



MONUSCO

The United Nations Organization Stabilization
Mission in the Democratic Republic of the Congo



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

**REPORT ON THE INVESTIGATION MISSIONS OF THE UNITED NATIONS JOINT
HUMAN RIGHTS OFFICE INTO THE MASS RAPES AND OTHER HUMAN RIGHTS
VIOLATIONS COMMITTED IN THE VILLAGES OF BUSHANI AND KALAMBAHIRO, IN
MASISI TERRITORY, NORTH KIVU, ON 31 DECEMBER 2010 AND 1 JANUARY 2011**

July 2011

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LIST OF ACRONYMS

APCLS	<i>Alliance des patriotes pour un Congo libre et souverain</i>
UNJHRO	United Nations Joint Human Rights Office
CMO	<i>Cour militaire opérationnelle</i>
CNDP	<i>Congrès national pour la défense du peuple</i>
CREDDHO	<i>Centre de recherche sur l'environnement, la démocratie et les droits de l'homme</i>
FARDC	<i>Forces armées de la République démocratique du Congo</i>
FDLR	<i>Forces démocratiques de libération du Rwanda</i>
OHCHR	Office of the United Nations High Commissioner for Human Rights
MONUC	United Nations Organization Mission in the Democratic Republic of the Congo
MONUSCO	United Nations Organization Stabilization Mission in the Democratic Republic of the Congo
NGO	Non-governmental organization
ICCPR	International Covenant on Civil and Political Rights
DRC	Democratic Republic of the Congo
RMP	<i>Registre du ministère public</i>

I. Summary

The present report by the United Nations Joint Human Rights Office deals with the human rights violations, including mass rapes, committed against civilians in the villages of Bushani and Kalambahiro, in Masisi territory, North Kivu, on 31 December 2010 and 1 January 2011.

Based on the investigations undertaken into these violations, in particular during the missions in Bushani and Kalambahiro from 17 to 19 January 2011 and from 2 to 4 February 2011, the UNJHRO can confirm that men in uniform identified by various sources as soldiers of the Armed Forces of the Democratic Republic of Congo (FARDC) submitted 47 women, including one minor, to sexual violence, including rape, abducted two civilians, and inflicted cruel, inhuman or degrading treatment on 12 others civilians. They also looted at least 100 houses and three buildings and set on fire or destroyed at least four houses.

However, no victim, witness or other source interviewed has been able to identify the FARDC battalion(s) that took part in the attack, particularly because their uniforms wore no identification. It should however be noted that, shortly after the events, packagings of food rations supplied according to the conditionality policy by MONUSCO to FARDC battalions, that were being supported as part of Operation “Hatua Yamana” were found in Bushani. To date, however, the team has been unable to confirm the involvement of a battalion supported by MONUSCO as it could not obtain all the information needed, in particular from the FARDC, in order to determine to which battalions the troops involved in these violations belonged.

While a preliminary judicial investigation was opened on 13 January 2011 by the military prosecutor’s office at the Cour militaire opérationnelle (CMO) of North Kivu and despite an order issued by the same authority on 10 February 2011 requesting that the commanders of the FARDC battalions, that were stationed near the villages attacked, be made available, it was not until March 2011 that FARDC officers were interviewed by the military justice. The limited cooperation between the FARDC and the military justice is impeding the efforts to fight impunity in cases of serious violations of human rights, particularly sexual violence.

The UNJHRO is concerned by the threats of reprisals against the inhabitants of the villages attacked due to the denunciation of the violations they suffered. Several months after the events, they are still living in permanent insecurity, hiding in the forests or neighbouring towns.

This report contains recommendations to the authorities of the Democratic Republic of the Congo (DRC), MONUSCO and humanitarian partners, in particular with regard to the protection of civilians in these villages, the type of assistance needed by the victims and the measures to be taken to ensure that the alleged perpetrators of these violations be brought to justice.

II. Introduction

1. On 31 December 2010 and 1 January 2011, at least 100 men in uniform, identified by various sources as soldiers of the Armed Forces of the Democratic Republic of Congo (FARDC), attacked civilians in the villages of Bushani¹ and Kalambahiro² located in the *groupement* Nyamaboko I, in Masisi territory, North Kivu. Once informed of this situation, between 17 and 19 January 2011, the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO),³ deployed a team, referred to as “*the team*” in this report, composed of staff of the United Nations Joint Human Rights Office (UNJHRO),⁴ in these villages to verify and document the allegations of human rights violations.

2. From 2 to 4 February 2011, the team carried out a second mission in the two villages that had been attacked, jointly with representatives of the military prosecutor’s office at the *Cour militaire opérationnelle* (CMO) of North Kivu, and of the non-governmental organizations (NGOs) *Heal Africa* and CREDDHO⁵. This mission was conducted to undertake further investigations, as well as to support the partners providing medical and legal assistance for the victims (particularly for victims of sexual violence) and the military prosecutor’s office at the CMO of North Kivu and its assistants in their investigations.

3. On the basis of the information gathered during these two missions, the team has been able to establish that at least 46 women and one minor were victims of sexual violence, including rape, that 12 people were subjected to cruel, inhuman or degrading treatment, that at least 100 houses and three other buildings were looted and that at least four houses were destroyed or set on fire by the assailants. Two people were also abducted during the attack on Bushani, but were released shortly afterwards.

III. Methodology and constraints

4. The team undertook two missions to Bushani and Kalambahiro between 17 and 19 January 2011 and between 2 and 4 February 2010 to investigate into the allegations of human rights violations committed on 31 December 2010 and 1 January 2011. During these missions, the team interviewed victims, witnesses, local authorities, FARDC soldiers, MONUSCO soldiers, particularly those based in Kimua (about four hours’ walk from Kalambahiro and 6 ½ hours’ walk from Bushani). The team was thus able to document approximately 50 corroborating statements from a variety of sources and it was possible to interview victims and witnesses individually and confidentially in order not to jeopardize their safety. Research was also

¹ The village of Bushani is in the *localité* of Butsike.

² The village of Kalambahiro is in the *localité* of Mianga, about 2 ½ hours’ walk from the village of Bushani.

³ On 28 May 2010, the United Nations Security Council, in accordance with Chapter VII of the United Nations Charter, adopted Resolution 1925 (2010) extending the MONUC mandate until 30 June 2010, and authorising the deployment of MONUSCO from 1 July 2010 to 30 June 2011. This resolution reaffirms the protection of civilians as its first priority (see in particular paragraph 12 of the Resolution).

⁴ On 1 February 2008, the MONUC Human Rights Division (HRD) and the Office of the United Nations High Commissioner for Human Rights (OHCHR) in the DRC merged, thus forming the United Nations Joint Human Rights Office (UNJHRO).

⁵ *Centre de recherche sur l’environnement, la démocratie et les droits de l’homme.*

conducted with military sources to identify the FARDC units which were present in the area when the villages of Bushani and Kalambahiro were attacked.

5. In addition, the team can confirm that weapons were used during the attacks. Indeed, a total of 82 cartridge cases⁶ were found by the team in several places in the village of Bushani, corresponding to ammunition for AK47 and for calibre 7.62x51 mm weaponry according to MONUSCO soldiers. The team has also carried out a thorough check of the references on the packagings of MONUSCO food rations found in Bushani.

6. During the investigations, the team faced several difficulties. It was unable to interview some of the victims of sexual violence and other human rights violations because the majority of the population of Bushani, fearing that their village would be attacked again, had fled into the nearby forest or to other towns. Others preferred to remain silent in fear of reprisals or being stigmatized. As a result, the team has been unable to draw up a complete list of victims. Considering the evidence gathered, the number of victims of this attack could be significantly higher. In addition, at the beginning of the investigations, the work of the team was limited by the lack of cooperation of the FARDC hierarchy when it came to identifying the FARDC units which were in Bushani and Kalambahiro on 31 December 2010 and 1 January 2011.

IV. Background of the attack

7. The villages of Bushani and Kalambahiro are in a particularly isolated and mountainous area in Masisi territory. The dense forest surrounding these villages, combined with the lack of roads and means of telecommunications, have enabled various armed groups, in particular members of APCLS⁷ and FDLR⁸ to hide out there. The limited presence of MONUSCO and FARDC troops⁹ has made it easier for these armed groups, the most influential of which are the FDLR, to gain control of the area. Although the latter have a base at Bitoyi (about 5 km from Kalambahiro), they only have a residual presence in the *groupement* Nyamaboko I, and their activities are said to be restricted to intelligence missions. The people of the villages of Bushani and Kalambahiro are mainly of Hunde ethnic origin. However, there are at least two Hutu families living in Bushani.

8. Given the important presence of armed groups, whose activities were becoming increasingly harmful for the civilian population living in the Kimua-Ntando area in Masisi territory, a joint MONUSCO-FARDC operation named “*Hatua Yamana*” (“*Formidable Reach*” in Swahili) was carried out from 31 December 2010 to 7 January 2011 in order to eliminate the presence of any armed groups in this area and restore the Congolese State authority on these territories. Five FARDC battalions, namely 1213, 2212, 2222, 2331, and 2311, were selected for this operation.

⁶ The 82 cartridge cases found in the village of Bushani might not reflect the actual number of shots fired by the assailants during the attack. In fact, according to local sources, many cartridge cases were washed away by the rain, while others could be in the bush.

⁷ Alliance des patriotes pour un Congo libre et souverain

⁸ Forces démocratiques de libération du Rwanda

⁹ The FARDC only have two bases in the area, at Showa, East of Bushani, and Chugi, South-East of Kimua. Both bases are at several hours’ walk from the villages of Bushani and Kalambahiro.

MONUSCO contributed by providing logistical and technical support for the FARDC troops in accordance with its mandate and the requirements of the conditionality policy.¹⁰

9. According to several corroborating sources, the deployment of the selected battalions along three axes¹¹ surrounding the Kimua-Ntando area was planned as part of this operation. According to the same sources, the “*Hatua Yamana*” operational plan did not provide for any military intervention in the villages of Bushani or Kalambahiro. However, according to the information gathered from military and civilian sources, it is possible that the areas of intervention set out by the operational plan were not respected.

10. According to local sources, the attacks on Bushani and Kalambahiro were punitive expeditions led by men in uniform identified by various sources as FARDC soldiers, in reprisal against civilian populations suspected of supporting “*enemy*” forces.¹²

V. Legal framework

11. The human rights mentioned in this report are protected by several texts, in particular the Universal Declaration of Human Rights¹³, conventions and other international instruments ratified by the Democratic Republic of the Congo, such as the African Charter on Human and Peoples' Rights¹⁴ and the International Covenant on Civil and Political Rights.¹⁵ As a signatory Party to these conventions, the Congolese Government is bound to respect these rights and to take the necessary measures to prevent and punish violations of these rights committed by its own security forces or other non-State perpetrators.

12. In light of international humanitarian law, the crimes committed during the attacks on Bushani and Kalambahiro may constitute breaches of Common Article 3 of the four Geneva Conventions of 12th August 1949¹⁶ and Additional Protocol II on the protection of victims of

¹⁰ Paragraph 12(h) of Security Council Resolution 1925 (2010).

¹¹ Eastern axis, Kosopo/Kashunga/Kimua and Ntando for 2331 and 2222 battalions (the second being reserve troops), Western axis, Kibati/Ngenge/Mukuerbwa/Kimua, for 2212 and 1213 battalions (the second being reserve troops) and Southern axis Chugi/Kaloba/Mwima/Lutoboho/Kimua, for 2311 battalion.

¹² The term “*enemy*” is often used by FARDC to refer to rebel armed groups, especially the FDLR.

¹³ The Universal Declaration of Human Rights (UDHR) of 10 December 1948 specifically recognizes the right to life, liberty and to the security of the person (art. 3), the right to physical integrity and the ban on torture and cruel, inhuman or degrading treatment or punishment (art. 5), and the right to own property (art. 17).

¹⁴ The African Charter on Human and Peoples' Rights, adopted on 27 June 1981 in Nairobi, lays down the right to physical and mental integrity of the person (articles. 4 and 5), the right of every individual to liberty and security (art. 6) and the right to own property (art. 14).

¹⁵ The International Covenant on Civil and Political Rights (ICCPR), which came in force on 23 March 1976, guarantees in particular the right to physical integrity and the prohibition of torture and cruel, inhuman or degrading treatment or punishment (art. 7), as well as the right of the individual to liberty and security (art. 9).

¹⁶ Common Article 3 of the four (4) Geneva Conventions of 12th August 1949: “*In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions: 1. Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:*

non-international armed conflict¹⁷, to which the DRC is a Party. These instruments provide the basic rights to ensure protection of those who do not take part, or no longer take part, in hostilities, this being the case for the victims of the attacks on Bushani and Kalambahiro as they were unarmed civilians.

13. Additionally, the violations of human rights committed during the attacks on Bushani and Kalambahiro may constitute violations of Congolese criminal law, such as rape, voluntary assault and battery (or intentional injury), theft and abduction, crimes punished by a prison sentence. It is the responsibility of the military justice to investigate these violations, as it has jurisdiction to rule on all crimes committed by the members of the armed forces and the national police.¹⁸

VI. Sequence of events

14. During the afternoon of 31 December 2010, while Bushani inhabitants were busy preparing New Year's Eve, at least 100 men¹⁹ in uniform, identified by various sources as FARDC soldiers, surrounded and gradually invaded the village under the pretext that its inhabitants were hiding rebels and weapons. The assailants shot several times in the air to intimidate the civilian population, who panicked and subsequently fled into the nearby forest.

15. People who stayed in the village, including Bushani village's chief and four women, were detained by the assailants and ordered by one of them, identified as an officer called "*Capitaine*", to reveal where the inhabitants were hiding weapons. The victims stated that there were no weapon, and they were subsequently beaten with whips and truncheons, before being tied up and confined in a house which was used as a detention facility during the attack. The victims were handcuffed and spent the night there. They were only released on 1 January 2011 by the assailants before their departure.

16. For two days, men in uniform identified by various sources as FARDC soldiers, armed with machetes, AK47 and rocket launchers, carried out a manhunt and systematically searched the village of Bushani and the nearby forest. According to witness statements, they split up into three groups. While the first two groups attacked civilians from Bushani who were hidden in the forest, the third stayed in the village to loot houses and extort goods from civilians. All the people found in the forest by the assailants were brutalized and stripped of their belongings,²⁰ and three women were raped.

17. On 1 January 2011, shortly after 3 p.m., the assailants received over the radio a message in Kinyarwanda from their superiors, instructing them to proceed immediately to Kailenge (about a three-hour-walk from Bushani), in Masisi territory. When they left the village, they took with

(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; ... (c) outrages upon personal dignity, in particular humiliating and degrading treatment".

¹⁷ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977.

¹⁸ Art. 156 of the Constitution of the Democratic Republic of the Congo of 18 February 2006.

¹⁹ Some victims estimated that there were between 150 and 200 assailants.

²⁰ Most of the civilians usually "*bury*" their belongings (cooking tools, valuable clothing, money, etc.) in the forest to prevent lootings and other extortions by various assailants.

them the goods found in the houses, i.e. kitchen tools, mattresses, clothing, food, drink and machetes; they destroyed or burned whatever was difficult to carry. A man and a woman, natives from Bushani, were abducted by the assailants and forced to accompany them to Kailenge. On the same day, at approximately 5 p.m., they entered the village of Kalambahiro. They systematically looted goods, houses and buildings such as the church, the school and the health centre.²¹ They spent the night there before leaving for the village of Kailenge at dawn on 2 January 2011.

18. According to local sources, the assailants returned to Bushani between 4 and 5 January 2011. They shot several times in the air near the village. The civilian population of Bushani, which had been gradually returning to the village since the beginning of January 2011, fled again into the bush. The soldiers subsequently looted the village, spent the night there and left the following morning for Kimua.

19. Towards the end of January 2011²², men in uniform, identified by various sources as FARDC soldiers, set up barriers on the tracks leading from Bushani and the surrounding villages to the centre of Masisi.²³ People crossing these control points were informed by the FARDC soldiers that they were about to launch a new attack against the inhabitants of Bushani and Kalambahiro because of their denunciation of the violations they had suffered. This information, which spread widely among the community, generated panic, and civilians, who had been gradually returning to the village of Bushani, fled back to their hideouts in the forest.

VII. Human rights violations

7.1. Sexual violence

20. On the basis of corroborating statements, the team concludes that on 31 December 2010 and 1 January 2011, at least 47 people, i.e. 46 women and one girl, were victims of sexual violence, including rape, in the village of Bushani. The victims of rape and other sexual violence are between 16 and 65 years old. The rape victims include pregnant women.

21. Almost all the victims of sexual violence, who have been interviewed, live in Bushani, with the exception of three women who had come from Rusinga and Luhando (two villages in *groupement* Nyamaboko I) to celebrate New Year's Eve in Bushani. The victims were threatened with machetes and truncheons and were then undressed and searched before being raped in turn by the assailants in groups of two or four, sometimes in the presence of their children. Some women were reportedly raped by a man identified as a FARDC officer called "*Capitaine*", who led the attack on Bushani, and by his two bodyguards.

²¹ The health centre in Kalambahiro, which receives occasional support from the NGO CARE, is one of the few institutions that provide medical care for populations living in Nyamaboko I *groupement*. The health centre was completely looted during the attack of 1 January 2011. All medical equipment and medicine were stolen by the assailants

²² Sources interviewed have been unable to indicate the exact date when these barriers were set up. It has, however, been reported that the barriers came after the attack on Bushani and Kalambahiro and were part of a battle tactic used by government forces to ambush members of armed groups.

²³ There are no roads. Only tracks winding through hills and valleys in the heart of a dense forest lead from Bushani and the neighbouring villages to Masisi-centre.

22. Acts of sexual violence were committed in the houses and especially in the forest where the civilian population had fled. For example, four women, caught in the village on 31 December 2010 and confined in a house that was used as a detention facility during the attack, were raped by the assailants three times in the presence of their children. Perpetrators committed sexual touching on at least seven other women, looking for money they suspected the victims were hiding. When the women resisted or struggled, the assailants threatened them in Kinyarwanda to death with their firearms or bayonets.

23. The number of victims of sexual violence could be higher than stated above, as some victims have not reported the sexual violence they were victims of, by fear of being rejected, stigmatized by their community or repudiated by their husbands or partners.

7.2. Arbitrary arrests and cruel, inhuman or degrading treatment

24. On 31 December 2010, when the assailants surrounded the village of Bushani, people caught in their houses or in the bush were beaten with whips, rifle butts or machete handles. A total of 12 civilians, i.e. eight men and four women, were beaten before being tied up and locked up in the house of a village notable. The fact that they were unable to respond to the assailants' request about where weapons allegedly belonging to FDLR were hidden, was invoked to justify their detention. Men and women were held separately. The women were held with their children.

25. The statement of a victim of ill-treatment in Bushani clarifies the sequence of events: *“It was the morning of 1 January 2011. FARDC soldiers were still here. I had spent the night hiding in the bush and three soldiers found me. I was pulled out of my makeshift shelter and was beaten with rifle butts by three FARDC soldiers screaming in Kinyarwanda “come out”. They beat me all over my body, as well as my baby I was carrying on my back. He was seriously wounded from blows to his foot (...). When we arrived in the village, I was taken before the “Capitaine” who spanked me. As I was crying, the “Capitaine” fired between my legs and then locked me in a house and raped me, along with three other soldiers (...).”*

26. The 12 civilians held were released on 1 January 2011 by the assailants before their departure. When they were released, the women were told *“never to share with FDLR”* again.

7.3. Lootings, abductions, and extortions

27. During the attacks on Bushani and Kalambahiro villages, at least 100 houses, mostly in Bushani, were totally looted by the assailants. The school, the church, and the health centre in Kalambahiro were also looted. In each village attacked, the houses were searched before being systematically looted. The goods taken were mainly basic supplies such as food, cooking tools, clothing, mattresses and machetes. Goods that could not be carried away were damaged or burned. In addition, the attackers destroyed at least four houses.

28. The assailants stripped Bushani's civilian population of all its belongings. The victims were forced, at gunpoint or under threat of violence, to hand over the money they had. Each of them

had sums ranging from 3,000 Congolese Francs to 200 US Dollars, mostly obtained from the sale of their cattle before the New Year's Eve holidays.

29. On 1 January 2011, a couple living in Bushani was abducted by the assailants after the attack and forced to guide them through the forest to Kailenge via Kalambahiro. These two victims were released by the assailants upon arrival in Kailenge the next day.

VIII. Identification of the alleged perpetrators

30. On the basis of the statements from various sources, the alleged perpetrators of the human rights violations described above have been identified as FARDC soldiers. In fact, even though it was difficult for the witnesses and victims to establish which FARDC battalion or battalions was/were involved in the attacks on Bushani and Kalambahiro²⁴, corroborating statements indicate that the perpetrators were FARDC soldiers.²⁵

31. In addition, during its investigation missions in Bushani, the team found packagings bearing the references of food rations distributed to “*screened*” battalions which received support from MONUSCO within the framework of Operation “*Hatua Yamana*”, i.e. 2331²⁶ and 2222²⁷ FARDC battalions²⁸. In so far as the investigations carried out by the team could establish the presence of the 2331 battalion in particular in the area of the villages attacked between the end of December 2010 and the beginning of January 2011²⁹, it cannot be excluded that the alleged perpetrators of the violations were FARDC soldiers who had received support from MONUSCO. However, the team has been informed that the rations intended for the 2222 battalion were received by Major Eustache Ntambara, who introduced himself as the representative of the 2222 battalion, although at that point he was actually the commander of the 2223 battalion, an unscreened battalion which was not intended to take part in Operation “*Hatua Yamana*”. According to some sources, this 2223 battalion is a hybrid one made up of non-integrated soldiers who do not obey the FARDC chain of command and act exclusively under the orders of ex-CNDP officers, integrated in the FARDC, such as General Bosco Ntaganda. It is thus possible that the human rights violations were committed by a battalion which did not take part in

²⁴ The only identification on FARDC uniforms is the word “FARDC”. As a result, it was difficult for the victims to determine the identities or units of the battalions which committed the violations.

²⁵ According to statements collected, the assailants wore uniforms only bearing the word “FARDC”, and some were in the camouflage gear known as “*tâche tâche*”, which is the new uniform distributed to the government forces of North Kivu since November 2010.

²⁶ The Commander of 2331 FARDC battalion is Lieutenant Colonel Nzambe Kwande, and his deputy is Major Singa Ogen, according to the screening request received from the FARDC in mid-December 2010.

²⁷ The Commander of 2222 FARDC battalion is Lieutenant Colonel Ntambwe Dereva, and his deputy is Major Andaba Mapinduzi, according to the screening request received from the FARDC in mid-December 2010.

²⁸ According to reliable sources, on 30 December 2010, the 2331 and 2222 FARDC battalions received 1116 and 840 MRE (*Meals Ready to Eat*) packs respectively from MONUSCO.

²⁹ Reliable sources have mentioned that, on 31 December 2010, the day when Operation *Hatua Yamana* and the offensive against civilians of Bushani were launched, the 2331 FARDC battalion was expected in Buhimba (approximately four hour-walk from Bushani) during the night as part of the battalion's advance towards the combat zone. The same sources have revealed that, on 1 January 2011, this battalion was around Buhimba, and then on 2 January 2011 in Kailenge (approximately three hour-walk from Bushani), with 2311 FARDC battalion. The presence of this unit in Kailenge on 2 January 2011 has also been confirmed from the statements of several victims and witnesses, according to whom the assailants left Bushani on 1 January 2011 for Kailenge via Kalambahiro after receiving over the radio a message ordering them to go there.

Operation “*Hatua Yamana*” and that the rations distributed by MONUSCO as part of its support for this operation were deliberately diverted to other elements integrated or not in the FARDC. On the basis of the current information in its possession, the team cannot, at this stage, confirm either hypothesis.

32. Additional investigations should be carried out to find out to which battalion the soldiers involved in Bushani and Kalambahiro attacks belonged. The soldiers of the FARDC battalions, in particular those selected for Operation “*Hatua Yamana*”, were under the operational command of Colonel Bobo Kakudji³⁰, the commander of Operation Amani Leo in North Kivu, and more specifically of Colonel Chuma Balumisa, the commander of the 2nd operational area of Operation Amani Leo in the province of North Kivu. Given their hierarchical position, they should have been aware of the troops’ movements in the Kimua-Ntando area and should therefore be able to identify the battalions responsible for the violations committed against civilians in Bushani and Kalambahiro. They should collaborate fully with the judicial authorities to shed a light on these attacks.

IX. Response of the Congolese authorities, MONUSCO and the humanitarian partners

9.1. Congolese authorities

33. Following the human rights violations committed in Bushani and Kalambahiro on 31 December 2010 and 1 January 2011, Operation “*Hatua Yamana*” was reportedly suspended on 7 January 2011 by FARDC, due mainly to the allegations of human rights violations brought to their attention, on 4 January 2011, by local authorities. On 13 January 2011, the military prosecutor’s office at the CMO opened preliminary judicial investigations under the reference No. RMP 0236/MLS/011. On 3 and 4 February 2011, a team of investigators from the military prosecutor’s office, headed by the military prosecutor, went to Bushani and Kalambahiro with the support of MONUSCO. This team was able to meet witnesses and victims of the attacks and gathered and analyzed evidence regarding the food rations and ammunitions used by the assailants in Bushani. On 10 February 2011, the military prosecutor’s office at the CMO of North Kivu issued an order requiring the commanders of the FARDC battalions, which had moved through the villages attacked, to be made available for questioning.

34. However, FARDC officers were not made available, nor interviewed by the military justice in this case before March 2011. This situation has considerably slowed down the investigation and demonstrates the limited cooperation between the various structures within the FARDC. This lack of cooperation by the Operation Amani Leo command in North Kivu with the Congolese military justice is impeding the efforts to fight impunity for the alleged perpetrators of human rights violations committed against civilians in Bushani and Kalambahiro, as well as the implementation of the zero-tolerance policy decreed by the President of the Republic on 5 July 2009.³¹

³⁰ In the joint operations supported by MONUSCO, the responsibility of the troops on the front line does not fall within the classical command structure (battalion, brigade, sector, and zone), but directly under the commander of Operation Amani Leo for the province where the operations are being carried out.

³¹ On 5 July 2009, President Kabila issued an edict defining a zero-tolerance policy for human rights violations, including acts of sexual violence committed by members of the armed forces.

35. As it has not been possible to establish the individual responsibilities of the suspected perpetrators, the officers in command of Operation Amani Leo should make every effort to assist in identifying those responsible for the violations; otherwise they themselves could be considered responsible for the actions committed by their soldiers. The judicial authorities handling the case should prosecute them on the basis of the relevant provisions of the law of armed conflict.

36. On 24 May 2011, the UNJHRO received from the Minister of Justice and Human Rights observations on this report, which had been shared with the latter for comments on 21 April 2011. In addition, on 21 May 2011, MONUSCO received comments originating from the FARDC command. The factual errors they pointed out have been corrected in this report.

9.2. MONUSCO

37. MONUSCO deployed investigation teams twice, i.e. from 17 to 19 January 2011 and from 2 to 4 February 2011, to the villages that had been attacked, in order to verify the allegations of human rights violations committed in Bushani and Kalambahiro. MONUSCO also facilitated the deployment and accompanied a team of investigators from the military prosecutor's office at the CMO of North Kivu to both villages. These two missions took place jointly with the support of MONUSCO troops, whose presence on the paths leading to Kalambahiro and Bushani considerably increased the feeling of security among the civilian population. On 19 January 2011, MONUSCO took one victim, whose health was critical due to the rape she had suffered, to Goma, where she was admitted to hospital. Her hospital expenses were paid by a NGO in Goma. MONUSCO also lobbied the military authorities for the investigations to be continued on this matter.

38. On 20 January 2011, the UNJHRO communicated information obtained regarding rapes, looting and other human rights violations committed in Bushani and Kalambahiro to the military prosecutor's office at the CMO of North Kivu. The latter confirmed to the UNJHRO that preliminary judicial investigations had started on 13 January 2011 and expressed a wish for support from the UNJHRO.

39. On 25 January 2011, during a press conference in Geneva, the spokesperson for the United Nations High Commissioner for Human Rights, reporting on the human rights violations committed in Bushani, expressed the concerns of the United Nations High Commissioner for Human Rights about the fact that *"the Congolese army remains responsible for a significant number of human rights violations, including sexual violence, against their own population."* On 26 January 2011, the spokesperson for the Congolese Government and Minister of Communications and Media, Mr. Lambert Mende, responded to this declaration in a press release by denying any responsibility of the FARDC for these violations.³²

³² According to the verbatim of Mr. Mende's press release of 26 January 2011, *"no Fardc troops can have taken any action whatsoever in Bushani on 31 December 2010 and 1 January 2011, because Fardc, which had started a slow advance to Bushani, which was occupied by Fdlr terrorists, on 29 December 2010, only arrived there on 2 January 2011, after fierce fighting. The local populations had fled the area, where there wasn't a soul to be seen. The New Year's Eve violence in Bushani cannot be attributed to them in any case, contrary to what is claimed by the HCNUDH whose propensity for denigrating the armed forces by manipulating figures and producing deliberately confusing reports on security incidents in the country is regretted by the government"*.

40. It should be noted that, in accordance with its mandate as defined by Security Council Resolutions 1906 and 1925, MONUSCO has established strict procedures for the implementation of its support to joint operations. More specifically, rations and other forms of support are only provided after the commanders of the FARDC battalions proposed for the joint operations have been screened. Specific directives for the implementation of these procedures have been issued to MONUSCO brigades. Following the incidents in Bushani and Kalambahiro, the MONUSCO Force Commander issued, on 1 April 2011, an additional instruction to all MONUSCO brigades, stipulating that rations should be handed over to the eligible and screened battalion commanders and deputy commanders only after confirmation of their identities when receiving support during joint operations. Since these incidents, MONUSCO has given no further support to the battalions suspected of involvement in these violations. In addition, MONUSCO has called several times on the competent authorities for the perpetrators of these violations to be identified and prosecuted.

9.3. Humanitarian partners

41. From 2 to 4 February 2011, a doctor and two psychologists from the NGO *Heal Africa* and two jurists from the NGO CREDDHO joined the team during its second mission to Bushani and Kalambahiro. The doctor provided medical assistance to 41 civilians including 35 rape victims. While listening sessions were held by psychologists for 38 rape victims, the jurists, in turn, informed about 30 of the victims of these violations of their rights, and in particular of the steps to be taken if they wish to file a complaint against their attackers.

X. Conclusions and recommendations

42. Following the missions to investigate the events in Bushani and Kalambahiro, the UNJHRO can confirm that, on 31 December 2010 and 1 January 2011, men in uniform identified as FARDC soldiers committed serious human rights violations against civilians. In the light of the information gathered and presented in this report, at least 47 women, including one minor, were victims of sexual violence, including rape, committed during the attacks on these villages. At least 100 houses and three buildings were also looted by the latter, with at least four houses destroyed or set on fire, two civilians abducted and 12 others subjected to cruel, inhumane or degrading treatment.

43. These developments are all the more worrying given that the men identified as FARDC soldiers involved in these violations may have received MONUSCO support as part of Operation “*Hatua Yamana*”. Should this be the case, the commission of these violations highlights the difficulties of implementing the conditionality policy as an instrument of protection and prevention of human rights violations. In any case, the incidents in Bushani and Kalambahiro reveal the failings of the procedures for distribution of food rations and control of the support given to the FARDC soldiers established by MONUSCO. The capacity of MONUSCO to supervise the behaviour of the FARDC soldiers supported during joint operations remains limited due in particular to security and logistical constraints.

44. Since the opening, on 13 January 2011, of preliminary judicial investigations into these violations and until the date of drafting of this report, there has been limited cooperation between the FARDC and the military justice, which constitutes an obstacle to the pursuit of all joint efforts in favour of the fight against impunity and the implementation of the zero-tolerance policy decreed by the President of the Republic on 5 July 2009.

45. The UNJHRO therefore recommends to:

- **The authorities of the Democratic Republic of the Congo to:**

- take all necessary measures to fulfil their primary responsibility of ensuring the protection of civilians throughout the territory of the DRC ;
- take all measures to prevent reprisals by the alleged perpetrators of the violations committed against the inhabitants of Bushani and Kalambahiro ;
- continue their cooperation with the military prosecutor's office at the CMO of North Kivu so that all the alleged perpetrators of the attacks on Bushani and Kalambahiro are prosecuted and brought to justice ;
- provide medical and material assistance to the population which, as a result of the violations it has suffered, is in a highly precarious situation ;
- provide FARDC troops with military uniforms bearing names and units, as recommended by the Special Rapporteur on extrajudicial, summary or arbitrary executions following his visit to the Democratic Republic of Congo in October 2009 ;

- **The MONUSCO to:**

- implement the new measures taken with regard to the distribution of food rations to the FARDC and ensure in particular that there is better monitoring of the support given to the FARDC in the context of joint operations ;
- continue lobbying Operation Amani Leo command in North Kivu so that the investigations lead to the identification of the FARDC battalions suspected of perpetrating the Bushani and Kalambahiro attacks ;
- provide the Congolese authorities with the necessary support for protecting civilians in Bushani and Kalambahiro following the threats of reprisals made against them, as well as investigating and prosecuting the alleged perpetrators ;

- **The humanitarian partners to:**

- provide adequate medical and social assistance to all the victims of sexual violence, in particular tests for detecting sexually transmitted diseases, as well as programmes to counter their stigmatization and ensure their rehabilitation ;

- provide humanitarian and legal assistance to the victims of human rights violations committed in Bushani and Kalambahiro.

ANNEX

Bushani, Kalambahiro and the surrounding areas (North Kivu)

