

Committee on the Rights of the Child
Human Rights Treaties Division
Office of the United Nations High Commissioner for Human Rights
Palais Wilson - 52, rue des Pâquis
CH-1201 Geneva

November 22, 2016


Re: Plenary Session on the Democratic Republic of Congo

Dear Members of the Committee on the Rights of the Child,

We write in advance of your upcoming plenary review of the Democratic Republic of Congo government's compliance with the Convention on the Rights of the Child (the "Convention"). It is an update to [our earlier submission](#), based on recent events. This submission relates to Articles 6, 24, 28, 29, 35, 37, 38, 39, and 40 of the Convention, and proposes issues and questions that Committee members may wish to raise with the government.

Thank you for your attention to our concerns, and with best wishes for a productive plenary session.

Sincerely,

A handwritten signature in black ink that reads "Zama Coursen-Neff". The signature is written in a cursive, flowing style.

Zama Coursen-Neff
Executive Director
Children's Rights Division

Education (Articles 28, 29, and 38)

Human Rights Watch would like to congratulate the Democratic Republic of Congo on endorsing the Safe Schools Declaration on July 28, 2016. The Safe Schools Declaration suggests various common-sense actions that countries can take to reduce the negative consequences of armed conflict on education.¹ By committing to work towards safe schools for all children and educational staff, Congo has made a step forward in defending the right to education.

A key element of the Safe Schools Declaration, as well as of United Nations Security Council Resolutions 2143 (2014) and 2225 (2015), is that governments take concrete measures to deter the military use of schools. In this respect, we note that in early 2013, Congo's minister of defense at the time, Alexandre Luba Ntambo, issued a ministerial directive to the Congolese army stating: "I urge you to educate all members of the [Congolese army] that all those found guilty of one of the following shortcomings will face severe criminal and disciplinary sanctions: ... Recruitment and use of children..., Attacks against schools ..., requisition of schools ... for military purposes, destruction of school facilities."²

This is a positive move by the defense ministry, and has the possibility of serving as an example of good practice to other countries. However, Human Rights Watch is unaware of any existing Congolese legislation or military doctrine that explicitly prohibits or regulates the practice of military use of schools, let alone that makes it a criminal offense, in order to implement the sanctions proposed by this directive.

Congolese troops who partake in UN peacekeeping operations are also obliged to not use schools in their operations.³

Human Rights Watch recommends the Committee ask the government of the Democratic Republic of Congo:

- How many schools, universities, or education facilities have been damaged or destroyed as a result of attacks by a) state security forces and b) non-state armed groups in each year of the reporting period, and since?
- What action has the government taken to prevent attacks by non-state armed groups on schools and universities and to mitigate their impact when they do occur?

¹ Safe Schools Declaration, http://www.protectingeducation.org/sites/default/files/documents/safe_schools_declaration-final.pdf (accessed October 20, 2016).

² Minister of Defense Alexandre Luba Ntambo, Ministerial Directive on the Implementation of the Action Plan, Ministry of Defense, No. VPM/MDNAC/CAP/0909/2013, May 2, 2013.

³ United Nations Infantry Battalion Manual, 2012, section 2.13, "Schools shall not be used by the military in their operations."

- How many schools, universities, or education facilities have been fully or partially occupied or used by a) government security forces and b) non-state armed groups in each year of the reporting period, and since?
- What action has the government taken to ensure that attacks on schools in contravention of international humanitarian law are investigated and those responsible duly prosecuted?
- What measures is the government putting in place to ensure children displaced by conflict are able to safely access a quality education?
- Is the obligation to not use schools during military operations included in pre-deployment trainings of Congolese forces contributing to United Nations peacekeeping missions?
- Does the 2013 ministerial directive require any implementing legislation or military doctrine in order to carry out the stated sanctions for military use of schools?

Human Rights Watch asks the Committee to call upon the government of the Democratic Republic of Congo to:

- Take concrete measures to deter the military use of schools, following UN Security Council Resolutions 2143 (2014) and 2225 (2015), including by bringing the Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict into domestic military policy and operational frameworks, as per the commitment made in the Safe Schools Declaration.
- Investigate and appropriately prosecute individuals responsible for involvement in the range of violations of international law that constitute attacks on education, including as a matter of command responsibility.
- Respond to attacks on schools by promptly repairing damage and ensuring that students can safely return to class.
- Ensure the provision of education in crises and displacement, and adopt special measures to ensure children can continue their education in highly insecure areas, including by reducing the distance to school, offering distance learning programs, and setting up protective learning spaces for girls and teachers.

Abductions/Enforced Disappearances (Articles 6, 35)

On June 7, 2016, the government published its report on Operation Likofi, an anti-crime campaign in which Congolese police shot dead at least 51 young men and boys, and forcibly disappeared another 33, between November 2013 and February 2014. Human Rights Watch documented how uniformed police, often wearing masks, dragged *kuluna*, or suspected gang members, from their homes at night and executed them. Some were street children, while others were youth falsely accused by their neighbors in unrelated disputes. The government report did not recognize the full extent of the abuses, provide a total of those killed during the operation, or call for those most responsible to be brought to justice. Furthermore, the

identities of 421 bodies buried in a mass grave in Maluku remain unknown.⁴ The operation's commander, Gen. Célestin Kanyama, is now National Police Provincial police commissioner for Kinshasa. In June 2016, the US authorities imposed sanctions on Kanyama "for being responsible for or complicit in, or having engaged in, directly or indirectly, the targeting of women, children, or any civilians through the commission of acts of violence, abduction, or forced displacement in the DRC, and for being a leader of an entity that has, or whose members have, engaged in such conduct."⁵

Human Rights Watch recommends the Committee ask the government of the Democratic Republic of Congo:

- What actions have been taken to investigate and prosecute those most responsible for the summary executions and enforced disappearances during Operation Likofi, and if no action has been taken, why not?
- What measures have been taken to protect street children and other vulnerable young children and young adults?

Human Rights Watch asks the Committee to call upon the government of the Democratic Republic of Congo to:

- Ensure that those most responsible for the abuses committed during Operation Likofi are criminally investigated and appropriately prosecuted, including Gen. Célestin Kanyama.
- Ensure that all children in detention who are suspected kuluna and credibly charged with a criminal offense receive a trial before a competent, independent and impartial child court.
- Release those in custody who have not promptly and credibly been charged with a criminal offense and those under Congo's age of criminal responsibility, which is 14. Children found responsible for a crime should only be incarcerated as a last resort and for the shortest appropriate period of time, and be separated from adults.
- Support programs that provide education, shelter, skills training, sports, and cultural activities for street children and other vulnerable children and young adults in Kinshasa as part of a broader effort to decrease criminal activities by kuluna.
- Take appropriate legal action against politicians and their supporters who provide weapons or bribe youth in Kinshasa to disrupt their opponents' activities.
- Assign the Ministry of Gender, Family, and Children as a focal point to promote the protection of street children and other vulnerable children and young adults and to monitor law enforcement practices related to street children.

⁴ Ida Sawyer, "Dispatches: Still No Justice for Congo's Likofi Victims," June 7, 2016, <https://www.hrw.org/news/2016/06/07/dispatches-still-no-justice-congos-likofi-victims>.

⁵ Ibid; U.S. Department of the Treasury, "Treasury Sanctions High-Ranking Government Security Official for Role in Violence in the Democratic Republic of the Congo," June 23, 2016, <https://www.treasury.gov/press-center/press-releases/Pages/jlo496.aspx> (accessed November 3, 2016).

- Investigate and appropriately prosecute cases of police violence against street children.
- Encourage the Ministry of Youth, Sports, Culture, and Arts to organize recreational activities and other pastimes for street children and other vulnerable children and young adults.

Detention of children (Articles 24, 37, 38 (4), 39, 40)

Security forces have arrested and detained hundreds of children suspected of association with armed groups.⁶ In December 2015, Human Rights Watch documented the unlawful detention of at least 29 children, all boys ages 15 to 17, during a visit to Angenga prison in northwest Congo. Human Rights Watch interviewed 53 detainees, including 29 children, and several prison officials as well as more than 40 Congolese military and government officials, UN officials, humanitarian workers, and others, between December 2015 and March 2016.⁷

Congolese authorities alleged the children in detention were members of the Democratic Forces for the Liberation of Rwanda (FDLR), a rebel armed group. Seventeen children told us they were civilians and had no affiliation with the FDLR, while others said they were former members but had demobilized months or years previously and reintegrated into civilian life. Only two children said they were active FDLR members when they were apprehended.⁸

Detention conditions at Angenga have been dire, with limited access to food, clear water, and medical care. Children were detained alongside adults during the day, and were detained in the same cells as the adults until they were transferred by prison officials to a separate block for sleeping at night in late February 2016. Some of the children had been held for more than a year. None of the children had been charged with crimes, or had access to lawyers or their families.⁹

Several weeks after Human Rights Watch's research into the detention conditions at Angenga prison was published, the government and the UN in a joint mission removed many of the children.¹⁰

Human Rights Watch recommends the Committee ask the government of the Democratic Republic of Congo:

- How many children remain detained in the military prison in Angenga?

⁶ Human Rights Watch, *Extreme Measures: Abuses against Children Detained as National Security Threats*, July 2016, <https://www.hrw.org/news/2016/04/04/dr-congo-children-held-remote-military-prison>.

⁷ "DR Congo: Children Held in Remote Military Prison: Former Child Soldiers Should Be Rehabilitated, Released," Human Rights Watch news release, April 4, 2016, <https://www.hrw.org/news/2016/04/04/dr-congo-children-held-remote-military-prison>.

⁸ Ibid.

⁹ Ibid.

¹⁰ Human Rights Watch, "Extreme Measures."

- What plans does the government have for the rehabilitation and reintegration of former child soldiers into society?

Human Rights Watch asks the Committee to call upon the government of the Democratic Republic of Congo to:

- Immediately release all children detained at Angenga who have not been charged with a crime.
- Strictly comply with international legal obligations to detain children only as a last resort and for the shortest possible period of time.
- When prosecuting children alleged to have committed illegal acts, treat children in accordance with international juvenile justice standards and law. In particular, ensure that children enjoy full due process guarantees, including access to counsel, the right to challenge their confinement, contact with their families, and separation from adult detainees. Ensure that any punishment for criminal offenses be appropriate to their age, and be aimed at their rehabilitation and reintegration into society.
- In line with international law, recognize the special situation of children who have been recruited or used in armed conflict and rehabilitate and reintegrate former child soldiers into society.