



**United Nations Organization Mission in  
the Democratic Republic of Congo**



**Office of the High Commissioner for  
Human Rights**

## **Special report**

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**CONSOLIDATED INVESTIGATION REPORT OF THE UNITED  
NATIONS JOINT HUMAN RIGHTS OFFICE (UNJHRO) FOLLOWING  
WIDESPREAD LOOTING AND GRAVE VIOLATIONS OF HUMAN  
RIGHTS BY THE CONGOLESE NATIONAL ARMED FORCES IN GOMA  
AND KANYABAYONGA IN OCTOBER AND NOVEMBER 2008**

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## **1. Executive summary**

1. At the end of October 2008 and in November 2008, in the context of generalized fighting in North Kivu between the Congolese-Tutsi rebel group *Congrès national pour la Défense du Peuple* (CNDP) and the Congolese National Armed Forces ( *Forces Armées de la République Démocratique du Congo* – FARDC) supported by other forces (local Mayi Mayi militias and Rwandan-Hutu FDLR militia), the CNDP managed to secure several strategic positions and subsequently launched large scale operations in two different directions, South towards Goma, the provincial capital, and North towards the large urban centre of Rutshuru. The FARDC troops charged with the defence of both axes retreated further South through Goma town and towards South Kivu; and North into Lubero territory through Kanyabayonga.

2. This report deals primarily with the serious violations of human rights and international humanitarian law committed both in Goma and in several towns and villages of Lubero territory, including Kanyabayonga, by FARDC elements during their withdrawal and highlights the need for profound reforms to be undertaken by the FARDC to enable it to fully and properly play its constitutional role. As human rights violations by the FARDC are so significant, failure at the political and operational levels to act to remedy the situation in and of itself constitutes a serious human rights violation. The Congolese government must take efficient actions on the incidents in the context of previous and continued human rights violations committed by the FARDC. Without profound change in the FARDC, the international community may be perceived as contributing to human rights violations as opposed to effectively supporting the desired change and this perception might affect its support to FARDC. It is critical to ensure that MONUC does not support or participate in any form of joint operation involving troops likely to violate international human rights and humanitarian law during the course of the operation.

3. At least 9 cases of arbitrary killing committed by FARDC soldiers were recorded in Goma during the night of 29-30 October 2008, generally in the context of the looting of private homes or robbery of vehicles which soldiers used to flee the city. At least forty-five persons received bullet wounds during the period in question. Two summary executions and one arbitrary killing were confirmed in Kayna on 17 and 18 November 2008 and another in Bulotwa, in the Kanyabayonga area. At least 15 victims suffered bullet wounds, including two children. This figure does not include FARDC soldiers and Mayi Mayi fighters killed or wounded in combat. Regarding sexual violence, the human rights investigators received several allegations concerning rapes in Goma committed during the night of 29-30 October. The Goma general hospital treated 17 cases of rape attributed to men in uniform. In the Kanyabayonga area, the team could directly confirm 35 of 45 alleged cases of rape by FARDC soldiers in the month of November and confirmed a further fourteen (14) new cases between 30 November and 20 December in Kanyabayonga town alone.

4. Looting was perpetrated in a large scale both in Goma and in the Kanyabayonga area. Looted items generally included foodstuffs, and basic household and agricultural items as well as mobile telephones. In many cases, it deprived victims of their basic means of subsistence, as victims were chased from their homes and forced to leave their villages. In addition, the looting had a psychological impact on victims; it represents a perversion of duty by soldiers of the FARDC, and greatly undermines both efforts to achieve sustainable peace and to foster respect for the rule of law.

5. The United Nations Joint Human Rights Office conducted investigations in the city of Goma and in South Lubero. Human rights officers interviewed victims and witnesses as well as military, police and administrative authorities. The teams visited Goma's hospitals and health clinics (*centres de santé*) and went to locations identified by witnesses as crime scenes (notably of arbitrary killings). The highly volatile security situation in the region at the time of the incidents covered in this report rendered the investigations particularly difficult. For example, the team had to overcome several serious threats to their security in its mission to the Kanyabayonga area.

6. A large number of the troops responsible for the human rights violations mentioned in this report still remain in or around the towns and villages they occupied in October/November 2008. After the incidents, changes in the command structure of some units were made, and some commanders were effectively replaced. The judicial response to the violations has, so far, been wholly insufficient. While the Military Justice system has initiated proceedings in Goma and Kanyabayonga, the number of soldiers arrested cannot account for the number of violations committed. Reports of out-of-court disciplinary punishments, including summary execution of perpetrators, could not be confirmed, but also raise concerns regarding the weakness of legal means to control the FARDC troops.

7. A number of recommendations are made at the end of this report. They address themselves to the Government and the Parliament of the Democratic Republic of Congo as well as the international community. Among other recommendations for immediate action, the Government should take the necessary measures to investigate the serious crimes and human rights violations described in this report. On the long term, it should put in place a comprehensive reform of the security sector, and establish a vetting mechanism to ensure that perpetrators of human rights violations are excluded from the army. The Parliament should establish an independent commission to evaluate the root causes of the incidents and undertake corrective actions to remedy the situation, including through the development of a comprehensive strategy for security sector reform. The international community should provide support to such reform. MONUC and EUSEC, in particular, should ensure that its support to military operations is linked with an improvement in the human rights record of FARDC.

## **2. Methodology and difficulties encountered**

8. Following serious allegations of mass human rights violations committed by FARDC troops in Goma and the area of South Lubero/Kanyabayonga, the United Nations Joint Human Rights Office (UNJHRO)<sup>1</sup> conducted investigations in the city of Goma (led by the UNJHRO-Goma field office) and in South Lubero (a multidisciplinary mission including the UNJHRO sub-offices of Beni and Butembo).<sup>2</sup>

9. The teams interviewed over 70 persons in Goma and Lubero, including military, police and administrative authorities; Mayi Mayi fighters; military justice officials; prison authorities and detainees; witnesses and victims; hospital and medical staff; members of local NGOs and journalists. In certain locations, the teams collected physical and documentary evidence such as bullet cases, pieces of exploded ammunition, and abandoned ID documents and photographs.

10. In Goma, where there is a permanent UNJHRO presence, two teams of human rights officers (HROs) were dispatched on 31 October to those areas where violations had been reported. The teams visited Goma's hospitals and health clinics (*centres de santé*) and locations identified by witnesses as crime scenes (notably of arbitrary killings). The teams cross-verified information related to alleged violations with reliable sources.

11. The highly volatile security situation in Goma at the time of the incidents covered in this report rendered the investigations particularly difficult. The presence within the city of uncontrolled FARDC soldiers and of CNDP forces approximately 10 kilometres outside Goma, and incidents where crowds attacked MONUC vehicles and held violent demonstrations against the UN Mission aggravated the situation, as did a prison breakout which occurred during the same period. Between 27 and 31 October, MONUC staff members were generally not authorized to leave the Mission's compound due to security restrictions. This situation rendered difficult the conduct of in-depth investigations in the immediate aftermath of the events.

12. The UNJHRO presence in Butembo, South Lubero, supported by the UNJHRO's Beni and Goma offices, led a multidisciplinary mission from 24 to 28 November. The team was based at the DDR camp in Kanyabayonga and benefited from escort by MONUC military contingents in the area (INDBATT IV). Following the recommendations of this initial mission, a second multidisciplinary mission<sup>3</sup> took place between 17 and 20 December 2008.

13. During the first mission, the team visited the locations where, according to credible sources, the most serious human rights violations had occurred. On 25 November, the team visited the villages of Kirumba, Kayna and Bulotwa. On 26 November, investigations were conducted in Kaseghe, Bwatsinge, Kirumba and Kayna. On 27 November, the team investigated in Kanyabayonga, Kirumba and Kayna. Less serious but numerous allegations of violations that took place in other villages could not be verified due to operational constraints. During the

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<sup>1</sup> The UNJHRO is the UN human rights integrated presence in the DRC. It is made up of the MONUC Human Rights Division (HRD) and the Office of the High Commissioner for Human Rights (OHCHR).

<sup>2</sup> The nine (9) person mission was comprised of UNJHRO Beni, Butembo and Goma (5), UNPOL Goma (1) MONUC CAS Beni (1) and MONUC Child Protection Beni (1).

<sup>3</sup> This second mission was organized by the Protection Cluster Nord Kivu-Grand Nord and included staff from MONUC CAS, MONUC Child Protection, UNJHRO, UNHCR and the Norwegian Refugee Council.

mission the team met and interviewed victims and witnesses, local administrative authorities, military authorities, Mayi Mayi combatants and representatives of the civil society. Therefore, although the report may not include all the violations that took place, it does provide a well-documented depiction of the type and severity of the violations that occurred during these time periods.

14. The team had to overcome several serious threats to their security in its mission to the Kanyabayonga area. Three of these incidents involved Mayi Mayi elements (both Mayi Mayi *Kasindiens* and PARECO) and another incident involved the FARDC. The second mission followed up on the first mission by assessing to what extent conditions had changed. It also allowed team members to visit several villages that it had not been possible to reach in November. During this mission, the team, escorted by INDBATT, was based in Kasando and traveled to Kanyabayonga (18 December), Luofu, Mapera, Kirumba and Kayna (19 December) and again to Kanyabayonga, Kayna and Kirumba (20 December). During the mission, the team met with the newly appointed FARDC Operations Commander for the *Grand Nord* region, Brigadier General Bahuma Ambamba.<sup>4</sup>

### **3. Context and overview of the events**

#### **3.1. General context**

15. The incidents analyzed in this report occurred in the context of widespread fighting in North Kivu between the CNDP<sup>5</sup> and the Congolese National Armed Forces (FARDC - *Forces Armées de la République Démocratique du Congo*), supported at times by various local defence militias, known collectively as Mayi Mayi, and the FDLR militia<sup>6</sup>. The ceasefire established by the Goma Peace Agreement of 23 January 2008 was violated on 28 August 2008 when hostilities between CNDP, FARDC and other groups (namely PARECO Mayi Mayi and FDLR) resumed. By late October, the CNDP had managed to secure several strategic positions<sup>7</sup>, from which they launched large-scale operations in two different directions; south, towards the provincial capital of Goma, and north, towards the town of Rutshuru.<sup>8</sup> The FARDC troops charged with the defence of both axes retreated, respectively, further south through Goma and on towards South Kivu; and north into Lubero territory through Kanyabayonga.

16. This report primarily covers the serious human rights violations committed in Goma and in several towns in Lubero territory by FARDC soldiers during their above-mentioned withdrawal.

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<sup>4</sup> General Bahuma replaced General Kinkela, who was the commander when the incidents took place (see below).

<sup>5</sup> The CNDP (*Congrès national pour la défense du peuple* – National Congress for the Defense of the People) is a Congolese politico-military movement led by General Laurent Nkunda that claims to protect the interests of the Congolese-Tutsi minority and other Rwandophones in the Kivus. The CNDP claims these people are threatened by the presence of FDLR militias in Congolese territory.

<sup>6</sup> The FDLR (*Forces Démocratiques de Libération du Rwanda*) is a politico-military movement that originates from the remnants of the ex-FAR (*Forces Armées Rwandaises*) and ex-Interahamwe militias and Hutu civilians who fled from Rwanda in 1994. Some were involved in the Rwandan genocide.

<sup>7</sup> In particular, on 26 October, CNDP took control of the military camp of Rumangabo, the main FARDC base in the region.

<sup>8</sup> Rutshuru and Kiwanja are only 5 km far from each other and can be considered as a single urban center of more than 70000 inhabitants, in a strategic location on the road linking the provincial capital Goma with the Grand Nord.

17. At the time of the incidents, the FARDC (*Forces Armées de la République Démocratique du Congo*) were formed as a result of the peace process which heralded the end of the Second Congo War in July 2003<sup>9</sup>. It was composed of the armies of the different warring factions of the time (existing government forces, and the forces of the ex-RCD, ex-MLC, and ex-Mayi Mayi). Depending on the security and political circumstances affecting each of these groups, the integration into a single, unified army followed different paths and timing. As a result, there were several categories of Brigades.

18. Integrated Brigades were army units composed of soldiers with different backgrounds (ex-MLC, ex-RCD, government, etc.) and originating from different regions (and thus ethnically heterogeneous). Soldiers from the Integrated Brigades have gone through a training process known as “*brassage*”. There were 18 Integrated Brigades, all denominated by ordinals (First, Second, Third, etc.) followed by the mention Integrated Brigade (IB). While they were all issued with identical green uniforms, soldiers of each Integrated Brigade were distinguishable through a coloured band worn on their left shoulders (for example a green band for soldiers of the 2<sup>nd</sup> IB, yellow for soldiers of the 4<sup>th</sup> IB, etc.). While initially Integrated Brigades were primarily deployed in their entirety within a given area (1<sup>st</sup> IB in Bunia, 2<sup>nd</sup> IB in Beni-Lubero, etc.), the scale of the conflict in North Kivu led to the splitting up of the brigades into smaller (battalion- and company-size) army units, which were then re-deployed according to operational needs.<sup>10</sup> As a result, companies and battalions hailing from various different brigades operated simultaneously within the same area.

19. Existing alongside the IBs were army units that had not yet undergone *brassage* or taken part in the integration process. As a result, they maintained their former denomination (generally a higher ordinal, i.e. 110<sup>th</sup> Brigade) and were more ethnically homogeneous. The incidents highlighted in this report are primarily attributable to elements of IBs and elements not formally attached to a brigade, but rather to the headquarters of the Military Region.

20. The FARDC experience structural difficulties including lack of training and discipline and low salaries, as well as widespread corruption. Soldiers are poorly paid, if paid at all, and social support for their dependents is close to non-existent. As a result, when redeployed, soldiers usually travel with their families, even while they are engaged in combat operations. This, added to the lack of appropriate logistical support (rations, military tents) implies that troops on the move normally have to provide for themselves and their families and find their own lodging, either by building makeshift camps composed of straw huts or by “renting” private houses. The low wages, oftentimes paid late or embezzled along the chain of payment, when paid at all, lead soldiers to resort to the use of force to ensure their self-sustainment. Being in the military is thus viewed by many in the DRC as a means to make a living off the population, rather than as a public service or duty.

21. During their lootings in Lubero territory, the FARDC was confronted by its traditional allies in the Mayi Mayi *Kasindiens* and PARECO groups, who, on this occasion resolved to fight against the government troops in order to protect the population.

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<sup>9</sup> The information contained in the present report refers to the structure of FARDC before the integration of CNDP and other armed groups into its ranks.

<sup>10</sup> Although the exact size can vary according to the nationality of the army and the type of unit, a standard brigade consists of between 4,000 and 5,000 troops. A battalion usually consists of between 500 and 1500 men, and a company normally is composed of between 75 and 200 men – the company is sub-divided into platoons of between 30 and 50 soldiers.

22. The generic term Mayi Mayi is used to describe traditional local defence militias that operated in the provinces of North and South Kivu, Orientale and Katanga, and that traditionally have infused their activities with a strong mystic component. In the context of the North Kivu crisis, the main Mayi Mayi groups operating there are integrated into the PARECO coalition (Coalition of the Patriotic Congolese Resistance). However, other Mayi Mayi groups operate outside of this coalition, either independently or in various alliances involving PARECO, FARDC or FDLR). Mayi Mayi groups with a strong sense of community belonging are particularly prolific in the ethnically homogeneous<sup>11</sup> region of Lubero.<sup>12</sup>

23. Although during the latest crisis the ethnically Nande Mayi Mayi have generally allied themselves with FARDC, PARECO and FDLR against what they perceive as the common CNDP-Tutsi threat, their main allegiance is not necessarily to the Government but to their villages of origin. This explains the fact that during the Kanyabayonga events they opposed the FARDC, not only to protect the population from the looting but also to oblige the FARDC to either confront the CNDP or hand over its weapons to the Mayi Mayi in order for them to organize the self-defense of the area. Two Mayi Mayi groups are mentioned in this report. They are PARECO coalition<sup>13</sup> discussed above, whose military commander is Colonel Kakule Sikula La Fontaine, and the group known as *les Kasindiens*,<sup>14</sup> commanded by General Vita Kitambala and based in Nyamihindo, one kilometer south of Kayna in the direction of Kanyabayonga. Kitambala, a native of Kayna, is a former ally of La Fontaine. The division between the two is the result of a power struggle and divergent views.

### 3.2 Context of the Goma incidents

24. The security situation prevailing in the Goma area during the week prior to the incidents of 30 and 31 October 2008 was extremely tense and uncertain. On 26 October CNDP troops for the second time in two weeks took control of Rumangabo military camp, HQ of the 2nd Integrated Brigade and held positions in Virunga National Park near the road to Goma. On 27 October heavy artillery exchange between CNDP and FARDC took place along the Kibumba-Kalengera axis. On the same date, in the city of Goma, angry crowds pelted stones at MONUC installations and vehicles, frustrated by CNDP progress and their perception that MONUC should have attempted to halt the CNDP's advance towards the city, given the FARDC's inability to do so.

25. On 28 October heavy fighting took place in Rubare (35 Km NE of Goma) and the strategic town of Rutshuru (72 km N of Goma) fell to CNDP which encountered no opposition from the FARDC. Fleeing FARDC soldiers attacked a MONUC patrol with stones and rifle-fire on the road to Rwindi (16 km South of Kanyabayonga).<sup>15</sup> Three MONUC peacekeepers /

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<sup>11</sup> The territories of Beni and Lubero form what is known as the "Grand Nord", almost exclusively populated by the Nande community.

<sup>12</sup> Nevertheless, a multitude of rogue Mayi Mayi groups regularly perpetrate acts of robbery and sexual violence in the area or act as private armies for local businesspersons.

<sup>13</sup> The PARECO coalition is ethnically heterogeneous, with members originating from various groups such as the Nande, Hutu and Hunde.

<sup>14</sup> This group takes its name from the border town of Kasindi, in Beni territory.

<sup>15</sup> The hierarchy of the 8<sup>th</sup> Military Region declared to MONUC that these troops were mutineers and that they had no longer control over them.



military observers were seriously injured. FARDC soldiers looted 18 trucks and cars loaded with humanitarian aid and seized the keys.<sup>16</sup>

26. The following day, the CNDP's continued advance forced the FARDC to withdraw from Kibumba, 35 kilometres northeast of Goma, provoking a massive population displacement towards Goma, including of IDPs from the Kibati IDP camp situated 12 kilometres north of the city. Persisting rumors of an imminent CNDP attack on Goma caused widespread panic among the civilian population, heightened by an influx of fleeing FARDC troops entering Goma. MONUC deployed armored vehicles and combat helicopters to prevent the CNDP's advance towards Goma. The CNDP eventually stopped its advance 10 kilometres from Goma.

27. On 29 October, then-CNDP leader Laurent Nkunda declared a unilateral ceasefire, the justification for which was ostensibly to avoid creating panic amongst the population of Goma, including IDPs who had recently entered the city. In the communiqué announcing the ceasefire, Nkunda further called upon MONUC to protect persons and property in the city from what he described as "fleeing government forces".

28. Most FARDC troops had by then fled Goma towards South Kivu, effectively leaving the protection of the city to MONUC.<sup>17</sup> Disbanded FARDC soldiers fleeing the front and congregating in Goma, as well as FARDC soldiers garrisoned in the city whose commanders had either lost control over their forces or fled, subsequently went on a rampage, committing acts such as arbitrary killings, rape and other acts of sexual violence, looting and extortion. Widespread looting of shops and private residences affected numerous areas of Goma, including the following neighbourhoods (*quartiers*) Mabenga-Sud, Mabenga-Nord, Nyabushango, Ndosho, Katindo-gauche, Katingo-droite, Virunga, Kasika, and the *Volcans* neighbourhood. At least 10 killings were confirmed to have been committed during these acts of looting, and Goma Hospital confirmed that it had treated 17 victims who had reportedly been raped by uniformed armed men. During the night of 29-30 October, uncontrolled soldiers could be heard firing their weapons (mainly in air) throughout Goma, including in particular in the neighbourhood of Himbi and near the airport. MONUC patrols dispatched to assess the situation were also fired at by unidentified sources, without incurring any casualties.

29. At this stage, the FARDC military command in Goma appeared to have so little effective control over its troops that, according to MONUC military sources, FARDC Regional Commander General Mayala decided to dispatch patrols to attempt to recover control and stop the looting. Reportedly several FARDC soldiers were arrested by these patrols and summarily executed on the spot (see below).

### **3.3 Composition of troops in Goma and chain of command**

30. In late October 2008, approximately 200 soldiers were garrisoned at the FARDC 8<sup>th</sup> Military Region Headquarters (*Etat Major de la 8ème Région Militaire*) in Goma. This

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<sup>16</sup> Stealing humanitarian aid could constitute a crime actionable under international law. Article 23 of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War clearly stipulates the responsibility of state warring parties to allow the passage of foodstuffs, clothing, medical stores, and other components of humanitarian aid.

<sup>17</sup> General Mayala remained in Goma with between 100 to 150 soldiers, and a company of Colonel Padiri's 82<sup>nd</sup> (non-integrated) Brigade remained at the airport.

contingent was made up of ordinary FARDC soldiers not attached to a particular brigade, elements of the Republican Guard and battalions from two different non-integrated brigades responsible for the city security. A Military Police (MP) battalion from the 82<sup>nd</sup> Brigade, commanded by Colonel Padiri, controlled an area extending from the Katindo military camp to Mugunga, and the 83<sup>rd</sup> Brigade under Colonel Musala controlled the area extending from the Katindo Military camp to Kibumba. The Commander of the 8<sup>th</sup> Military Region with overall responsibility for North Kivu, and with direct command over the troops stationed in Goma, was General Vainqueur Mayala.

31. In addition to the above, soldiers of the 2<sup>nd</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 14<sup>th</sup>, and 18<sup>th</sup> Integrated Brigades, as well as of the 83<sup>rd</sup> Brigade, most of which had previously been based along the Goma-Rumangabo axis entered the city fleeing combat. Among these elements there were also soldiers of brigades based further north, such as the 6<sup>th</sup> IB that was deployed between Kalengera and Kiwanja, most of whom had fled towards Kanyabayonga. However, due to the general disarray which characterized the period in question, some soldiers from this brigade ended up in Goma and were thus present during the 29-30 October events.

### **3.4 Context of the incidents in South Lubero (Kanyabayonga area)**

32. The town of Kanyabayonga, which is situated 160 kilometres south of Butembo and 175 kilometres north of Goma, had received several waves of internally displaced persons (IDPs) fleeing combat in the territory of Rutshuru (Kiwanja, Nyanzale, Kibirizi, Kikuku, Rwindi, Mirangi, Kyaghala, etc.), beginning in late October 2008. FARDC soldiers from several Integrated Brigades, accompanied by their families, began arriving in Kanyabayonga during the same period. As the number of incoming soldiers increased, the security situation deteriorated. The following period was characterized by the occupation and looting of private residences and businesses by the soldiers and their families, seizure of agricultural products, extortion and robbery of valuables, in particular mobile telephones and radios.

33. The advance of the CNDP on Rutshuru, Kiwanja, Nyanzale, Kikulu and Kibirizi in late October - early November 2008 increased this movement of FARDC troops northwards towards the territory of Lubero, following the axis Kanyabayonga-Butembo. It is unclear to which extent the withdrawal towards Lubero territory was a tactical move, a panic reaction, or a combination of both. The latter seems the most likely, as UNJHRO investigators were able to confirm that the FARDC troops in question were accompanied by groups of soldiers from disbanded units, soldiers' family members and IDPs.

#### **Kanyabayonga town**

34. By early November, FARDC soldiers of the 2<sup>nd</sup>, 4<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 9<sup>th</sup>, 13<sup>th</sup>, 15<sup>th</sup> and 16<sup>th</sup> Integrated Brigades<sup>18</sup> had completely occupied Kanyabayonga and several other towns and villages in the area (notably Kayna, Kirumba and Kasando) and begun a generalized looting spree targeting the local population. On 10 November, the population of Kanyabayonga began fleeing the town as a result of the abuses committed against them by FARDC soldiers.

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<sup>18</sup> As explained in the general context, this does not imply that brigades were present in the area in full strength.

35. Between 15 and 18 November, the situation escalated with FARDC troops indiscriminately firing rifle and even artillery rounds. According to witnesses, soldiers of the 7<sup>th</sup> and the 15<sup>th</sup> Integrated Brigades were particularly violent and persistent in their actions. The shooting provoked panic among the local population, most of whom abandoned the town. Some families (grouped in around 10 huts) took shelter near MONUC military base in Kanyabayonga and others left for their agricultural fields. Some of the population escaped further north, to the towns of Kirumba, Lubero, Butembo and Beni.

36. Violence soon engulfed the nearby towns of Kayna and Kirumba, also occupied by the FARDC during their north-bound retreat.

### **Kayna**

37. At around 10 p.m. on 10 November, FARDC soldiers from various Integrated Brigades entered Kayna, firing their weapons. They succeeded in rapidly occupying the town. The population, taken by surprise, was unable to evacuate the area. Until the following afternoon, FARDC soldiers then proceeded to loot homes, businesses and schools. The town's inhabitants fled at around 1 a.m. that night, after which the FARDC forcibly occupied private homes in the town, including the residence of the local PNC (*Police Nationale Congolaise*, National Police) Commander, whose official weapons were seized by FARDC soldiers.

38. The situation further degenerated when, on 18 November, a new wave of violence ensued following a dispute between a FARDC soldier and a *Kasindien* Mayi Mayi fighter. According to witnesses, the Mayi Mayi fighter had attempted to prevent the FARDC soldier from stealing a telephone from a civilian. The incident deteriorated into open combat between FARDC soldiers and Mayi Mayi fighters, followed by another wave of looting from 18 to 20 November. Witnesses have reported that the looting was carried out by soldiers of the 6<sup>th</sup> Integrated Brigade. Civilians were forced to carry looted goods from Kayna to the 6<sup>th</sup> IB position in Kamandi. Several killings were reported, including those of two persons summarily executed and burnt by FARDC soldiers who accused them of belonging to a Mayi Mayi group, (*see Human Rights Violations below*)

39. Between 11 and 18 November, the Mayi Mayi *Kasindiens* and the FARDC Military Police collaborated in an effort to re-establish some measure of security. Despite these efforts, witnesses indicated that the Military Police was unable to apprehend all of the rogue FARDC soldiers.

### **Kirumba**

40. Like Kayna, Kirumba suffered two different waves of violations by FARDC soldiers. The first wave took place on the night of 10 November and continued into the following day. FARDC soldiers arrived in Kirumba in great numbers, firing indiscriminately and entering homes to loot them. The soldiers began shooting while on the Kayna-Kirumba road, provoking some residents to flee before actual fighting began, while others remained in town. On the morning of 11 November, a group of PARECO Mayi Mayi coming from Kamandi attacked the FARDC in order to prevent the looting. The consequent fighting caused the displacement of the remainder of the town's inhabitants. According to witness statements, the elements implicated on

the FARDC side belonged to the 2<sup>nd</sup>, 4<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 9<sup>th</sup>, 13<sup>th</sup>, 15<sup>th</sup> and 16<sup>th</sup> Integrated Brigades. Five FARDC soldiers and one PARECO Mayi Mayi fighter were killed during the fighting.

41. A similar incident took place on the night of 18 to 19 November when FARDC soldiers arrived from Kayna at around 11 pm and began to loot the town. On the early morning of 19 November, PARECO Mayi Mayi entered Kirumba and succeeded in forcing the FARDC into retreat, killing three soldiers in the process. The PARECO Mayi Mayi remained in Kirumba until 20 November. Following negotiations between the FARDC hierarchy (in particular, a delegation led by Land Forces Commander General Amisi) and the PARECO Mayi Mayi, the latter agreed to leave Kirumba upon receiving reassurances that FARDC soldiers would end their abuses against the civilian population. Military Police subsequently took control of the centre of Kirumba, after which the security situation improved. Up to the time of the UNJHRO investigative mission, Kirumba was controlled by a Military Police platoon commanded by a Captain Bahati (who had allegedly participated in the looting of the town, according to some witnesses).

### **Kaseghe**

42. Unlike the situation in the three previously mentioned towns, the town of Kaseghe was not looted during the November incidents. The town had already been occupied for over a month by the *Kasindiens* Mayi Mayi led by Major Aimé prior to the arrival of the FARDC. Fearing imminent clashes, the inhabitants of Kaseghe began leaving the town around 11 November, joining the movement of displaced people coming from Kayna and Kirumba on their way to Hutwe, Bingi and Kiserera. Meanwhile, the *Kasindiens* Mayi Mayi supported by PARECO managed to disarm FARDC soldiers proceeding towards Kaseghe. The Mayi Mayi indicated that they seized over 78 AK-47 assault rifles from the soldiers. From 18 November the FARDC 2<sup>nd</sup> Integrated Brigade commanded by Colonel John Tshibangu<sup>19</sup> was deployed in town with the acquiescence of the Mayi Mayi with which it cooperates.

43. Several other villages (Mighobwe among others) situated in a 30-km radius from Kanyabayonga and on the axis linking Kanyabayonga, Kayna and Kirumba were also looted by FARDC soldiers. Rapes were also reported in these villages.

### **3.5 Composition of troops in Kanyabayonga and chain of command**

44. The scale of the violations described above renders it difficult to attribute them exclusively to several rogue individual elements of the FARDC. Further, the incidents described in this report cannot be ascribed to a few soldiers losing control in the heat of combat; but rather one in which thousands of troops fleeing from the enemy attacked their own rearguard villages.

45. A judicial investigation should establish whether the incidents could be attributed to the orders, actions or omissions of a particular commander or commanders or if they were due to

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<sup>19</sup> Colonel Tshibangu replaced Colonel Kasongo as commander of the 2<sup>nd</sup> IB after the incidents and managed to obtain a pacific co-existence with the Mayi Mayi. This improvement of the situation was probably due to Col. Tshibangu's good relations with the Nande in the mono-ethnic Grand Nord. Col. Tshibangu, although not a Nande himself, has been for a long time the commander of the former 89<sup>th</sup> Brigade/ex-APC, composed almost exclusively by Nande and stationed in Beni-Lubero and had entertained good relations with the local intelligentsia and Mayi Mayi groups until his brigade was sent to *brassage* in 2006. On the contrary, Col. Kasongo's 2<sup>nd</sup> IB had a long history of conflict with the Mayi Mayi in Butembo and was never appreciated by the local Nande community in Lubero.

confusion and general disorganisation. Preliminary information seems to indicate that FARDC commanders – in particular, those responsible for commanding Integrated Brigades – were unable to effectively exercise their legal responsibility to control troops under their command. The fact that many of the acts described in this report were committed by soldiers belonging to Integrated Brigades – a considerable number of whom have benefited from support and training provided by the international community, including human rights training provided by the UNJHRO - raises questions about the effectiveness of military cooperation between the Congolese Government and the international community as structured to date, and lends weight to the argument that a thorough reform of the security sector is imperative. Appropriate human and financial resources should be provided to this effort as a priority, and if necessary, continued MONUC support should be made conditional on progress on this regard. It is critical to ensure that MONUC does not support or participate in any form of joint operation involving troops likely to violate international human rights and humanitarian law during the course of the operation. Compliance of these operations with human rights and international humanitarian law is an obligation explicitly contained in Security Council Resolution 1856 (2008).

46. The report identifies those individuals who had command responsibility over FARDC soldiers allegedly involved in the incidents. The commander of the FARDC for the Grand Nord axis, covering the territories of Beni and Lubero, was General Kinkela. Colonel Muhungura and Colonel François were the commander and deputy commander, respectively of the 15<sup>th</sup> IB based in Kanyabayonga and deployed in its surrounding area. In addition, a large number of troops retreating from the Petit Nord area (Rutshuru) were reportedly under the operational command of Colonel Delphin Kahimbi, who was the commander for the Rutshuru axis. Several Integrated Brigades Commanders were present in the area and would have been expected to have been able to control their troops – amongst whom Colonel Kasongo (2<sup>nd</sup> IB) and Colonel Kitenge (13<sup>th</sup> IB), also from the Rutshuru axis, and Colonel Smith Gihanga, commander of the Nyanzale axis (9<sup>th</sup>, 14<sup>th</sup> and 15<sup>th</sup> IBs). The Commander of the Eighth Military Region with overall responsibility for North Kivu (both Grand Nord and Petit Nord) was General Vainqueur Mayala. The Land Forces Commander of the FARDC with overall responsibility for all the Integrated Brigades involved in the incidents is General Gabriel Amisi. Omissions or failures of duty which lead to human rights violations can be considered as serious, in some instances, as affirmative actions leading to human rights violations.

#### **4. Violations of human rights and international humanitarian law**

47. The investigations undertaken by the UNJHRO confirmed that FARDC soldiers were responsible for committing serious violations of human rights and international humanitarian law, both in Goma and in several villages and towns in Lubero territory. Through the provision of relevant examples, the following section describes the types of violations committed.

##### **4.1 Summary executions, arbitrary killings and serious violations of physical integrity**

48. The investigative teams received allegations of arbitrary killings and summary executions. The incidents discussed in this section have been corroborated by testimonies from independent witnesses and, when possible, through site visits. Therefore, they are considered as being confirmed. In five of these cases, members of the investigative teams were able to see and photograph the corpses of the victims.

##### **Goma**

49. On 31 October, the team visited several sites where serious human rights violations and international crimes were alleged to have been committed, and was able to gather information directly from victims and witnesses. The team documented nine cases of arbitrary killings perpetrated during the night of 29-30 October 2008. The team also received allegations concerning several other cases, but was unable to verify them. In addition to the above-mentioned killings, some 45 victims were admitted with injuries to medical facilities in Goma. The members of the team were unable to follow the progression of all these cases, but have received information that at least two of the victims later died as a result of their injuries.

50. In the Katindo neighbourhood, two elements of the FARDC perpetrated a violent armed attack on a private residence in which four persons were killed (two women and two men) and three other persons (children aged 3, 14 and 17) received bullet wounds. A witness stated that pillaging appeared to be the main motivation behind this incident. The members of the investigative team saw the bodies of three of the deceased victims.

51. In the same neighborhood, the team interviewed the relative of another victim, a young man who was shot and killed by two FARDC soldiers following his refusal to hand them his money. The soldiers fled immediately after the crime.

52. In the so-called TMK neighbourhood (named after the acronym of a local airline based in the area), a father and his 8-year-old son were shot in their home by a FARDC soldier. The father died instantly; the boy died the following day, as a result of his injuries. Another 8-year-old boy and a 14-year-old girl belonging to the same family were wounded during the incident. The soldier then disposed of his uniform and left the area, but was later arrested by military authorities.

53. The team interviewed a victim whose establishment was looted (pillage) by six FARDC soldiers. The soldiers took his money and valuables, then shot him in the shoulder and stabbed him in the back and left arm. The soldier leading the group instructed his colleagues to spare the victim's life and use him to identify the residences of people who had money. They

took him to an adjacent establishment where they found a young man who did not have any money on him. One of the soldiers shot the young man in the head. Their colleagues subsequently shot the victim (presumably dead at this point) in the chest and arms.

54. The investigative team received several allegations pertaining to the killing of at least three other civilians by soldiers attempting to seize their motorcycles. On 29 October, a MONUC civilian staff member accompanied by several MONUC peacekeepers from the Indian Battalion witnessed a FARDC soldier shooting a motorcycle driver in the head on the Goma airport road. The soldier then seized the motorcycle and fled. In addition, a soldier was reportedly killed while attempting to loot a house. The identity of the killers is not known. There are strong presumptions that more killings took place than those that could be verified through direct witness testimony.

55. Finally, General Mayala and other military sources reported to MONUC that, during the night of the incidents, the FARDC patrols dispatched to stop the looting killed several soldiers who were caught in the act (reportedly seven, although there are contradicting reports on this issue). It is unclear whether these deaths actually occurred, and if they did, whether they were the result of gunfire exchanges with the above-mentioned patrols or whether the soldiers were executed following their arrests (in which case the killings would qualify as summary executions). The investigative team was able to confirm the death of one soldier killed by unknown persons; investigations into this particular incident were still ongoing at the time of writing.

56. Through visits to the four hospitals and four clinics (*centres de santé*) to which victims were transported, the investigative team was able to establish that 45 victims suffering from bullet wounds were admitted to the said centers, amongst them a 10-year-old girl, which establish *prima facie* cases of indiscriminate attacks against civilian. According to information provided by medical personnel, the majority of victims admitted for treatment were IDPs who had fled the IDP camps of Kibumba, Rugari, Masisim, Minova and Bulengo seeking shelter in Goma.

### **The Kanyabayonga area**

57. No killings were recorded within the town limits of Kanyabayonga, where two local clinics treated four civilians, amongst them a man stabbed by a soldier when he refused to give him money and a child injured while playing with a grenade. In the greater Kanyabayonga area, however, the team documented four killings and at least 15 victims who had suffered bullet wounds, of whom two were children.

58. In Kayna, the team was able to confirm three cases of arbitrary killings that occurred between 17 and 18 November 2008. In one of these cases, a 60-year-old man was summarily executed in the presence of his wife by an FARDC soldier. In another case, soldiers of the 15th Integrated Brigade summarily executed and burned the corpses of two victims (a 15-year-old student and a 25-year-old mechanic) whom they suspected of belonging to the Mayi Mayi. Their remains were buried near the Kayna hospital. Four people were wounded by bullets on 18 November, including two men who refused to hand over their possessions to a group of soldiers from the 2<sup>nd</sup>, 6<sup>th</sup>, and 15<sup>th</sup> Brigades. Another victim was killed on the suspicion that he was a Mayi Mayi fighter, and yet another, a 13-year-old boy, for reasons unknown.

59. On 15 November, in Bulotwe, an FARDC soldier killed a 30-year-old woman who refused to hand over her mobile telephone.

60. In Kirumba, the investigative team documented that four people (two men and two women) had been injured in looting incidents on 9, 11, 12 and 13 November. Another man was injured on 11 November while trying to recover goods looted from his home in Mighobwe.

## **4.2 Rape and other acts of sexual violence**

### **Goma**

61. The team received several allegations of rape and other cases of sexual violence, committed during the night of 29-30 October. During the night of 29 to 30 October, the team received a victim who came to the MONUC base immediately after soldiers had raped and robbed her. The victim stated that when gunfire erupted in her neighbourhood, she had taken refuge in a bar in the *quartier des Volcans*. Four FARDC soldiers entered the establishment, and two of them raped the victim while the other held guard. Some 25 minutes later, the same group returned to the bar and a third soldier raped the victim. The soldiers subsequently beat 3 young men who were present in the establishment and robbed those present of their money and jewelry and electronic equipment. The rape victim was referred to a local hospital. The four FARDC soldiers in question were later detained, tried and convicted for rape and looting (*see below*).

62. Following the events of 29 and 30 October, Goma Hospital admitted 17 rape victims who alleged that their rapists were armed men in military uniform. The PNC in Goma also reported that it was investigating two cases of rape allegedly committed by FARDC soldiers.

### **Kanyabayonga area**

63. The investigators received allegations regarding 45 cases of rape allegedly committed by FARDC soldiers since their arrival in the area at the end of October 2008. The team was able to confirm 35 of these cases.

64. In Kanyabayonga itself, 26 cases of rape were confirmed during the period of 10 to 23 November. The victims included four minor girls, one young man raped by a female soldier at gunpoint, and three pregnant women. One of the four minors, a 15-year-old girl, was gang-raped by five soldiers in the bush.

65. In Kayna, the team was informed of three cases of rape that took place during the night of 17 November 2008. All three victims were admitted to a clinic for treatment.

66. In Kirumba, Kaseghe and Bwatsinge the team documented six cases of rape, five of which were gang-rapes.

67. A further ten cases of rape were reported to the team but could not be confirmed through a site visit due to operational constraints. The alleged violations occurred in five villages that were not visited during the investigation.



68. Although this report focuses on the very high number of serious human rights violations committed during the initial waves of violence during November 2008, it is important to note that on a follow-up mission to Kanyabayonga, the investigative team was able to confirm 14 new cases of rape perpetrated by FARDC soldiers between 30 November and 20 December 2008.

### **4.3 Pillage and the illegal occupation of property**

69. With the exception of sexual violence, which in certain cases appeared to be a goal in itself, most of the other human rights violations described in this report involved pillaging and other forms of extortion of property or goods. In an armed conflict, pillage is classified as a war crime (Article 8 (b) (xvii) and 8(e) (vi) of the Rome Statute). Local witnesses, aid workers and the international media have described how they witnessed hundreds of soldiers walking along roads carrying foam mattresses, generators, radios, cooking ware, food and agricultural products and other household items. Even though only a small proportion of total cases has been reported, it has become evident that pillaging was a recurrent and extremely widespread activity of the soldiers during the incidents described in this report.

#### **Goma**

70. Incidents of pillaging have already been mentioned in connection with the arbitrary killings and rapes described above, and will therefore not be repeated in this section. Apart from these cases, many other cases of widespread pillage took place without human casualties. Given the magnitude of the violations, the team investigated only a small portion of the total number of allegations. Looting took place in particular in the Mabenga-Sud, Mabenga-Nord, Nyabushango, Ndosho, Katindo-gauche, Katingo-droite, Virunga, Kasika, and in the *quartier des Volcans* neighbourhoods. In the area known as Himbi II, in the Katindo neighbourhood, several businesses were looted on the main street. The investigative team was able to confirm that, on 29 October, FARDC soldiers of the 14<sup>th</sup> Integrated Brigade seized a car belonging to a local human rights defender and physically abused his driver. The car was later recovered through the intervention of senior officers of the Eighth Military Region. Further, the PNC reported that one police vehicle was stolen by FARDC soldiers. Two MONUC staff members reported that their residence in the *quartier des Volcans* in Goma was looted by a group of 8 to 10 FARDC soldiers. Another MONUC staff member had his car radio stolen whilst circulating in the Mabanga Sud area. Goma Police has also reported two cases of looting of fuel stations in Birere and Katindo areas.

#### **Kanyabayonga area**

71. Pillage in the area of Kanyabayonga was systematic, and affected numerous private homes. Force was also used to obtain goods and food from the population. While there were tactical grounds for the FARDC's movement into Kanyabayonga and troops were indeed ordered to re-group there, the occupation of other villages, such as Kayna, seemed motivated exclusively to facilitate looting as troops advanced into these villages firing their weapons and breaking into homes. While in some instances the occupation of houses of worship, schools, and other public spaces in order to establish camps could be considered justifiable, given the circumstances, discussions or consultations with the affected civilians or their representatives were not held

prior to occupation. No such plausible justification exists for the occupation of private residences, however, and many home owners were forced to flee.

## **5. Official measures taken by the State to address the human rights violations committed**

72. As mentioned above, General Mayala of the 8<sup>th</sup> Military Region reported to MONUC that during the night of the Goma incidents, patrols were sent out to put an end to widespread looting by FARDC soldiers and restore law and order.

73. Regarding the actions taken by the military justice system, 16 FARDC soldiers from the Eighth Military Region<sup>20</sup> were initially arrested in Goma in connection with the looting spree of 29-30 October, eight of whom were tried and sentenced on 18 November 2008 at the Operational Military Court (*Cour Militaire Opérationnelle* or CMO).<sup>21</sup> The soldiers were charged with the war crimes of rape and pillage (one case, with a sentence of life imprisonment and dishonorable discharge from the army); physical maltreatment, or *coups et blessures* (one case, with a sentence of six months' imprisonment); desertion (one case, with a sentence of life imprisonment and dishonorable discharge from the army); "abandonment of post", or *abandon de poste de faction en temps de guerre* (two cases, with sentences of life imprisonment and dishonorable discharge from the army); extortion and failure to obey orders, or *extorsion et violation de consignes* (two defendants acquitted in one case) and attempted extortion (one case where the defendant was acquitted). On 10 January 2009, the CMO sentenced two soldiers and one civilian to life imprisonment for looting as a war crime, conspiracy to commit a crime, or *association des malfaiteurs*, and rape. The State was ordered to provide reparation for damages to two victims who were civil parties to the proceedings. The State must pay 14 million Congolese francs (approximately 20,000 USD) in compensation for the rape and 13 million Congolese francs (approximately 18,500 USD) in compensation for the looting. In two other cases, the CMO sentenced a captain to 12 months' imprisonment for receiving stolen goods, or *recel*, obtained from the looting on 29-30 October, and acquitted two soldiers accused of cowardice, or *lâcheté*.

74. The persons arrested and tried in connection with the events of 29-30 October 2008 can account for only a fraction of the registered incidents. Only a handful of soldiers have been condemned so far, and none of them were linked to any of the killings committed during that night. Further, and based on examples from similar past court rulings instructing the Congolese State to pay reparations to victims of human rights violations, it is unlikely that the above-mentioned compensation will be paid out to the victims.

75. Regarding the territory of Lubero, it could have been expected that a large accumulation of troops, poorly equipped and without sufficient provisions, would prey on the population to sustain themselves. Although the reasons for the general movement of troops into Lubero territory are known (a combination of tactical withdrawal for re-grouping purposes and a

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<sup>20</sup> They belonged to different Brigades: HQ 8th MR, 2nd IB, 6th IB, 15th IB, 82 Brigade (non-integrated) and 83 Brigade (non-integrated).

<sup>21</sup>The CMO is an exceptional *ad hoc* tribunal created by *Ordonnance présidentielle* No 08/003 based on article 18 of the Military Judiciary Code (Law 023/2002) that provides for the establishment of operational courts to accompany military operations in time of war or rebellion. From a human rights perspective, the CMO raises questions, as it provides for lower procedural guarantees than an ordinary military court, the extension of its jurisdiction is unclear and, more importantly, it does not recognize a right to appeal, contrary to the Congolese constitution (art.21.2 and art 61), that establishes that the right to appeal is a fundamental principle that admits no derogation.

parallel movement of soldiers and soldiers' families that feared being left behind), it is not that clear what provoked the specific actions of 10 and 11 November, during which the most serious incidents were reported. Some sources have suggested that soldiers of the 15<sup>th</sup> Integrated Brigade had mutinied following the alleged embezzlement of their salaries by several of the brigade's high-ranking officers. While this information has not been confirmed (and the officers are still on active duty), it could explain why soldiers of the 15<sup>th</sup> Integrated Brigade were often cited by witnesses as having been the main perpetrators in several serious incidents.

76. On 22 November 2008, the towns of Kanyabayonga, Kayna and Kirumba were visited by a Government delegation composed of the Provincial Minister of Interior and the Commander of the FARDC Land Forces, who pledged to de-militarize the towns' centers, punish the perpetrators of human rights violations, and restitute looted goods. A redeployment plan was also discussed, but the sources in these towns claim that while the commanders have been replaced, the soldiers who actually carried out the violations remain in the area. General Kinkela, commander of the Grand Nord axis, was replaced by General Bahuma and Colonel Kasongo, commander of the 2<sup>nd</sup> Integrated Brigade, was replaced by Colonel John Tshibangu. Colonel Kitenge of the 13<sup>th</sup> Integrated Brigade was also relieved of his command. However, other brigades whose soldiers were involved in the incidents, such as the 7<sup>th</sup>, 9<sup>th</sup>, and 15<sup>th</sup> brigades, have retained their commanders.

77. Apart from the mentioned replacements at the command level of some brigades, it is unclear what other actions have been taken to identify and investigate and prosecute punish perpetrators of serious human rights violations. The Operational Military Court (CMO) had yet to begin its hearings into the cases of soldiers arrested in connection with the events at the time of the investigation. During its mission of 17 to 20 December, General Bahuma informed the investigative team that more than 50 soldiers had been arrested in connection with the incidents of 10-11 November, but that the trials had not yet begun because the Operational Military Court (which had begun operating in Kanyabayonga prior to the November incidents) had been obliged to suspend its work following the incidents. According to General Bahuma, this was because CMO personnel had also been forced to flee because of the violations committed by FARDC soldiers. At the time of the investigation, trial hearings for both old and new cases were expected to resume soon. The delay not only affects the constitutional rights of the arrested soldiers, but will also affect the feasibility of any investigation undertaken by the CMO, given the ever-changing circumstances in the area. It also invalidates the thesis that the CMO – despite a lack of clarity relative to its purpose and its dubious constitutionality (see footnote 30, page 19) – is at least useful because of its celerity. In addition, the substitution of the local police by military police is also interfering in the ordinary administration of justice in the area.

78. Finally, the investigative team has not been able to confirm information pertaining to the alleged summary execution of soldiers by commanders, executions allegedly carried out to impose discipline and punish perpetrators on the spot, by way of example. In the Kanyabayonga area, sources concurred that seven soldiers and a Mayi Mayi fighter were killed in Kirumba, including three soldiers from the 15<sup>th</sup> Integrated Brigade who were buried with honors by their commander and four soldiers from the 2<sup>nd</sup> and 6<sup>th</sup> Integrated Brigades who were buried in a mass grave in Kayna – the circumstances surrounding the deaths of the latter remain unclear.

79. Regarding reparations, General Bahuma showed the members of the investigative team five motorcycles and 50 bicycles purchased by the FARDC to give to civilians who had had

theirs stolen during the looting incidents. This effort to establish good-will with the local population is in addition to the joint verification commission (FARDC-administrative authorities-affected families) that has begun working in Kanyabayonga to identify occupied fields and compile a list of products damaged or consumed by the FARDC during the events.

## **6. Conclusions and Recommendations**

### **6.1 Main Conclusions**

80. In October and November 2008, in the context of generalized fighting in North Kivu against the CNDP, retreating Congolese National Armed Forces (FARDC) occupied several towns and villages where they engaged in large-scale pillage and committed other violations of human rights and international humanitarian law, including arbitrary killings and sexual violence. The main incidents took place in Goma, Kanyabayonga, Kayna and Kirumba.
81. At the time of the investigation, a large number of these troops still remain in or around the towns and villages they had occupied in October/November 2008. Some of these troops are responsible for the human rights violations mentioned in this report. Since the incidents described in this report took place, local residents have complained that the soldiers who committed these violations remain in the area. The residents have requested their replacement. Although the request of the population is understandable, it can be argued – especially considering the broad range of Brigades that were involved in the incidents – that with current levels of training and discipline many FARDC units could, potentially, have reacted in a similar manner. Thus, rather than the mere substitution of brigades, other measures should be put in place to ensure order and discipline, such as the cantonment of troops in camps outside urban areas, the securing of weapons in camp facilities, and an increase in number and frequency of military police patrols.
82. Restitution of some looted goods took place after the intervention of military authorities. This process, however, will not be completed as it will not be possible to return all looted products to their lawful owners. Local efforts to ensure some form of reparation, in particular for occupied fields and consumed or destroyed agricultural produce, are being put in place, but will also fall short of satisfactorily indemnifying the victims.
83. After the incidents, changes in the command structure of some units were made, and some commanders were effectively replaced. It is unclear, however, whether these changes can be ascribed, either fully or in part, to a desire on the part of the FARDC senior command to address the violations committed by soldiers who were under the authority of the replaced commanders.
84. The judicial response to the violations has, so far, been wholly insufficient. While the Military Justice system has initiated proceedings in Goma and Kanyabayonga, the number of soldiers arrested cannot account for the number of violations committed. Reports of out-of-court disciplinary punishments, including summary execution of perpetrators, could not be confirmed, but also raise concerns regarding the weakness of legal means to control the FARDC troops.

## **6.2 Recommendations**

### **To the Government of the Democratic Republic of the Congo**

85. To undertake a thorough and impartial investigation into the serious crimes and human rights violations described in this report. Military Justice should make efforts to investigate, prosecute and try those allegedly responsible. Ordinary military jurisdiction should be used, rather than the CMO;
86. Take disciplinary measures vis-à-vis those allegedly responsible;
87. Provide necessary compensation to victims of the events who lost family members or to individuals that were raped or whose property was stolen or damaged. When individual reparation is not possible other forms of community reparations should be explored;
88. Proceed with the comprehensive reform of the security sector and establish a vetting mechanism to exclude human rights violators from key positions in the army and other security services.
89. Ensure the timely payment of salaries and an adequate provision of supplies for its forces in terms of rations and equipment, and, in a wider context, for an adequate social support for their families in order to prevent FARDC soldiers preying on the civilian population for their subsistence.

### **To the Parliament of the Democratic Republic of the Congo**

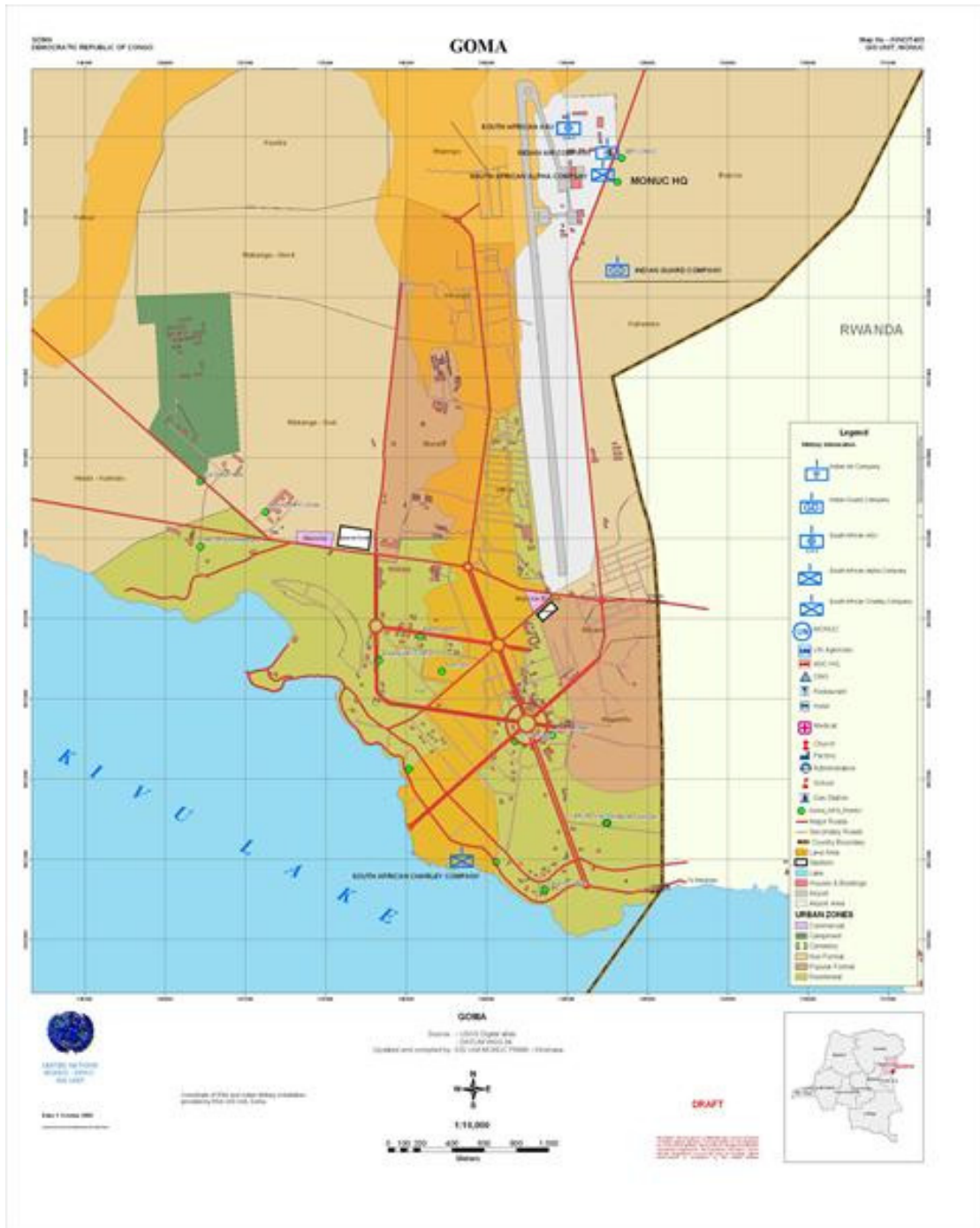
90. Establish an independent commission to evaluate the root causes of the incidents described in this report, and undertake to remedy the situation, including through the development of a comprehensive strategy for security sector reform.

### **To the International community**

91. Provide robust support to DRC Security Sector Reform, including both financial and technical assistance to the reform programmes, contingent on the DRC's government institutions developing and implementing a reform programmes that translates into measurable improvements in the human rights record of FARDC;
92. Ensure that future logistical and other technical support provided to the armed forces of the Democratic Republic of the Congo by MONUC and EU security sector reform mission in the Democratic Republic of the Congo (EUSEC RD Congo) (EUSEC) be linked to an improvement in the human rights record of these forces, and emphasize that for military cooperation to continue, substantive moves towards profound reform should be taken;
93. Future programmes of support to the security sector in the Democratic Republic of the Congo funded by the international community should be contingent upon the Government's willingness to carry out a reform of its security sector. If the international community fails to take these steps, understanding that without such reform such events likely will occur

again, and if FARDC does carry out similar human rights violations in the future, donor countries may face accusations of complicity in the violations.

## 7. ANNEX I Map – Area of Goma



8. ANNEX II  
Map – Area of Lubero –Kanyabayonga (source OCHA)

