

## I. Context

[N.B.: See also Armed Conflicts in the Great Lakes Region [Part 3]]

### I. Context

[Source: Human Rights Watch, “‘You Will Be Punished’ – Attacks on Civilians in Eastern Congo”, Report, 2009, available at [www.hrw.org](http://www.hrw.org). Footnotes omitted]

#### “You Will Be Punished” Attacks on Civilians in Eastern Congo

[...]



Map of North and South Kivu © Human Rights Watch / Human Rights Watch

#### KEY PLAYERS

**The Congolese Armed Forces (Forces armées de la République démocratique du Congo, FARDC):**

The Congolese national army, FARDC, created in 2003 has an estimated strength of 120,000 soldiers, many

from former rebel groups who were incorporated following various peace deals. About half of the Congolese army is deployed in eastern Congo. Since 2006, the government has twice attempted to integrate the 6,000 strong rebel CNDP, but failed each time. In early 2009 a third attempt was made to incorporate the CNDP as well as other remaining rebel groups, a process known as “fast track accelerated integration.” Many who agreed to integrate, however, remained loyal to their former rebel commanders, raising serious doubts about the sustainability of the process.

**National Congress for the Defense of the People (Congrès national pour la défense du peuple, CNDP):** The CNDP is a Rwandan-backed rebel group launched in July 2006 by the renegade Tutsi general, Laurent Nkunda, to defend, protect, and ensure political representation for the several hundred thousand Congolese Tutsi living in eastern Congo, and some 44,000 Congolese refugees, most of them Tutsi, living in Rwanda. It is estimated to have some 6,000 combatants, including a significant number recruited in Rwanda; many of its officers are Tutsi. On January 5, 2009, Nkunda was ousted as leader by his military chief of staff, Bosco Ntaganda, and subsequently detained in Rwanda. Ntaganda, wanted on an arrest warrant from the International Criminal Court, abandoned the three-year insurgency and integrated the CNDP's troops into the government army. On April 26, 2009, the CNDP established itself as a political party.

**Democratic Forces for the Liberation of Rwanda (Les Forces démocratiques de libération du Rwanda, FDLR):** The FDLR is a Hutu militia group based in eastern Congo, some of whose leaders participated in the genocide in Rwanda in 1994. It seeks to overthrow the government of Rwanda and promote greater political representation of Hutu. In late 2008, the FDLR was estimated to have at least 6,000 combatants, controlling large areas of North and South Kivu, including many key mining areas. The FDLR's president and supreme commander is Ignace Murwanashyaka, based in Germany. He was arrested on November 17, 2009, on charges of war crimes and crimes against humanity. The group's military commander in eastern Congo is Gen. Sylvester Mudacumura. The Congolese government has often supported and shown general tolerance for the FDLR, until early 2009 when its policy changed and the government launched military operations against the group.

**Rally for Unity and Democracy (RUD)-Urunana:** RUD-Urunana is a splinter group of the FDLR estimated at some 400 combatants based in North Kivu, made up largely of dissident FDLR combatants. It was created in 2004 by the United States-based former FDLR 1st vice-president, Jean-Marie Vianney Higiyo. Other political leaders are in Europe and North America. Since the start of military operations against RUD and the FDLR in January 2009, the two groups have reunited militarily.

**Mai Mai militia:** The Mai Mai militia groups are local defense groups often organized on an ethnic basis who have traditionally fought alongside the government army against “foreign invaders,” including the CNDP and other Rwandan-backed rebel groups. In 2009 there were over 22 Mai Mai groups, ranging greatly in size and effectiveness, in both North and South Kivu. Some joined the Congolese army as part of the rapid integration process, while others refused, angry at the perceived preferential treatment given to the CNDP and unwilling

to join the army unless they were able to stay in their communities. The various Mai Mai groups are estimated to have some 8,000 to 12,000 combatants.

**Coalition of Congolese Patriotic Resistance (Coalition des patriotes résistants congolais, PARECO):**

PARECO is the largest of the Mai Mai groups, created in March 2007 by joining various other ethnic-based Mai Mai militias including from the Congolese Hutu, Hunde, and Nande ethnic groups. Throughout 2007 and 2008, PARECO collaborated closely with the FDLR and received substantial support from the Congolese army, especially in their battles against the CNDP. In 2009, many PARECO combatants, particularly the Hutu, joined the Congolese army and its military commander, Mugabu Baguma, was made a colonel. The Hunde and Nande commanders were not offered equivalent command positions and remained outside the integration process, along with the majority of the Hunde and Nande combatants

**Patriotic Alliance for a Free and Sovereign Congo (Alliance des patriotes pour un Congo libre et souverain, APCLS):**

The APCLS is a breakaway faction of PARECO. Created in April 2008, it is largely made up of ethnic Hunde and is led by General Janvier Buingo Karairi. It is based in the area to the north of Nyabiondo, in western Masisi, with its headquarters in Lukweti village and has an estimated 500 to 800 combatants. The APCLS is allied with the FDLR and refuses to integrate into the Congolese army without guarantees that they will be deployed in their home region and that the newly integrated CNDP soldiers will leave.

[Source: Amnesty International, “No End to War on Women and Children, North Kivu, Democratic Republic of the Congo”, Report 2008, available at [www.amnesty.org](http://www.amnesty.org)]

In August 2007 armed conflict erupted in the province of North Kivu. The renewed fighting, the worst since the official end of the DRC conflict in 2003, pitted the regular Congolese army (FARDC) against the CNDP armed political group, under the command of renegade general Laurent Nkunda. Also involved were mayi-mayi ethnic militia opposed to the CNDP, and the Rwandan FDLR, a mainly Rwandan Hutu armed insurgent group which contains remnants of forces allegedly responsible for the 1994 Rwandan genocide. The United Nations (UN) peacekeeping force in the DRC, MONUC, was unable to contain the fighting and at its height could only assure the security of major population centres.

[...]

The immediate cause of the August 2007 fighting was a breakdown in attempts to integrate CNDP forces into the FARDC. Laurent Nkunda claims his CNDP forces are fighting to protect eastern DRC's ethnic Tutsi population from attacks by the FDLR, which the CNDP accuses the government and FARDC of supporting militarily. The government, for its part, asserts it launched military operations against the CNDP to restore the authority of the state. Also ranged against the CNDP are mayi-mayi militias, many of which are grouped in an armed political coalition called PARECO. The mayi-mayi are drawn from a number of ethnic groups and

purport to protect their communities from opposing forces, primarily the CNDP, which they accuse the Rwandan government of supporting.

Civilians bore the brunt of the violence, which was marked by serious violations of international human rights and humanitarian law by both the armed groups and government armed forces and which triggered a desperate humanitarian crisis. By the end of 2007, more than 500,000 people had fled their homes and sought shelter with host families or in camps for the internally displaced that sprang up across the province. The humanitarian and security situation in many sites, many of which are located close to military positions, is extremely poor.

The escalating violence in North Kivu, which again threatened regional stability, led to concerted international efforts to resolve the crisis. In November 2007, the governments of the DRC and Rwanda agreed, in the “Nairobi communiqué”, to take joint measures to dismantle the FDLR. The measures agreed included the launch of DRC government military operations against the FDLR. The two governments also undertook to prevent support to other armed groups operating in eastern DRC. [...]

In January 2008, after the failure of a government military offensive against the CNDP, a Conference on Peace, Security and Development for the Kivus was organized in Goma, the capital of North Kivu. The conference [...] brought together representatives of the DRC government, the CNDP, PARECO and other Congolese armed groups (the FDLR was not invited to the conference) and Kivu civil society. The negotiations led to an “Act of Engagement” signed on 23 January by Congolese armed groups in the Kivus, including the CNDP and PARECO, in which they committed to an immediate cease-fire, to the progressive demobilisation of their forces, and to an immediate halt to violations of international humanitarian law [...]. In return, the government undertook to end the threat posed by the FDLR and to grant an amnesty to members of the Congolese armed groups who signed the Act of Engagement for “acts of war” not including crimes against humanity, war crimes or genocide, a definition that limits the amnesty to participation in armed conflict but not to acts that constitute serious human rights violations.

[...]

Since the signing of the Act of Engagement, the cease-fire has been broken on hundreds of occasions, thousands of women and girls have been raped, hundreds of children recruited into the armed groups, often through abduction, and scores of civilians unlawfully killed. Hundreds of thousands of people living as IDPs remain too fearful to return to their homes and fields. Congolese and foreign armed groups remain in control of large parts of the province and the majority of the FDLR continues to resist the disarmament and repatriation to Rwanda of its forces. [...]

## II. 2008 Crisis in North Kivu

[Source: Human Rights Watch, "Killings in Kiwanja. The UN's Inability to Protect Civilians", Report, 2008, available at [www.hrw.org](http://www.hrw.org). Footnotes omitted]

[...]

### II. Context

#### Peace process fails

In late August 2008, heavy fighting resumed in North Kivu between the Congolese army and Nkunda's CNDP rebels, as well as other armed groups, breaking a fragile ceasefire that had been in place since the Goma peace agreement was signed on January 23. [...]

The Congolese army launched an offensive against the CNDP on August 28 but quickly lost ground, despite their superior numbers. The better organized CNDP rebels captured huge swathes of territory in the heavily populated and fertile areas of Masisi and Rutshuru, sometimes temporarily halting or reversing their advance for strategic reasons or in response to pressure from the international community. On October 26, the rebels captured Rumangabo military camp, one of the most important military bases in eastern Congo, for the second time since October 8. After seizing a large stock of weapons and ammunition, the CNDP forces then moved simultaneously north towards Rutshuru and south towards Goma. From October 26 to 28, the rebels gained control of a strategic stretch of road between Goma and Rutshuru and won another battle at Kibumba, just 27 kilometers north of Goma.

When CNDP forces took Kiwanja and Rutshuru on October 29, other CNDP forces were threatening Goma. While the Congolese government feared a possible CNDP capture of Goma, its soldiers fled the city both north and south, pillaging and looting along the way. The CNDP did not attempt to enter Goma, and declared a unilateral ceasefire.

The government did not respond to the ceasefire and its forces continued skirmishes with the CNDP forces. The CNDP also engaged in occasional combat with pro-government militias, including the Coalition of Congolese Patriotic Resistance (PARECO) and other Mai Mai groups, as well as with a Rwandan armed group, the Democratic Forces for the Liberation of Rwanda (FDLR), some of whose leaders participated in the 1994 genocide. The ongoing fighting allowed the CNDP to take further territory; by the end of November, it controlled nearly twice the area under its command at the end of August.

[...]

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[...]

### **G. Support to CNDP by the Government of Rwanda**

1. The Group has investigated allegations that the Government of Rwanda is providing support to CNDP. It has found evidence that the Rwandan authorities have been complicit in the recruitment of soldiers, including children, have facilitated the supply of military equipment, and have sent officers and units from the Rwandan Defence Force (RDF) to the Democratic Republic of the Congo in support of CNDP.

[...]

1. CNDP operates recruitment networks in Rwanda. In some cases, there has reportedly been complicity by Rwandan officials in this recruitment. At the very least, it is clear that the Rwandan Government could do more to shut down these recruitment activities. [...]
2. [...] [N]umerous former CNDP combatants, both Congolese and Rwandan, have testified that RDF officers and units provide support to CNDP on Congolese territory:
  - a. The Group has received numerous reports of RDF presence within CNDP and RDF units deployed in support of CNDP. Eight former CNDP combatants have testified to the Group that there were active RDF officers or units supporting CNDP. [...]
  - b. According to MONUC reports and local sources interviewed by the Group, an RDF battalion based on the other side of the border from Kibumba (Rutshuru territory) has made several targeted strikes into territory of the Democratic Republic of the Congo against FDLR positions close to the border. On 1 May 2008, around 10 RDF soldiers crossed the border to Ruhunda market and abducted an FDLR officer, Captain Kasereka, after killing the FARDC soldier Issa Molimo from the 83<sup>rd</sup> brigade. The Group received confirmation regarding this incident from MONUC and the local population. The second incident took place in August 2008, when a group of RDF soldiers injured an FDLR commander and the woman he was staying with.

[...]

1. The Group has evidence that indicates that RDF provided support to CNDP during their recent offensive of 26 to 30 October 2008:
  - a. According to four separate interviews with eyewitnesses from Gasizi and Ruhunda, Congolese villages located along the Rwandan border directly to the east of Kibumba, at least two Rwandan tanks were deployed to the Kabuhanga border crossing on 25 or 26 October 2008. [...]
  - b. The same local sources consistently reported that on 25 and 26 October 2008, they saw troops crossing from Rwanda through Kikeri and Mashahi forest area in support of CNDP advance. The Group was unable to ascertain whether these were RDF or CNDP troops, but the sources were certain they came from Rwandan territory;

[...]

1. Rwanda has also been a rear base for CNDP in other ways:
  - a. [...] [B]ank accounts that CNDP uses for financing are located in Rwanda;
  - b. CNDP officials have houses and families in Rwanda, whom they visit. CNDP delegates meet regularly with embassies there, despite the Nairobi communiqué, in which the Government of Rwanda pledged to prevent the entry into and exit from its territory of members of CNDP;
  - c. The Group was informed, including by CNDP operatives and local businessmen, of fund-raising meetings held in Gisenyi on a regular basis, especially during the offensive on Goma in late October 2008;
  - d. The CNDP leadership uses a series of around 30 consecutive MTN Rwandacell telephone numbers for much of their communication. Until September 2008, when the transmission towers were disabled, Rwandacell phones could operate on their Supercell sister network that operated in Masisi and Rutshuru (Democratic Republic of the Congo). CNDP regularly buys or is sent credit for these telephones through representatives in Rwanda. According to documents that the Group has obtained, one of the satellite telephones CNDP uses was issued to an individual, Lambert Amahoro, based in Kigali;
  - e. As explained above, some of the trucks that supply CNDP with fuel and goods are registered in Rwanda;

[...].

### III. 2009 Conflict in the Kivus - Paras 1 to 34

[Source: Human Rights Watch, “‘You Will Be Punished’ – Attacks on Civilians in Eastern Congo”, Report, 2009, available at [www.hrw.org](http://www.hrw.org). Footnotes omitted]

#### “You Will Be Punished” Attacks on Civilians in Eastern Congo

[...]

## II. Lead-Up to Military Operations

### Crisis Point

[See *supra*, Part II, “2008 Conflict in North Kivu”]

1. In August 2008, the Congolese army launched a military offensive against the CNDP. Despite their superior numbers, the government forces quickly lost ground. [...] On October 8, 2008, the rebels unexpectedly attacked and captured Rumangabo military camp, one of the most important military bases in eastern Congo, and seized a large stock of weapons and ammunition. Then, on October 26, the CNDP launched a major military offensive, rapidly overrunning Congolese army positions in quick succession. Military support from UN peacekeepers to the Congolese army was not enough to halt the advance and on October 29, 2008, Nkunda’s rebels approached Goma, causing widespread panic. The Congolese army disintegrated, its soldiers looting, raping, and killing as they fled. UN peacekeepers remained as the only credible military force to protect Goma and its 500,000 inhabitants.

[...]

## Rwanda-Congo Deal

1. Rwanda too faced difficulties following the CNDP's advance on Goma. Rwandan President Paul Kagame had started to feel the political costs associated with his support for Nkunda's CNDP. The December 12, 2008 publication of the UN Group of Experts report, which had been made available to governments a month earlier, detailed evidence of Rwanda's support for the CNDP [...] [**See supra** Part II]. In addition, officials in Rwanda had found it difficult to control the increasingly headstrong Nkunda. The CNDP's announcement that its goals were national and included the removal of Kabila was not well received in Kigali.
2. On December 5, 2008, the Congolese minister of foreign affairs, Alexis Thambwe Mwamba, and his Rwandan counterpart, Rosemary Museminali, announced the upcoming joint military operation against the FDLR, named *Umoja Wetu*. For several weeks, bilateral talks continued in secret. [...]
3. In January 2009 the plan was put into operation. On January 5, Bosco Ntaganda, Nkunda's military chief of staff, announced he was removing Nkunda as leader of the CNDP for hindering peace in eastern Congo. Ntaganda was being sought on an arrest warrant from the International Criminal Court for war crimes committed in Ituri, northeastern Congo, between 2002 and 2004. According to CNDP insiders interviewed by Human Rights Watch, Ntaganda had had many rifts with Nkunda since he joined the CNDP movement in 2006, which may, in part, explain his decision to head the "putsch" against Nkunda. He was also likely urged on by Rwandan officials who knew Ntaganda well (he had served in the Rwandan army) and who sought to exploit the divisions between the two men for their own purposes.
4. Shortly after announcing Nkunda's removal, [...] [t]en senior CNDP officers [...] joined Ntaganda's putsch and signed a declaration of the cessation of hostilities on January 16, which stated that the CNDP would integrate into the Congolese army to disarm the FDLR through joint Rwandan and Congolese military operations. [...] Seeing support ebbing away, Nkunda responded to a request [...] to come to Gisenyi, Rwanda, for consultations. On his arrival the next day, Rwandan authorities promptly detained Nkunda and placed him under house arrest. Ntaganda was made a general in the Congolese army.
5. Later on March 23, a new CNDP negotiating delegation signed a political agreement with the Congolese government, which provided its troops with amnesty for acts of war and insurgency (but not for war crimes, crimes against humanity or genocide), release of political prisoners, and political participation in Congo's government.

## Joint Military Operations

### *Umoja Wetu*

1. On January 20, at least 4,000 Rwandan troops, and possibly many more, crossed the border into eastern Congo to fight the FDLR in a joint Rwandan-Congolese offensive named operation *Umoja Wetu* ("Our Unity" in Swahili). Although a joint offensive in name, many Congolese troops were distracted by the complicated integration of former combatants from the CNDP, and other armed groups into their ranks and were largely absent from the operation. Concerned about negative public opinion from having concluded a deal in which Rwandan troops were invited into Congo, Kabila's government at first



maintained that the Rwandan soldiers present in Congo were only military advisors to the joint operations and would not stay long. Then in a televised statement on January 31, President Kabila extended the invitation declaring that the joint operation would be finished by the end of February 2009, without making any mention of the extent of Rwanda's military involvement.

2. Rwandan troops quickly forged ahead, sometimes together with former CNDP troops, attacking one of the main FDLR bases [...] and other FDLR positions (North Kivu). [...]
3. After 35 days of military operations in North Kivu, and in what was likely an agreed timeframe between Presidents Kabila and Kagame, the Rwandan army withdrew from Congo on February 25. [...]

#### *Kimia II*

1. Government representatives from both Rwanda and Congo emphasized that the mission was not complete and pressed MONUC to join forces with the Congolese army to finish off the FDLR problem in North and South Kivu. [...]
2. On March 2, the Congolese army jointly with MONUC peacekeepers launched the second phase of military operations against the FDLR, known as operation *Kimia II* ("quiet" in Swahili). [...] Former CNDP officers received important command positions. Bosco Ntaganda, a newly made general in the Congolese army, was in effect deputy commander of operation *Kimia II*. Aware that Ntaganda was wanted on an arrest warrant from the ICC, and that the Congolese government, as a state party to the ICC, had a legal obligation to arrest him, Congolese government officials kept Ntaganda's name out of the official organizational structure of operation *Kimia II*. On May 29, the Congolese minister of defense wrote to Alan Doss, the head of MONUC, to say that Ntaganda was not playing a role in *Kimia II*. The assurances, however, were false. According to at least five Congolese army officers interviewed by Human Rights Watch, and internal Congolese army documents, Ntaganda was the *de facto* deputy commander of operations for *Kimia II* and was in charge of integrating CNDP soldiers into the Congolese army. His regular presence in Goma and his repeated visits to troops on the frontlines all demonstrated he played an important role.

[...]

### **III. Human Rights Abuses by FDLR and Allies**

[...]

#### **A Strategy of Deliberately Targeting Civilians**

1. Before January 2009 and the launch of operations *Umoja Wetu* and *Kimia II*, FDLR members lived in numerous towns and villages spread across North and South Kivu, intermixed with Congolese civilians. Their relationships with local communities varied. In some locations, the FDLR lived in relative harmony, while in others the relationship was more violent. One constant was the FDLR's ruthless economic exploitation of local populations. In many of the areas controlled by the FDLR, Congolese state authorities and administrative services were non-existent. FDLR commanders often acted as local authorities and imposed a system of forced cohabitation, administration, and exploitation on Congolese civilians who had no choice but to live side-by-side with FDLR combatants.
2. When the Congolese army launched military operations against the FDLR in mid-January 2009, the

relationship between the FDLR and local Congolese communities suddenly changed. Almost overnight the FDLR brutally turned on their Congolese neighbors. The FDLR responded to the dramatic shift in the Congolese government's policy toward them and the launch of joint Congo-Rwanda military operations by carrying out a strategy of unlawful retaliatory attacks against the civilian population. FDLR combatants deliberately targeted Congolese civilians with what they considered punishment for their government's policy and for what the FDLR perceived as the population's "betrayal."

3. The scale and ferocity of the attacks depended on the nature of the military operations against the FDLR. In some areas, FDLR combatants attacked civilians before the Congolese army and their allies had arrived, sometimes deliberately taking the civilians into their military positions as hostages, perhaps to be used as human shields. In other areas, the FDLR retreated, waited for the Rwandan or the Congolese army soldiers to come and go, and then returned to punish the civilian population for "welcoming" or "collaborating" with their enemies.
4. Between late January and September 2009, FDLR forces deliberately killed at least 701 civilians. Many were chopped to death by machete or hoe. Some were shot. Others were burned to death in their homes. More than half of the victims were women and children. The FDLR also targeted and killed village chiefs and other influential community leaders, a tactic especially effective at spreading fear throughout entire communities.
5. The widespread killing of civilians was accompanied by rape. In the first six months of 2009, the cases of sexual violence registered at health facilities near the areas of conflict in North and South Kivu doubled or tripled. FDLR combatants were responsible for nearly half of all the rapes documented by Human Rights Watch. In over 30 cases documented by Human Rights Watch, victims told us that their FDLR attackers said that they were being raped to "punish" them. Most of the victims were gang-raped, some so viciously that they later bled to death as a result of their injuries. Some of the victims were killed when they were shot in the vagina. The killing and rape was accompanied by widespread and wanton burning of homes, schools, health centers and other civilian structures. In dozens of places across North and South Kivu, entire villages were burned to the ground and the population's goods were looted, leaving families utterly destitute.
6. The widespread and systematic nature of the attacks on civilians across North and South Kivu in areas sometimes hundreds of kilometers apart, the similarity of the messages from the FDLR to local communities – including in public meetings, warning letters and direct verbal threats – as well as the similarity of methods used during attacks, strongly indicate that the retaliatory attacks were ordered from the FDLR's central command. Dozens of former FDLR combatants interviewed by Human Rights Watch and others confirmed that no significant military operations could be carried out without clear orders from the military leadership. A senior FDLR commander who deserted in April 2009 told a European diplomat in a transcribed interview that the FDLR leadership had ordered "punitive action" against those who collaborated with the Congolese military operations. The UN Group of Experts also collected information from FDLR "signalers" who pass on commands from the FDLR military command to individual units, some of whom later deserted, that they communicated orders to attack population centers, to carry out "reprisal" attacks against the Congolese population and to treat all collaborators of the Congolese army as their "enemies."
7. Some local authorities and health workers who had lived near FDLR positions for many years and knew the group well told Human Rights Watch they believed the FDLR's strategy of attacking civilians may have been aimed at causing a humanitarian disaster with a high human cost so that the Congolese government would be forced to call off the military operations. A number of FDLR combatants who left

the group since January 2009 and entered the UN's DDRRR program told UN officials that they had been given orders to create a humanitarian catastrophe with the intention of pressing the international community to call off its support for the military operations against them.

8. Whatever the FDLR's aims, under international law, deliberate attacks on civilians are war crimes, and serious offenses committed against civilians as part of a widespread or systematic attack against any civilian population are crimes against humanity.

### **Explicit Threats to "Punish" Civilians**

1. The FDLR strategy of retaliatory attacks against civilians was clearly evident in threatening letters the FDLR wrote to local authorities, written announcements left on roads, public meetings FDLR commanders held with civilian populations, and in oral threats FDLR combatants gave to civilians. In dozens of such verbal messages collected by Human Rights Watch across towns and villages in North and South Kivu, the FDLR explicitly said that the civilian population would be "punished" for the Congolese army's military operations.
2. Warning letters
3. The FDLR and its RUD-Urunana ally deposited letters and other notes for civilian populations before, during, and after attacks in which they explicitly warned people that they would be targeted or that further attacks would follow. [...]
4. In one such letter from during the *Umoja Wetu* operation, [...] an FDLR commander warned that anyone who collaborated with the Rwandan army would be considered a "mortal enemy." The letter added that if the population collaborated with Rwandan soldiers, they would be considered as a "belligerent party" with all "imaginable consequences."

[...]

#### *Public meetings*

1. During the course of its research, Human Rights Watch interviewed individuals who were present at 11 separate public meetings held by FDLR or RUD commanders in North and South Kivu. In each of these meetings the message was the same: if you are not with us, you are against us and will be punished. In some meetings FDLR or RUD combatants warned that if local populations did not take action to stop the Congolese army's operations, they would be punished, indicating that some of the attacks on civilians may have been carried out in an attempt to influence government officials to halt operations. [...]

#### *Killings in Ufumandu area*

1. The Rwandan army crossed the border into eastern Congo on January 20, just as many FDLR commanders had gathered at their base in and around Kibua for the annual meeting of the high command. [...]
2. As the Rwandan and Congolese coalition forces engaged in operation *Umoja Wetu* advanced toward Kibua around January 25, the FDLR barricaded roads and blocked civilians from fleeing the area. According to witnesses interviewed by Human Rights Watch, when some civilians tried to flee, the FDLR attacked them, killing dozens with gunfire, rocket-propelled grenades, and machetes. [...]

3. The FDLR also abducted as hostages at least 46 local residents and took them to their military camp, apparently intending to use them as “human shields” against the impending attack. Witnesses said that when coalition forces attacked Kibua on January 27, the trapped civilians tried to flee, but the FDLR hacked many to death while others died in the crossfire. [...]

#### *Targeting local chiefs*

1. Since the start of military operations in January 2009, the FDLR has summarily executed at least eight local chiefs whom they accused of having welcomed the Congolese and Rwandan armies, failing to stop the military operations against the FDLR, or providing information to the coalition forces about their whereabouts. Family members and those who worked with local authorities have also been targeted. In some instances, local chiefs were executed publicly in a clear attempt to terrorize the population.

[...]

#### **Burning and Pillage**

1. The FDLR's strategy of retaliatory attacks against Congolese civilians to “punish” them also included the widespread and wanton burning of thousands of homes, schools, health centers, churches and other structures throughout North and South Kivu. In some villages, not a single structure was left standing. According to information collected by Human Rights Watch in missions across North and South Kivu, the FDLR burned or otherwise destroyed at least 7,051 homes and other structures between January and September 2009. The destruction was often accompanied by the pillaging of goods, leaving civilian populations utterly destitute. [...]

### **V. Abuses by the Congolese Army and Other Forces**

1. Congolese civilians desperately seeking protection from the brutal FDLR attacks were cruelly let down. The Congolese army, the FARDC, in joint operations with the Rwanda Defence Forces (RDF), in operation *Umoja Wetu*, and later with the support of MONUC peacekeepers in operation *Kimia II*, also targeted and committed horrific abuses against civilians. [...]

[...]

#### **Massacres and Killing of Civilians during Operation Umoja Wetu**

1. Rwandan army soldiers entered Congo in late January 2009 and joined Congolese army units in operation Umoja Wetu against the FDLR. The five-week operation was jointly commanded by Rwandan and Congolese army officers based in Goma, North Kivu, and the neighboring border town of Gisenyi, Rwanda. In some locations coalition soldiers were well-behaved. Congolese civilians reported that Rwandan troops, in particular, paid for the food they bought from local people while on operations and made a deliberate effort to maintain good relations. But such good behavior was not repeated everywhere. In a number of areas, coalition forces were responsible for the targeted killing of civilians, rape, arbitrary arrests, and the destruction of homes. According to Human Rights Watch research, at least 201 civilians were killed by coalition forces during operation Umoja Wetu.

[...]

1. Victims and witnesses interviewed by Human Rights Watch found it difficult, if not impossible, to distinguish Rwandan army soldiers from former CNDP combatants recently integrated into the Congolese army who played an important role in the operation. The soldiers of both armies often wore identical camouflage uniforms, many were Tutsi, and spoke Kinyarwanda (the main language of Rwanda). Rwandan army soldiers did have a small Rwandan flag on the upper sleeve of their uniforms, but this was not always easy to spot. In some cases former CNDP combatants had the same army uniforms though they usually removed the Rwandan flag. A significant number of CNDP combatants were in fact former Rwandan army soldiers or were Rwandan citizens who had been recruited into the CNDP in 2007 and 2008. In most cases witnesses simply identified their attackers as “Tutsi soldiers” in camouflage uniforms.

[...]

#### *Ndorumo massacre*

1. In late February, Rwandan and Congolese soldiers arrived in Ndorumo, Masisi territory, a remote village nestled among the forested hills largely made up of ethnic Hunde, with a small minority of Hutu. The coalition soldiers set up a military position at the local primary school and told the population not to be frightened since they were government soldiers who had come to bring peace. The APCLS militia, an ally of the FDLR, had a military position in Lukweti, a few kilometers from Ndorumo, but according to witnesses interviewed by Human Rights Watch, there were no APCLS or FDLR combatants present in Ndorumo the day the coalition forces arrived.
2. Within just two hours of their arrival, the coalition forces called a meeting at the local school, but as people gathered they began to shoot and kill civilians. There was no military combat in the village, nor did the FDLR or APCLS militia attack the coalition forces. Instead the coalition forces randomly and without warning began to attack local civilians who they accused of collaborating with the FDLR. [...]
3. During a two-day killing spree, coalition soldiers killed some 90 civilians in and around Ndorumo village, sending a stark warning that civilians would be punished for their perceived support of the FDLR and its allies. The victims included 30 women, four children and eight elderly men.

[...]

### **III. 2009 Conflict in the Kivus - Paras 35 to 70**

#### **Other Abuses during Operation Umoja Wetu**

##### *Sexual violence*

1. The attacks on civilians by the coalition soldiers during operation *Umoja Wetu* often included sexual violence against women and girls, and also in at least one case, against a man. Human Rights Watch documented 42 cases of rape by coalition soldiers who were deployed against the FDLR in January and February 2009.

[...]

1. There appears to have been an increase in cases of male rape since the launch of military operations against the FDLR. However, there are almost no statistics due to the shame and fear associated with male rape in Congo. [...]

#### *Unlawful destruction of homes and other structures*

1. Coalition soldiers also engaged in wide-scale and wanton destruction of homes and villages. During operation *Umoja Wetu*, coalition forces burned at least 1,357 homes in 14 different villages in [...] territories of North Kivu. In most cases, soldiers blamed civilians for having lived with the FDLR or their allies and punished them by burning their homes, sometimes in apparent frustration after they were unable to find the FDLR. The widespread destruction of homes and other civilian structures without a militarily justified reason is a form of collective punishment against the civilian population.

[...]

#### *Arbitrary arrests, torture and illegal transfers to Rwanda*

1. Human Rights Watch documented the arbitrary arrest in Goma of at least two Congolese Hutu civilians during operation *Umoja Wetu*, who were taken across the border to Rwanda, where they were held illegally for days or weeks. The detainees were tortured by Rwandan military authorities to force them to confess to being FDLR combatants or sympathizers. Human Rights Watch received credible reports of 23 similar cases.
2. In interviews with Human Rights Watch, two of these civilians detained at different times and locations described similar practices used. They were initially arrested in Goma by soldiers in Congolese army or police uniforms who later changed into Rwandan army uniforms before transferring the detainees to Rwanda. The change of uniforms and the subsequent detention in Rwanda strongly indicates that those carrying out the arrests were Rwandan officials. In both cases, the detainees were tortured, including by being badly beaten, and reported that other detainees with whom they were held were also beaten.

[...]

1. Of the 25 cases of arbitrary arrest by the coalition forces involving the illegal transfer of Congolese civilians to Rwanda reported to Human Rights Watch, none of the detainees was ever charged with any offense.
2. On February 25, 2009, Rwandan soldiers began to withdraw from eastern Congo and in the following days ended the joint Rwandan-Congolese military operation *Umoja Wetu*. The Rwandan government praised the operation and said it had "seriously weakened" the FDLR and urged the Congolese government to continue its military operations against the FDLR.

#### *Massacres and Killings during Kimia II*

1. On March 2, the Congolese army launched its next phase of operations against the FDLR, called *Kimia*

*II*, this time with substantial logistical, tactical, and other support from MONUC peacekeepers [...].

Despite MONUC's mandate under UN Security Council Resolution 1856 to help protect civilians and the insistence of UN officials that their support of the operations would help to decrease any harm to civilians, this phase of military operations was even more deadly to civilians than operation *Umoja Wetu*.

2. Human Rights Watch has documented the deliberate killing by Congolese army soldiers of 505 civilians in North and South Kivu since the start of operation *Kimia II* from March through to September 2009.  
[...]

#### *Massacres in Nyabiondo-Pinga area*

1. As during the *Umoja Wetu* operation, the area between Nyabiondo and Pinga was the target of military operations during the *Kimia II* operations, demonstrating that the FDLR had not been pushed out of this area during operation *Umoja Wetu*, as had been claimed. As before, civilians paid the price. Although this zone had been attacked by coalition forces in February, FDLR forces and their APCLS militia allies had not been defeated and had simply fled or retreated to the surrounding forests and returned to the villages soon after the coalition forces departed. In March, Congolese army forces, largely drawn from CNDP soldiers newly integrated into the Congolese army, some of whom may have participated in the earlier *Umoja Wetu* operation, returned to the edges of the area to continue their offensive. The soldiers established military positions surrounding the zone from where they launched dozens of attacks. As before, FDLR and APCLS combatants retreated or fled in the face of the offensive. When Congolese army soldiers arrived into the villages where the combatants had previously been based, they often found only civilians, whom they accused of supporting the FDLR and its allies.
2. According to dozens of victims and witnesses interviewed by Human Rights Watch, Congolese army forces deliberately killed at least 270 civilians in this area alone between March 5 and September 29. Victims and witnesses repeatedly identified the perpetrators of these attacks as "Tutsi soldiers" in camouflage uniforms, indicating that they may have been former CNDP soldiers newly integrated into the Congolese army.

[...]

#### *Motivation for attacks in Nyabiondo-Pinga area*

1. Several local authorities, Congolese army commanders and others told Human Rights Watch that they believed the motivation for the attacks on civilians by former CNDP soldiers integrated into the Congolese army in the Nyabiondo-Pinga area is about control over land and the return of Congolese Tutsi refugees from Rwanda. One former CNDP officer now integrated into the Congolese army told Human Rights Watch that the operations in the Nyabiondo-Pinga area were intended to "kill civilians and terrorize the Hunde and Hutu population" so that the land would be cleared for the return of Congolese Tutsi coming back from Rwanda.
2. Several thousand Tutsi civilians lived in the mountainous area between Nyabiondo and Pinga including many Tutsi who came to Congo from Rwanda following ethnic pogroms there in 1959. In 1992-93, ethnic clashes erupted between Hutu, Hunde and Tutsi ethnic groups who lived in this area and in other towns and villages in Masisi. The clashes, which were largely about control over land, left thousands dead. Many Tutsi fled the area to seek refuge in other parts of Congo and eventually fled to Rwanda

following the arrival into Congo of a large number of Hutu refugees and those responsible for the genocide in Rwanda.

3. One of the CNDP's main political objectives is the return of the Congolese Tutsi refugees from Rwanda back to Congo. There are an estimated 44,000 Congolese refugees in official refugee camps in Rwanda, in addition to other unregistered Congolese Tutsi who live in host families or who bought their own land in Rwanda. Some acquired Rwandan citizenship. Many harbored the desire to return to Congo one day.
4. UNHRC [sic] [UNHCR] has not yet officially begun the process of returning Congolese Tutsi refugees from Rwanda back to Congo, deeming the situation too insecure. Yet between April and November 2009, several thousand refugees and possibly other Rwandan citizens crossed the border to Congo, the majority since August. [...]
5. It is unclear what has sparked this seemingly sudden population movement. Those interviewed by Human Rights Watch in Kibumba and Kitchanga cited hunger in Rwanda, educational opportunities in Congo, possibilities of accessing their land in Congo, and news of peace and security in eastern Congo as the reasons why they decided to leave Rwanda this year. Yet given that most are still living in camps once they arrive in Congo, it is possible they may have been encouraged to return or they believe there are new opportunities.

[...]

## **Other Abuses during Kimia II**

[...]

### *Forced labor*

1. Since the start of military operations against the FDLR, Congolese army forces have pressed hundreds of civilians into forced labor to carry their supplies, ammunition, and other equipment to the frontlines. The journeys are long and difficult, and the loads often very heavy. At least two men died after collapsing under loads that were too heavy for them to carry and at least ten others were killed when they refused or were physically unable to lift the load assigned to them. [...]
2. Civilians have also been abducted to serve as "guides" and show the FARDC soldiers the paths usually taken by the FDLR or their military positions. These civilians risked being punished and beaten either for not knowing where the FDLR may be hiding, or, if they did seem to know where to go, sometimes they have been accused of being an FDLR member or collaborator. Civilians traveling with soldiers as porters or guides also risked falling into ambushes by the FDLR or being targeted later by FDLR combatants who accused them of having "collaborated with" or supported the enemy forces.

[...]

1. In many areas, Congolese army soldiers also forced civilians to carry out services for them such as collecting firewood and water, or constructing their temporary huts. In some locations the use of civilians for this work led local authorities to bitterly complain that their populations were being used as "slaves."

[...]



## VII. Congolese Government and Army's Failure to Protect Civilians

1. The protection of civilians in Congo is primarily the responsibility of the Congolese government and its security forces. Yet Congolese government officials have failed to take adequate or effective steps to protect civilians in eastern Congo. Congolese army troops have committed widespread violations of international humanitarian and human rights law, but few have been held to account.
2. During military operations in *Umoja Wetu* and *Kimia II*, the Congolese armed forces made little if any planning for civilian protection, integrated highly abusive militias into its forces, and failed to seriously address the deeply entrenched problem of impunity. In some cases, the Congolese army launched attacks in areas where they knew civilians and humanitarian workers would be put at particular risk.

### Inadequate Civilian Protection Planning

1. Before the Congolese government embarked on the military operations *Umoja Wetu* and *Kimia II*, little or no provision for civilian protection in conflict areas was put into place. Once operations were underway and FDLR retaliatory attacks against civilians were launched, the government and army officials made few, if any, adjustments to military operations to account for the increased risk to civilians.
2. [...] When asked by Human Rights Watch researchers what measures were being taken to protect civilians during the ongoing military operations, some senior army commanders responded that civilian protection was the responsibility of MONUC.
3. The government should have foreseen and taken into account that its military operations would be placing civilians at greatly heightened risk of abuses from FDLR combatants and its own forces. Previous military operations in North Kivu in 2007 and 2008, including a short-lived joint operation in 2007 when CNDP troops temporarily "mixed" with Congolese army soldiers to fight the FDLR, had also resulted in FDLR retaliatory attacks against civilians and abuses by government soldiers. But Congolese decision-makers appeared to focus entirely on the offensive military operations against the FDLR without giving adequate, if any, serious attention to the additional risks to civilians. Civilians suffered tremendously because the Congolese government, with the support of its international partners (discussed below), sought to achieve the twin goals of making a peace deal with the CNDP rebels and weakening the FDLR by launching military operations without adequate provision for the protection of civilians. This had horrific consequences for the people of eastern Congo.

### Integration Problems Increase Risks

1. In a hasty "fast track accelerated integration" process that was part of the arrangement struck between Congo and Rwanda, the Congolese army welcomed an estimated 20,000 former rebels, mostly from the CNDP but also other Mai Mai groups, into its ranks. After registering their names, giving them Congolese army uniforms, and, for some, a cursory health check, the Congolese government deployed them within days on military operations against the FDLR alongside their existing soldiers. At the launch of operation *Kimia II*, there were an estimated 50,000 government soldiers deployed on military operations in North and South Kivu. The rapid integration process provided no opportunity for vetting the rebels to dismiss human rights abusers, nor were child soldiers removed from the rebel ranks before being integrated into the government army. Once former rebels became government soldiers, their conduct became the responsibility of the Congolese army.
2. The rapid integration process led to immediate problems. There was confusion over chain of command

with newly integrated former rebels and government soldiers who were already in the army often remaining loyal to their old commanders rather than to their new officers. [...]

## VIII. MONUC and Civilian Protection

1. [...] MONUC was first established in 1999. With nearly 20,000 peacekeepers, MONUC is currently the largest UN peacekeeping mission in the world, with a strong mandate from the UN Security Council to protect civilians “under imminent threat of physical violence” and to use force to do so. In December 2008, the Security Council specifically requested MONUC to attach “the highest priority to addressing the crisis in the Kivus, in particular the protection of civilians.”
2. Since 2004, MONUC’s mandate also authorized the mission to participate in and support military operations led by and jointly planned with Congolese army integrated brigades against foreign and national armed groups, including the FDLR. The Security Council emphasized that such operations must be “in accordance with international humanitarian, human rights and refugee law and should include appropriate measures to protect civilians.”
3. MONUC has faced significant challenges in fulfilling this mandate. In March 2009 it joined forces with the Congolese armed forces to carry out the *Kimia II* military operations against the FDLR. But preparations for the operation were hurried, permitting little time for full reflection on how an international peacekeeping force could appropriately provide protection to civilians while backing a national army with a terrible human rights record. Well into *Kimia II*, the conditions around MONUC’s involvement were not yet properly clarified and no concrete plan to provide protection to civilians at risk was in place. To make matters worse, MONUC lacked the necessary logistical resources and rapid response capabilities to effectively carry out its mandate to protect civilians, and it had trouble grappling with the fragmented and catastrophic conflict on the ground.

[...]

### Concerns about Operation Kimia II

1. On March 2, the Congolese army with direct MONUC participation launched operation *Kimia II*. MONUC’s role included logistical and operations support such as intelligence and operations planning, fire support, air strikes, transportation, joint patrolling, and medical evacuations. MONUC also agreed to supply daily rations for 16,000 soldiers, plus fuel for FARDC vehicles and other transport support worth over \$6 million for the first six months of the operation.
2. [...] A number of diplomats and MONUC officials recognized the potentially catastrophic human cost of the planned operations and were aware of the serious limitations in the Congolese army’s capacity to conduct the operations effectively and in compliance with international humanitarian law. Civilian staff members in MONUC told Human Rights Watch there was little to no consultation between MONUC military and civilian staff before plans went forward with *Kimia II*, giving those wary about MONUC’s support for the operation little opportunity to voice their concerns or to develop advance plans to enhance civilian protection.

[...]

1. There is no evidence that MONUC officials pressed the Congolese government to address serious

shortcomings before the launch of *Kimia II*, including completing integration of the CNDP and other armed groups in the Congolese army, resolving salary and logistical problems for the armed forces involved in the operation, and putting into place a strategy for adequate civilian protection. In an internal document in November 2009, MONUC said that conducting military operations against the FDLR was a sovereign decision by the Congolese government and insisted that if MONUC had not supported the military operations, it risked a “chain reaction” that could have unraveled the integration process, seen a re-emergence of armed groups, and a deterioration of relations between Congo and Rwanda. [...]

#### *Debates on conditionality*

1. MONUC officials emphasized both publicly and privately that the *Kimia II* operations should respect international humanitarian and human rights law, but no formal conditions were put in place defining MONUC’s role in the operations. It was not clear how respect for international humanitarian law would be ensured – especially by Congolese army forces with a record of war crimes – or under what circumstances MONUC would withdraw its support if violations occurred. [...]
2. On January 13, March 6, and April 2, the UN Office of Legal Affairs provided formal legal advice to MONUC. According to the confidential legal note in April, MONUC “cannot participate in any form of joint operations with FARDC units, or support an operation by those units, if there are substantial grounds for believing there to be a real risk of them violating international humanitarian law, human rights law or refugee law in the course of the operation.” The legal advice added that should such violations occur, “MONUC must immediately intercede with the FARDC at the command and operations levels, with a view to dissuading the unit concerned from continuing such violations.” If such action did not bring results and the violations were widespread and serious, MONUC was advised “to cease its participation in the operations as a whole.”

[...]

#### *MONUC and accountability for FARDC abuses*

1. [...] MONUC did seek to act on the abuses committed by Congolese soldiers in the area between Nyabiondo and Pinga. On November 1, after eight months of support to operation *Kimia II*, Alain Le Roy, the head of the UN Department of Peacekeeping Operations announced during a visit to Congo that MONUC would suspend its support to the Congolese army’s 213<sup>th</sup> Brigade. MONUC’s own preliminary investigations had revealed Congolese army soldiers had killed at least 62 civilians in the Lukweti area, just north of Nyabiondo. MONUC support, however, was not suspended to any other army units despite credible information that gross human rights violations were occurring elsewhere. Following strong protests from Congolese government officials about the suspension, MONUC quickly responded that its overall support to *Kimia II* operations would continue.
2. MONUC’s withdrawal of support to the 213<sup>th</sup> Brigade consisted of halting all supplies of food rations for the soldiers for the month of November. But since there is no system in place to track whether the rations MONUC provides to Congolese army units participating in operation *Kimia II* actually make it to the troops on the ground, it is unclear what, if any, impact this suspension of support will bring. None of the commanders responsible for the abuses in the Nyabiondo or Shalio areas, nor other commanders

known for previous serious human rights violations, had been removed from involvement in *Kimia II* operations at the time of writing.

[...]

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## Discussion

### I. Qualification of the conflict and applicable law

1. How would you qualify the situation in the Kivus between 2007 and 2009? Would you say that there is one single armed conflict spreading over time and territory, or, for the purpose of determining the applicable rules of IHL, that there are several armed conflicts (in 2007, 2008 and 2009)? Do the Act of Engagement of 23 January 2008 and the declaration on the cessation of hostilities of 16 January 2009 mark the end of a conflict? Do the hostilities that erupted after these peace agreements mark the beginning of new conflicts?
2. Would you say that, between 2007 and 2009, there was one single armed conflict with evolving alliances, or that there were several armed conflicts respectively starting after each redefinition of the alliances?
3.
  - a. What is the nature of the armed conflict(s)? Who are the parties to the conflict(s)? Does the same set of rules apply to all the parties? Based on the background information provided in the case, do you think that all the non-State armed groups meet the requirements for Protocol II to apply?
  - b. (2009 *Conflict in the Kivus*, paras 17-19) Does the FDLR meet the requirements for Protocol II to apply? Even though it is deliberately violating IHL? In order for Protocol II to apply, does the armed group have to respect IHL or be able to respect IHL? (P II, Art. 1)
  - c. Do the armed groups other than the FDLR meet the requirements for Protocol II to apply? If no, which groups do not seem to meet the requirements? If one armed opposition group meets the requirements of Protocol II, does the latter also apply to fighting between the government and groups which do not meet those requirements? To fighting between such groups? If at least one group fights for the government? Does Protocol II at least protect the persons affected by governmental measures in such conflicts?
  - d. If Protocol II does not apply to some of the groups, what law does apply to them? Does Protocol II still apply to the other groups that meet the requirements? (GC I-IV, Art. 3; P II, Art. 1)
  - e. Would you say that there is one single armed conflict with several bilateral confrontations, or that there are several armed conflicts, each of which represents a bilateral confrontation? Can a conflict situation be divided into as many bilateral relationships as there are parties to the conflict, potentially with a different set of rules applying to each relationship? Is it realistic to say that different rules may apply to the same party according to who it is fighting? Is it realistic to expect parties to respect this difference?
4.
  - a. Does foreign intervention automatically internationalize a conflict? Was Rwanda's support for the CNDP in 2008 sufficient to conclude that Rwanda was involved in the armed conflict? If yes, does it turn the conflict into an international one? For qualification purposes, does it matter that Rwanda's assistance and direct attacks were not directed against the Congolese army, but against a rebel

group on Congolese territory, the FDLR?

- b. Did the fact that Rwanda was involved in the conflict against the FDLR in 2009 internationalize the conflict (operation *Umoja Wetu*)? For qualification purposes, does it matter that Rwanda was invited by the Congolese Government?
5. Can peacekeeping forces be parties to an armed conflict? Did MONUC become a party to the conflict when it agreed to launch joint military operations against the FDLR (operation *Kimia II*)? Did this internationalize the conflict? Was MONUC a party to the conflict before operation *Kimia II*? Does the fact that MONUC was authorized to use all necessary means automatically mean that it was party to the armed conflict? [See *Armed Conflicts in the Great Lakes Region*, [Part 3, D.]]

## II. Conduct of hostilities

1.
  - a. (2009 *Conflict in the Kivus*, paras 17-23) Under IHL, when may civilians be directly targeted? Does it suffice to say that someone is collaborating with the enemy for him to be considered as belonging to the enemy party and thus to be a legitimate target? (GC I-IV, Art. 3; P II, Art. 4; CIHL, Rules 1 and 6)
  - b. (2009 *Conflict in the Kivus*, paras 12-23 and 37) Under IHL, can civilians be targeted in the conduct of hostilities, or killed once in the power of the enemy, in “retaliatory” attacks intended to punish them for their government's policy? What protection does IHL offer against such situations? What can IHL do when deliberate attacks against the civilian population and civilian objects, or the killing of civilians in the power of a belligerent, are part of that belligerent's military strategy? (HR, Art. 50; GC I-IV, Art. 3; GC IV, Art. 33; P I, Arts 20, 51(6) and 75(2)(d); P II, Art. 4(2)(b); CIHL, Rules 103 and 146-148)
2. (2009 *Conflict in the Kivus*, paras 24-26) Which rules of IHL did the FDLR violate when it prevented civilians from fleeing the place of hostilities? Which rules did it violate when it abducted local residents and took them to its military camp? What does IHL say about hostage-taking? What does it say about human shields? (GC I-IV, Art. 3; P I, Art. 51(7); P II, Art. 4(2)(c); CIHL, Rules 96 and 97)
3. (2009 *Conflict in the Kivus*, para. 27) Can local chiefs be considered as belonging to the enemy party? What about people who work with the local authorities? If they are “failing to stop the military operations against the FDLR, or providing information to the coalition forces about their whereabouts”? Can they then be considered as directly participating in hostilities? Even assuming that they may be so considered, can they be summarily executed? Can their family members be targeted? (P II, Art. 4; CIHL, Rules 1, 2 and 6)
4. (2009 *Conflict in the Kivus*, paras 16 and 35-37) What protection does IHL give against rape and other forms of sexual violence? Does IHL also protect men against sexual violence? (GC I-IV, Art. 3; GC IV, Art. 27; P I, Arts 75(2) and 76; P II, Art. 4(2)(a) and (e); CIHL, Rules 90, 91 and 93)
5. (2009 *Conflict in the Kivus*, paras 31 and 39) From the point of view of IHL, is it a problem that it was difficult to distinguish Rwandan army soldiers from former CNDP combatants recently integrated into the Congolese army (para. 31)? Similarly, what do you think of the fact that soldiers wearing Congolese uniforms changed into Rwandan uniforms during the transfer of detainees (para. 39)? Under IHL, is there an obligation for armed groups to distinguish themselves from allied armed groups? Why can this be problematic? (P I, Arts 44(3) and 48; CIHL, Rule 106)
6. (2009 *Conflict in the Kivus*, paras 38-40)
  - a. In the present case, on what basis could Congolese civilians be arrested and detained? Does the

applicable IHL give any indication about when a person may be detained? If IHL is unclear on the matter, how should confinement be regulated? Can civilians be detained only when they are charged with an offence?

- b. Can detained civilians be transferred to another State's territory? If this other State is the Detaining Power's ally? Does your answer vary according to the nature of the conflict? Why does Human Rights Watch say that the transfer to Rwanda was illegal (*para. 40*)? (P II, Art. 17; CIHL, Rule 129)

7. (*2009 Conflict in the Kivus, paras 51-53*)

- a. Can civilians be forced to carry out tasks for one of the parties to the conflict? Does your answer vary according to the nature of the tasks? Does your answer vary according to the nature of the conflict? Did the Congolese army violate IHL when it forced civilians to carry supplies, ammunitions and other equipment to the frontline? When it used them as guides? When it forced them to collect firewood and water, or to construct temporary huts? (GC IV, Arts 40, 51 and 95; P II, Art. 5(1)(e); CIHL, Rule 95)
- b. Can civilians who are forced to serve as guides be considered, at the time they so serve, as directly participating in hostilities and therefore be directly targeted by the FDLR? If not, how else can the FDLR prevent its military positions from being discovered? (GC I-IV, Art. 3; P II, Art. 4(1); CIHL, Rules 1 and 6) [See ICRC, Interpretive Guidance on the Notion of Direct Participation in Hostilities]

### III. Responsibility

1. (*2009 Conflict in the Kivus, paras 54-60*) Is the DRC responsible for the violations of IHL committed by former CNDP combatants integrated into the Congolese army? What should it have done to prevent or reduce violations committed by former CNDP combatants? (HR, Art. 3; P I, Art. 91; CIHL, Rule 149)
2. (*2009 Conflict in the Kivus, paras 54-60*) Under IHL, what were the DRC's obligations regarding the protection of the civilian population? Is there a general obligation to protect the civilian population against the enemy? Or is it only an obligation to protect the civilian population against the effects of specific military attacks? What could the Congolese army have done to better protect the civilian population? (CIHL, Rule 22)
3. (*2009 Conflict in the Kivus, para. 11*) What responsibility did the DRC incur when it integrated Bosco Ntaganda into its armed forces and appointed him deputy commander of operation *Kimia II* while he was under an ICC arrest warrant? Did the DRC violate its obligations under the ICC Statute by not surrendering Ntaganda to the ICC?
4.
  - a. (*2008 Crisis in North Kivu*) Did Rwanda engage its international responsibility for assisting the CNDP in 2008? In which cases and for what reasons did IHL violations committed by the CNDP engage the responsibility of Rwanda? Can Rwanda be held accountable for failing to prevent such violations? (CIHL, Rule 149)
  - b. (*2009 Conflict in the Kivus, paras 7, 29-53*) Can Rwanda be held accountable for violations committed during operation *Umoja Wetu*? Only for violations committed by its own forces? Or can it be held accountable for violations committed by the Congolese forces? [See International Law Commission, Articles on State Responsibility]
  - c. Whose obligation is it to investigate and prosecute violations of IHL committed in the Kivus? Is it solely the DRC's obligation, because the violations occurred on Congolese territory? Does Rwanda also have an obligation to investigate and prosecute violations? Is Rwanda under such an

obligation only for violations committed by its own forces? Does any other State have an obligation in this respect? (GC IV, Art. 146; CIHL, Rules 157 and 158)

5. Why did MONUC have an obligation to stop violations of IHL by the Congolese forces? Can it be held accountable for violations committed by the Congolese forces during operation *Kimia II*? Only if MONUC peacekeepers committed violations? If yes, who would have jurisdiction to prosecute?

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