demobilize children still in the FARDC and armed groups. Most were additionally named as responsible for killings, abductions and rape.

2 *Amnesty International Report 2005*.
6 *Amnesty International (AI), DRC, Children at War: Creating Hope for their Future*, October 2006.
8 Report of the Secretary-General, above note 4.
9 *Amnesty International Report 2005*.
10 Ibid.
12 *DRC, Children at War*, above note 6.
17 Report of the Secretary-General, above note 13.
18 Ibid.
19 Confidential sources, South Kivu, July 2007.
20 Report of the Secretary-General, above note 13.
21 *DRC, Children at War*, above note 6.
23 Mai Mai groups were locally based armed militias. Mainly active in the eastern provinces of Maniema, Katanga and the Kivus, they were backed by government forces during the armed conflict but entered opportunistic alliances with opposing forces. Some entered the unification process but others remained outside and engaged in armed activity against FARDC units.
25 Report of the Secretary-General, above note 7.
27 Coalition sources, June 2007.
29 Coalition sources, eastern DRC, April 2007.
30 HRW, above note 26.
31 HRW, above note 24.
33 Coalition source, July 2007.
36 Seventeenth Report of the Secretary-General, above note 34.
40 Report of the Secretary-General, above note 7.
41 Interviews with child protection agencies, Bunia, March 2007; report on the national workshop on DDR, Goma, 12–14 April 2007.
43 ICG, The Congo: Solving the FDLR Problem Once and for All, May 2005; ICG, Congo: Bringing peace to North Kivu, October 2007.
44 HRW, above note 24.
47 DRC, Children at War, above note 6; Report of the Secretary-General, above note 13.
49 Coalition information from local sources, eastern DRC, June 2007.
50 A separate process was established for the demobilization and repatriation of all foreign groups, which was managed by MONUC.
51 DRC, Children at War, above note 6.
52 Report of the Secretary-General, above note 13.
53 Report of the secretary-General, above note 32.
54 DRC, Children at War, above note 6.
56 Coalition sources, July 2007.
57 Coalition sources, eastern DRC, April 2007.
58 UNICEF, above note 46.
59 Under the adult DDR program fighters received a monetary sum on demobilization followed by a monthly allowance for one year.
60 Child Soldiers: Global Report 2004; report of the Secretary-General, above note 13.
61 Beth Verhey, Reaching the Girls: Study on Girls Associated with Armed Forces and Groups in the DRC, Save the Children and NGO Group: CARE, IFESH, IRC, April, 2005.
62 DRC, Children at War, above note 6.
63 Coalition sources, DRC, April 2007.
64 DRC, Children at War, above note 6.
65 Coalition interviews, March, April and July 2007.
67 Verhey, above note 61.
70 MONUC Child Protection Section, Arrestations et détentions, above note 15.
71 Coalition source, July 2007.
72 Ibid.
79 HRW, above note 22; AI, DRC, Civilians Pay the Price for Political and Military Rivalry, September 2005.
80 Reports of the Secretary-General, above notes 7 and 13.
81 UN, Report of the Special Representative of the Secretary-General for Children and Armed Conflict, UN Doc. A/62/228, 13 August 2007.
82 Reports of the Secretary-General, above notes 32 and 37.