

Democratic Republic Of Congo, Attacks Against and Military Use of Schools

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N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

A. HUMAN RIGHTS WATCH REPORT “OUR SCHOOL BECAME THE BATTLEFIELD”

[Source: Human Rights Watch, “Our School Became the Battlefield”: Using Schools for Child Recruitment and Military Purposes in Eastern Democratic Republic of Congo, October 2015, available at https://www.hrw.org/sites/default/files/report_pdf/drcschools1015_web.pdf (footnotes omitted)]

[...]

Glossary of Armed Forces and Groups in Eastern Congo

[1] A number of non-state armed groups, as well as the Congolese armed forces, committed serious abuses against civilians in eastern Congo between 2012 and 2014. Some of these groups are described below. [...]

[...]

M23

[2] The M23 was led by mostly Tutsi officers who had been part of a previous rebellion, the National Congress for the Defense of the People (*Congrès national pour la défense du peuple*, CNDP), before integrating into the army in early 2009, then defecting in early 2012. The name comes from the March 23, 2009 agreement with the Congolese government. The M23 relied on significant support from Rwandan military officials who planned and commanded operations, trained new recruits, and provided weapons, ammunition, and other supplies. Hundreds of young men and boys were recruited in Rwanda and forced to cross the border into Congo and fight with the M23. Between April 2012 and November 2013, when the group was defeated, M23 fighters committed widespread war crimes, including summary executions, rape, and recruitment of children, including by force.

[...]

People's Alliance for a Free and Sovereign Congo (APCLS)

[3] The People's Alliance for a Free and Sovereign Congo (*Alliance du peuple pour un Congo libre et souverain*) is a largely ethnic Hunde armed group led by Janvier Buingo Karairi, which largely operates in the area north of Nyabiondo, in western Masisi territory. The group's leaders claim they are protecting the Hunde population from what they describe as a "Tutsi invasion" and occupation of western Masisi. The APCLS has been responsible for serious abuses in areas they control and during operations against opposing forces, including rapes, abductions, burning of homes, illegal detention, torture, mistreatment, and forced recruitment of children. They have sometimes operated side by side with the FDLR and Nyatura.

[...]

I. Background

[4] Armed conflict in the Democratic Republic of Congo over the past two decades, primarily in the eastern part of the country, has resulted in the deaths of an estimated five million people to violence, fighting, hunger, and disease. Combatants from dozens of Congolese and foreign armed groups and soldiers from the Congolese army, as well as the Rwandan and Ugandan armies, have carried out massacres, rapes, summary executions, torture, pillage, arson, and recruitment of children into their forces. The use of rape as a tactic of war has particularly marked the conflicts, with hundreds of thousands of women and girls experiencing sexual violence.

Conflict in North and South Kivu 2012-2015

[5] Armed conflict continued in eastern Congo from 2012 through 2015, with the Congolese army and various armed groups responsible for numerous serious abuses against civilians.

Fighting Between M23 Rebels and Congolese Army

[6] In March 2012, Bosco Ntaganda, a former rebel who had become a general in the Congolese army, defected from the army with several hundred former members of the National Congress for the Defense of

the People (*Congrès national pour la défense du peuple*, CNDP) rebel group. The mutiny began soon after the government indicated that it was planning to deploy ex-CNDP soldiers outside of North and South Kivu. A parallel military structure had been established in North and South Kivu with troops loyal to Ntaganda responsible for targeted killings, mass rapes, abductions, robberies, and resource plundering. Ntaganda's troops forcibly recruited at least 149 people, including at least 48 children, in Masisi, North Kivu, in April and May 2012.

[7] Soon after Ntaganda's mutiny was defeated by the Congolese army in April, other former CNDP members led by Col. Sultani Makenga launched another mutiny in Rutshuru territory, North Kivu. Ntaganda and troops loyal to him joined this new rebellion.

[8] The M23 rebellion received significant support from Rwandan military officials, including in the planning and command of military operations and the supply of weapons and ammunition. At least 600 young men and boys were recruited by force or under false pretenses in Rwanda to join the rebellion.

[9] During their 12-day occupation of the eastern city of Goma and the town of Sake in November 2012, M23 fighters summarily executed at least 24 people, raped at least 36 women and girls, looted hundreds of homes, offices, and vehicles, and forcibly recruited army soldiers and medical officers, police, and civilians into its ranks.

[10] As government soldiers fled the M23 advance on Goma, they went on a rampage and raped at least 76 women and girls in and around the town of Minova, South Kivu, according to Human Rights Watch research. The M23 withdrew from Goma on December 2 when the government agreed to start peace talks in Kampala, Uganda.

[11] Following infighting within the M23, Bosco Ntaganda surrendered to the US embassy in Rwanda in March 2013. As of September 2015, he stands trial at the International Criminal Court on charges of war crimes and crimes against humanity committed in 2002 and 2003.

[12] The M23 was defeated in November 2013 after international pressure on the group's Rwandan backers and the deployment of a United Nations "Intervention Brigade" to conduct offensive operations against armed groups and strengthen the UN peacekeeping mission. Several thousand fighters from other armed groups surrendered in the weeks that followed.

[13] On December 12, 2013, the M23 and the Congolese government signed declarations in Nairobi marking an end to the M23 rebellion and the conclusion of the 12-month-long Kampala talks. The declarations included commitments to disarm, demobilize, and reintegrate former M23 members, and not to give an amnesty to those responsible for war crimes and crimes against humanity.

[14] But the government has stalled in implementing a new Disarmament, Demobilization, and Reintegration (DDR) program for former combatants, and there were few efforts made to bring to justice M23 and other armed group leaders implicated in abuses. At time of writing, most former M23 fighters were still in Uganda and Rwanda and their leaders remained at large.

Attacks on Civilians by Other Armed Groups

[15] As the Congolese military focused attention on defeating the M23, numerous other armed groups carried out horrific attacks on civilians in North and South Kivu. They include the Raia Mutomboki, the Nyatura, Mai Mai Sheka, Mai Mai Kifuafua, and the Democratic Forces for the Liberation of Rwanda (*Forces démocratiques pour la libération du Rwanda* , FDLR).

[...]

Education in North and South Kivu

[16] Congo's constitution guarantees that everyone has the right to education, and that primary education—which lasts six years and is aimed at 6 to 11 year olds—is both free and compulsory in public schools. Unfortunately, the reality is far from this promise.

[17] There are four categories of schools in Congo: 1) schools under the direct control of the government; 2) so-called “network schools,” also known as “government-regulated schools” or “conventionized schools,” which are usually run by religious or social groups by agreement with the government; 3) private schools accredited by the government; and 4) private schools not accredited by the government. The first two types of schools are generally considered as public government schools, with the “network schools” responsible for the majority of children. The government is responsible for paying teachers and administrative staff at public schools, although the “network schools” hire their own teachers and also sometimes mobilize other resources, generally from the local community, for instance, to build infrastructure. [...]

[...]

[18] According to a 2012 survey by Congo's Ministry of Primary, Secondary, and Vocational Education, the proportion of 5 to 17 year olds who are out of school (that is, have either never enrolled in school or who have dropped out) is estimated at 29 percent. [...]

[19] The statistics for North Kivu are particularly grim. North Kivu has the nation's highest proportion of 5 to 17 year olds out of school, at 44 percent. South Kivu is the fifth worst affected region, with 30 percent out of school. [...]

[...]

[20] Various factors explain low enrollment and high drop-out rates in Congo, including low income and educational levels of some parents, early and child marriage, child labor in agriculture and mining, insufficient funding for education, and not enough places at schools. However, according to the 2012 survey, 16 percent of children in South Kivu and 8 percent in North Kivu who dropped out of school did so—at least in part—due to concerns about “fear of crime/conflict.” [...]

[21] New fighting in North Kivu in 2012 led to a sharp jump in children whose schooling was affected by the conflict. According to UNICEF, the UN's children's agency, at least 240,000 students missed weeks of schooling as a result of the conflict between April and December 2012.

[22] It is against this bleak education outlook that attacks on schools and the military use of schools makes a bad situation worse.

II. Attacks on Students and Schools

[...]

[23] On October 4, 2012, the Congolese government adopted an action plan for the prevention of recruitment and use of children, sexual violence, and other grave violations against children by the national armed forces and other state security forces. [...] The government has worked together with United Nations child protection agencies to remove child soldiers from the army and to prevent integration of children from armed groups into the army.

[24] However, as documented in this chapter, numerous armed groups have attacked schools, students, and teachers; looted schools; and abducted and recruited children from school grounds, or while students are on their way to or from school. [...]

[...]

Recruitment of Children from Schools by the M23

[25] When Bosco Ntaganda and those loyal to him defected from the Congolese army in March 2012, before the start of the M23 rebellion, they told civilians in Masisi territory that children and young men were needed for their forces. [...]

[26] In the days that followed, Ntaganda's fighters took children by force from schools as well as from their homes, farms, or the roadside as they tried to flee on foot or on motorbike taxis. A number of those forcibly recruited were given rudimentary military training, but the majority was immediately forced to porter weapons and ammunition to frontline positions. Many were made to wear military attire.

[...]

[27] One student explained how some of the students have subsequently returned home, "but have never attended school again for fear of being caught another day at the school by soldiers."

[28] Human Rights Watch documented that Ntaganda's forces forcibly recruited at least 149 boys and young men into his forces between April 19 and May 16, 2012. Students were also abducted by the M23 after the rebellion was officially established. In July and August 2012, at least 137 young men and boys were forcibly recruited in Rutshuru territory, including at least 20 children under 18, seven of whom were under 15.

[...]

Recruitment of Children from Schools by Other Armed Groups

[29] Other armed groups in eastern Congo have also recruited children in schools or while children are walking to or from school. Many were then sent to fight on the battlefield with little to no training. Others served as porters or cooks, and many of the girls were forced to be sex slaves.

[...]

[30] APCLS fighters have also forcibly recruited children into their ranks. A 14-year-old boy was captured by APCLS fighters on his way home from school with four other boys, ages 12 to 14. After escaping from the group in 2014, he told Human Rights Watch:

The life we led was very difficult because we spent nights without eating. They told us that's what it is to be a soldier. We should be different from civilians. During these times, they gave us strong drinks like King Whiskey and Simba—all that in order to differentiate us from civilians and make us have self-control. [...]

[...]

Rape and Other Sexual Violence against Girls

[31] Sometimes, soldiers and fighters target girls from schools for abduction and sexual violence. After being raped, girls often drop out of school because of the associated stigma, medical consequences, or because they are scared of being attacked again.

[...]

Other Violent Attacks on Schools, Teachers, and Students

[32] Human Rights Watch has documented numerous cases in which schools, teachers, and students were targeted during attacks by armed groups on villages in eastern Congo.

[33] On July 26, 2012, for example, M23 fighters forced a primary school teacher from Gisiza locality to transport boxes of ammunition from Kabaya to the Rumangabo military camp. When the teacher tried to return home, he was shot in the back by M23 fighters.

III. Military Use of Schools

[...]

[34] The use of schools for military purposes, along with looting from schools, are the most frequently reported disruption caused by troops against schools in eastern Congo. Government soldiers and members of armed groups have used schools as lodging and military positions and looted them for firewood and other resources.

[35] When soldiers impose themselves into schools it puts students and teachers unnecessarily at risk and hinders students' ability to learn. It also causes damage to school buildings, equipment, and teaching materials. In most cases documented by Human Rights Watch, school occupations lasted from two nights to

a week or slightly more, although use for many months was also documented. Even brief military use left schools unfit for educational use without major rehabilitation.

[36] In some cases, soldiers or fighters occupied schools entirely, forcing schools to close for the duration of the occupation. In others, they used schools after school hours and at night, leaving the school to partially function during the day, or they only used part of the school, with students attempting to continue their studies alongside the combatants.

[37] Attempts to quantify the number of schools across Congo affected by military use between 2012 and 2014 is complicated by competing standards of verification and reporting used by different UN agencies and nongovernmental organizations, as well as difficulties in surveying schools due to factors such as insecurity and remoteness of locations.

[...]

Groups Using Schools for Military Purposes

[38] Human Rights Watch documented schools being used for military purposes by the Congolese army, the M23, the FDLR, Nyatura groups, and the Raia Mutomboki.

[39] Sometimes schools have been used multiple times by different groups. The director of one school told Human Rights Watch:

On May 10, 2013, we stopped school activities as the school was occupied by [Congolese army] soldiers who were in combat with the M23.... [Congolese army] soldiers stayed for a month in the classrooms.... The school was transformed into a military camp.... [Then] the M23 ... managed to chase away the [Congolese army] from the area. They fled, leaving behind some military equipment in our school that the M23 recovered upon their arrival. The M23 then, in turn, also used our school for a period. And when, during the months of October and November 2013, the fighting resumed between the [Congolese army] and the M23, the [Congolese] military chased away the M23 and reoccupied the classrooms of our primary school.

[...]

Use of Schools as Military Bases and Temporary Accommodation

[40] School staff described how soldiers and fighters demanded entry into classrooms or broke the locks off doors in order to enter schools and use them as bases or for temporary accommodation.

[41] A secondary school director explained what happened when the Congolese army arrived in May 2012:

They [army soldiers] put their weapons and ammunition in the classrooms... The students were afraid and said that the [army] would start fighting soon. Some fled. The captain told me to calm the students; that they would win soon.... We were cohabitating in the school with the [Congolese army] who were staying during the night. It was for about 10 days.

[...]

[42] Teachers and school directors told Human Rights Watch that government soldiers often dismissed their concerns about protecting the schools, claiming that wartime circumstances justified the school's occupation. The director of a primary school in Nyiragongo territory, north of Goma, told Human Rights Watch what happened after army troops occupied his school in September 2012: "We tried to organize a meeting with the [Congolese army], but they refused and said that we were in wartime, and they weren't willing to give the time.

Duration of Military Use

[43] In numerous instances, armed groups and the Congolese army have used schools as temporary accommodation while traveling to or from military operations, sometimes far from active combat zones. For example, at a school in Masisi territory, army soldiers occupied classrooms overnight in February 2013 while traveling south. [...]

[44] But in some cases, occupations lasted for days, weeks, and even months. A teacher at a primary school in Nyiragongo territory described how soldiers used his school as a small command center for several weeks in September and October 2012 : [...].

[...]

Use of Schools for Military Training

[45] Schools have also been used as places to train soldiers and forced recruits. For example, a man who was abducted by the M23 told Human Rights Watch that he was taken first to a classroom of the primary school in Chengerero and then to a former kindergarten for military training for a week in June 2013. And at Institut Bweremana, immediately next to the army's headquarters in Minova, soldiers frequently used the school grounds from November 2012 until at least July 2013 to conduct parades and military training exercises.

[...]

Negative Consequences of Military Use of Schools

[46] Almost inevitably, use of schools by the government armed forces or armed groups harms students' safety or education. When students mix with soldiers, they are often subjected to abuses such as forced recruitment, forced labor, beatings, and sexual violence.

[47] Whatever the duration of the occupation, in every instance of the military use of schools documented by Human Rights Watch, witnesses described how forces looted the school's equipment or building materials to use as firewood or for other purposes. When schools are damaged or destroyed, and school materials looted or burned, education infrastructure vital to the realization of children's right to education is lost.

[...]

Schools Damaged or Destroyed by Occupying Soldiers

[48] Forces occupying schools have regularly taken tin roof sheeting for shelter; used school benches, the wood sidings of classrooms, and textbooks and notebooks to light and burn fires; and raided the supplies of school canteens. The theft of school property may constitute the unlawful seizure of non-military property, or looting. Because local communities frequently fund the construction of their schools in eastern Congo, the destruction and damage of schools hurts the community financially.

[...]

Schools Damaged or Destroyed by Attacks Because of Military Presence

[49] A number of schools came under attack because of the presence of the army or armed groups in the school. Such attacks are legitimate under the laws of war, yet nonetheless result in damage to education infrastructure and thus impinge on students' studies.

[50] One director explained that while his primary school was used by Congolese army soldiers, they installed heavy weapons that were used to fire on the M23 forces on a hill about five kilometers away. In return, the M23 fired in the school's direction. "One classroom was completely destroyed after a bomb fell on it from the M23 area," he said.

[51] During fighting between People's Alliance for a Free and Sovereign Congo (*Alliance du peuple pour un Congo libre et souverain*, APCLS) and the army in early and mid-2012, government soldiers occupied several schools between Nyabibwe and Lukweti in Masisi territory. One director explained how government troops used his school four times from March to June 2012: "The school was just grounds for them. They stayed there. Our military are not there to protect but to use firearms and damage things." The director noted that "there were spent shells everywhere and in the school courtyard," indicating that weapons had been fired inside the school.

Ongoing Dangers After School Use

[52] The risk to students and teachers' safety may not end even once the troops have vacated a school.

[53] A village leader explained that after the M23 abandoned his village's school, a demining organization found "rocket-like bombs" around the school, one in each of the four corners of the school plot, and a fifth at the entrance to the main road leading to the school, about 100 meters from the school.

[54] During a visit to Institut Bweremana in Minova in June 2013, Human Rights Watch observed technicians removing large munitions from the school latrines. Found in the latrines were nine 107mm rockets, two boxes of standard AK-47 ammunition, and two recoilless rockets. Though the latrines had been closed and partially destroyed so as to prevent their use, Human Rights Watch observed children playing around them. New latrines had been built about 50 meters away, but removing the munitions took more than seven months.

Harm to Education

[55] The presence of troops inside schools can lead to children being forcibly excluded from school, or to students avoiding school due to concerns about their own safety. [...]

[56] Deterioration of a school's physical structure and a loss of education materials have also hurt students' studies. Given the dire state of many Congolese school buildings, even moderate damage can render them completely unusable. [...]

[...]

IV. International Examples of Good Military Practice Protecting Schools

[57] Not all uses of schools for military purposes are prohibited by the laws of armed conflict. However, unlawful and unnecessary misuse of schools is made more likely by a lack of clear regulations, training for soldiers on how schools should be protected from military use, and adequate logistical support.

[58] In June 2015, the United Nations Security Council expressed "deep concern that the military use of schools in contravention of applicable international law may render schools legitimate targets of attack, thus endangering the safety of children and in this regard encourages Member States to take concrete measures to deter such use of schools by armed forces and armed groups."

[59] Some government armed forces and some non-state armed groups have already developed military orders or doctrines that clearly spell out protections for schools from military use. Such good practice may be useful to the Congolese armed forces and armed groups when considering and developing similar policies that recognize feasible alternatives to using schools.

[...]

[60] The director of the army's civic and patriotic education unit told Human Rights Watch that all soldiers are trained on the need to protect children and schools. However, the need to avoid attacks on schools, students, and teachers is not specifically mentioned in the army's Code of Conduct.

Armed Forces and Non-State Armed Groups' Good Practice

[61] There are examples of protections instituted in other countries that Congo could consider as examples of good practice when developing its own protections for schools from military use through legislation, military orders, or in negotiations with armed groups. Examples from countries that also have experience with armed conflict include:

[...]

[62] The armed forces of Colombia have issued the following order:

Considering International Humanitarian Law norms, it is considered a clear violation of the Principle of Distinction and the Principle of Precaution in attacks and, therefore a serious fault, the fact that a commander occupies or allows the occupation by his troops, of ... public institutions such as education establishments.

[...]

[63] Seventeen non-state armed groups, including from **Burma, India, Iran, Sudan, Syria, and Turkey**, have signed deeds of commitment developed by the nongovernmental organization Geneva Call, pledging:

We will ... avoid using for military purposes schools or premises primarily used by children

[...]

V. Legal Protections for Schools, Children and Education

[64] Congolese law, the law of armed conflict, and international human rights law all include provisions applicable to the use of schools for military purposes and for the protection of children.

[...]

Law of Armed Conflict (International Humanitarian Law)

Protection of Schools

[65] The law of armed conflict (also known as international humanitarian law) is the body of law that regulates conduct in international and non-international armed conflicts. Under Additional Protocol II to the Geneva Conventions, applicable during non-international armed conflicts, it is a “fundamental guarantee” that children shall receive an education, in keeping with the wishes of their parents.

[66] Schools are normally civilian objects and, as such, shall not be the object of attack unless they become legitimate military objectives. To intentionally direct attacks against schools when they are not legitimate military objectives constitutes a war crime. In case of doubt whether a school is being used to make an effective contribution to military action, it shall be presumed not to be so used.

[67] The law of armed conflict requires that the parties to a conflict take precautions against the effects of attack. To the extent that schools are civilian objects, parties to an armed conflict shall, to the maximum extent feasible, a) avoid locating military objectives within or near densely populated areas where schools are likely to be located; b) endeavour to remove the civilian population, individual civilians, and civilian objects under their control from the vicinity of military objectives; and c) take the other necessary precautions to protect those schools under their control against the dangers resulting from military operations.

[68] Therefore, turning a school into a military objective (for example, by using it as a military barracks) subjects it to possible attacks from the enemy that might be lawful under the law of armed conflict. Locating military objectives (a military truck, for example) in a school courtyard also increases the risk that the school will suffer incidental damage from an attack against those nearby military objectives that might be lawful under the law of armed conflict.

[69] Schools also benefit from special protection as cultural property under customary law, and each party to a conflict must respect and protect buildings dedicated to education that are included in the scope of cultural property. This implies a duty of special care to avoid damage to buildings dedicated to education (unless they

are military objectives) as well as the prohibition of all seizure of, or destruction or wilful damage done to, institutions dedicated to education.

[70] Account must also be taken of other relevant rules and principles of the law of armed conflict. Among these are special protections to children. If education institutions are fully or partially used for military purposes, the life and physical safety of children might be at risk and access to education is restricted or even impeded, either because children may not go to school for fear of being killed or injured in an attack by the opposing forces, or because they have been deprived of their usual educational building.

Prohibition on Use of Children in Armed Conflict

[71] The laws of armed conflict and international human rights law prohibit the recruitment and use of children as soldiers. Additional Protocol II prohibits states and non-state armed groups from recruiting or using children under the age of 15 in armed conflict.

[72] In 2000, the UN adopted the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (the "Optional Protocol"). The Optional Protocol, to which Congo is a party, raised the standards set in the Convention on the Rights of the Child by establishing 18 as the minimum age for any conscription or forced recruitment or direct participation in hostilities. The Optional Protocol bans *any* recruitment or use of children under 18 by non-state armed groups: "Armed groups that are distinct from the armed forces of a state should not, under any circumstances, recruit or use in hostilities persons under the age of eighteen." It also obligates governments to "take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices."

[73] Individuals who commit serious violations of international humanitarian law with criminal intent are responsible for war crimes. Under customary international humanitarian law and the Rome Statute of the International Criminal Court (ICC), it is a war crime for members of armed forces or non-state armed groups to conscript or enlist children under 15, or to use them to participate actively in hostilities.

[74] The ICC statute clarifies that individual criminal liability also extends beyond the use of children as armed combatants. Under the ICC statute, the war crime of recruiting or using child soldiers:

Cover[s] both direct participation in combat and also active participation in military activities linked to combat such as scouting, spying, sabotage and the use of children as decoys, couriers or at military checkpoints....

[U]se of children in a direct support function such as acting as bearers to take supplies to the front line, or activities at the front line itself, would be included.

International Human Rights Law

[75] International human rights law is applicable at all times, subject to lawful derogations. A number of international human rights law provisions are relevant to the issue of the military use of schools.

[76] International human rights law guarantees students, teachers, academics, and all education staff the right to life, personal liberty, and security. States shall also ensure, to the maximum extent possible, the survival and the development of children.

[77] As children, students under the age of 18 receive special protections under international human rights law. According to the Convention on the Rights of the Child (CRC), in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the “best interests of the child” shall be a primary consideration.

[78] Everyone has the right to education. With a view to achieving the full realization of this right, states shall make primary education compulsory and available free to all; secondary education generally available and accessible to all; and higher education equally accessible to all on the basis of capacity. The material conditions of teaching staff shall be continuously improved. States shall also take measures to encourage regular attendance by children at schools and the reduction of child dropout rates. With respect to children, states shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation. The CRC, one of the main international treaties guaranteeing the right to education for children, contains no provision for derogation or suspension.

[...]

B. RULES OF WAR OF THE PEOPLE’S ALLIANCE FOR A FREE AND SOVEREIGN CONGO (APCLS)

[Source: Geneva Call, "Règles de la guerre dans le mouvement Alliance du Peuple pour un Congo Libre et Souverain (APCLS)", 5 November 2015, available at http://theirwords.org/media/transfer/doc/apcls_regle_de_la_guerre_2015-de43f439e7bb54263caec76dcbf0a2bd.pdf]

In situations of armed conflict, I will respect the rules set forth in international humanitarian law (IHL).

1. I will fight only enemy combatants and attack only military objectives.
2. I will use methods of warfare and take every precaution in pursuing military goals to ensure the least harm is done to the lives and property of civilians.
3. I will not attack or harm a person who wishes to surrender.
4. I will treat humanely all civilians and persons *hors de combat*, including detainees and the wounded, in accordance with IHL.
5. I will not commit violence of any kind against children or women.

6. The minimum age of recruitment is 18 years.

7. I will respect all cultural property, be it objects or places.

8. I will not tolerate or engage in rape or pillage.

9. I will respect all persons and objects of the Red Cross and other recognized symbols of humanitarian organizations.

I understand that to disobey these rules is a crime, for it dishonours military personnel and their countries. Therefore, I will report any violation of these rules to our superiors.

Done at Mautu, 5 November 2015

for APCLS

Janvier BUNGO KARAIRI

Supreme Commander of the Movement

Discussion

I. Classification of the Conflict and Applicable Law:

1. (*Document A, paras [4]-[15]*) How would you qualify the situation in the eastern Democratic Republic of Congo (DRC)? Between the State and fighters from armed groups? Between the State and combatants of the Rwandan and Ugandan armies? Between the armed groups themselves? Which rules of IHL apply? (GC I-IV, Art. 3; P II, Art. 1)

2. (*Document A, paras [2], [8]*) Did Rwanda's support to the M23 affect the nature of the conflict between the armed group and the DRC? Considering that the M23 "relied on significant support from Rwandan military officials who planned and commanded operations, trained new recruits, and provided weapons, ammunition and other supplies"? Is it an internationalised armed conflict? Does that term have any meaning in IHL? (see ICTY, *The Prosecutor v. Tadić*, Part C., paras 98-145)

3. (*Document A, para. [12]*) Did the involvement of the United Nation's "Intervention Brigade" alter the nature of the conflict? Can the UN be a party to an IAC or a NIAC? In what circumstances? In this case, could the M23 target the UN Intervention Brigade considering that it was deployed to "conduct offensive operations against armed groups"? Are the rules of IHL binding on international organisations or peacekeeping and peace enforcement missions?

4. (*Document A, para. [13]*) Following the signature of the peace declaration on the 12th of December 2013, has the conflict between the Congolese government and the M23 ended? Does that mean that IHL ceases to apply? What if some members of the M23 continue to attack civilians after that date – can they no longer be prosecuted for war crimes? What is the temporal scope of IHL of non-international armed conflicts? (see ICTY, *The Prosecutor v. Tadić*, Part A., para. 70)

II. Conduct of Hostilities

5. (*Document A, paras [4], [14], [36]*) The HRW report refers several times to the members of armed groups as “combatants”. What is a combatant under IHL? Does the term combatant have the same meaning in NIACs as in IACs? Why are States reluctant to refer to members of armed groups as “combatants”? (P I, Art. 43(2); CIHL, Rule 3)
6. (*Document A, paras [25]-[30]*) An APCLS fighter told a former child soldier that they “should be different from civilians” and gave them strong drinks to “differentiate” them (*see para. [30]*). Who is a child a soldier? Does the term only include children who fight, or also those that serve as porters, cooks and sex slaves? Are child soldiers no longer civilians? Can they be lawfully targeted? In what circumstances? Is making child soldiers wear military attire in compliance with or in violation of IHL? Should they be required to distinguish themselves from civilians? (P II, Art. 13; CIHL, Rules 5 and 6; ICRC, Interpretative Guidance on the Notion of Direct Participation in Hostilities)
7. (*Document A, paras [32]-[33], [64]-[70]*)
- a. Can schools be attacked under IHL? Are schools specially protected? When is a school considered to be a military objective? Does the presence of soldiers in schools suffice to make a school a military objective (*see para. [35]*)? In case of doubt that a school is being used to make an effective contribution to military action, can it still be attacked? Are there any circumstances under which a school may lawfully be attacked? Are schools cultural property as the Human Rights Watch Report suggests in para. 69? Is attacking a school a war crime? In what circumstances? (P I, Art. 52; CIHL, Rules 8, 38, 39, 40; ICC Statute, Arts 8(2)(b)(ix) and Art. 8(2)(e)(iv))
- b. Can school staff be targeted under IHL? If teachers and/or directors support a belligerent party? Encourage students to fight? Transport ammunition? (*see para. [33]*). Even if he or she was forced to do so? (P II, Art. 13; CIHL, Rules 5 and 6; ICRC, Interpretative Guidance on the Notion of Direct Participation in Hostilities)
8. (*Document A, paras [34]-[45], [64]-[70]*)
- a. What qualifies as military use of schools? When a school is used for temporary accommodation, military training or resources? For a long or short period of time? Does IHL expressly prohibit the military use of schools? What principles of IHL could be applied to prevent the military use of schools? If the school is only partially occupied after schools hours, is that prohibited by IHL? (*see para. [36]*) Can the occupation of a school by the Congolese army be justified by “wartime circumstances” (*see para. [42]*)? (P I, Art. 58; P II, Arts 4(2)(g) and 4(3)(a)); CIHL, Rules 22, 23 24 and 52)
- b. (*Document A, paras [46]-[56]*) Why does Human Rights Watch consider it important to discourage military use of schools? Do you agree? What would you say to the argument that discouraging military use of schools tips the balance between humanity and military necessity unfairly towards the side of the former?

III. Treatment of Persons

9. (*Document A, paras [9],[65], [78]*)
- a. Do children have a right to education? In IHL? Does this apply to children living in areas controlled by armed groups? Do such groups have to ensure that all children are provided with an education? Or only those under their control? Did the M23 have to provide children with an education during its 12-day occupation of the eastern city of Goma and the town of Sake in November 2012 (*see para. [9]*)? What if the occupation had been longer? Or shorter? (P II, Arts 1 and 4(3)(a))
- b. Do other sources of international law give belligerent parties an obligation to provide education? Do these obligations complement or contradict IHL? Do they apply to both the State and armed groups? Can armed

groups have human rights obligations? What are the advantages or disadvantages of such application? (Convention on the Rights of the Child (CRC), Art. 28)

10. (Document A, paras [25]-[30], [71]-[74])

a. Is the recruitment of children by the M23 and other armed groups prohibited in international law? At what age is such recruitment prohibited? Under IHL? Under the Optional Protocol to the Convention on the Rights of the Child? Does the Optional Protocol apply to armed groups? In 2012, the M23 forcibly recruited 20 children under 18, seven of whom were under 15. (see *para. [28]*) Did the M23 violate IHL or IHRL concerning the children who were over 15 years old but under 18? Those who were under 15? What if the children voluntarily joined the armed group? (P II, Art. 4(3)(c); Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, Arts 1 and 4)

b. According to the Optional Protocol, what can the DRC do if children under 18 want to join the armed forces? Is this option available to the M23? (Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, Arts. 2, 3 and 4)

c. Is the recruitment of children under 15 into armed forces or groups a war crime? Over 15? Does it apply only to children recruited to fight, or also to using children to otherwise participate in hostilities? What is meant by this term? Does it include children who serve as porters, cooks and sex slaves (see *para. [29]*)? If children are participating in hostilities, can they be targetable under IHL? Is there a difference between the terms active participation under the ICC Statute, direct participation under P I and participation in hostilities under P II? (P I, Art. 77(2); P II, Art. 4(3)(c); ICC Statute, Arts 8(2)(b)(xxvi) and 8(2)(e)(vii); ICC, *The Prosecutor v. Thomas Lubanga Dyilo*)

11. (Document A, paras [2]-[4],[6],[9], [31]) In the conflict in the DRC, “the use of rape as a tactic of war has particularly marked the conflicts, with hundreds of thousands of women and girls experiencing sexual violence” (see *para. [2]*). Can rape be qualified as a “tactic of war”? Is it prohibited by IHL? Only against women, or also men? Is rape a war crime? A grave breach? (GC IV, Art. 27(2); P I, Art. 76(1); P II, Art. 4(2)(e); CIHL, Rules 93 and 134; ICC, Arts 8(2)(b)(xxii) and 8(2)(e)(vi))

IV. Implementation of IHL

12. (Document A, paras [11], [13]-[14])

a. The peace agreement between the M23 and Congolese government “included commitments [...] not to give an amnesty to those responsible for war crimes and crimes against humanity”. Why does IHL of NIACs encourage States to give an amnesty? Are fighters who acted in compliance with IHL not immune from prosecution? Should the amnesty also apply to potential war crimes? If it enhances the chances of having peace? (P II, Art. 6(5))

b. Does the DRC have an obligation to prosecute war crimes committed by former fighters of the M23 and other armed groups? What about non-belligerent States, such as Uganda and Rwanda, which host leaders of the M23? What if we consider that the armed conflict between the DRC and the M23 was an IAC by virtue of Rwanda’s support to the armed group? (GC I, Art. 49; GC II, Art. 50; GC III, Art. 129; GC IV, Art. 146; P I, Art. 85(1))

13. (Document A, paras [57]-[63]; Document B)

a. How can compliance of IHL by members of armed forces and armed groups be enhanced? Does IHL oblige the DRC to disseminate IHL and provide training to its armed forces? Does it impose the same obligations to the M23 and other armed groups? (P II, Art. 19; CIHL, Rules 139, 142 and 143)

b. The APCLS has allegedly recruited children (see *Document A, para. [30]*) and committed serious abuses in areas under their control (see *Document A, para. [3]*). Does this violate its internal regulations? Does IHL

provide any consequences for the violation of such regulations? What is the legal value in IHL of commitments made by armed groups?

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