

## APPENDIX BUILDING THE RULE OF WAR

The appendix to this article proceeds in three parts. Part A presents a discussion of the workings and jurisdiction of the Congolese military justice system. Part B provides details on the compilation of the database and my discussions with military prosecutors. Part C presents summaries of the 20 South Kivu case files, including relevant case details and redacted narratives that explain details of the mechanisms where possible and appropriate. All sensitive and confidential information that is not already in the public domain has been redacted to protect the identities of sources and interlocutors.

### A. The Congolese Military Justice System

DR Congo’s formal justice system has its roots in French civil law, institutionalized under Belgian rule in the early twentieth century. The legal system is officially divided into three distinct branches: the civilian, the military and the administrative.

DR Congo’s first *Code de Justice Militaire* (Military Justice Code) of 1972, which built on the provisional military justice code of 1964, laid the foundations for Congolese military justice.<sup>1</sup> Under the 2002 reforms to the military justice system, the organization and jurisdiction of the Congolese military courts was revised and a new military penal code was introduced.<sup>2</sup> Under the 2002 legal framework, military courts exercised jurisdiction over employees of the state security forces, over members of insurgent armed groups, or where the accused was alleged to have committed a crime in the course of serving the state.<sup>3</sup> Civilian courts, on the other hand, technically exercised jurisdiction over ordinary crimes perpetrated by civilians, except where those crimes fell under certain specified exemptions, in which case jurisdiction over civilians was transferred to the military courts. In practice, however, the distinction between civilian and military justice has often broken down. The *Loi N°023/2002 du 18 novembre 2002 portant Code Judiciaire Militaire* extends jurisdiction to all those who have belonged to former armies, rebel factions, insurrectionary bands or armed militia; to those present on military, naval or police missions; students of military schools; prisoners of war; those who, even if they are not members of the army, provoke, engage or assist one or more members of the armed forces or police to commit an offense against military law. The Code also extends jurisdiction to civilians who commit offenses using “weapons of war” (Military Justice Code, Articles 111, 112). The wording of the *Code Judiciaire Militaire* is thus open to considerable interpretation. Since weapons of war are not explicitly named, courts are able to define these liberally to include a vast swathe of crimes. Afrimap (2010) has documented the multiple different ways in which

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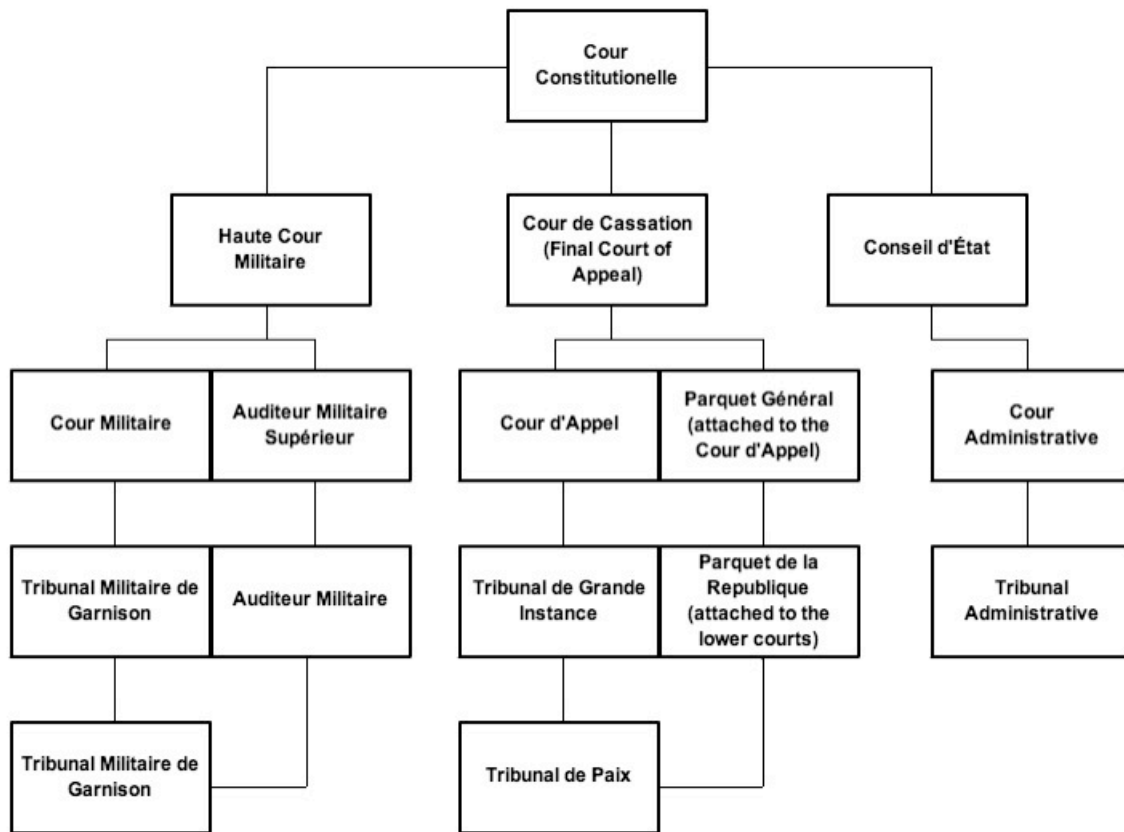
<sup>1</sup> *Loi/Ordonnance Portant Institution d’Un Code de Justice Militaire N°72/060 du 25 septembre 1972*

<sup>2</sup> See: *Loi N°023/2002 Du 18 Novembre 2002 portant Code Judiciaire Militaire* and the *Loi 024-2002 du 18 Novembre 2002 portant Code Penal Militaire*.

<sup>3</sup> A 2013 law revised this jurisdiction, giving civilian courts jurisdiction over international crimes (see: the *Loi organique N°13/011/B portant organisation, fonctionnement et compétences des juridictions de l’ordre judiciaire*, or, in English, the Law on the Organization, Functioning and Jurisdiction of the Courts). However, this reform did not affect any of the cases discussed here, as it was only introduced after the research was completed.

military courts have overreached in prosecuting ordinary civilians, assuming roles that would normally fall to the jurisdiction of civilian courts.<sup>4</sup> The technical distinction between military and civilian jurisdictions has most frequently broken down in times of conflict, in regions plagued by violence or heavy military presence, or in remote locations where civilian and/or military courts are few and far between.

*The Structure of DR Congo’s Legal System (2012)*<sup>5</sup>



Until recently, military courts exercised exclusive jurisdiction over international crimes. The two international crimes relevant to this study are war crimes and crimes against humanity. A war crime constitutes a “serious breach of international humanitarian law committed against civilians or enemy combatants during an international or domestic armed conflict, for which the

<sup>4</sup> AfriMAP, “Democratic Republic of Congo - Military Justice and Human Rights: An Urgent Need to Complete Reforms” (South Africa: A Study by AfriMAP and the Open Society Initiative for Southern Africa, 2010).

<sup>5</sup> Not included in the above organigram are the cours militaire opérationelles. For instance, la cour militaire opérationelle de Goma was established in 2008, and has assumed jurisdiction over war crimes committed in Minova, South Kivu, in 2012, among other war crimes and crimes against humanity investigations. The cours opérationelles still assume responsibility over the majority of international crimes investigated and prosecuted in North Kivu.

perpetrators may be held criminally liable on an individual basis”.<sup>6</sup> A crime against humanity includes any act committed as part of a widespread or systematic attack directed against any civilian population. Building on case law from the criminal tribunals for Rwanda and the former Yugoslavia, Congolese courts have determined that, for an attack to be considered “systematic” it must be perpetrated on the basis of a policy or a preconceived plan. A “widespread” attack must possess a “massive and frequent character”, must be carried out collectively, and must be directed against a multiplicity of victims.<sup>7</sup>

In 2013, a revised law transferred jurisdiction over international crimes to civilian courts (see: the *Loi organique N°13/011/B portant organisation, fonctionnement et compétences des juridictions de l’ordre judiciaire*). Given that the 2013 law entered into force after the research for this article was undertaken, all of the cases discussed in this project fell under the exclusive jurisdiction of the military courts.<sup>8</sup>

Judges in military courts are officers of the Congolese armed forces. The military penal code stipulates that judges presiding over cases involving military personnel must be of equal or superior rank to the defendant. Like most legal systems, in both civilian and military cases, the state prosecutor must be a party to the case; however, in both jurisdictions victims can also appear as *parties civiles* (civil parties). In both the civilian and military justice systems, victims may open a case directly with the prosecutor. Victims may also report cases to the police who will refer them on to the parquet or the military justice, or prosecutors may initiate cases of their own accord. For cases involving international crimes, international and domestic human rights organizations typically identify potential cases, refer them to the relevant prosecutor (the *Auditorat Militaire Supérieure*), and support the prosecutor in beginning an investigation. Once a case has been opened, it will be registered in the *Registre du Ministère Public* (RMP) and assigned a docket number (RMP number). The case may also be registered on the *Rôle Pénal* (RP) by the court’s clerk at this stage and assigned an RP number in the clerk’s registry. Once a dossier is formally opened by the military prosecutor, the prosecutor’s office may issue a *mandat d’amener* as part of the information-gathering phase. This is a request to bring the implicated party in to the prosecutor’s office for questioning. Once sufficient evidence has been collected, the military prosecutor may issue an arrest warrant or a provisional arrest warrant (a *mandat d’arrêt* or *mandat d’arrêt provisoire*). When the case involves active military personnel, warrants are first issued to the commander of the provincial military region and, if approved, are then issued to the implicated individual’s commanding officer, who has responsibility to execute the warrant and turn the individual in question over to the military justice system. When the case involves a police officer, his/her superior must receive the warrant. When the case involves an armed actor from a non-state group, the commanding officer need not approve the warrant, which is issued directly to the commander of the provincial military region or to the judicial

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<sup>6</sup> Rome Statute of the International Criminal Court.

<sup>7</sup> See, e.g., TMG de Mbandaka, *Affaire Songo Mboyo* (RMP154/PEN/SHOF/05) and *Affaire Mutins de Mbandaka* (RP 086/005; RP 101/006).

<sup>8</sup> It should be noted that there have been a number of barriers associated with transferring jurisdiction to the civilian courts. In many cases, particularly in South Kivu, military courts have retained jurisdiction over international crimes in practice in spite of the 2013 legal reforms.

police to execute. Thus, unit level commanders, the commanders of the provincial military regions, and even judicial police, can exert considerable influence over the execution (or non-execution) of warrants in the early stages of investigations.

If investigations proceed and sufficient evidence exists for prosecutors to build a case, a trial date is set. Due to scarce resources and political maneuvering, this process can be subject to lengthy delays. After a verdict is reached, either party can appeal the decision. Appeal cases are registered on the *Rôle Pénal en Appel* (RPA), meaning the case is pending before the Appeal Court (the *Cour Militaire*).

While a number of amnesties have been offered over the course of the conflict, amnesty laws typically preclude possibilities of amnesty for international crimes. The 2014 Amnesty Law and the Final Communiqué on the Kampala Dialogue between the Government of the Democratic Republic of Congo and the M23 Insurgency, for example, states:

- 1.1 In accordance with national and international law, the Amnesty does not cover war crimes, crimes of genocide, and crimes against humanity, including sexual violence, recruitment of child soldiers and other massive violations of human rights.<sup>9</sup>

Earlier amnesty laws include Law N°05/023 of December 19, 2005, passed by the transitional parliament, and Law N°09/003 of May 7, 2009. The 2005 law formalized the amnesty promised in the 2003 Presidential Decree (N°03-001) of April 15, 2003. The 2003 Decree granted amnesty by temporary executive order as per the 2002 Global and All-Inclusive Agreement, for acts of war and political breaches of the law for the period of August 2, 1998 to April 4, 2003 (later extended to June 20<sup>th</sup>, 2003).<sup>10</sup> The 2009 law offered amnesty for acts of war committed since 2003 and extending up to 2009. The amnesty was extended to “all Congolese living in the territory of the Democratic Republic of Congo or abroad for acts of war and insurrection committed in the provinces of North Kivu and South Kivu”.<sup>11</sup> Both laws explicitly prohibited the possibility of amnesty for genocide, war crimes, and crimes against humanity; however many individuals, including some Congolese legal practitioners, have professed that officers afforded amnesty under these laws are exempt from prosecution even for international crimes. This point of contention has led to considerable confusion, which has overshadowed the progression of certain cases examined in this study. I discuss these challenges further in Section B.

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<sup>9</sup> Text from the Final Communiqué on the Kampala Negotiations, which ended the war against M23 on 12<sup>th</sup> December, 2013. Enriched in Article 4 of Loi No 14/006 of February 11, 2014 (Loi portant amnistie pour faits insurrectionnels, faits de guerre et infractions politiques).

<sup>10</sup> Law N°05/023 of December 19, 2005; International Center for Transitional Justice, “Amnesty Law Must Not Equal Impunity” (Kinshasa, DR Congo, May 7, 2009), <https://www.ictj.org/sites/default/files/ICTJ-DRC-Amnesty-Facts-2009-English.pdf>.

<sup>11</sup> N°09/003 Journal Officiel de la République Démocratique Du Congo, 7<sup>th</sup> May, 9, 2009. DR Congo, “Amnesty Law of 07 May 2009,” May 7, 2009; “Amnesty Law for DR Congo Militias,” *BBC*, May 7, 2009, sec. Africa, <http://news.bbc.co.uk/2/hi/africa/8037891.stm>.

## **B. Research Phases**

The empirical research for this article was conducted in four phases. The first phase involved the creation of a dataset that I used as the basis for interviews with legal experts and military prosecutors. Second, in consultation with military prosecutors and legal experts, I coded the treatment of potential war crimes and crimes against humanity cases by military prosecutors and identified those cases that could feasibly move forward through the legal system. Third, I conducted targeted qualitative interviews, as well as informational interviews, around the progression of each feasible war crime or crime against humanity dossier through the legal system. Fourth, I compiled comprehensive narrative histories for each dossier in order to identify the patterns that shaped the progression of a case to investigation and trial. The latter two phases are discussed in depth in the body of the article. Here, I summarize the steps taken in phases one and two.

### *1. Creating the dataset*

Incidents of potential war crimes and crimes against humanity that could feasibly have been investigated by military prosecutors were identified using the Armed Conflict Location and Events Dataset (ACLED), the Uppsala Conflict Data Program (UCDP) and CrisisWatch reports. While these datasets by no means constitute a holistic or representative universe of violent events (and are likely to exclude incidents occurring outside of populated areas or those that were slow to reach the attention of NGOs or local media outlets) the data sources were nevertheless an appropriate place to begin this analysis. This is because the majority of incidents in the ACLED database derive from local news sources - in particular, Radio Okapi, the UN news service. Radio Okapi, along with the human rights reports that provide the basis for the CrisisWatch and UCDP data, share similar channels of information (local and international human rights monitors, UN bulletins, and army intelligence) to those used by military prosecutors and their international partners. Given the frequency with which violent incidents occur, events that were not picked up by Radio Okapi or other local media outlets were less likely to reach the attention of military prosecutors or the international NGOs supporting them. This assumption is supported by the fact that there were very few international crimes dossiers open before the military courts that were not located in any form in one of the three data sources used.

I thus began with the complete database of ACLED events for DR Congo that occurred in North and South Kivu between 2005 and 2012.<sup>12</sup> In going through each of the entries in the database line by line, I eliminated any event that did not have the potential to constitute a war crime or a crime against humanity that would realistically be investigated by North and South Kivu’s military courts. Based on the definitions discussed above, a war crime constitutes a “serious breach of international humanitarian law committed against civilians or enemy combatants during an international or domestic armed conflict, for which the perpetrators may be held

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<sup>12</sup> While my timeframe of study was 2006-2012, I included incidents of violence beginning in 2005 in the first round of analysis. This is because court cases that began in 2006 could have been linked to violence perpetrated in 2005.

criminally liable on an individual basis”.<sup>13</sup> A crime against humanity involves any act committed as part of a widespread or systematic attack directed against any civilian population.<sup>14</sup> On this basis, I eliminated events such as peaceful protests; media crackdowns; strike action; military clashes between armed groups in which no civilian casualties were reported; and military clashes in which no incidents of abduction, torture, theft, rape, burning, pillage or other assaults were explicitly mentioned in the report. Where necessary and possible, I verified events against the original news story or report. For incidents involving, for example, a FARDC rescue operation for civilians kidnapped by an armed group, I cross-checked the original event referenced – in this example, the kidnapping of civilians – against other events included in the dataset. If the original event could be found in the dataset, I removed the rescue attempt (on the basis that it likely referred to the same incident). If the original incident could not be found, and it appeared possible that it could have taken place in my time frame of study, the report was included in the database.

For many events, there was insufficient information to assess whether or not the event would clearly meet the legal definition of a war crime or a crime against humanity. Events that proved the most challenging to assess were incidents such as isolated attacks on vehicles, or the theft of cattle or resources from a family (for example). These events were assessed on a case-by-case basis. They could certainly constitute international crimes if they formed part of a broader, systematic pattern of abuses. Where the event in question appeared to be part of a visibly recognizable pattern in the dataset, isolated incidents like these were kept in the database (for instance, where civilians of a certain ethnicity were targeted by a group in the same location across a period of days or weeks). However, if the perpetrators were not linked to any identifiable armed group, and if the attack appeared to occur in isolation rather than forming part of a broader pattern of incidents committed against the same group of victims or across geographic area, then the event was removed.

Once this exercise was complete, I examined the Uppsala (UCDP) and CrisisWatch databases according to the same criteria. I merged the three datasets, removing all incidents that fell outside the scope of my study and removing obvious repeats across the various sources. I also removed clear repeats within the final dataset. For example, I removed identical reports of the same event so that each unique incident only appeared once. I also grouped events that were clearly linked to one another and treated them as if they were a single entry that occurred over multiple days. For

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<sup>13</sup> Definitions are derived from the Geneva Conventions (1949), their additional protocols I and II (1977), and the Hague Conventions (1899, 1907). Their most recent codification can be found in Article 8 of the Rome Statute of the ICC. United Nations Mapping Report 1993-2003.

<sup>14</sup> Acts included within the definition of crimes against humanity are murder; extermination; enslavement; deportation, forcible transfer of populations; imprisonment; torture; rape; sexual slavery; enforced prostitution; forced pregnancy; enforced sterilization; any other form of sexual violence of comparable gravity; persecution against an identifiable group on political, racial, national, ethnic, cultural, religious or gender grounds; enforced disappearance of persons; the crime of apartheid; or any other inhumane act of a similar character intentionally causing great suffering or serious bodily or mental injury. For complete definitions of War Crimes and Crimes against Humanity see Articles 7 and 8 of the Rome Statute of the International Criminal Court, and its accompanying Elements of Crimes.

instance, attacks committed by the same armed group in the same location over a period of days or even weeks were coded as a single overarching incident comprising of multiple attacks. The final dataset consisted of 392 incidents of potential war crimes and crimes against humanity across the two provinces (230 in North Kivu and 162 in South Kivu). The dataset included incidents perpetrated by approximately 24 different armed groups in North Kivu and approximately 15 in South Kivu (including the Congolese national army, the *Forces Armées de la République Démocratique du Congo*, or FARDC).

Due to misinformation in the original data sources, and events that were written up slightly differently in multiple media reports, not all duplicates were successfully removed in Phase 1. Rather, some duplicates only became apparent in my discussions with military prosecutorial staff. In addition, many of the incidents in the dataset turned out to be linked to the same overarching “dossier”, that is, a broader investigation or case file. Thus, where Table 2 indicates that investigations were feasible for 79 separate incidents of violence, these 79 incidents pertain to 36 case files in total – 16 in North Kivu and 20 in South Kivu. To elaborate, where Kazungu was implicated in multiple incidents in and around Bunyakiri in 2006, including a massacre at Ninja, an abduction at Kaniola, and the destruction of houses in Kibungu, each of these individual incidents appear as a separate entry in the database. However, they each pertain to the overarching investigation I title: “Bunyakiri”. Relevant news reports pertaining to the South Kivu case files are cited in the incident descriptions of the Narrative Case Histories Table in Section C below.

## 2. *Verifying the status of cases*

Using the newly created dataset of 392 incidents across North and South Kivu involving potential war crimes or crimes against humanity, I documented which incidents had been monitored, investigated or recorded by the criminal justice system and what was the incident’s current status. As accurately as possible, I carefully recorded how prosecutors had responded to each incident in the dataset. The incidents fell into four categories: those events that appeared to be entirely unknown to military prosecutors (134); those for which insufficient information was included in the media report for prosecutors or legal experts to identify the incident (102); those that were inaccessible to prosecutors, for reasons clarified below (77); and those for which investigations into war crimes or crimes against humanity cases should have been feasible (79). These four categories were derived from the database and developed in discussion with prosecutorial staff, domestic legal practitioners, and international in-country legal experts.

First, were incidents for which prosecutors were unaware that the incident had ever taken place. These 134 incidents, which comprised the majority of events in the dataset, were coded “event unknown”. This classification was reserved for incidents that prosecutors had never heard of and did not know existed. This was sometimes due to a lack of sufficient detail in the report, so that when I questioned prosecutors and local NGOs about the incident, they could not recall ever hearing about the incident in question. In some cases, these reports provided fairly specific information about victims and perpetrators, but prosecutors had seemingly never come across the case.

Second, were incidents that prosecutors were aware of, but had insufficient information to proceed with investigations. Cases were coded as having “insufficient information” where no perpetrator groups were identified, or when a group such as “Interhamwe”, “Hutu rebels” or “Mai-Mai” were denoted in the news report with no further specifying information. The report may also have been vague or contradictory in terms of the information given. In such cases, prosecutors could sometimes piece together information to make the link to a specific attack that they remembered learning of, but oftentimes there was insufficient information to open a formal dossier.

Third, cases were coded as “inaccessible” when prosecutors faced genuine logistical barriers to moving forward. Many of these cases were incidents that prosecutors legitimately believed were impossible to pursue through the Congolese military justice system on the basis of four general criteria. These criteria included (1) incidents for which investigations were stalled because the UN Mission was unable to facilitate transport to collect evidence (either because funds were unavailable or because the territory in which the incident occurred was occupied by an armed group and travel to the site was not possible)<sup>15</sup>; (2) incidents that took place in the Kivus but for which the implicated group or alleged perpetrator was based outside of the Kivus and thus did not fall under the jurisdiction of prosecutors in North and South Kivu (such as incidents involving Mai Mai Gédeon, who was the subject of an investigation and eventual trial in Katanga); (3) incidents where the alleged perpetrator (and any potential accomplices) were dead or known to be no longer in the country; and, finally, (4) incidents for which prosecutors believed (often incorrectly) that the 2009 amnesty protected suspects from prosecution or investigation – normally because they involved acts committed by armed groups or individuals later reintegrated into the FARDC. As noted above, while Congolese amnesty laws clearly state that amnesty does not extend to international crimes, many legal practitioners and Congolese politicians nevertheless upheld that reintegration and amnesty exempted accused individuals from investigation or prosecution. Such a belief caused many cases to be thrown out without being registered or investigated at all. The mechanisms documented in this article are certainly at play in many of these cases. However, I chose to exclude cases involving amnesty from this particular analysis because these cases were obstructed in ways that often proved fairly straightforward to observe. We gain far greater analytic leverage by looking at cases that were not immediately discarded for logistical or other easily-explained reasons.

Finally, were those incidents for which investigations into potential war crimes or crimes against humanity were considered reasonable, necessary and feasible. These 79 incidents, coded “investigation feasible”, pertained to 16 separate case files (or “dossiers”) in North Kivu and 20 case files in South Kivu. Only seven of these concluded within the timeframe the research was carried out.

The research process was not perfect. Indeed, many of the cases that fell into the categories of “inaccessible,” for example, warranted far deeper scrutiny and could have revealed important

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<sup>15</sup> It should be noted that the police and the military justice system more broadly often lack the means to facilitate their own transport.



information pertaining to the dynamics documented here. Moreover, there were certain cases that were dismissed in the original Phase 2 coding for which prosecutors and other interlocutors almost certainly had further information that I was not able to access. Nevertheless, for the purposes of feasibility, I chose to focus on the cases that military prosecutors themselves deemed possible. By virtue of the fact that these cases appeared on the surface to be perfectly suitable for investigation, they offered the greatest analytic leverage over how and why cases were stalled or propelled forward.

### **C. Narrative Case Histories**

In the final section of the online appendix, I present a summary of the 20 South Kivu case files. The case files from North Kivu are not discussed in this article due to confidentiality concerns and the destruction of many data sources before the research could be concluded. To protect the confidentiality of my sources, extended narratives, identifying details, and reference to any events or conversations that could potentially compromise the security of my interlocutors are redacted. This means that specific details and relationships pertaining to many of the mechanisms at work are not referenced here. Instead, I provide case summaries that include information already in the public domain. To the extent possible, the mechanisms at work in each case are summarized (and a general discussion of the patterns that emerge from the mechanisms and analysis is presented in the body of the article). However, all direct quotations have been removed and, where not already publicly available in case decisions or other documents and reports, I do not mention case details or individuals involved in the cases by name. In 2015, the International Center for Transitional Justice (ICTJ) published a report entitled “The Accountability Landscape in Eastern DRC,” which documents the status of 39 international crimes dossiers before Congolese military courts in Ituri, North Kivu and South Kivu between 2009 and 2015. My research was conducted between 2011 and 2014, and concerns only incidents in North and South Kivu in the period from 2006 – 2012. The ICTJ report thus offers important updates and supplementary information on a number of the cases discussed in this article. I would like to thank the ICTJ for the supplementary information they provided, as well as for corroboration of a number of important case details and developments since my original research was carried out. The “Case Updates” in the below table, which cover the period subsequent to the conclusion of my research in 2014, up until publication of this article, draw predominantly from ICTJ research, as well as from a limited number of follow-up interviews and supplementary court data collected by the author in 2016.

It should be noted that since the research and writing of this article was completed, the military justice system, with the support of the International Center for Transitional Justice (ICTJ) and the United Nations Development Program (UNDP), has developed a prioritization strategy for selecting and supporting cases. Thus, recognizing the challenges associated with relying on the political will of interested parties to support cases under investigation, military prosecutors now focus on cases that meet a set of predefined criteria that serve to determine their priority status. It is important to recognize, therefore, that the vast majority of domestic and international actors involved in supporting the prosecution of international crimes in DR Congo are familiar with – and frustrated by – the challenges documented in this article. Since the prioritization strategy was

implemented, stakeholders hope that investigations and prosecutions will no longer be plagued by the political manipulation and obstruction to the extent that characterized the cases discussed in this article.

In addition to the prioritization strategy, the transfer of jurisdiction over international crimes to the civilian courts in 2013 was similarly introduced partly to circumvent some of the challenges documented here. As evidenced in a number of the cases below, specific challenges arise from the dual role the Congolese military plays in both executing arrest warrants and prosecuting cases, and engaging in battlefield offensives and counter-insurgency. As a party to the myriad conflicts the plague DR Congo’s eastern provinces, the FARDC is far from an impartial actor in the administration of justice. The transfer of jurisdiction to the civilian courts was intended to remove the influence that FARDC elites exert, both in authorizing arrest warrants, and in using accountability mechanisms selectively to remove military adversaries. Due to a lack of expertise in the civilian courts, in practice, responsibility for prosecuting international crimes has remained with the military justice system. However, efforts by international stakeholders are underway to build legal capacity within the civilian courts.

*Summary of Cases and Mechanisms*

Case name	<b>Cent-Six (106): Colonel Bedi Mobuli Egangela, FARDC/Ex-FAZ RMP 1163, 0248/TP/2009, RP 083/14, RMP 1377/MTL 2011</b>
<i>Incident</i>	May 2004 - July 2006: Lieutenant Colonel Bedi Mobuli Egangela (alias: Cent-Six) <sup>16</sup> was a former member of the <i>forces armées zairoises</i> (FAZ) under Mobutu who was integrated into the 106 <sup>th</sup> Battalion of 10th Military Region of the FARDC in 2005 and then again defected from the FARDC in Bunyakiri in 2006. It was during his tenure as commander of 106 <sup>th</sup> Battalion that he earned the nickname “Colonel Cent-Six.” Both before and after his defection, he was accused of committing egregious crimes in the forests of Bunyakiri, including mass rape, torture, murder, the recruitment of child soldiers and other abductions. Specifically, between December 2005 and March 2006, Col. Egangela was implicated in a sequence of attacks in a number of South Kivu villages. During these attacks, he committed looting, abduction, torture and sexual slavery. On 2 <sup>nd</sup> September 2006, Col. Egangela’s troops abducted 33 civilians from their homes. <sup>17</sup>
<i>Mechanisms</i>	<i>Removing adversaries</i> (inter-group conflict) The case was propelled forward by FARDC commanders as part of an effort to exert territorial control and remove hostile FARDC adversaries from the battlefield. By 2006, Col. Egangela was fairly weak because many of his previously loyal troops had lost faith in him and deserted his command. Since his power was dwindling, he no longer had military allies to support him. Thus,

<sup>16</sup> Radio Bukavu 23<sup>rd</sup> Jan 2005; Radio Okapi 24<sup>th</sup> Jan 2005; Radio Bukavu 16<sup>th</sup> Feb 2005; RTNC Radio Goma, 9<sup>th</sup>, 16<sup>th</sup> Jun 2005; Radio Okapi 30<sup>th</sup> Jul 2005.

<sup>17</sup> *Cour Militaire de Sud Kivu*, Judgement of the 15<sup>th</sup> December, 2014.

	towards the end of 2006, FARDC officers launched an attack on Cent-Six close to Bukavu, capturing him and executing an arrest warrant prepared by the <i>Auditeur Militaire</i> . He was immediately transported to Kinshasa to await trial, because authorities feared that he would escape if he were imprisoned in South Kivu. Congolese law states that all accused persons must be tried in the territory in which their crimes were committed, meaning that he was unable to face trial in Kinshasa. With logistical support from various international organizations, the case was finally registered at the <i>Auditorat Militaire Supérieur</i> in South Kivu on 21 <sup>st</sup> November 2011, when preparations began in earnest for his return to South Kivu.
<i>Case details</i>	Arrest: 2007, Trial: August 2014, Judgement: December 2014. Case stalled for a number of years in Kinshasa due to difficulties in transporting Egangela back to South Kivu.
<i>Sentence</i>	Life imprisonment (crimes against humanity of rape, sexual slavery, pillage, and arbitrary arrest; war crime of murder)
<i>Case update</i>	Cent-Six remained in custody in Kinshasa at the end of the research period. A new provisional arrest warrant and charges against Col. Egangela were registered on 4 <sup>th</sup> May 2013 and he was transported back to South Kivu on 2 <sup>nd</sup> April 2013. His trial commenced in August 2014. <i>Avocats Sans Frontières</i> (ASF) provided legal aid and representation to victims, and the United Nations Development Program (UNDP) covered the expenses for the judges and defendants. In December 2014, Egangela was handed down a life sentence for the crimes against humanity of rape, sexual slavery, pillage, and arbitrary detention. He was also found guilty of the war crime of murder. He was ordered to pay 723 civil parties to the case amounts between \$500 USD to \$1500 USD. <sup>18</sup> Egangela was transported back to Kinshasa to serve out his sentence. He appealed the Military Court’s decision and the appeal was pending at the time of writing. <sup>19</sup>
<b>Case name</b>	<b>Bunyakiri: Jean Bosco Maniraguha (Kazungu), Sibomana Kabanda, FDLR-Rasta RP 275/09, RP 521/10, RMP 581/TBK/07, RMP 1673/KMC/10 (trial), RPA</b>

<sup>18</sup> Cour Militaire de Sud Kivu, Judgement of the 15<sup>th</sup> December, 2014. It should be noted that reparations ordered by Congolese courts are rarely paid in practice, either by defendants or by the Congolese state.

<sup>19</sup> International Center for Transitional Justice, “The Accountability Landscape in Eastern DRC | International Center for Transitional Justice” (New York, N.Y., 2015), <https://www.ictj.org/publication/accountability-landscape-eastern-drc-analysis-national-legislative-and-judicial-response>; UNSC, “Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo” (New York, N.Y., 2013), [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/2013/388](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2013/388); United Nations Organization Stabilization Mission in the Democratic Republic of the Congo and United Nations Joint Human Rights Office, “Progress and Obstacles in the Fight Against Impunity for Sexual Violence in the Democratic Republic of the Congo,” 2014, [https://monusco.unmissions.org/LinkClick.aspx?fileticket=Gyh\\_dUBNGcs%3D&tabid=10770&mid=13783&language=en-US](https://monusco.unmissions.org/LinkClick.aspx?fileticket=Gyh_dUBNGcs%3D&tabid=10770&mid=13783&language=en-US).

	<b>0177 (appeal)</b>
<i>Incident</i>	<p>June 2006 - January 2007: Case involving multiple incidents allegedly perpetrated by FDLR in Bunyakiri.<sup>20</sup> “Kazungu” was engaged in violent behavior in and around Bunyakiri from approximately 2000. He was renowned for brutal assaults on local populations, including the abduction of sex slaves from his hometown and the torture of civilians. Local rumors circulated that he would eat the flesh of those he killed in his campaign of terror. Between 2005 and 2007, the province of South Kivu was plagued with growing insecurity. This included an increase in FDLR attacks and, in 2006, the emergence of a new faction presenting itself as FDLR, named “Rasta” with Kazungu at its head. Building on a spate of attacks in 2005, in June and July 2006, Kazungu was implicated in atrocities on the Kalonge axis. Between August 2006 and January 2007 he was linked to similarly grave attacks in Bunyakiri.<sup>21</sup> Incidents included reports of mass rapes, kidnappings, sexual slavery, murder, torture, pillaging, setting fire to houses, and armed robbery in several Congolese villages.</p>
<i>Mechanisms</i>	<p><i>Removing adversaries</i> (inter-group conflict)          The case was propelled to trial through a military offensive against FDLR and Maniraguha by the FARDC in collaboration with the local community. In 2007, MONUSCO’s Disarmament, Demobilization, Reintegration, Repatriation and Resettlement (DDR/RR) unit offered support to the 10<sup>th</sup> Military Region in the form of seeking out FDLR presence in Bunyakiri and deporting destabilizing elements back to Rwanda. Kazungu disappeared into the forest to avoid deportation and continued his campaign of terror in Bunyakiri, engaging in brutal acts of sexual torture involving men, women and children. The chief of a South Kivu village, also frustrated with growing insecurity brought about by Kazungu, called Kazungu and his ally, Sibomana Kabanda, for a meeting to attempt reconciliation. However, in communication with the FARDC, the chief assisted in setting up Kazungu’s arrest. While Kazungu was meeting with the chief, a number of FARDC officers, dressed in civilian clothes, captured Kazungu’s bodyguard. They then surrounded Kazungu and captured him and Kabanda.<sup>22</sup> Once Kazungu was in custody, ASF, the American Bar Association (ABA), UNDP, the African Center for Peace Democracy and Human Rights (ACPD), the UN Joint Human Rights Office, and their partners supported the case. ASF collected extensive evidence relating to the crimes, recruited victims and witnesses to give testimonies, and facilitated all logistical arrangements and costs associated with the trial. The Military Prosecutor General at the Auditorat Militaire (Col. Mutata Luaba, assisted by his deputy, Col. Wavara) pioneered the</p>

<sup>20</sup> Radio Bukavu 17<sup>th</sup> March 2005; Radio Okapi 25<sup>th</sup> Apr 2005; Radio Bukavu 26<sup>th</sup> April 2005; Radio France 25<sup>th</sup> May 2005; Radio Okapi 29 Apr 05; RTNC Radio Goma, 9<sup>th</sup>, 16<sup>th</sup> Jun 2005; Agence France Press; Radio Okapi 20<sup>th</sup> July 2005; RTNC Goma 14<sup>th</sup> Oct 2005; BBC Monitoring citing Radio Maendeleo, 24<sup>th</sup> March 2006.

<sup>21</sup> ACLED; Tribunal Militaire de Garnison de Bukavu, Judgement of the 16<sup>th</sup> August 2011.

<sup>22</sup> United Nations Joint Human Rights Office (UNJHRO), Répertoire des audiences foraines organisées au Sud-Kivu, 2011.

	investigation and trial. The FARDC command structure at the time supported the case. For some time, been engaged in efforts to remove FDLR factions from the battlefield in order to reestablish the FARDC’s monopoly on violence.
<i>Case details</i>	Arrest: January 2007, Trial: August 2011, Judgement: 16 August 2011, Appeal: Oct 2011
<i>Sentence</i>	Life imprisonment for crimes against humanity of rape, torture, murder, and imprisonment (Maniraguha), 30 years imprisonment for crimes against humanity of murder, imprisonment (Kabanda), increased to life imprisonment on appeal. Kabanda was acquitted for the crime of rape as a crime against humanity due to a lack of available evidence beyond reasonable doubt. <sup>23</sup> Both received sentences for the deprivation of liberty and destruction of property. Kazungu also received twenty years for the illegal possession of weapons and ammunition. <sup>24</sup> The decision was appealed two months later and the decisions were upheld. <sup>25</sup>
<b>Case name</b>	<b>Mulenge: Christophe Kamona Manda, Cpl. Ndagijimana Sekuye, Cpl. Justin Mambwe Mukebu, Cpl. Gahungu Maniragaba, and Sgt. Okelo Tangi, FARDC  RMP 0933/KMC/10 (trial), RMP 0802/BMN/010 (appeal)</b>
<i>Incident</i>	August 2009: In August 2009, the 83 <sup>rd</sup> battalion of the eighth integrated brigade of the FARDC, under the command of Christophe Kamona Manda, was tracking FDLR soldiers in Mulenge, South Kivu. <sup>26</sup> When the battalion reached the town of Mulenge, no FDLR could be found. Moreover, many civilians had taken refuge from the FDLR in the neighboring town of Mugaja. On 18 August 2009, a group of women left Mugaja to search for food in their abandoned fields in Kishagala, Mulenge center. As they approached Mulenge, a number of women were attacked by members of the 83 <sup>rd</sup> battalion, while others accompanying them fled. <sup>27</sup> The FARDC accused the women of being the wives of FDLR. <sup>28</sup> During the attack, seven autochtone women were raped by members of the 83 <sup>rd</sup> battalion in an abandoned school.
<i>Mechanisms</i>	<i>Protecting loyalties</i> (intra-group cooperation); <i>Deflecting attention</i> (inter-group cooperation) After the incident, the attacks were reported to the Auditeur Militaire d’Uvira. Judicial police, with the support of local human rights organizations collecting witness testimony, identified six implicated individuals, including First Sergeant Kamona Manda. The Auditeur Militaire issued a warrant for the arrest of First Sergeant Kamona Manda and five subordinates. <sup>29</sup> Manda declared that the

<sup>23</sup> Tribunal Militaire de Garnison de Bukavu, Judgement of the 16<sup>th</sup> August 2011; Cour Militaire de Sud Kivu, Judgement of the 29<sup>th</sup> October, 2011.

<sup>24</sup> Tribunal Militaire de Garnison de Bukavu, Judgement of the 16<sup>th</sup> August 2011.

<sup>25</sup> Cour Militaire de Sud Kivu, Judgement of the 29<sup>th</sup> October, 2011.

<sup>26</sup> All Africa, 28<sup>th</sup> August 2009.

<sup>27</sup> Avocats Sans Frontières, “Application Du Statut de Rome Par Les Juridictions Congolais,” Case Notes (Bukavu, DR Congo, 2015).

<sup>28</sup> RMP 0933/KMC/10. Tribunal Militaire de Garnison d’Uvira, Judgment of 30<sup>th</sup> October, 2010.

<sup>29</sup> RMP 0933/KMC/10. Tribunal Militaire de Garnison d’Uvira, Judgment of 30<sup>th</sup> October, 2010

	<p>attacks were perpetrated by FDLR, but these claims were widely refuted. Multiple efforts were made by FARDC officers and allies to liberate the defendants and obstruct the trial from moving forward. Manda first attempted to protect his subordinates by sending them to Bunyakiri. ACPD and other local organizations issued a press release about the attack and continued to pressure military prosecutors to arrest the implicated soldiers.<sup>30</sup> Subsequently, allies from pre-FARDC integration engaged in efforts to liberate the accused through multiple armed attacks on vehicles transporting the defendants to and from judicial hearings. Subsequently, Manda became afraid for his own well-being and turned over four of the five implicated soldiers under his command to the military justice system to deflect attention in an effort to evade arrest himself. The Auditeur Militaire was not satisfied with the custody of Manda’s four subordinates, and sent a team to Bunyakiri to arrest First Sergeant Manda himself. Manda was arrested in Hombo. Local human rights organization ACPD worked with ABA and ASF to recruit witnesses for a mobile court in Uvira. In an ambush on the convoy of the Auditorat Militaire after the hearing, Sgt. Okelo Tangi, one of the accused, was killed.<sup>31</sup> All of the other defendants were re-arrested with Kamona Manda. The defendants were brought to trial in October 2010.</p>
<p><i>Case details</i></p>	<p>Arrest: 25<sup>th</sup> April 2010, Trial: October 2010, Judgment: 30<sup>th</sup> October, 2010. After Manda’s initial liberation attempt had failed, he was compelled to face trial. Trial hearings took place from 10<sup>th</sup> - 12<sup>th</sup> October 2010.<sup>32</sup> ASF provided legal assistance and representation to victims, and UNDP provided institutional support and assistance to defendants. The Tribunal Militaire de Garnison d’Uvira found all the defendants guilty of crimes against humanity, and all received sentences of life imprisonment. On 1<sup>st</sup> November 2010, the defendants appealed the judgment before the Cour Militaire de Sud Kivu, and the appeal began on 1<sup>st</sup> November 2011. The appeal verdict was delivered on 7<sup>th</sup> November, 2011 (decision upheld).<sup>33</sup> During this process, the defendants were transferred to Central Bukavu prison but, en route, the convoy was attacked again, this time reportedly by Rwandan soldiers attempting to liberate their fellow ex-CNDP compatriots.<sup>34</sup> These efforts ultimately failed and the indictees remained in custody.</p>
<p><i>Sentence</i></p>	<p>Life imprisonment for the crimes against humanity of rape. Upheld on appeal.</p>

<sup>30</sup> African Center for Peace, Democracy and Human Rights (ACPD), Dépêche: Crime Contre L’humanité dans la Ville de Mulenge, 22<sup>nd</sup> August 2009.

<sup>31</sup> RMP 0933/KMC/10. Tribunal Militaire de Garnison d’Uvira, Judgment of 30<sup>th</sup> October, 2010.

<sup>32</sup> RMP 0933/KMC/10. Tribunal Militaire de Garnison d’Uvira, Judgment of 30<sup>th</sup> October, 2010.

<sup>33</sup> RMP 0802/BMN/010. Cour Militaire de Sud Kivu, Appeal Decision of 7<sup>th</sup> November, 2011.

<sup>34</sup> The CNDP is an armed group comprised predominantly of Congolese Tutsi, many of whose members were integrated into the FARDC as part of the March 23 agreement in 2009. See Jason K Stearns, “From CNDP to M23: The Evolution of an Armed Movement in Eastern Congo,” The Rift Valley Institute: Usalama Project (London; Nairobi, 2012), page 36, for a detailed discussion of the evolution of the CNDP.

<b>Case name</b>	<b>Katasomwa: Balumisa Manace (Dix Mille), Maj. Eugide Elya Mungemba, Capt. Makanyaka Kizungu Kilalo, Jean-Claude Senjishi, Chongo Musemakweli, Beni Mutakato, Desiré Ekofo Petea, Zihindula, Justin Matabaro, Kanabo, and Lybie Mirasalo, FARDC RMP 1280/MTL/2009, RP 038, RMP 1427/NGG/2009</b>
<i>Incident</i>	Sept. 2009: Longstanding tensions between Tembo and Hutu communities in Katosomwa provided the backdrop for an incident involving ex-Mai Mai and ex-PARECO integrated factions of the FARDC. <sup>35</sup> Throughout September 2009, incidents of theft and looting were reported, culminating in the shooting of an influential ex-Mai Mai commander named “Le Blanc” in an altercation involving alcohol. <sup>36</sup> “Le Blanc” was a 1 <sup>st</sup> company commander escorting a senior officer from the 4 <sup>th</sup> company of the 241 <sup>st</sup> Brigade, named Major Kateyateya Safari, who had been visiting his family in Katasomwa. Balumisa Manasse, the commander of the 85 <sup>th</sup> Brigade, dispatched his deputy, Elya Mungemba, to investigate the incident. The predominantly Tembo soldiers of the 85 <sup>th</sup> Integrated Brigade used this incident to take revenge on the Hutu community, creating panic that led civilians to flee from their homes and take refuge in the bush. Under orders from Colonel Balumisa (an ex-Mai Mai of Tembo ethnicity), over a three-day period Tembo troops raped, pillaged and looted any Hutu villagers they came into contact with. The looted possessions were sent to Col. Balumisa. <sup>37</sup>
<i>Mechanisms</i>	<i>Unobstructed / Unknown</i> <p>Note: My research indicated that the case against the three indictees proceeded without interference, since the military hierarchy cooperated with the investigation and facilitated the arrest of the accused. However, the recently published ICTJ report, based largely on research undertaken subsequent to my analysis, found that deals were struck among FARDC military elites in order to move particular indictments forward while obstructing and protecting others (See: ICTJ 2015: 29).</p> <p>The African Center for Peace and Democracy (ACPD) and other organizations issued a press release about the attack, and pressured the Auditeur Militaire to open a case and issue arrest warrants against the individuals involved. ACPD collected extensive evidence with regard to the case, and compiled victim and witness testimonies, greatly facilitating the work of the military prosecution. In collaboration with ACPD, the Auditeur Militaire continued with investigations and eventually issued warrants for the arrest of Col. Balumisa and two other former-Mai Mai combatants. The OPJ, in collaboration with the FARDC’s Amani Leo intelligence unit, invited Col. Balumisa to FARDC headquarters in Bukavu on 16<sup>th</sup> October 2009 to tell his side of the story, giving no indication that an arrest was pending. However, once he and two of his officers were at the</p>

<sup>35</sup> United Nations News Agency, Xinhua News Agency 19<sup>th</sup> October 2009.

<sup>36</sup> Avocats Sans Frontières, “Application Du Statut de Rome Par Les Juridictions Congolais.”

<sup>37</sup> RMP 1280/MTL/2009. Cour Militaire de Sud Kivu, Judgement of the 9<sup>th</sup> March, 2011

	FARDC headquarters, FARDC soldiers from Amani Leo arrested Col. Balumisa, Maj. Eugide Elya Mungemba, and Capt. Makanyaka Kizungu Kilalo and transferred them to the Auditorat Militaire and then to prison. The case was formally registered at the Auditorat Militaire de Garnison de Bukavu on 26 <sup>th</sup> October 2009, and was registered at the Auditorat Militaire Superieure de Sud Kivu on 20 <sup>th</sup> November 2009. An additional eight individuals allegedly involved were investigated, tried and sentenced in absentia. ASF provided assistance and legal representation to the victims, and UNJHRO and UNDP provided institutional support.
<i>Case details</i>	Arrest: Sept 2009, Trial: February 2011, Judgment: 9 <sup>th</sup> March 2011, Appealed: March 2011. The trial began on 28 February 2011, and the Military Court in South Kivu issued the final judgment on 9 <sup>th</sup> March, 2011. Col. Balumisa and his ten accomplices (eight in absentia) were sentenced to life imprisonment, some on charges of command responsibility, crimes against humanity of rape, pillaging, and other inhumane acts. Col. Balumisa and two others are serving out sentences in Bukavu, and the remaining defendants remain at liberty, potentially receiving protection from other authorities. The status of their protection and whereabouts is unknown. The defendants and the Auditeur each appealed the case before the Haute Cour Militaire on 9 <sup>th</sup> March, 2011. At the time of writing, the appeal remained in process.
<i>Sentence</i>	15 years imprisonment for crimes against humanity of rape (Balumisa, Mugembe, Kilalo), 15 years imprisonment for crimes against humanity of other inhumane acts (Balumisa, Mugembe, Kilalo), life imprisonment for the crimes against humanity of rape and other inhumane acts (7 others). The Military Court also demanded that all of the defendants pay \$5,000 USD to each victim of rape and \$200 USD to each victim of pillaging. <sup>38</sup>
<i>Case update</i>	As of 2015, the case was still pending appeal at the Haute Cour Militaire. However, this is not a priority case under the military justice system’s prioritization strategy, so scant resources have instead been directed towards other high priority cases.
<b>Case name</b>	<b>Matili: Kyat Hende Dittman and 26 others, Hende/Raia Mutomboki RMP 1303/MTL/2010, RMP 1308/MTL/2010, RP 036-039</b>
<i>Incident</i>	2009 - 2010: In May 2009, an unidentified armed group, later connected to Kyat Hende, known also as “Pharaon,” was implicated in the mass rape murder and torture of civilians, over six days in the town of Matili. <sup>39</sup> In March 2010, the

<sup>38</sup> RMP 1280/MTL/2009. Cour Militaire de Sud Kivu, Judgement of the 9<sup>th</sup> March, 2011

<sup>39</sup> Cour Militaire de Sud Kivu, Judgment of 15<sup>th</sup> October, 2012. RMP 2605/KK/2012, RMP 1486/BKL/13. Note: the judgment mistakenly notes that the Matili attack occurred in May 2011, however, this is not correct. Hende was already in custody at this time and his trial had commenced. The report in the database does not mention the Matili case directly, but cites insecurity in Matili and Kitindi in 2010 (BBC Monitoring 31<sup>st</sup> May 2010). The discussion of this reported insecurity prompted prosecutors to refer to the case of Hende when discussing the 2010 Shabunda incidents in the database.



	<p>same elements committed an attack on the village of Kitindi in South Kivu, following an attack on a police station and a nearby quarry.<sup>40</sup> Over a period of two months, between March and June 2010, 27 elements associated with Kyat Hende were implicated in the theft of property and creating an insurrectional movement. The attack was alleged to have been perpetrated by an armed group named Raia Mutomboki; however, later it emerged that Kyat Hende was at the helm. Hende and his accomplices, reportedly sought to take control of villages within the Shabunda territory because there were many minerals there, including tin and gold. Hende and his troops attacked political and military personnel and buildings in particular, in an effort to dismantle state authority. In 2010, Hende’s troops formed an alliance with elements from Raia Mutomboki, under the command of Amuri Kikukama.<sup>41</sup> Hende received command of the combined troops and led them to commit further destruction. Faced with resources, wealth and security apparatus lost to Hende’s occupied territories, FARDC troops returned to Matili to take the town back from Hende’s insurgents. After the FARDC counter attack, Raia Mutomboki and Hende’s troops scattered, and the FARDC were unable to follow them.</p>
<i>Mechanisms</i>	<p><i>Removing challengers</i> (inter-group conflict)          FARDC units launched a military attack against Kyat Hende to remove him and other hostile elements from the battlefield. Kyat Hende and the Raia Mutomboki forces had created widespread insecurity across South Kivu and posed a significant challenge to the FARDC’s monopoly on violence in the region. Kyat Hende in particular posed a threat to profits from local mines. One organization reported that President Kabila, in a visit to Bukavu in December, 2009, was troubled by the reports of ongoing insecurity connected to Kyat Hende and issued an order to secure Hende’s arrest, as well as a reward of \$5,000, although neither could be confirmed by the author. After a spate of atrocities in 2010, Hende was captured and brought to Matili and, subsequently, to the Auditorat Militaire. After being transferred to Bukavu, CADDHOM worked with MONUSCO to bring victims from Shabunda to testify. The trial commenced on 27<sup>th</sup> September, 2010, and proceeded unobstructed at the Central Prison in Bukavu. Hende escaped from Bukavu Central Prison in 2012.</p>
<i>Case details</i>	<p>Arrests: June 2010, Trial: 17<sup>th</sup> September 2010, Sentenced: 15<sup>th</sup> October 2012</p>
<i>Sentence</i>	<p>Hende received a 20-year sentence for the crimes against humanity of imprisonment and severe deprivations of physical liberty, inhumane acts, conspiracy against the state, participation in an insurrectional movement, and terrorism. 16 of the remaining defendants received sentences ranging from 30</p>

<sup>40</sup> Radio Okapi, “Bukavu: Début Du Procès Des Présumés Insurgés de Shabunda,” *Radio Okapi*, September 17, 2010, <http://www.radiookapi.net/actualite/2010/09/17/bukavu-debut-du-proces-des-presumes-insurges-de-shabunda>.

<sup>41</sup> Cour Militaire de Sud Kivu, Judgment of 15<sup>th</sup> October, 2012. RMP 2605/KK/2012, RMP 1486/BKL/13

	months to 20 years, many also for crimes against humanity. The Military Court acquitted the remaining nine defendants. <sup>42</sup> An appeal was pending before the Haute Cour Militaire at the time of writing.
<b>Case name</b>	<b>Kitindi: Matofu Baleki RMP 1585</b>
<i>Incident</i>	Over a period of months in 2009, soldiers of 321 <sup>st</sup> Battalion engaged in crimes against humanity in and around Kitindi. <sup>43</sup> An officer of the 321 <sup>st</sup> Battalion of the FARDC, Matofu Baleki, was linked to these incidents and had been using his troops to steal from local populations. Soldiers of the 321 <sup>st</sup> Battalion were also accused of raping and looting close to the town of Kitindi.
<i>Mechanisms</i>	<i>Protecting loyalties (intra-group cooperation)</i> The case was obstructed by FARDC elites shielding officers within their patronage networks from prosecution, and striking deals to ensure the continued loyalty of supporters in the context of ongoing military incursions.
<i>Case details</i>	Arrested: December 2009, Released: 2012. One of the children, who had been abducted by Matofu for his use as a porter, reported Baleki to the village chief, who took the case to the OPJ at Kamituga. The case was transferred to the Auditorat Militaire in Bukavu, where a warrant was issued. The Auditeur in Kamituga requested a meeting with Baleki. Once he arrived at the Auditorat at Kamituga, he was arrested and transferred to Bukavu.
<i>Sentence</i>	N/A
<i>Update</i>	In an agreement between FARDC elites and judicial authorities, Matofu was eventually released to fight against M23 and reportedly died on the front lines. Reports of his death could not be confirmed by the author.
<b>Case name</b>	<b>Kizima: Sabin “Kizima” Lenine (FDLR) RMP 1909, RMP 1901/KMC/2010, RP 702/11</b>
<i>Incident</i>	December 2009 – August 2010: Case involving FDLR attacks in Shabunda. <sup>44</sup> From December 2009 – January 2010, approximately 72 armed FDLR elements were reported to have committed a widespread and systematic attack against civilians in villages across Shabunda. FDLR elements reportedly burnt 15 houses in the village of Musweli, looted and pillaged local shops and houses, and committed rapes against civilians in the village of Nduma. Later in 2010, the same FDLR elements, reportedly under the command of “Kizima,” entered the villages of Lulingu and Tchateka, and attacked, raped, tortured and violated civilian women and girls, and looted the houses of civilian populations. One was burnt alive inside a wooden house. In July 2010, the same FDLR elements, under Kizima’s command, entered the village of Tchombi and abducted a number of boys to use as porters. CADDHOM, an NGO monitoring human rights abuses in

<sup>42</sup> RMP 1303/MTL/2010/RMP 1308/MTL/2010. Cour Militaire de Sud Kivu, Judgment of the 15<sup>th</sup> October, 2012.

<sup>43</sup> BBC Monitoring, 6<sup>th</sup> February 2009.

<sup>44</sup> BBC Monitoring, 19<sup>th</sup> July 2009; BBC Monitoring Service: Africa, 25<sup>th</sup> September 2009. Neither report mentions Kizima by name, but both reports caused prosecutors and legal experts to refer to the Kizima case, by virtue of the similarities in the nature of the attacks reported in and around Shabunda.

	South Kivu, wrote a letter to the Auditorat Militaire to open the case. In September 2010, the Auditeur Militaire’s office, assisted by MONUSCO, travelled to Shabunda to conduct investigations. They announced the Auditeur Militaire’s visit on the radio, calling potential witnesses to meet with military investigators. 192 people showed up to meet with investigators and to attend the formal hearing to provide witness testimony.
<i>Mechanisms</i>	<i>Removing adversaries (inter-group conflict)</i> FARDC engaged in ongoing efforts to pursue and defeat hostile FDLR elements. Many FARDC representatives welcomed the opportunity to remove a hostile adversary from the battlefield, particularly one affiliated with FDLR, for whom they might gain political capital and local support for removing. When Kizima was informed that the Auditeur Militaire was investigating the case, he did not wait for a warrant to be issued and instead surrendered himself to the base of the United Nations High Commission for Refugees, asking to be repatriated to Rwanda. <sup>45</sup> Once Kizima was in custody, the case against him progressed without interference. The FARDC declined his repatriation request and the military prosecutor transferred the case to the Tribunal Militaire de Garnison de Bukavu. Other suspects in the case were identified by victims at the local hospital and the accused were held in Bukavu Central Prison awaiting trial.
<i>Case details</i>	Arrest warrant: November 2010, Surrender: November 2010, Transferred to TMG Bukavu: February 2012, Judgment: 29 <sup>th</sup> December, 2014
<i>Sentence</i>	Sentence: life imprisonment for crimes against humanity of murder, rape, torture, and other degrading acts.
<i>Case update</i>	The trial began on 9 <sup>th</sup> June, 2014, and a decision was reached on 29 <sup>th</sup> December 2014 condemning Sabin Kizima Lenine to life imprisonment. Kizima received a sentence of life imprisonment for crimes against humanity by murder, rape, torture, and other degrading acts. He was also ordered to pay \$5,000 USD to each rape victim, \$10,000 USD for each murder victim, and \$3,000 USD to each victim of imprisonment or other forms of physical liberty deprivation. <sup>46</sup> At the time of writing an appeal had been petitioned before the Military Court of Bukavu. <sup>47</sup>
<b>Case name</b>	<b>Mupoke: Sub. Lt. Kabala Mandumba Mundande, Emmanuel Ndahisaba, Monga Mukangabantu and Donat Kasareka (FARDC/Ex-CNDP) RMP 1868/TBK/2010, RP 708/12 (Trial), RMP 1868/KMC/11, RPA 230 (Appeal)</b>
<i>Incident</i>	On 17 <sup>th</sup> January 2010, the 51 <sup>st</sup> sector of the FARDC’s 10 <sup>th</sup> Military Region was preparing an operation against elements from FDLR in Nindja. <sup>48</sup> FARDC forces

<sup>45</sup> Lenine himself claimed that this was incorrect and that he was arrested at a MONUSCO base in Kimia 2.

<sup>46</sup> Tribunal Militaire de Garnison de Bukavu, Judgment of 29<sup>th</sup> December, 2014.

<sup>47</sup> International Center for Transitional Justice, “The Accountability Landscape in Eastern DRC | International Center for Transitional Justice.”

<sup>48</sup> Radio Okapi, 25<sup>th</sup> February 2012. Prosecutors noted that the report incorrectly attributes the attack to 2012, whereas in actual fact it occurred in 2010.

	<p>surrounded the village of Mupoke, but the FDLR was nowhere to be found. Instead, Donat Kasareka, in charge of operations in the 5122<sup>nd</sup> Battalion, with members of the second company (controlled by Lieutenant Kabala Mandumba Mundande) and the fourth company (commanded by Lieutenant Emmanuel Ndahisaba) attacked the market and the village church.<sup>49</sup> Information officer Lieutenant Monga Mukangabantu was also present. Civilians were captured, tied up, tortured, and raped. One witness reported that one of the girls requested that the unit kill her instead of rape her, and they shot her instantly. After night fell, a number of FARDC troops arrived in Katuku locality, where they stopped for the night. The FARDC forced some of the villagers to transport stolen goods on foot from Mupoke to the military base. In Katuku, after two hours of walking, those who were too weak to continue were released. Others escaped, while some were taken back to the military camp and raped repeatedly. Four women were kidnapped and raped until the morning. The FARDC released many of the victims the following morning and instructed them to keep quiet about the incident. However, many men were kept back, forced to continue transporting the goods to the FARDC base in Nyalubembe, which was a five-hour walk away. When news of the attack leaked, Kasareka declared that it was FDLR soldiers who were responsible. However, one of the victims reported the incident to a representative from a local human rights monitoring group in Mupoke. The victim also confirmed that the attack was committed by Donat Kasareka’s troops and not by FDLR. The human rights organization took the victim to Panzi Hospital in Bukavu for treatment, and Panzi lawyers worked with the ABA to initiate a case.</p>
<p><i>Mechanisms</i></p>	<p><i>Protecting loyalties (intra-group cooperation)</i>          The case was obstructed against three defendants but allowed to proceed in one case. Interventions by powerful ex-CNDP allies in the tenth military region allowed three of the accused, Kasareka, Ndahisaba and Mukangabantu who were also ex-CNDP, to escape to Rwanda. The judgment explicitly notes that FARDC elites in Amani Leo were complicit in the escape and guilty of refusing to cooperate with the court.<sup>50</sup> Col. Mandumba, the only non-ex-CNDP officer implicated in the case, remained in the country and faced arrested on 5<sup>th</sup> October 2010. On 21<sup>st</sup> October 2010, Col. Mandumba was issued a provisional arrest warrant in custody, detailing crimes against humanity charges filed against him.</p>

<sup>49</sup> The judgement designates the 5122<sup>nd</sup> Battalion the 512<sup>th</sup> Battalion and the appeal judgment and other court documents incorrectly refer to the 1152<sup>nd</sup> Battalion and the 1022<sup>nd</sup> Battalion (RMP 1868/KMC/11 Cour Militaire de Sud Kivu, Appeal Judgment of 20<sup>th</sup> October, 2013).

<sup>50</sup> RMP 1868/KMC/11 Cour Militaire de Sud Kivu, Appeal Judgment of 20<sup>th</sup> October, 2013. The appeal judgment notes: “Le Tribunal dénote que la hiérarchie militaire dans ce cas sous analyse n’a pas collaboré avec la justice de manière transparente” (“the tribunal notes that in this case under analysis by the court, the military hierarchy has not collaborated with the justice system in a transparent form”).

	<p>Later, the dossier was updated and the charges amended to include the war crimes of murder, torture, rape, pillage and attacks on property in Mupoke.<sup>51</sup> Since his accomplices had fled the country, Col. Mandumba faced trial in 2012. The remaining non-CNDP affiliated defendant, Mandumba, was sentenced to 20 years’ imprisonment for the war crimes of murder, rape, pillaging, and attacks on property. The three escaped defendants were tried and sentenced in absentia.</p>
<i>Case details</i>	<p>Arrest: (war crimes charges), Trial: October 2012, Sentenced: 15<sup>th</sup> October, 2012</p>
<i>Sentence</i>	<p>On 15<sup>th</sup> Oct 2012, Col. Mandumba was sentenced to 20 years’ imprisonment for the war crimes of murder, rape, torture, pillage, and attacks against protected property (Mandumba), increased to life imprisonment on appeal. The remaining defendants received sentences of life imprisonment in absentia. The accused (with the state) were ordered to pay \$50,000 USD for the murder victim; \$2,500 to \$30,000 USD to the rape victims; \$1,750 to \$15,000 USD to the torture victims; \$5,000 USD to the victim of the attack against protected property; and \$800 USD to each victim of pillage (107 in total).<sup>52</sup> On 16<sup>th</sup> October 2012, Kabala Mandumba lodged an appeal against the Tribunal Militaire de Garnison’s decision. The Prosecutor also appealed the judgment on 17<sup>th</sup> October 2012.</p>
<i>Case Update</i>	<p>The appeal began in May 2013, and the appeal decision was handed down on 20<sup>th</sup> October 2013. The Cour Militaire de Sud Kivu confirmed the guilty verdict of the lower court, and increased the sentence for Kabala Mandumba to life imprisonment. The Military Court requalified the facts to war crimes of murder, pillage, rape, and degrading treatment. He was ordered to pay, jointly with the state, \$60,000 USD for the murder victim, \$55 to \$5,000 USD to the rape victims, and \$2,000 to the victims of degrading treatment.<sup>53</sup> Subsequent to the decision, Kabala Mandumba escaped from prison but no further details of his liberation are known.</p>
<b>Case name</b>	<p><b>Kalundu: Manu Emmanuel Kamanzi and Damascene Habamungo (FARDC)        RMP 1568/TBK/2010, RP 504</b></p>
<i>Incident</i>	<p>Jan 2010: Case involving FARDC in Mwenga.<sup>54</sup> Troops from 521<sup>st</sup> Brigade of the 10<sup>th</sup> Military Region of the FARDC ambushed a number of women as they returned home from the market in Mwenga. Eleven women had their belongings stolen, and three were raped.<sup>55</sup> The 521<sup>st</sup> Brigade had been involved in an offensive against FDLR forces, but the FDLR had already left the town by the day of the attack.</p>

<sup>51</sup> RMP 1868/TBK/MC/1012. Tribunal Militaire de Garnison de Bukavu. Judgment of 15<sup>th</sup> October 2012.

<sup>52</sup> RMP 1868/TBK/MC/1012. Tribunal Militaire de Garnison de Bukavu. Judgment of 15<sup>th</sup> October 2012.

<sup>53</sup> RMP 1868/KMC/11 Cour Militaire de Sud Kivu, Appeal Judgment of 20<sup>th</sup> October, 2013

<sup>54</sup> Reuters, 1<sup>st</sup> February, 2010. The news report in this case referred to attacks by the FDLR in Mwenga in February 2010. Although the attacks were not perpetrated by FDLR but by FARDC, there was initial confusion over the identities of the perpetrators.

<sup>55</sup> CADDHOM-Collectif d’Actions pour la Défense des Droits de l’Homme, 29<sup>th</sup> March, 2010.

<i>Mechanisms</i>	<i>Unobstructed</i> Kamanzi and Habamungo were identified by witnesses in the village of Kalundu. A local human rights organization monitored the case and brought it to the attention of the military prosecutor. The prosecutor ordered the FARDC based in Mwenga to arrest the suspects, who were ultimately turned over to the military justice system by their commander. The legal process in this case appeared to proceed unobstructed and without interference; however, it proved impossible to verify and obtain further details of the case.
<i>Case details</i>	Arrest: Date unknown, Trial: February 2011, Judgment: February 2011. At the time of writing, the case was delayed awaiting appeal due to lack of funds.
<i>Sentence</i>	20 years’ imprisonment for extortion and rape. The decision in this case could not be obtained. Although the incident was initially coded as a potential crime against humanity, and military prosecutors linked the events in Mwenga to the case against Kamanzi and Habamungo, it seems that the defendants were not charged with crimes against humanity, but with ordinary crimes under the Military Penal Code.
<b>Case name</b>	<b>Djela Felixe, Kibungwe</b> <b>RMP not noted</b>
<i>Incident</i>	February 2010: Djela Felixe was second in command of the 2 <sup>nd</sup> company and a Lieutenant Colonel in the 10 <sup>th</sup> Military Region’s 5211 <sup>th</sup> Battalion in South Kivu. On 2 <sup>nd</sup> February 2010, in the locality of Kibungwe, close to the Itombwe National Park, a number of civilians were killed and raped in a military offensive, reportedly by the FARDC. Djela Felixe and his superiors initially noted that the attacks were the result of ongoing fighting with the FDLR, and that it was the FDLR troops who were responsible. <sup>56</sup> However, it later emerged that the rapes and shootings were carried out by officers under the command of Djela Felixe. <sup>57</sup>

<sup>56</sup> Tribunal Militaire de Garnison de Bukavu, “Arret Djela Felix: Examen des Faits et leur Analyse en Droit par la Cour,” 2011. See also Associated Press Newswires; New York Times, 1<sup>st</sup> February 2010. The attacks discussed in the media coverage were not necessarily linked to Djela Felixe, but when discussing the incidents in Mwenga and Shabunda, prosecutors referred to investigations both in Kibungwe and Kalundu.

<sup>57</sup> The court reasoned that there was no credible evidence to suggest that fighting had occurred between the FARDC and FDLR, and the fact that civilians had not fled the town of Kibungwe suggested that the attack came as a surprise and was perpetrated by the FARDC unit present (Tribunal Militaire de Garnison de Bukavu, “Arret Djela Felixe: Examen des Faits et leur Analyse en Droit par la Cour,” 2011). Local witnesses confirmed that no clashes between FDLR and FARDC had taken place at that time and that the FDLR had not been present Kibungwe on the day of the attack. Civilians confirmed that the attack was carried out by elements of the FARDC and was unprovoked. After Felixe and his superior were questioned about the attack by the relevant authorities within the 10<sup>th</sup> Military Region, Felixe admitted that the victims were killed by bullets dispensed by elements under his command. However, he argued that there was no intention to kill, and that any casualties were the result of collateral damage and self-defense in the course of the alleged offensive against the FDLR. Moreover, he claimed that any injuries sustained were only of civilians associated with FDLR (“Arret Djela Felixe: Examen des Faits et leur

<i>Mechanisms</i>	<p><i>Brokering deals, protecting loyalties (intra-group cooperation)</i></p> <p>Case against Felixe and his superior obstructed by FARDC elites to protect the loyalties of the accused. Throughout 2011, prosecutors engaged in dialogue with commanders from the 10<sup>th</sup> Military Region. Reports suggest that Felixe had travelled to Kibungwe under orders from superiors within the FARDC hierarchy, who were also alleged to have authorized the civilian attacks. After much back and forth, the relevant FARDC authorities finally agreed to cooperate with a warrant for Felixe’s arrest. General Masunzu, the commander of the 10<sup>th</sup> Military Region, would not consent to the arrest of others implicated in the incident. The Auditeur thus issued an arrest warrant against Felixe for the war crimes of murder and rape. Felixe was placed under arrest, but one week after his capture he escaped with help from a prison guard reportedly under instruction from FARDC insiders. The Auditeur reopened the case and opened a new case against the guard who helped him escape. The Auditeur spent a number of weeks negotiating with Gen. Masunzu, and the FARDC military command structure finally agreed that Felixe could be arrested again. In the meantime, local NGOs and lawyers working on the case received multiple death threats. The FARDC turned Felixe over to the appropriate authorities and he faced trial in August 2013. He only faced charges for ordinary crimes under the Military Penal Code and his accomplices remained unnamed in all official documents.</p>
<i>Case details</i>	Arrest: Date unknown, Trial: 14 <sup>th</sup> - 18 <sup>th</sup> May 2013, Sentence: 2 <sup>nd</sup> August 2013
<i>Sentence</i>	Life imprisonment (murder); 20 years (aggravated rape)
<i>Case update</i>	<p>The case proceeded to trial in August 2013. The Military Court ruled that Felixe was not guilty of the charges of extortion, but guilty of abusing his powers as a battalion commander. In addition to murder, the court found the defendant guilty of violating the sexual integrity of the civil party, penetrating her without consent, and ordering his soldiers to beat her. Under articles 1, 2, 12-17, 27, 31-33, 38, 41, 55, 61, 67, 73, 76, 77, 84, 104-107, 129, 214, 215, 226, 228 to 275 and 317 to 320 of the Military Penal Code, and the definitions of rape drawn from the ordinary criminal code (articles 43, 44 and 170 as amended and supplemented by the Sexual Violence Law No. 06/018 of 20 July 2006), Felixe received a sentence of fifteen years for murder and twenty years for rape.<sup>58</sup> With regard to the civil claims, the court found the defendant and the Congolese state jointly responsible for damages amounting to \$50,000 USD payable to the civil parties and the families of those murdered. The court found the defendant jointly and the Congolese state jointly liable for \$7,500 USD for rape, payable to the civil party in the rape charge.<sup>59</sup> Felixe has reportedly appealed the case to the Haute Cour Militaire but at the time of writing there had been no developments with regard to the status of the appeal.</p>

Analyse en Droit par la Cour,” 2011). Local human rights groups and witnesses on the ground strongly contest the defendant’s interpretation of events.

<sup>58</sup> Tribunal Militaire de Garnison de Bukavu, “Arret Djela Felix: Examen des Faits et leur Analyse en Droit par la Cour,” 2011.

<sup>59</sup> Ibid.

<b>Case name</b>	<b>Fizi: Lieutenant Kibibi and ten others (FARDC) RMP 1337/MTL/2011; RP 043</b>
<i>Incident</i>	Jan 2011: Case involving soldiers from the 43 <sup>rd</sup> Sector of the FARDC. <sup>60</sup> On 1 <sup>st</sup> January, 2011, following an altercation involving the death of a FARDC soldier, rioting broke out in the town of Fizi. <sup>61</sup> Enraged by the violent response of the townspeople and the death of one of his soldiers, Lieutenant Colonel Mutuare Daniel Kibibi instructed his officers to round up those responsible. <sup>62</sup> Soldiers from the 43 <sup>rd</sup> Sector began looting houses, assaulting locals, and raping women and children. While precise figures are unknown, at least seventy local women and children were confirmed to have been violently raped and tortured by Congolese soldiers in just a few short hours. Many families were displaced, goods stolen, and shops pillaged and destroyed in the unrest.
<i>Mechanisms</i>	<i>Removing challengers (intra-group conflict); Deflecting attention (inter-group cooperation)</i> <p>The case against Lt. Col. Kibibi and subordinates was supported by factions of the ex-CNDP military command structure in order to remove potential challengers from their ranks and deflect attention away from other alleged human rights abuses. The case attracted a great deal of domestic and international media attention. Although events such as these were not uncommon in South Kivu, in this instance Lieutenant Kibibi could easily be identified as the commanding officer responsible. Moreover, although ex-CNDP General Sultani Makenga (the Deputy Commander of the FARDC’s Amani Leo at the time of the investigation) often protected the loyalties of those close to him, Makenga did not stand in the way of the prosecution. Rather, the arrest and trial of Lt. Col. Kibibi and his subordinates served as a vehicle to remove a “small fish” and potential trouble-maker from Makenga’s ranks, while simultaneously deflecting attention from military operations and other alleged ex-CNDP crimes elsewhere.</p>
<i>Case details</i>	Arrest: January 2011, Trial: February 2011, Judgment: February 2011. <p>Following domestic and international outrage, a full investigation was launched. Within just six weeks of the Fizi incident, Lieutenant Colonel Kibibi and ten of his officers were arrested, tried and convicted for sexual assaults carried out against nearly 100 civilian women. Nine of the officers received prison sentences ranging from five to twenty years and were ordered to pay damages to their victims, 55 of whom testified against the soldiers in court. The court upheld that Lt-Col Kibibi and his officers were guilty of civil, criminal and international crimes of terrorism, rape, forced imprisonment, sexual brutality, sexual torture, inhumane sexual acts and a host of other violent offences. An appeal was lodged with the Haute Cour Militaire but was stalled at the time of writing.</p>
<i>Sentences</i>	On 21 <sup>st</sup> February 2011 the court convicted Lt. Col. Kibibi and three other

<sup>60</sup> CrisisWatch, 19<sup>th</sup> January 2011; Agence France Press 24<sup>th</sup> January 2011.

<sup>61</sup> Human Rights Watch, “Democratic Republic of Congo: Ending Impunity for Sexual Violence - New Judicial Mechanism Needed to Bring Perpetrators to Justice,” 2014, <http://www.hrw.org/news/2014/06/10/democratic-republic-congo-ending-impunity-sexual-violence>.

<sup>62</sup> Cour Militaire de Sud Kivu, Judgment of 21<sup>st</sup> February, 2011. RMP 1337/MTL/2011



	defendants for the crimes against humanity of rape, torture and sexual slavery, and sentenced them to 20 years’ imprisonment. <sup>63</sup> Five other officers were handed down ten to fifteen year sentences. One officer was acquitted for lack of evidence, and the court ruled itself incompetent to try the final defendant because he was a minor. All of the defendants were ordered by the Military Court to pay, along with the state, \$10,000 USD to the rape victims, \$1,000 USD to the victims of imprisonment, \$200 USD to the victims of harm and injuries, and \$500 USD to the victims of theft. <sup>64</sup>
<b>Case name</b>	<b>Nzovu: Jean Bosco Singababanza and Dufitimana Victor  RMP 2304/KMC/2012, RMP 2180/IH/2304/KMC/2012</b>
<i>Incident</i>	January 2011: Case involving FDLR attacks in Shabunda. <sup>65</sup> Following multiple years of FDLR attacks in Shabunda, in January 2011 FDLR elements clashed with elements from Raia Mutomboki. In the midst of the fighting between the two groups, FDLR entered the village of Nzovu and used machetes to go house to house. They killed villagers indiscriminately and burnt down houses. Between 33 and 45 deaths were reported, and 2700 individuals were displaced from the surrounding area in the fighting. <sup>66</sup>
<i>Mechanisms</i>	<i>Removing adversaries (inter-group conflict)</i> Since the perpetrators were identified directly by victims and human rights groups, the FARDC was able to make arrests that served to remove adversaries from the battlefield. On 5 <sup>th</sup> January 2012, MONUSCO conducted a reconnaissance mission to the area in response to reports of violence, and the Mission established a mobile base at Lubimbe and dispatched patrols to other affected areas. <sup>67</sup> In coordination with the International Committee of the Red Cross (ICRC), MONUSCO also evacuated a number of severely injured civilians. In collaboration and with support from MONUSCO, FARDC also deployed units to the area. Local human rights organizations had been documenting the abuses and reported details of the crimes to the military justice. A case was registered with Auditorat Militaire de Garnison and, in January 2012, two of the perpetrators were arrested. On 23 <sup>rd</sup> January, 2012, Jean Bosco Singababanza and Dufitimana Victor were charged with crimes against humanity of murder and attempted murder.
<i>Case details</i>	Trial pending at the time of writing.
<i>Sentence</i>	N/A
<i>Case Update</i>	At the time of writing the case was on hold due to lack of funds. 98 charges were pending against them and a mobile court was being supported by UNDP, ASF and the American Bar Association.

<sup>63</sup> Cour Militaire de Sud Kivu, Judgment of 21<sup>st</sup> February, 2011. RMP 1337/MTL/2011

<sup>64</sup> Cour Militaire de Sud Kivu, Judgment of 21<sup>st</sup> February, 2011. RMP 1337/MTL/2011

<sup>65</sup> Radio Okapi, 17<sup>th</sup> August 2011.

<sup>66</sup> United Nations Security Council, “Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo,” January 26, 2012, [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/2012/65](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2012/65). Paragraph 24.

<sup>67</sup> Ibid.

<b>Case name</b>	<b>Nyatara No RMP</b>
<i>Incident</i>	2011 - 2012: Attacks by Nyatura elements in Kalehe. <sup>68</sup> Throughout 2010 and 2011, reports of crimes against humanity committed by Nyatura elements across North and South Kivu, but in Kalehe in particular, increased. Events included burning houses, raiding villages and, of specific interest to the military courts, the killing of a prominent local businessman.
<i>Mechanisms</i>	<i>Brokering deals (inter-group cooperation)</i> Individuals associated with Nyatura struck various deals with FARDC elites to obstruct cases from moving forward, particularly in a 2011 case involving the killing of a prominent businessman. The accused implicated in the 2011 investigation – a prominent Kivutian Hutu – occupied a position of some influence in Kalehe. His close connections to Hutu elements integrated into the FARDC, and his important roles in the army’s Kimia II and Umoja Wetu operations against the FDLR, meant that he was well positioned to strike a deal to quieten the investigation. Many Hutu and ex-PARECO defectors from the FARDC were involved in splinter movements in the Kalehe territory in 2011. Many more comprised the FARDC’s 241 <sup>st</sup> and 242 <sup>nd</sup> battalions. <sup>69</sup> Warrants and investigations against a number of those affiliated were dropped or stymied as part of deals involving, among other things, the mobilization of ex-PARECO, ex-RCD, and other Hutu elements returning to assist in the struggle against the FDLR and other armed groups operative in Kalehe’s high plateau.
<i>Case details</i>	A warrant was reportedly issued in 2011 and later dropped (author unable to obtain copy of warrant or confirm the case or date of issue).
<i>Sentence</i>	N/A
<b>Case name</b>	<b>Nakiele: Col. Kulimushi (Kifaru) (FARDC/ex-PARECO) RMP 1358/MTL/11</b>
<i>Incident</i>	July 2011: Attacks in the high plateau of South Kivu’s Fizi territory. <sup>70</sup> Col. Kifaru had deserted his military base south of Nakiele on June 8 <sup>th</sup> to express his

<sup>68</sup> It should be noted that “Nyatura” is a name adopted by many Hutu armed groups across North and South Kivu, and is not a single group under a unified command. Incidents recorded in the original database and discussed with prosecutors were reported by Radio Okapi, 15<sup>th</sup> July 2012 and OCHA 20<sup>th</sup> August 2012. Because of the way in which the research was conducted, the reports in the database did not always match to cases before the military courts. Instead, certain incidents reported in the database – such as attacks committed by Nyatura elements – provoked prosecutorial staff or legal practitioners to discuss other incidents. It is likely that this is what happened in this case.

<sup>69</sup> Jason K Stearns, “PARECO: Land, Local Strongmen and the Roots of Militia Politics in North Kivu,” The Rift Valley Institute: Usalama Project (London; Nairobi, January 23, 2013), <http://www.riftvalley.net/news/rvi%E2%80%99s-usalama-project-report-pareco#.Vg3vV2TBzGc>.

<sup>70</sup> OCHA 11<sup>th</sup> June 2011; Agence France Press 12<sup>th</sup> June 2011; Radio Okapi, 22<sup>nd</sup> July 2011; 1<sup>st</sup> August 2011.

	dissatisfaction with an army reshuffle under which many of his close allies were reportedly about to be denied influential positions within the national army. <sup>71</sup> On the 10 <sup>th</sup> June 2011, FARDC Colonel Kulimushi (Alias: Kifaru) and approximately 150 of his troops entered the village of Abala in South Kivu and engaged in looting, stealing and committing mass rapes and other sexual assaults against local populations. <sup>72</sup> Attacks spread to the nearby villages of Nakiele and Kanguli throughout mid-June. <sup>73</sup>
<i>Mechanisms</i>	<i>Protecting loyalties (intra-group cooperation); Brokering deals (inter-group cooperation)</i> Case obstructed, first by M23, and later by FARDC elites, in exchange for military support in the context of the M23 insurgency.
<i>Case details</i>	In the aftermath of the attacks, government spokesman Lambert Mende announced that his forces were actively looking for Colonel Kifaru and DR Congo's justice minister confirmed that he had given orders for a special tribunal to initiate criminal proceedings for crimes of mass rape, looting and other crimes against humanity.
<i>Sentence</i>	N/A
<i>Case Update</i>	After the defeat of M23 in late 2012, pressure mounted to reopen the case against Col. Kifaru. However, at the time of writing, little progress had been made and Col. Kifaru remained at liberty. Reports that Kifaru was in very poor health, combined with the prosecution's new prioritization strategy for the pursuit of international crimes, has meant that Kifaru is no longer a priority for the military justice and is therefore unlikely to face trial.
<b>Case name</b>	<b>Mai Mai Yakutumba RMP 2128/MPL/12</b>
<i>Incident</i>	2008 – 2011: Incidents involving Mai Mai Yakutumba in Fizi Territory culminating in the attack on Banyamulenge NGO workers in August 2011. <sup>74</sup> Throughout 2008 and 2009, a number of attacks in and around Fizi territory were attributed to Mai Mai Yakutumba under the leadership of the self-proclaimed “General,” Amuri Yakutumba. Attacks were predominantly directed against Banyamulenge communities in the region as the Mai Mai Yakutumba group rallied support from local Bembe populations and politicians using anti-Banyamulenge language and rhetoric.
<i>Mechanisms</i>	<i>Removing adversaries (inter-group conflict); Brokering deals (inter-group cooperation)</i>

<sup>71</sup> Ian Quick, *Follies in Fragile States: How International Stabilisation Failed in the Congo*, 1 edition (Double Loop, 2015); Jason Stearns, “Mass Rape Reveals the Fragility of Rebel Integration Process,” *Congo Siasa*, June 28, 2011, <http://congosiasa.blogspot.com/2011/06/what-lies-behind-recent-mass-rape-of.html>.

<sup>72</sup> Radio Okapi: <http://radiookapi.net/actualite/2011/06/26/fizi-affaire-viols-massifs-a-nakiele-au-moins-121-femmes-en-auraient-ete-victimes/> (last accessed Oct 12<sup>th</sup>, 2013).

<sup>73</sup> Auditorat Militaire Superieure de Sud Kivu: RMP 1358/MTL/11.

<sup>74</sup> Radio Okapi, 10<sup>th</sup> August 2011; Radio Okapi, 21st August 2011; Africa Research Bulletin, 3<sup>rd</sup> October 2011; Radio Okapi, 4<sup>th</sup> October 2011.

	<p>Case initially pursued against Yakutumba to remove a troublesome adversary, but was later abandoned due to a deal involving the integration of Yakutumba elements into the FARDC. Military prosecutors had been watching the activities of Mai Mai Yakutumba for some time and paid particular attention to two 2008 and 2009 attacks involving NGOs and civilians. Following Amuri Yakutumba’s refusal to integrate into the FARDC as part of the 2009 integration process, the 12<sup>th</sup> Integrated Brigade of the FARDC launched an attack on Mai Mai Yakutumba in Baraka in November 2009 in an effort to arrest Yakutumba elements and hold them accountable for human rights abuses.<sup>75</sup> The arrest attempts were unsuccessful and Mai Mai Yakutumba continued in their activities unobstructed. Antagonisms rose once again in 2011, with a number of cattle raids targeting Banyamulenge communities and attacks on houses. In October 2011, seven Banyamulenge civilians were tortured and murdered by elements suspected of being affiliated with Mai Mai Yakutumba. The perpetrators used guns and machetes to target the Banyamulenge convoy while they were traveling with an NGO from Kalongwe to Minembwe. Four non-Banyamulenge civilians traveling with the group were not attacked. The case was finally opened before the Auditorat Militaire de Garnison de Bukavu in 2012, but Amuri Yakutumba is not mentioned by name on the dossier and the case was stalled after Yakutumba commenced negotiations with FARDC elites.</p>
<i>Case details</i>	Case formally opened in 2012, investigations ongoing.
<i>Sentence</i>	N/A
<i>Case Update</i>	<p>In order to avoid arrest, Yakutumba announced his decision to integrate some of his loyalists into the national army in January of 2013. In November, 2013, however, hostilities broke out once again and Yakutumba reneged on his decision to integrate. Reports suggest that the FARDC was not, after all, willing or able to offer him amnesty for the NGO attack and his piracy activities on Lake Tanganyika. Moreover, reports suggest that Yakutumba did not have the troops needed to strike a satisfactory deal with the FARDC military command.<sup>76</sup> Yakutumba’s fears of arrest have caused him to retreat back to Fizi and disengage from negotiations, and the 10<sup>th</sup> Military Region has since approved the execution of a warrant against him as an enemy of the Congolese state.</p>
<b>Case name</b>	<b>Col. Nsabimana and accomplices (FARDC) RMP 1421/BKL/12</b>
<i>Incident</i>	<p>August 2011: Rape of approximately six to ten women in Katalukulu, reportedly by elements of the 431<sup>st</sup> Brigade of the FARDC.<sup>77</sup> In late 2011 and early 2012, prosecutors engaged in investigations into the Katalukulu incident; however, investigations were continually obstructed by interested parties. The perpetrators of the incident were initially unknown but in 2012, the attacks were attributed to</p>

<sup>75</sup> Jason K Stearns, “Mai-Mai Yakutumba: Resistance and Racketeering in Fizi, South Kivu,” The Rift Valley Institute: Usalama Project (London; Nairobi, 2013), <http://www.riftvalley.net/publication/mai-mai-yakutumba#.Vgxqb2TBzGc>.

<sup>76</sup> Ibid.

<sup>77</sup> CrisisWatch, 2<sup>nd</sup> August 2011.

	a battalion of the 431 <sup>st</sup> Brigade, allegedly under the command of Col. Nsabimana. The female victims refused to testify or to report the case because they were afraid of retribution and reprisal from FARDC soldiers. In June 2012, the case was registered at the Auditorat Militaire de Sud Kivu following pressure from local human rights organizations.
<i>Mechanisms</i>	<i>Brokering deals (inter-group cooperation)</i> Case continually obstructed. Details of what precisely transpired in this case to protect Nsabimana and other implicated parties were deeply contested. Some suggested that Nsabimana was initially protected by the FARDC’s ex-CNDP command structure. It is also possible that Nsabimana was not, in fact, involved in the original incident or present in Katalukulu at all for the attack, and that accusations against him were manufactured to protect other parties. The details of various competing claims could not be confirmed or verified by the author.
<i>Case details</i>	June 2012: Registered at Auditorat Militaire; Case obstructed.
<i>Sentence</i>	N/A
<b>Case name</b>	<b>Lwizi: Major Kateyateya Safari, Col. Vonga Ngizo, Lt. Col. Lwezo RMP 2605/KK/2012, RMP 1486/BKL/13</b>
<i>Incident</i>	July 2012: Case involving the 102 <sup>nd</sup> Regiment of the FARDC in Mushashirwa, Kalehe Territory. <sup>78</sup> In July 2012, Major Kateyateya Safari informed the chief of the locality of Karimba that the FARDC would be patrolling the village that night, and asked the chef de localité to have food and drinks prepared for his soldiers. He informed the village chief that the villagers should not be afraid when the FARDC troops arrived in the town. However, when the soldiers of the 102 <sup>nd</sup> Regiment arrived, they fired shots in the air and, rather than celebrating with the village, they looted possessions from local civilians. Many civilians fled, but the FARDC rounded up those left and asked if there were elements of FDLR or Raia Mutomboki hiding in the village. One pastor announced that those groups were not in the village but were hiding in the forest, and Major Kateyateya Safari reportedly shot him. Many more civilians were killed and sexually assaulted. MONUSCO monitored events and produced a report, but the report wrongly indicated that FDLR had been responsible for the attack. <sup>79</sup> A local human rights monitoring group, CADDHOM, produced a follow-up report after conducting extensive investigations on the ground. <sup>80</sup>
<i>Mechanisms</i>	<i>Protecting loyalties (intra-group cooperation); brokering deals (inter-group cooperation).</i> FARDC elites blocked the prosecution of Kateyateya Safari until mid-2014, when investigations were reignited in earnest. In 2012, the Auditeur Militaire sent a letter to Gen. Masunzu, the Commander of the 10 <sup>th</sup> Military Region (South

<sup>78</sup> Human Rights Watch, 1<sup>st</sup> July 2012.

<sup>79</sup> United Nations Security Council, “Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo,” November 14, 2012, [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/2012/838&Lang=E](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2012/838&Lang=E). Paragraph 21.

<sup>80</sup> CADDHOM-Collectif d’Actions pour la Défense des Droits de l’Homme, July 2012.

	<p>Kivu), to deliver Maj. Kateyateya Safari to the Auditorat for questioning, but Gen. Masunzu failed to act on the mandat d’amener. Interviewees noted that Maj. Kateyateya Safari had a close personal relationship with Gen. Masunzu, due to having worked together previously. On an earlier mission to Tchulwe, it was reported that Gen. Masunzu had been ambushed by Raia Mutomboki, and Major Kateyateya had shielded Gen. Masunzu from attack, losing two soldiers in the ambush. In addition, sources noted that Maj. Kateyateya Safari was an ex-PARECO soldier who had declined to defect to M23 when many other ex-PARECO troops had done so. The FARDC elite in South Kivu have often developed interests in forging military alliances with ex-PARECO and other potential military allies, particularly in the context of ongoing military incursions. These two factors meant that Gen. Masunzu had a strong personal interest in shielding the defendants from arrest.<sup>81</sup></p>
<i>Case details</i>	<p>Case opened by the Auditeur Militaire: September 2013, Arrests blocked until 2014.</p>
<i>Sentence</i>	<p>N/A</p>
<i>Case Update</i>	<p>Kateyateya Safari and his co-defendants, Col. Vonga Ngizo and Lt. Col. Lwezo, were finally arrested on 13<sup>th</sup> June 2014, after General Masunzu was transferred to Katanga. The three defendants were charged with crimes against humanity of looting. However, the defendants were released shortly after their arrest and, while charges were pending at the time of writing, they continue remain on provisional release with a requirement to report to the AMS twice per week.<sup>82</sup> Allegations of corruption shroud the case. The UN Joint Human Rights Office has provided support to facilitate investigations and the ABA and ACPD offered assistance to the victims and civil parties.</p>
<b>Case name</b>	<p><b>Mutarule 1</b> <b>No RMP</b></p>
<i>Incident</i>	<p>Attacks on Barundi citizens were carried out in the town of Mutarule, South Kivu, in 2012.<sup>83</sup> Tensions between local Bafuliru and Barundi communities resulted in periodic killings, the burning of houses and theft of land.</p>
<i>Mechanisms</i>	<p><i>Protecting loyalties (intra-group cooperation)</i>          Case obstructed, although details of the case were contested and some details were unclear. It should be noted that a new incident occurred in Mutarule in 2014, and a dossier was subsequently opened for the 2014 Mutarule case. The two incidents were not connected to one another, other than that they both concerned ongoing violence between Bafuliru and Barundi communities. A formal dossier never existed for the 2012 Mutarule case, although legal experts noted that there was political interference that prevented moving a case forward.</p>

<sup>81</sup> A number of interviewees also noted that, when Kateyateya Safari was brought into the AMG for questioning, he attempted to bribe the military prosecutors.

<sup>82</sup> International Center for Transitional Justice, “The Accountability Landscape in Eastern DRC | International Center for Transitional Justice.”

<sup>83</sup> United Nations High Commissioner for Refugees (Geneva), 15<sup>th</sup> July 2012; OCHA 6<sup>th</sup> December 2012.

<i>Case details</i>	A case was discussed by military prosecutors in 2012 in order to investigate incidents pertaining to tensions between the two communities but did not come to fruition.
<i>Sentence</i>	N/A
<b>Case name</b>	<b>Minova/Bweremana (FARDC) RMP 0372/BBM/013, RP 003/2013</b>
<i>Incident</i>	In November 2012, the Congolese army fled the city of Goma and the city was captured by M23 forces. <sup>84</sup> For three days, FARDC troops from multiple battalions stationed themselves in the town of Minova, approximately 50km south of Goma in South Kivu’s Kalehe territory. <sup>85</sup> During this period, FARDC troops were accused of looting, pillaging and raping local civilians. 135 individual cases of sexual violence were reported by media outlets and human rights monitoring groups, as well as other serious human rights violations perpetrated by the 41 <sup>st</sup> and 391 <sup>st</sup> battalions of the Congolese army. <sup>86</sup>
<i>Case details</i>	Arrests: November 2012 and January, April, 2013, Trial: 20 <sup>th</sup> December 2013, Judgment: 5 <sup>th</sup> May 2014
<i>Sentence</i>	Ranged from life imprisonment for the war crimes of rape and murder to five years for aggravated theft
<i>Mechanisms</i>	<i>Protecting loyalties, deflecting attention (intra-group cooperation)</i> Prosecutions against perpetrators and commanders were consistently delayed and obstructed due to ongoing military activities, and complex and overlapping loyalties concerning various implicated parties. Events in Minova received a great deal of international media attention and, as a result of mounting international pressure, 21 soldiers from the 41 <sup>st</sup> and 391 <sup>st</sup> battalions were arrested by their unit commanders in March 2013. <sup>87</sup> These soldiers were all at the rank of corporal, first sergeant or adjudant. No senior officers were arrested at this time. The Auditeur Supérieur de South Kivu publicly called for the arrests of the commanders of the 41 <sup>st</sup> and 391 <sup>st</sup> battalions, but given that these units fell under the jurisdiction of the 8 <sup>th</sup> Military Region of North Kivu, the authority to issue arrest warrants needed to come directly from the Auditeur Militaire Supérieure

<sup>84</sup> Agence France Press, 19<sup>th</sup> November 2012; OCHA, 24<sup>th</sup> November 2012.

<sup>85</sup> Present in or around Minova at the time the mass rapes were committed were the 802nd, 804th, 806th, and 810th Regiments, the 41<sup>st</sup> and 391<sup>st</sup> battalions of the 8<sup>th</sup> Military region and the 1006th and 1008th Battalions of 10th Military Region. United Nations Joint Human Rights Office, “UN News - Documented Cases of Human Rights Abuse Emerge Against M23 Armed Group in DR Congo,” December 21, 2012, <http://www.un.org/apps/news/story.asp?NewsID=43836#.Vg8Rj2TBzGd>.

<sup>86</sup> United Nations News Service MONUSCO, “UN News - DR Congo: UN Mission Chief Deplores Atrocities Committed by Armed Group in Eastern Province,” October 26, 2013, <http://www.un.org/apps/news/story.asp?NewsID=46346#.Vf78o2TBzGd>.

<sup>87</sup> Human Rights Watch, “Democratic Republic of Congo”; “Neufs soldats arrêtés en RDC pour au moins 126 viols près de Goma,” *Le Monde.fr*, December 18, 2012, [http://www.lemonde.fr/afrique/article/2012/12/18/neufs-soldats-arretes-en-rdc-pour-au-moins-126-viols-pres-de-goma\\_1808091\\_3212.html](http://www.lemonde.fr/afrique/article/2012/12/18/neufs-soldats-arretes-en-rdc-pour-au-moins-126-viols-pres-de-goma_1808091_3212.html). Other reports suggest only nine soldiers were arrested and later released.

	<p>of North Kivu and the commander of the 8<sup>th</sup> Military Region. In the context of the ongoing war with M23, both figures declared it impossible to proceed with investigations against the officers implicated in the Minova rapes because the implicated individuals were deemed crucial to fighting and winning the war.<sup>88</sup> Furthermore, given that the commanding officers of the respective battalions had not been directly involved in the Minova violence themselves, their prosecution relied on the doctrine of command responsibility.<sup>89</sup> There has been longstanding opposition and resistance to establishing precedent for invoking the doctrine of command responsibility in the Congolese courts, as it would leave many high ranking officers vulnerable, and potentially responsible for the actions of their troops. The early arrests of the junior officers thus served to demonstrate that the command structure of the 8<sup>th</sup> and 10<sup>th</sup> Military Regions was willing to support accountability efforts and work with the international community to prioritize justice in the high-profile Minova case. It also served to deflect attention away from the higher-ranking unit commanders who were facing calls for accountability from human rights groups. The M23 movement was finally defeated in November 2012, and the heightened political tensions that had characterized the M23 insurgency began to subside. Against this backdrop, the Commander of the 8<sup>th</sup> Military Region could no longer use the war against M23 as justification for protecting the loyalties of higher-ranking commanders. Facing mounting domestic and international pressure, including the threat that MONUSCO would withdraw U.N. support for the FARDC if an adequate legal response to the Minova atrocities was not forthcoming, the FARDC elite of North Kivu entered into negotiations about how to handle the visibility of the Minova investigation.<sup>90</sup> An agreement was reached on February 4th, 2013, and new charges were filed against 39 defendants, including four lieutenant colonels, one major, seven captains, two lieutenants, two sub-lieutenants, three adjutants, one first sergeant major, two sergeants, nine corporals, five first corporals and three without rank.<sup>91</sup></p>
<i>Case Update</i>	Following the collapse of M23 in late 2012, with support from international

<sup>88</sup> Diana Zeyneb Alhindawi, “They Will Be Heard: The Rape Survivors of Minova,” *Al Jazeera America*, March 14, 2014, <http://america.aljazeera.com/multimedia/2014/3/they-will-be-heard-therapesurvivorsofminova.html>; Milli Lake, “Congo-Kinshasa: After Minova - Can War Crimes Trials Overcome Violence in the DRC?,” *African Arguments*, May 8, 2014, <http://allafrica.com/stories/201405090554.html>.

<sup>89</sup> Maria Eriksson Baaz and Judith Verweijen, “Was the Congolese Army Ordered to Rape in Minova?,” *Congo Siasa*, 2013, <http://congosiasa.blogspot.com/2013/04/was-congolese-army-ordered-to-rape-in.html>.

<sup>90</sup> Human Rights Watch, “Democratic Republic of Congo”; United Nations Security Council, “Identical Letters Dated 25 February 2013 from the Secretary-General Addressed to the President of the General Assembly and to the President of the Security Council, UN-S-2013/110,” March 5, 2013, [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2013/110&referer=http://www.un.org/en/sc/documents/letters/2013.shtml&Lang=E](http://www.un.org/ga/search/view_doc.asp?symbol=S/2013/110&referer=http://www.un.org/en/sc/documents/letters/2013.shtml&Lang=E).

<sup>91</sup> International Center for Transitional Justice, “The Accountability Landscape in Eastern DRC | International Center for Transitional Justice.”



	<p>stakeholders, the South Kivu prosecution office conducted three investigative missions to Minova in December 2012 and February 2013. In response to international pressure and confusion over territorial jurisdiction, the Auditeur General in Kinshasa sent a general military prosecutor to take over the investigation. In November 2013, the prosecutor of the Cour Militaire Opérationnelle of North Kivu issued indictments against the 39 accused. The trial commenced in December 2013 and, in May 2014, a decision was handed down. Although the majority were charged with war crimes and crimes against humanity, only two of the 39 accused received life sentences for international crimes. The two individuals in question were lower-ranking soldiers and were found guilty of the war crimes of rape and murder. One other lower-ranking soldier received a life sentence for rape in violation of the military penal code, one received a five-year sentence for stealing a motorcycle, and a remaining 22 received sentences ranging from between ten and twenty years for pillaging and disobeying orders.<sup>92</sup> Importantly, only one of fourteen implicated officers was convicted and the remaining thirteen were acquitted. The decision was widely critiqued by human rights groups, who levied accusations of deep political interference.<sup>93</sup></p>
<p><b>Case name</b></p>	<p><b>Birungurungu: Col. Jean-Jacques Ilunga        RMP 2678/KMC/12, RMP 1463/WAV/13/NDM/KK/2013</b></p>
<p><i>Incident</i></p>	<p>Oct 2012: Case involving FARDC soldiers (ex-FAZ) in Fizi.<sup>94</sup> In October 2012, Col. Ilunga, an ex-FAZ commander integrated into the FARDC, was sent on a field mission to seek out FDLR elements in Fizi. However, in the course of his journey, he found Bembe communities armed with AK47s, reportedly protecting themselves from attacks by Banyamulenge.<sup>95</sup> Col. Ilunga demanded that the villagers hand over the weapons, but they refused. Col. Ilunga, with the 1012<sup>th</sup> Regiment, was reported to have tied the villagers up and subjected them to acts of rape and torture. Local and international human rights organizations reported the crimes to the Auditorat Militaire de Garnison de Bukavu and assisted with investigations. The case was registered at the AMG Bukavu on 5<sup>th</sup> November 2012 following a complaint submitted on 29 October 2012.<sup>96</sup></p>

<sup>92</sup> Human Rights Watch, “Justice on Trial: Lessons from the Minova Rape Case” (New York, October 1, 2015), <https://www.hrw.org/report/2015/10/01/justice-trial/lessons-minova-rape-case-democratic-republic-congo>.

<sup>93</sup> Human Rights Watch, “Democratic Republic of Congo”; Timo Mueller and Holly Dranginis, “Congo-Kinshasa: Minova’s Rape Acquittals Reveal Lessons for Congo,” *All Africa*, May 20, 2014, <http://allafrica.com/stories/201405201667.html>; United Nations News Service, “UN News - UN Human Rights Office ‘Disappointed’ by Ruling in DR Congo Mass Rape Trial,” *UN News Service Section*, May 6, 2014, <http://www.un.org/apps/news/story.asp?NewsID=47732#.VgXgk2TBzGd>.

<sup>94</sup> *Le Potentiel* (Kinshasa), 15<sup>th</sup> December 2012.

<sup>95</sup> African Center for Peace, Democracy and Human Rights (ACPD), *Dépêche: Crime Contre L’humanité Commis par les Elements du 1012ieme Regiment des FARDC base a Lulimba, Collectivité de Ngandja, Territoire de Fizi, Village Birungurungu, 27<sup>th</sup> October, 2012.*

<sup>96</sup> AMG/BKV: 024/NYRA/DIV/2012

<i>Mechanisms</i>	<i>Protecting loyalties (intra-group cooperation)</i> Case continually obstructed by FARDC elites and, subsequently, by the military justice itself. In 2012, the Auditeur prepared a warrant for Col. Ilunga’s arrest, and requested that General Masunzu execute the warrant. <sup>97</sup> General Masunzu declined to support the case. In the context of numerous military defections around the time of the warrant, as well as ongoing struggles against various armed groups, the 10 <sup>th</sup> Military Region was increasingly reliant on the support of its most trusted remaining colonels. As a result, Gen. Masunzu declared that it would be inappropriate to issue an arrest against a powerful and important military colonel at this time. When the military prosecutor contested this decision, Gen. Masunzu claimed that there was insufficient evidence to bring a case against Col. Ilunga, and thus he could not in good faith execute the warrant. Initially, the Auditeur continued to counter this claim with credible evidence to prosecute Col. Ilunga and his troops for the Birungurungu incident, but requests from the military justice were consistently denied.
<i>Case details</i>	Registered at AMG Bukavu: 5 <sup>th</sup> November 2012; Case obstructed by FARDC
<i>Sentence</i>	N/A
<i>Case Update</i>	In 2013, the case was transferred from the Auditorat Militaire de Garnison de Bukavu to the Auditorat Militaire de Sud Kivu, and registered there on 22 <sup>nd</sup> February 2013. Since the tense political climate surrounding the M23 uprising had subsided, General Masunzu agreed to cooperate with the arrest. Col. Ilunga was arrested on 16 <sup>th</sup> August 2013. <sup>98</sup> In September 2013, a provisional arrest warrant and charges, including crimes against humanity, were issued against Col. Ilunga. Col. Ilunga was given a provisional release on 18 <sup>th</sup> December 2013, which required him to report to the AMS twice per week. <sup>99</sup> However, the new Auditeur Superieure – Col. Bokatola Longo – who replaced Col. Mutata Luaba in 2014, was not supportive of the case. At the time of writing, investigations were ongoing and the UNDP, ASF, and ACPD, were providing logistical support, resources, fact-finding and expertise to facilitate the investigation and trial.

### **Additional cases on the Registre du Ministère Public**

Since this research was carried out, a number of new dossiers have been opened. Moreover, the new prioritization strategy has transformed the ways in which the Congolese courts treat international crimes. In theory at least, since 2016, investigations are now prioritized on the basis of the gravity and scale of the offense, and on the basis of available evidence. Thus, a number of cases documented herein have been deprioritized, whereas investigations in others have resumed

<sup>97</sup> AMG/BKV: 024/NYRA/DIV/2012

<sup>98</sup> International Center for Transitional Justice, “The Accountability Landscape in Eastern DRC | International Center for Transitional Justice.”

<sup>99</sup> Avocats Sans Frontières, “Application du Statut de Rome Par Les Juridictions Congolais,” Case Notes (Bukavu, DR Congo, 2015).

with gusto. Three cases in which investigations were ongoing during the period of research, but that did not emerge from the original data collection process, are documented below.<sup>100</sup>

Additionally, I provide details of one new case, the 2014 case of Mutarule. While the Mutarule incident occurred after the timeframe of study, and after the research for this article had been completed, it shares some similarities with earlier incidents in Mutarule, which occurred in 2012. Although the 2012 and 2014 incidents are not related to one another, both concern tensions between the Bafuliru and Barundi communities in Mutarule. For clarity, and to avoid conflation of the 2014 dossier with earlier attacks and investigations, I discuss key features of the 2014 case below.

1. **The Case of Lulingu**  
**RMP 1245/MTL/09**

In early July 2009, the FARDC’s 5<sup>th</sup> integrated brigade allegedly carried out mass rapes in Shabunda territory. A case was opened with the Auditorat Militaire de Sud Kivu but has been delayed because no perpetrators could be identified. Due to ongoing insecurity, it has been difficult for military investigators to access the site of the alleged attacks to collect further information.

2. **The Case of Major Rupongo Rogatien John and Major Shaka Nyambusaraba**  
**RMP 1373/WAV/11**

In March 2011, integrated soldiers from the Force Républicaines Fédéralistes (FRF) were accused of mass rape and torture in Kalungwe. The case against the two accused, each from the 4422<sup>nd</sup> battalion of the FARDC, was stalled at the time of writing. In spite of an arrest warrant, and legal and material support from MONUSCO, there was little enthusiasm from the FARDC hierarchy to bring the suspects to trial.<sup>101</sup> The case was registered at the Auditorat Militaire de Sud Kivu in October 2011 but remains pending.

3. **The Case of Lt. Col. Mukerenge**  
**RMP 1298/PEN/10**

Incident involving mass rapes in Fizi in June 2010. The case was originally registered at the Auditorat Militaire Supérieure in Bukavu, but was transferred to the Auditorat Militaire d’Uvira on 25<sup>th</sup> June 2010. Lt. Col. Mukerenge of the FARDC was identified as

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<sup>100</sup> Details of these cases, as well as a comprehensive list of international crimes before the military courts up to and including 2015, are discussed in the ICTJ’s report: “The Accountability Landscape in Eastern DRC”.

<sup>101</sup> United Nations Group of Experts, “Letter Dated 29 November 2011 from the Chair of the Security Council Committee Established Pursuant to Resolution 1533 (2004) Concerning the Democratic Republic of the Congo Addressed to the President of the Security Council,” December 2, 2011. Paragraph 642.

a potential perpetrator.<sup>102</sup> However, the case did not proceed due to lack of evidence and insufficient information.

#### 4. Note on the 2014 Mutarule Case (Mutarule 2)

##### **RMP 1526/BKL/2014, RP 087/15**

Following renewed violence between Bafuliru and Barundi communities in Mutarule in 2014, the Auditeur Militaire opened a case against seven individuals (RMP 1526/BKL/2014, RP 087/15).<sup>103</sup> Beyond the immediate similarities in the location, the accused in the 2014 case bore no relation to earlier attacks. The accused identified on the 2014 dossier included: Major Kayumba Neynyere Venantius, Col. Elias Byinshi Rubibi, and three accomplices, Sheria Kahungu Raymond, Obedi Rusagara Phillippe, Claude Mirindi and Karakara. On 6<sup>th</sup> June, 2014, Bafuliru citizens of Mutarule had been victim to an attack resulting in the murder of at least thirty civilians, including eight children. The civilians were shot and burned to death at a church service. The perpetrators also attacked a health center and several houses. Four of the defendants were arrested on 11<sup>th</sup> June 2014 and charged with the war crimes of murder and attacks against civilians. Karakara had fled and was not named in the final dossier.<sup>104</sup> The case was registered at the Auditorat Militaire on 17<sup>th</sup> June, 2014, and provisional arrest warrants were issued on the same day. A mobile court was scheduled for October 2014, but was delayed due to insufficient funding.<sup>105</sup> The trial was finally held in August and September 2016. However, the mobile military tribunal was subject to ongoing intimidation by armed actors and had to be relocated to Bukavu. On the night before Col. Elias Rubibi was scheduled to give testimony, he was murdered, allegedly to prevent him from providing evidence that was expected to implicate his commander in the attacks.<sup>106</sup>

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<sup>102</sup> As the case did not concern high officers, it was transferred on 25 June 2010 to the AMG Uvira (by letter 258/AMS/SK/2010). International Center for Transitional Justice, “The Accountability Landscape in Eastern DRC | International Center for Transitional Justice.”

<sup>103</sup> Kris Berwouts, “The Mutarule Massacre: Conflict from Below in Eastern Congo,” *African Arguments*, June 18, 2014, <http://africanarguments.org/2014/06/18/the-mutarule-massacre-conflict-from-below-in-eastern-congo-by-kris-berwouts/>; Human Rights Watch, “DR Congo: Army, UN Failed to Stop Massacre” (New York, July 2, 2014), <https://www.hrw.org/news/2014/07/02/dr-congo-army-un-failed-stop-massacre>.

<sup>104</sup> Avocats Sans Frontières, Case Notes (Bukavu, DR Congo, 2015).

<sup>105</sup> International Center for Transitional Justice, “The Accountability Landscape in Eastern DRC | International Center for Transitional Justice.”

<sup>106</sup> <http://www.radiookapi.net/2016/08/24/actualite/societe/uvira-poursuite-du-proces-des-presumes-auteurs-du-massacre-de-mutarule>