

The United Nations' Mapping Exercise Report and Uganda's involvement in the Democratic Republic of Congo conflict from 1996 to 2003

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Summary

The United Nations' 'DRC Mapping Exercise Report – Mapping of the most serious human rights and international humanitarian law violations committed in the DRC between 1993-2003 (August 2010)' was finally published in October 2010, albeit with clarifications, after strong objections from the countries that were adversely mentioned in it, including from Uganda. The article discusses the allegations levelled against Uganda in light of findings by other institutions, namely, the African Commission on Human and Peoples' Rights, which in 2003 found Uganda in violation of provisions of the African Charter on Human and Peoples' Rights, and the International Court of Justice, which in 2005 found Uganda responsible for violations of the law of belligerent occupation, human rights and the international law of armed conflict. The key argument of the paper is that, instead of the government of Uganda dismissing the report, it should institute measures to investigate and prosecute its agents who committed crimes during this conflict. As well, instead of dismissing the report as untrue, the Ugandan government should have put the record straight by responding to the allegations.

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1 Introduction

The United Nations (UN) report entitled 'DRC Mapping Exercise – Mapping of the most serious human rights and international humanitarian law violations committed in the Democratic Republic of Congo (DRC) between 1993-2003 (August 2010)' (Mapping Report) accused countries of the Great Lakes region, including Uganda, of committing human rights violations during the successive DRC conflicts which may qualify as war crimes, crimes against humanity and genocide. The report, which was completed in mid-2010, elicited hostility from, amongst others, the government of Uganda. The report, which contains descriptions of over 600 violent incidents occurring within the territory of the DRC between March 1993 and June 2003, is the first and only comprehensive UN document on major human right violations committed in the DRC during this period.

In response to the report, Uganda's Minister of Foreign Affairs, Sam Kutesa, wrote to the UN High Commissioner for Human Rights in Geneva, arguing that¹

the allegations made against the Uganda Peoples Defence Forces (UPDF) [were] a belated effort to insinuate that some regional forces committed a reverse genocide against the vanquished ex-FAR [*Forces d'Armée Rwandaise*] and their kin under rout from Rwanda, and in the process mask the failures of the UN in preventing genocide in Rwanda.

In addition, he stated that the report was a sinister tactic to undermine Uganda's resolve to continue contributing to and participating in various regional and international peacekeeping missions, including the African Union Mission in Somalia (AMISOM), the United Nations Mission in Sudan (UNMIS), and the United Nations-African Union Hybrid Mission in Darfur (UNAMID).² He concluded by saying that Uganda rejected the report in its entirety and that it should not be published.

It is a known fact that Uganda participated in the different Congolese conflicts, beginning with the 1996-1997 war against the government of President Mobutu in former Zaïre.³ Subsequently, Uganda was one of the countries that fought against the government of President Laurent Desire Kabila in August 1998. Ugandan forces eventually left the DRC territory in May 2003. Needless to say, the Ugandan army and Ugandan-allied Congolese rebels controlled large swathes of DRC territory between 1998 and 2003. The article specifically discusses the allegations levelled against Uganda. Of the countries named in the report, it is only Uganda that has been found responsible for some of

1 See Uganda's position on the draft DRC Mapping Exercise Report, 27 September 2010 (on file with author) http://www.ohchr.org/Documents/Countries/ZR/DRC_Report_Comments_Uganda.pdf (accessed 23 October 2011).

2 As above.

3 Upon attaining independence, the country was called Congo but, on 27 October 1971, President Mobutu changed its name to Zaïre.

the alleged crimes by a court of law.⁴ In December 2005, the International Court of Justice (ICJ) found Uganda responsible for violations of human rights and international humanitarian law when its troops occupied large areas of the DRC.

2 Background to Uganda's involvement in the DRC

Uganda's involvement in the DRC may be divided into two distinct campaigns; 1996 to 1997 and 1998 to 2003. During the 1996-1997 campaign, Uganda, together with Rwanda, Burundi and Angola, helped Laurent Kabila's Alliance of Democratic Forces for the Liberation of Congo (AFDL) to topple the government of Mobutu. During the second campaign that began in August 1998 up to 2003, Uganda sought to remove the AFDL government in the DRC.

2.1 1996-1997 intervention

Following the end of the 1994 Rwanda genocide, over 1 million Rwandan refugees (mainly Hutu) took refuge in Zaïre where they established camps along the border between Rwanda and Zaïre. Some, who had participated in the genocide, started launching attacks in Rwanda, thus provoking the new rulers of Rwanda – the Rwandese Patriotic Front/Army (RPF/A) – to launch counter-insurgency operations against them in Zaïre. Eventually, in 1996, the RPA entered Zaïre to pursue the insurgents and in the process, the refugee camps were dismantled. After dismantling the camps, the RPA decided that it would go all the way and remove Mobutu from power in Kinshasa. It should be recalled that when the RPA attacked Rwanda from Uganda in October 1990, Mobutu sent his troops to shore up the government of President Habyarimana.⁵ Thus, for the RPA it was pay-back time.

Laurent Kabila had fought against Mobutu for a long time. In fact, Kabila, a follower of the murdered Congolese independence Prime

4 In 2003, Burundi, Rwanda and Uganda were found by the African Commission on Human and Peoples' Rights to have violated the provisions of the African Charter on Human and Peoples' Rights.

5 According to G Prunier *From genocide to continental war: The 'Congolese' conflict and the crisis of continental Africa* (2009) 67-71, the basic cause that led the Rwandese leadership to attack Zaïre in September 1996 was the presence of the large, partially-militarised refugee camps on its borders. But there was also a broader view, which was a systematic trans-African plan to overthrow the Mobutu regime in Zaïre. Already in November 1994, in the wake of the Rwandan genocide, President Museveni had called a meeting in Kampala of all the 'serious' enemies of Mobutu to discuss the idea of overthrowing him. The conclusion had been that the time was not yet ripe. In early 1995, former President Julius Nyerere had re-launched the idea, developing contacts with a number of African heads of state with the purpose of cleaning up what they looked on as the shame of Africa. Rwanda, because of the refugee question, was of course to be the entry point and the spearhead of the mission. Prunier also recounts an incident where former President Bizimungu on

Minister, Patrice Lumumba, had been one of the leaders of the National Council of Resistance that was formed in the aftermath of Lumumba's assassination to liberate the country. Its eastern front leaders, such as Generals Nicolas Olenga, Christopher Gbenye and Thomas Kanza, were lured out of the rebellion by Mobutu in 1965⁶ with Kabila being the only party member who continued to wage a low-intensity struggle against the Mubutu regime in the Fizi-Baraka area until the early 1980s, when he, too, retired to the world of business to engage in cross-border trading in *inter alia* gold and ivory.

When the leaders of Uganda and Rwanda started looking for a Congolese who could lead the war against Mobutu, Kabila presented himself as the natural choice due to his long resistance against the Kinshasa regime. The AFDL, comprising four groups, namely, *Parti de la Révolution Populaire* (People's Revolutionary Party), which was founded in 1968 by Laurent Kabila; *Conseil National de Résistance pour la Démocratie* (National Resistance Council for Democracy), led by Andre Kisasi Ngandu with a Lumumbist association; *Mouvement Révolutionnaire pour la Libération du Zaïre* (Revolutionary Movement for the Liberation of Zaïre), led by Masasu Nindanga; and *Alliance Démocratique des Peuples* (Democratic Peoples' Alliance), led by Deogratias Bugera with Congolese Tutsi associates, was established on 18 October 1996⁷ 'to help the Rwandan, Ugandan, Congolese and later on Angolan military forces that were fighting against Mobutu to support their efforts'.⁸ The AFDL was meant to give the foreign military campaign against Mobutu a revolutionary or civil war character.⁹ Nevertheless,

3 October 1996 addressed the press and presented a map of Rwanda purporting to show large areas of North Kivu and smaller parts of South Kivu in Zaïre, as having been tributaries of the former Rwandese monarchy. Bizimungu had averred that if Zaïre gives back its Rwandese population, then it should also give back the land on which it (the population) lives. Prunier clearly insinuates that Rwanda's attack on Zaïre could also have been motivated by territory acquisition ambitions.

- 6 G Nzongola-Ntalaja *The Congo: From Leopold to Kabila: A people's history* (2002) 135.
- 7 International Crisis Group 'Congo at war: A briefing of the internal and external players in the Central African conflict' Africa Report (1998) 14 <http://www.crisisgroup.org/en/regions/africa/central-africa/dr-congo/002-congo-at-war-a-briefing-of-the-internal-and-external-players-in-the-central-african-conflict.aspx> (accessed 23 November 2011). See also G Nzongola-Ntalaja *From Zaïre to the Democratic Republic of Congo* (2004) 13, observing that the Lemera Protocol of 18 October 1996 established the AFDL as an alliance of four groups.
- 8 PA Kasaija 'Rebels and militias in resource conflict in the Eastern Democratic Republic of Congo (DRC)' in W Okumu & A Ikelegbe (eds) *Rebels, militias and Islamist militants: Human insecurity and state crises in Africa* (2010) 187.
- 9 International Crisis Group 'Democratic Republic of Congo: An analysis of the agreement and prospects for peace' Africa Report 5 (1999) 1 <http://www.crisisgroup.org/en/regions/africa/central-africa/dr-congo/005-democratic-republic-of-congo-an-analysis-of-the-agreement-and-prospects-for-peace.aspx> (accessed 23 November 2011).

the rebellion was supported, militarily and financially, by Rwanda and Uganda.¹⁰

Uganda argued that it was supporting the Kabila rebellion because the government of Mobutu had failed to stop rebel forces opposed to Museveni's National Resistance Movement (NRM) government from using the DRC to attack Uganda.¹¹ Indeed, on 12 November 1996, a rebel group called the Allied Democratic Forces (ADF) attacked Uganda from the direction of the DRC. Although the Ugandan army repelled the invaders, this gave the Museveni government the excuse to support the Kabila forces that were then fighting the government of Mobutu.

On 17 May 1997, AFDL rebels led by Kabila entered Kinshasa, thus ending Mobutu's 32 years in power. Kabila declared himself the new President of Zaïre and renamed the country Democratic Republic of the Congo, with a new flag and national anthem.¹² The war that brought him to power had started in the east of the country, mainly in the provinces of North and South Kivu.

2.2 1998-2003 intervention

The Second Congo War, which began on 2 August 1998, has been described as 'Africa's First World War'¹³ because at its height, it directly involved eight African countries¹⁴ together with a multitude of irregular forces. According to Nzongola-Ntalaja, the war was for 'the natural resources of the Congo'¹⁵ and resulted in the death of more than 3 million Congolese in the period up to November 2002 from war-related causes, such as malnutrition, lack of health care and dangerous living conditions.¹⁶ One needs to ask as to the context of Uganda's involvement in this war.

10 GS Gordon 'An African Marshall Plan: Changing USA policy to promote the rule of law and prevent mass atrocity in the DRC' (2009) 32 *Fordham International Law Journal* 1371.

11 PA Kasaja 'International law and Uganda's involvement in the DRC conflict' (2001/2002) 10 *University of Miami International and Comparative Law Review* 75.

12 G Nzongola-Ntalaja 'The role of intellectuals in the struggle for democracy, peace and reconstruction in Africa' (1997) 2 *Africa Journal of Political Science* 2.

13 Prunier (n 5 above) 285. See also International Crisis Group 'Africa's seven nation war' Africa Report 4 (1999) <http://www.crisisgroup.org/en/regions/africa/central-africa/dr-congo/004-africas-seven-nation-war.aspx> (accessed 23 November 2011).

14 The eight were Burundi, Rwanda and Uganda, on the side of the rebels, and Angola, Chad, DRC, Namibia and Zimbabwe on the side of the Kabila government.

15 Nzongola-Ntalaja (n 7 above) 16.

16 As above. A series of mortality surveys, conducted by the international non-governmental organisation, the International Rescue Committee (IRC) between 1998 and 2002, showed that an estimated 3,3 million people had died as a consequence of the war. See IRC 'Mortality in the Democratic Republic of Congo: Results from a nationwide survey' (April-July 2004) http://www.rescue.org/sites/default/files/resource-file/DRC_MortalitySurvey2004_Final_9Dec04.pdf (accessed 20 October 2011).

At President Kabila's inauguration in May 1997, President Museveni was an important invited guest. However, relations between Kabila and Museveni turned sour soon thereafter. On 27 July 1998, Kabila decided to terminate Rwanda's military and technical co-operation and to put an end to the presence of all foreign troops throughout the national territory.¹⁷ According to some commentators, this action was prompted by Kabila learning of a planned *coup d'état* against him by the Rwandan chief of staff of the Congolese army.¹⁸ But even before this event, relations between Museveni and Kabila had thawed. This is exemplified by the fact that Museveni refused to honour Kabila's invitation to attend the first anniversary celebrations of his ascendance to power. The reason for the thawing of relations has been attributed to the failure of Kabila to implement a memorandum of understanding which he had concluded with the Ugandan government to the effect that the UPDF would conduct joint operations with the *Forces Armée Congolaise* (FAC), to stop the DRC territory from being used by the Uganda rebels to launch armed attacks on Uganda. In fact, three memoranda of understanding had been signed between the DRC and Uganda, covering an agreement for joint operations between the UPDF and the FAC; an agreement between the DRC, Uganda and the United Nations High Commissioner for Refugees (UNHCR) to repatriate DRC refugees from Kyaka I and II; and an agreement for the Uganda police to train the DRC police on handling riots.¹⁹

When the news of Uganda's participation in the new rebellion against Kabila became public, the Ugandan government vehemently denied its involvement. The then Ugandan Foreign Affairs Minister, Eriya Kategaya, issued a statement rebutting accusations that Uganda had invaded the DRC.²⁰ However, one month after the outbreak of the rebellion, President Museveni defined Uganda's security interests in the DRC as 'Congo's territory being used by Sudan to infiltrate terrorists into Uganda; Congo's territory not being used by the *Interahamwe* to kill people in Kisoro; together with the international community not allowing genocide to take place [in the DRC]; and the hope that the Congolese people can be democratically empowered after a generation of Mobutuism'.²¹ However, he did not say whether Ugandan troops were actually present in the DRC.

On 26 August 1998, Kategaya told Uganda's Parliament that indeed the UPDF was actually deployed in the DRC. He explained that the UPDF was in the DRC to protect the country's legitimate interests. He

17 According to DRC's ambassador to the United Nations, Kabila took this decision 'after consultations with his Rwandan and Ugandan counterparts'.

18 FZ Ntoubandi 'The Congo/Uganda case: A comment on the main legal issues' (2007) 7 *African Human Rights Law Journal* 163.

19 Kasaija (n 11 above) 77.

20 As above.

21 Kasaija (n 11 above) 76.

did not elaborate what these interests were. This was later elaborated on by Major General Salim Saleh, then 'overseer' of the Ministry of Defence and Presidential Advisor on Defence and Military Affairs, who stated that 'Uganda troops will remain deep in the Congo until Kabila [accepted] a political solution to the crisis'.²² He further said that '[Uganda had] evidence that Kabila was arranging to attack [Uganda] on all frontiers',²³ thus Uganda had to move very fast to forestall such an attack.

In spite of the numerous peace conferences and agreements, the UPDF remained in the DRC. Between 1998 and 1999, Uganda created a number of Congolese rebel movements in the areas it occupied. For example, in 1998, Uganda helped create the *Mouvement pour la Libération du Congo* (MLC) led by Jean Pierre Bemba, a Congolese businessman who had hitherto been based in Brussels, Belgium. As the war against the Kabila government stalled due to the entry into the conflict of countries such as Zimbabwe, Namibia, Angola and Chad on the side of Kabila, Uganda saw the need to create a new group and front to fight the Kabila government. Since it controlled large swathes of DRC territory to the east and north-east, the military strategy that Uganda adopted involved empowering the Congolese people politically and militarily in the hope that they would overthrow Kabila themselves, thus the creation of the MLC.

With the help of Uganda, the MLC was able to raise a militia of between 15 000 and 20 000 members who operated in areas controlled by the

22 As above.

23 As above. The clearest rationalisation as to why Uganda got entangled in the DRC was spelled out in detail by the Minister of State for Foreign Affairs in charge of Regional Co-operation, Amama Mbabazi, while addressing the 53rd General Assembly Session of the UN in New York. The reasons for Uganda's involvement in the DRC were presented in terms of both external and internal dimensions. The external dimensions were spelled out as: attacks by ADF rebels on Uganda from the DRC, from the Mobutu regime through to the present Kabila regime, necessitating self-defence and hot pursuit by Uganda into the DRC; an understanding between the Kabila regime and the Ugandan regime to collaborate in the task of flushing out of Ugandan rebels from the DRC; collusion between the DRC and the Khartoum regime to provide operational bases and material support to the rebels in the DRC, as well as to avail to the Khartoum regime the use of the DRC territory as a launching pad for attacks on Uganda; and the (unexpected) involvement of other new actors (Namibia, Angola, Zimbabwe and Chad) which acted as a catalyst to increase the level of Uganda's own intervention. The internal dimensions were spelled out as: the breakout of the rebellion of 2 August 1998 in the DRC, arising from the alienation of Congolese political actors excluded from the narrowly-based and sectarian regime established by Kabila after his ascent to power in 1997; the imminent threat of another genocide in the region, arising from Kabila's open support to the Rwandese *Interahamwe* and ex-FAR or Rwandese soldiers of the late Habyarimana regime on the territory of the DRC; Uganda's obligation (which should, incidentally, be the obligation of the rest of the international community, as well) to stop this threatening crime against humanity; and the need to look at the idea of the sacrosanctity of national sovereignty and of territorial borders more critically in circumstances involving such grave threats to human life as those prevailing in the DRC and in the Sudan.

Ugandan military.²⁴ When President Museveni was asked why he was supporting many rebel groups in DRC, including the MLC, he replied that 'a good hunter sends out several dogs because he cannot know in advance which one will be the best'.²⁵ MLC militias and the Ugandan soldiers exploited minerals and other natural resources such as timber in the areas they controlled. President Museveni even allowed Bemba and his group to use the military airport at Entebbe in Uganda to cheaply transport their 'goods' to and from the DRC. Young men aged between 12 and 18 years were reportedly recruited into the MLC and sent to mines to dig for gold on behalf of the Ugandans and Bemba.²⁶

Other than MLC, Uganda also supported other Congolese rebel movements, including the Rally for Congolese Democracy-Liberation Movement (RCD-ML), led by Professor Wamba dia Wamba;²⁷ the Rally for Congolese Democracy-National (RCD-N), led by Roger Lumbala; the Union of Congolese Patriots (UPC), led by Thomas Lubanga; the Party for Unity and Safeguarding of the Integrity of Congo (PUSIC); the Front for Integration and Peace in Ituri (FIPI); and the Nationalist and Integrationist Front (FNI).²⁸

Following international pressure²⁹ and the Luanda agreement between the DRC and Uganda,³⁰ the UPDF finally withdrew from the DRC in May 2003.

3 Allegations against Uganda

Allegations against Uganda cover the periods June 1996 to May 1997, August 1998 to January 2000 and January 2001 to June 2003. In the

24 F Soudan 'Justice: L'Affaire Bemba' *Jeune Afrique* 1-7 June 2008 26.

25 PA Kasaija 'The politics of conflict resolution in the Democratic Republic of Congo (DRC): The inter-Congolese dialogue process' (2004) 4 *African Journal on Conflict Resolution* 75.

26 Judicial Commission of Inquiry into Allegations of Illegal Exploitation of Natural Resources and Other Forms of Wealth in the DRC, Final Report (S/2003/1027) (2002) 71.

27 Also called RCD-Kisangani. The different permutations of RCD emerged after the main RCD broke up in May 1999.

28 For a comprehensive list of the rebel movements and their state supporters, see Kasaija (n 8 above).

29 Eg UN Security Council Resolution 1304 (2000), 16 June 2000 S/RES/1304(2000), para 4 demanded that 'Uganda ... which ha[s] violated the sovereignty and territorial integrity of the Democratic Republic of the Congo, withdraw all [its] forces from the territory of the Democratic Republic of the Congo without further delay ...'; UN Security Council Resolution 1341 (2001), 22 February 2001, S/RES/1341(2001), para 2 demanded that 'Ugandan ... forces ... withdraw from the territory of the Democratic Republic of the Congo ...'

30 Agreement between the governments of DRC and the Republic of Uganda on the withdrawal of Ugandan troops from the DRC, co-operation and normalisation of relations between two countries (6 September 2002) <http://www.iss.co.za/AF/profiles/drcongo/cdreader/bin/5luanda.pdf> (accessed 30 September 2010).

period between June and May 1997, the allegations against Uganda broadly include killing Hutu Banyarwanda refugees in June 1996;³¹ the recruitment of minors in the army in November 1996;³² the mistreatment of child soldiers in March 1997;³³ and, after the capture of Kinshasa in May 1997, armed forces, including the UPDF, carrying out acts of torture, summary executions and rape in towns, including Kisangani.³⁴

The period between August 1998 and January 2000 includes 200 incidents and is characterised by the intervention on the territory of the DRC of the government armed forces of several countries, fighting alongside the FAC (Angola, Namibia and Zimbabwe) or against them (Burundi, Rwanda and Uganda), and also the involvement of multiple militia groups and the creation of a coalition under the banner of a new political and military movement called the RCD, which would later on several occasions split. Participants in these conflicts included at least eight national armies and 21 irregular armed groups. Allegations against Uganda in this period include numerous instances between July and September 1998 of murder of civilians, rape and pillaging;³⁵ using indiscriminate and disproportionate force against combatants and civilians;³⁶ instituting a reign of terror in the town of Beni with complete impunity by carrying out summary executions of civilians, torturing of civilians, including subjecting them to various forms of inhuman and degrading treatment, detaining civilians in holes dug two to three metres deep in the ground where they were forced to live exposed to bad weather with no sanitation and on muddy ground;³⁷ pillaging the town of Kisangani following fighting with the APR in August 1999 and May to June 2000;³⁸ the displacement of civilians in Kisangani town following fighting with the APR in May to June 2000;³⁹ participating in the destruction of over 400 private homes and causing damage to public and commercial properties, places of worship, educational institutions and healthcare facilities, including hospitals,

31 Office of the UN High Commissioner for Human Rights 'Report of the Mapping Exercise documenting the most serious violations of human rights and international humanitarian law committed within the territory of the Democratic Republic of the Congo between March 1993 and June 2003' (August 2010) (Mapping Report), para 271.

32 Para 285 Mapping Report (n 31 above).

33 Para 290 Mapping Report.

34 Para 290 Mapping Report.

35 Paras 330, 346, 347, 348, 349, 361, 362, 363, 365, 366 & 370 Mapping Report.

36 Para 347 Mapping Report.

37 Para 349 Mapping Report.

38 Paras 361 & 363 Mapping Report.

39 Para 363 Mapping Report.

following fighting with the APR in Kisangani town from May to June 2000;⁴⁰ and executing prisoners of war.⁴¹

The period of January 2001 to June 2003 includes 139 incidents of violations and was particularly marked with ethnic fighting between the Hema and Lendu in the province of Ituri, reaching unprecedented levels, with the intervention of Uganda on the side of the Hema. Allegations against Uganda in this period include the murder of all those who dared to dispute the authority of UPDF or criticised its involvement in the pillaging of the natural resources of the region;⁴² raping, looting and causing an unknown number of people to disappear;⁴³ participating in the killing of six International Committee of the Red Cross (ICRC) workers in April 2001;⁴⁴ killing members of the Lendu community;⁴⁵ and looting and destroying numerous buildings, private homes and premises used by local and international non-governmental organisations (NGOs) in Bunia town in March 2003.⁴⁶

4 Analysis of the allegations against Uganda

The Mapping Report notes that Uganda's involvement in the conflict begins during the first Congo war between July 1996 and July 1998.⁴⁷ Under the cover of the AFDL, whose own troops, weapons and logistics were supplied by Rwanda, soldiers from the RPA, the UPDF and the *Forces Armées Burundaises* (FAB) entered Zaire *en masse* and set about capturing the provinces of North and South Kivu, and the Ituri district. In fact, it has been observed that from the second half of 1995, the Rwandan authorities, in co-operation with those in Kampala, began their preparations to facilitate a mass military intervention of the Zairian territory by the RPA and UPDF, under the guise of a domestic rebellion.⁴⁸ To enable the rebellion to surface, Rwandan and Ugandan leaders requested the help of Tutsis in Zaire who had served in the RPF and RPA for several years to mass recruits in North and South Kivu to start a Banyamulenge rebellion.⁴⁹

The allegations against Uganda specifically centre on two issues: violations of human rights and international law of armed conflict; and engaging in illegal exploitation of the DRC's natural resources. The alle-

40 As above.

41 Para 385 Mapping Report.

42 Para 402 Mapping Report.

43 Paras 402, 408, 421, 433 & 444 Mapping Report.

44 Para 408 Mapping Report.

45 Para 409 Mapping Report.

46 Para 421 Mapping Report.

47 Para 178 Mapping Report.

48 Mapping Report 70.

49 As above.

gations against Uganda that are discussed below are those that have been pointed out by the Mapping Report and corroborated upon by numerous NGOs and the ICJ in the *Case Concerning Armed Activities on the Territory of Congo (Democratic Republic of Congo v Uganda)* (DRC case).⁵⁰

4.1 Recruitment of children

The first allegation against Uganda was the recruitment of child soldiers. The wars in the DRC were also marked by the systematic use of children associated with armed groups and forces (CAAFAG) by all parties to the conflict. It is estimated that 'at least 30 000 children were recruited or used by the armed forces or groups during the conflict'.⁵¹ According to the Report, 'from November 1996, the AFDL/UPDF soldiers recruited thousands of young people, including many minors, across the Ituri district'.⁵² In 2000, at least 163 of these children were sent to Uganda to undergo military training at a UPDF camp in Kyankwanzi before finally being repatriated to Ituri by the United Nations Children's Fund (UNICEF) in February 2001.⁵³ Congolese rebel militias supported by Uganda recruited children in their ranks with abandon. For example, the report notes that the CLM with the backing of the UPDF recruited children, primarily in Mbandaka, Équateur Province and, by 2001, the rebel militia admitted to having 1 800 CAAFAG within its ranks.⁵⁴ Children abducted by RCD-ML, another rebel group allied to Uganda, 'were sometimes taken to Uganda to undergo military training'.⁵⁵

In the *DRC* case, the ICJ concluded that there was 'convincing evidence of the training in the UPDF training camps of child soldiers, and of the UPDF's failure to prevent the recruitment of child soldiers in areas under its control'.⁵⁶ The UPDF engaged in a systematic cross-border deportation of recruited Congolese children from the Bunia, Beni and Butembo regions to Uganda. The Ugandan army itself admitted to training Congolese recruits, including children.⁵⁷ Thomas Lubanga, the leader of the UPC and an ally of Uganda during the conflict, admitted to recruiting children, with some estimates stating that 40 per cent of

50 *Armed Activities on the Territory of the Congo (Democratic Republic of Congo v Uganda)* ICJ (19 December 2005) (2005) ICJ Reports 168.

51 UN Mission in the DRC, Child Protection Section '*La justice et le recrutement et l'utilisation d'enfants dans des forces et groupes armés en RDC*' (2005) <http://www.unhcr.org/refworld/pdfid/46caafcd.pdf> (accessed 2 October 2010).

52 Para 285 Mapping Report (n 31 above).

53 Para 429 Mapping Report.

54 Para 697 Mapping Report.

55 Para 698 Mapping Report.

56 Para 210 Mapping Report.

57 PA Kasaija 'The implications of the arrest of Jean Pierre Bemba by the International Criminal Court' (2008) 14 *East African Journal of Peace and Human Rights* 259.

his army was made up of children.⁵⁸ In fact, he was later to be indicted by the International Criminal Court (ICC) on charges of recruiting children in his militia. Thus, there is clear evidence of Uganda violating the international humanitarian laws of armed conflict. The recruitment of children into armed forces is a war crime under the Rome Statute.⁵⁹ Moreover, the African Charter on the Rights and Welfare of the Child (African Children's Charter), which came into force in 1999, establishes that a 'child' is anyone below the age of 18. Uganda is a state party to this Charter, which also declares that 'States Parties ... shall take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain in particular, from recruiting any child'.⁶⁰

4.2 Murder

The accusations against Uganda regarding attacks on the civilian population started during the second DRC war that began in August 1998. The report observes that throughout their advance on Kinshasa, the Rwandan-Ugandan-Congolese coalition killed numerous civilians and committed a large number of rapes and acts of pillaging.⁶¹ In this regard, the report goes on to list specific incidents such as that,⁶² on 7 August 1998, during fighting between elements of the coalition and FAC for the control of Boma, the former killed at least 22 civilians close to the central bank and municipal gardens. The victims included gardeners, workers at the abattoir, two people with learning disabilities and people waiting for a vehicle to take them to Moanda. On 13 August 1998, the coalition soldiers stopped the turbines on the Inga dam, depriving Kinshasa and a large area of the province of Bas-Congo of their main source of electricity for almost three weeks. By making property essential to the survival of the civilian population unusable, they caused the death of an unknown number of civilians, particularly children and hospital patients.

Elsewhere, the Report details the activities of the UPDF in the Beni and Butembo areas. It observes that 'UPDF soldiers often made disproportionate use of force during these attacks, killing combatants and civilians indiscriminately'.⁶³ The Report cites specific incidents where the Ugandan army killed people, *inter alia*,⁶⁴ on 1 November 2000, UPDF soldiers killed between seven and 11 people during an attack on the population of the villages of Maboya and Loya, 16 kilometres north

58 As above.

59 Arts 8(2)(b)(xxvi) & 8(2)(e)(vii) Rome Statute of the International Criminal Court, A/CONF 183/9 (1998).

60 Art 22(2) African Charter on the Rights and Welfare of the Child, OAU Doc CAB/LEG/24.9/49 (1990).

61 Para 330 Mapping Report (n 31 above).

62 As above.

63 Para 347 Mapping Report.

64 Paras 330, 347, 348 & 349 Mapping Report.

of the town of Butembo, after the rebels of Vurondo Mayi-Mayi had killed four UPDF soldiers near the village of Maboya; on 9 November 2000, UPDF soldiers indiscriminately killed 36 people in the village of Kikere, close to Butuhe, north of Butembo; and in March 2000, UPDF soldiers killed four civilians and wounded several others in the town of Beni during an operation to quell a demonstration. The victims had been protesting against the murder of a woman, the arbitrary arrest of her husband and the pillaging of their house, committed a few days earlier by UPDF soldiers.

In the *DRC* case, the ICJ found that 'the UPDF ... failed to distinguish between combatants and non-combatants in the course of fighting against other troops'.⁶⁵ According to the United Nations Mission in Congo (MONUC), while the UPDF was fighting in the Ituri region, 'several civilians were killed, others were wounded by gunshots; shops looted ... [while] stray bullets ... killed civilians; others had their houses shelled'.⁶⁶ Human Rights Watch, on the same issue, observed that 'local militias, sometimes in collaboration with Ugandan soldiers, committed violations of international humanitarian law including the deliberate killing of civilians, numerous cases of rape, looting and some acts of cannibalism'.⁶⁷

The failure by Uganda to protect the population, as well as being a war crime under the Rome Statute, was a breach of the Geneva Conventions. The ICJ noted in the *DRC* case that indiscriminate shelling was a grave violation of humanitarian law. Customary international humanitarian law prohibits armed groups from directly attacking civilians or carrying out attacks that have a disproportionate or indiscriminate effect on the civilian population.

4.3 Torture and other inhuman and degrading treatment

According to the Report, in the town of Beni, for example, UPDF soldiers instituted a reign of terror for several years with complete impunity.⁶⁸ They carried out summary executions of civilians, arbitrarily detained large numbers of people and subjected them to torture and various other forms of cruel, inhuman or degrading treatment. They also introduced a particularly cruel form of detention, by putting the detainees in holes dug two or three metres deep into the ground, where they were forced to live exposed to bad weather, with no sanitation and on muddy ground. The Report cites specific incidents when UPDF carried out torture. For example, it notes that from 2001 to January 2003, elements of the ALC/UPDF tortured and killed an unknown

65 *Armed Activities on the Territory of the Congo* case (n 50 above) para 208.

66 As above.

67 See generally Human Rights Watch 'Ituri: Covered in blood – Ethnically-targeted violence in North-Eastern Congo' (July 2003).

68 Paras 349 & 444 Mapping Report.

number of civilians in the town of Buta. Most of the victims were held in muddy holes in conditions likely to cause death through disease or exhaustion.⁶⁹

In the *DRC* case, the ICJ unequivocally established that Uganda was an occupying power in the Ituri region, during the time when the UPDF was deployed there in accordance with the Hague Regulations of 1907.⁷⁰ As an occupying power, therefore, Uganda was under a duty to take all necessary measures in its power to restore and ensure, as far as possible, public order and safety in the occupied area, while respecting, unless absolutely prevented, the laws in force in the DRC. The duty also entailed 'securing the respect for the applicable rules of international human rights law and international humanitarian law, to protect the inhabitants of the occupied territory against acts of violence, and not to tolerate such violence by any third party'.⁷¹

On the specific issue of torture, the ICJ concluded that Ugandan troops were responsible for acts of torture and other acts of inhuman treatment against the civilian population in the Ituri region.⁷² Therefore, Uganda was not only in breach of general international law, such as the Convention against Torture (CAT), but also the Rome Statute.⁷³

4.4 Rape

The Report observes that rapes were also reportedly committed by Ugandan soldiers during the two ensuing wars, in 2000.⁷⁴ It specifically cites incidences of rape committed by the UPDF, *inter alia*, between 7 and 10 August 1998, in Boma, elements from the UPDF confined and raped several women in the Premier Bassin hotel, which they had requisitioned;⁷⁵ between January and February 2001, UPDF soldiers attacked around 20 villages in the Walendu Tatsi community [in the Ituri region], killing around 100 people, including various Lendu civilians. During the attacks, the soldiers also committed rape, looted and caused an unknown number of people to disappear;⁷⁶ in

69 Para 402 Mapping Report.

70 *Armed Activities on the Territory of the Congo* case (n 50 above) para 178. The cited provision is art 43 of Convention (IV) Respecting the Laws and Customs of War on Land and its Annex: Regulations concerning the Laws and Customs of War on Land, The Hague, 18 October 1907, which states: 'The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.'

71 *Armed Activities on the Territory of the Congo* case (n 50 above) para 178.

72 *Armed Activities on the Territory of the Congo* case (n 50 above) para 211.

73 Arts 7(1)(f) & (k), 8(2)(a)(ii) & (iii), 8(2)(b)(xxi), 8(2)(c)(i) & (ii).

74 Para 583 Mapping Report.

75 Para 330 Mapping Report.

76 Para 405 Mapping Report.

2001, elements of the UPDF allegedly killed an unknown number of people in the village of Irango and they also raped numerous girls;⁷⁷ and between February and April 2002, elements of the UPDF raped an unknown number of people in the Walendu Bindi community in the Irumu region.⁷⁸

In addition to directly committing rape, the UPDF abetted the commission of rape by local militia groups, especially in the Ituri region. Human Rights Watch observed that 'local militias, sometimes in collaboration with Ugandan soldiers, committed violations of international humanitarian law including ... numerous cases of rape'.⁷⁹ The Mapping Report in this regard observes that numerous rapes were committed by the Lendu militia, which subsequently became the FNI and the FRPI, and by the Hema of the UPC, over the course of successive battles to capture Bunia.⁸⁰ It should be noted that all these were local militia groups operating in the Ituri area allied to Uganda.

Although in the *DRC* case the ICJ did not find directly that the UPDF had committed acts of rape, it did conclude that Uganda had failed miserably in its duty to enforce adherence to international human rights and humanitarian law in the Ituri region by its soldiers and the local militias that operated there. There was, the ICJ concluded, a 'lack of vigilance [on the part of Uganda] in preventing violations of human rights and international humanitarian law by other actors present in the occupied territory, including rebel groups acting on their own account'.⁸¹ Suffice it to note that an act of rape can qualify to be a war crime,⁸² a crime against humanity⁸³ and even genocide.

4.5 Fighting in Kisangani

Simmering tensions between Uganda and Rwanda for the control of the city of Kisangani deteriorated into open warfare in August 1999. The city had been captured by Rwanda during the second Congo war, and it had invited Uganda to come in, the idea being that the UPDF would occupy the liberated zones while the RPA would advance quickly to the frontline.⁸⁴ According to the Mapping Report,⁸⁵ on the morning

77 Para 443 Mapping Report.

78 Para 408 Mapping Report.

79 See generally Human Rights Watch (n 67 above).

80 Paras 605, 606 & 607 Mapping Report.

81 Para 179 Mapping Report.

82 Eg, see arts 8(b)(2) & 8(e)(2) of the Rome Statute.

83 Eg, see *Prosecutor v Jean Paul Akayesu* judgment, Case ICTR-96-4-T, 2 September 1998.

84 International Crisis Group 'Uganda and Rwanda: Friends of enemies?' Africa Report 14 (2000) 7 <http://www.crisisgroup.org/en/regions/africa/central-africa/rwanda/014-uganda-and-rwanda-friends-or-enemies.aspx> (accessed 23 November 2011).

85 Para 361 Mapping Report.

of 7 August RPA and UDPF soldiers fought with heavy weapons for several hours without any civilians being wounded. Tension continued to build, nonetheless, and both sides strengthened their positions and brought large numbers of weapons into the town. On the evening of 14 August, fighting again broke out between the two armies at the airport and extended along the main roads and into the town centre. From 14 to 17 August 1999, APR and UDPF soldiers used heavy weapons in areas with a dense civilian population as they fought to gain control of the town of Kisangani. The fighting caused the deaths of over 30 civilians and wounded over 100 of them. Once the hostilities were over, Rwandan and Ugandan soldiers pillaged several places in Kisangani.

In May 2000, however, tension between the Ugandan and Rwandan armies in Kisangani again increased.⁸⁶ The UDPF strengthened its military positions to the northeast of the town and the APR reacted by bringing in additional weapons. On 5 May 2000, the RPA and UDPF used heavy weapons in densely-populated areas, causing the deaths of over 24 civilians and wounding an unknown number of them.

Fighting broke out again on 5 June, however, resulting in the so-called 'Six-Day War'.⁸⁷ The RPA and UDPF fought each other in Kisangani from 5 to 10 June 2000. Both sides embarked on indiscriminate attacks with heavy weapons, killing between 244 and 760 civilians according to some sources, wounding over 1 000 and causing thousands of people to be displaced. The two armies also destroyed over 400 private homes and caused serious damage to public and commercial properties, places of worship, including the Catholic Cathedral of Notre Dame, educational institutions and healthcare facilities such as hospitals.

The fighting in Kisangani between Uganda and Rwanda was due to persistent and serious differences over the objectives and strategies of the war in the DRC.⁸⁸ As observed elsewhere, during the war to topple Laurent Kabila while Rwanda favoured a lightning strike on Kinshasa resulting in it assuming power, Uganda argued for a military strategy that would involve empowering the Congolese people politically and militarily so as to overthrow the Kabila government themselves.⁸⁹ In fact, the differences in strategy led to the breakup of the rebel group, the RCD, that had been established in Kigali in preparation to taking control in Kinshasa once Kabila had been overthrown.⁹⁰

An exposition of all the reasons for the fighting in Kisangani is beyond the purview of this article. Nevertheless, it appears that the immediate

86 Para 362 Mapping Report.

87 Para 363 Mapping Report.

88 International Crisis Group (n 84 above) 8.

89 Kasaija, (n 57 above) 250-251. See also n 84 above, 8.

90 Of the RCD leadership, Wamba dia Wamba accepted Uganda's strategy, while Emile Ilunga, Bizima Karaha, Moise Nyarugabo, Lunda Bululu and Alexis Tambwe agreed with Rwanda.

triggers of the fighting were the inflated egos of the commanders on the ground. The commander of the Ugandan forces, Brigadier James Kazini, threatened to arrest Major Jean Pierre Ondekane, the first Vice-President of the RCD-Goma faction supported by Rwanda. Kazini accused RCD-Goma of not having any plan to liberate the Congolese people, while Ondekane accused him of disarming RCD-Goma soldiers and stealing Congolese natural resources.⁹¹ When Rwanda sent Colonel James Kabarebe to reinforce the RPA Kisangani front, the UPDF officers referred to him as a 'small corporal'.⁹² The fighting between the two armies resulted in the death of combatants and civilians and the destruction of property, as described by the Mapping Report.

Both Uganda and Rwanda agreed to set up a commission headed by the heads of both armies to investigate the cause(s) of the conflict. The joint inquiry report of October 1999 largely blamed the UPDF for initiating the fighting of August 1999.⁹³ Whilst Rwanda accepted the report, Uganda rejected it, arguing that the investigation had failed to interview key witnesses. Uganda's rejection of the inquiry report set the stage for the next round of battles between the two countries that took place from May to June 2000.

Regarding the fighting in Kisangani, the UN Security Council 'deplor[ed] the loss of civilian lives, the threat to the civilian population and the damage to the property inflicted by the forces of Uganda and Rwanda on the Congolese population'.⁹⁴ The UN Secretary-General concluded that '[Rwandan and Ugandan armed forces] should be held accountable for the loss of life and the property damage they inflicted on the civilian population of Kisangani'.⁹⁵

In the *DRC* case, the ICJ rejected Uganda's contention that the Court could not pronounce itself on the fighting in Kisangani in 1999 and 2000 in the absence of Rwanda.⁹⁶ The Court, *inter alia* on the Kisangani fighting, concluded that 'massive human rights violations and grave breaches of international humanitarian law were committed by the UPDF on the territory of Congo'.⁹⁷ On the specific proven allegation of shelling of schools, medical facilities, cathedrals, more than 4 000 houses and other public buildings by the UPDF,⁹⁸ the Court found that 'the UPDF failed to protect the civilian population and to distinguish

91 International Crisis Group (n 84 above) 14.

92 n 84 above, 15.

93 As above.

94 UN Security Council Resolution 1304 (2000), 16 June 2000, S/RES/1304(2000), Preamble para 8.

95 UN Security Council, Third Report of the Secretary-General on the United Nations Organisation Mission in the Democratic Republic of the Congo (MONUC), S/2000/566, 12 June 2000, para 79.

96 *Armed Activities on the Territory of the Congo* case (n 50 above) paras 196-204.

97 *Armed Activities on the Territory of the Congo* case (n 50 above) para 207.

98 *Armed Activities on the Territory of the Congo* case (n 50 above) para 208.

between combatants and non-combatants in the course of fighting other troops'.⁹⁹ It concluded that 'indiscriminate shelling is a grave violation of humanitarian law'.¹⁰⁰

4.6 Plundering of DRC's natural resources

The DRC is home to an abundance of natural resources, ranging from a multitude of minerals – including diamonds, gold, copper, cobalt, cassiterite (tin ore) and coltan – to timber, coffee and oil. This vast natural wealth has scarcely benefited the Congolese people, however, and has in contrast been the cause of numerous serious human rights abuses and violations of international humanitarian law. The issues of natural resource exploitation and human rights have been very closely linked in the DRC for many years, dating back to colonial times and the three decades of President Mobutu Sese Seko's rule.

During Mobutu's rule, natural resource exploitation in Zaire was characterised by widespread corruption, fraud, pillaging, bad management and a lack of accountability. The regime's political/military elites put systems in place that enabled them to control and exploit the country's mineral resources, thereby amassing great personal wealth but contributing nothing to the country's sustainable development. Very little of the revenue from natural resource exploitation has been ploughed back into the country to contribute to its development or to raise living standards.

During the first Congo war, a growing number of foreign actors became directly involved in exploiting the DRC's natural resources. Rebel groups and armies from neighbouring countries all participated, some (such as Zimbabwe) with the blessing of the Congolese authorities, others (such as Uganda and Rwanda) either through the intermediary of their Congolese partners or connections or by directly occupying a part of the country.¹⁰¹ During the second war, however, natural resource exploitation became increasingly attractive, not only because it enabled the countries and groups to finance their war efforts, but also because, for a large number of political/military leaders, it was a source of personal enrichment. Natural resources thus gradually became a driving force behind the war.¹⁰² Even presently, the war raging in Eastern DRC is largely fuelled by the urge by the different Congolese rebel and militia and foreign groups to control the natural resources found there.¹⁰³

99 As above.

100 As above.

101 Para 732 Mapping Report.

102 See generally Addendum to the Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the DRC (S/2001/1072) 13 November 2001.

103 See generally Kasaija (n 8 above).

The accusation of the UPDF plundering DRC natural resources appears in several places in the Mapping Report. It observed that the violent battles for control of Kisangani between 1999 and 2000 and the associated violations of human rights and international humanitarian law can be explained, at least in part, by the struggle to maintain control of its economic resources.¹⁰⁴ The town of Kisangani is in a region that is not only rich in diamonds and timber, but being situated on a river, it also forms an important trading and transport crossroad, linking Eastern DRC with the rest of the country. The Rwandan and Ugandan armies and the RCD-Goma obtained significant revenue from trading diamonds in and around Kisangani. During the three wars for control of Kisangani, competition for the region's natural resources and the town's strategic importance were factors that precipitated the fighting.

The Report alleges that, between January 2001 and June 2003, 'Bas-Uélé district remained under the control of ... UPDF soldiers [who] committed serious violations against all those who dared to dispute their authority or criticised their involvement in pillaging the natural resources of the region'.¹⁰⁵ The Report, citing the UN Special Rapporteur for Human Rights in DRC, states that the Kisangani fighting between Uganda and Rwanda was 'both economic (both armies wanted the huge wealth of Orientale Province) and political (control of the territory)'.¹⁰⁶

Citing specific incidents of plundering, the Report *inter alia* states that in January 2002, UPDF troops and Hema militia opened fire on the inhabitants of Kobu village (Walendu Djatsi *collectivité*, in Djugu territory) to force away Lendu populations from near the Kilomoto gold mines.¹⁰⁷ Uganda supported rebel groups such as the CLM, financed a significant proportion of its war effort through taxes on exports of tea, coffee, timber and gold from Equateur and Orientale Provinces.¹⁰⁸ The Report generally concluded that during the second DRC conflict, Uganda financed its military expenditure with profits from natural resource exploitation in the DRC.¹⁰⁹ To buttress its conclusion, the Report observed that the Ugandan army enjoyed a considerably larger budget due to profits from the DRC's wealth, particularly the districts of Ituri and Haut Uelele, from 1998 to 2002.¹¹⁰

104 Para 748 Mapping Report.

105 Para 402 Mapping Report.

106 Para 748 Mapping Report.

107 Para 408 Mapping Report.

108 Para 769 Mapping Report.

109 Para 768 Mapping Report.

110 As above.

Other than UN investigations,¹¹¹ Uganda's alleged plundering of the DRC's natural wealth was also a subject of a judicial commission of inquiry in Uganda. The Judicial Commission of Inquiry into Allegations into Illegal Exploitation of Natural Resources and Other Forms of Wealth in the DRC was set up on 23 May 2002 to examine the UN Panel's allegations relating to Uganda.¹¹² The Commission, whilst finding that there was no Ugandan governmental policy to exploit the DRC's natural resources, found that individual Ugandan soldiers had engaged in commercial activities and looting in a purely private capacity for their personal enrichment.¹¹³ It recommended the prosecution of several high-ranking military officers, including Brigadier Kazini who commanded Uganda's troops in the DRC. However, the government never initiated any criminal investigations or proceedings on the alleged offenders.¹¹⁴

When the ICJ discussed the issue of the illegal plunder of DRC's natural wealth by Uganda, it declared that 'officers and soldiers of the UPDF, including the most high-ranking officers, looted, plundered and exploited DRC's natural resources and that the military authorities did not take any measures to put an end to these acts'.¹¹⁵ It added: 'Uganda violated its duty of vigilance by not taking adequate measures to ensure that its military forces did not engage in the looting, plundering and exploitation of the DRC natural resources.'¹¹⁶ The Court in conclusion found that 'Uganda was internationally responsible for acts of looting, plundering and exploitation of the DRC's natural resources'.¹¹⁷ Uganda's argument that the exploitation had been carried out for the benefit of the local population as permitted under international humanitarian law was rejected. The Court informed Uganda that it was under an obligation to make reparation to the DRC.¹¹⁸

111 The UN Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo (UN Panel) was set up by the Security Council in June 2000.

112 The Commission was established under Legal Notice 5 of the *Uganda Gazette* of 25 May 2001 issued by the Minister of Foreign Affairs. The Commission was composed of Justice David Porter (Chairperson); members Justice JP Berko and Mr John Rwambuya; Mr Bisereko Kyomuhendo (Secretary); and Alan Shonubi (Lead Counsel).

113 Cited in *Armed Activities on the Territory of the Congo* case (n 50 above) para 234.

114 Brigadier Kazini was killed by his girlfriend in Kampala in November 2009.

115 *Armed Activities on the Territory of the Congo* case (n 50 above) para 242.

116 *Armed Activities on the Territory of the Congo* case (n 50 above) para 246.

117 *Armed Activities on the Territory of the Congo* case (n 50 above) para 250.

118 Under general rules of international law, the Court ruled that 'any violation by a state of its international obligation generates state responsibility and, consequently, a duty to make reparation'. The Court, however, enjoined DRC and Uganda to decide on the nature, amount and the form of reparation since DRC was also found to have violated international law regarding the inviolability of diplomatic missions and personnel *à propos* Uganda's mission in Kinshasa; *Armed Activities on the Territory of the Congo* case (n 50 above) para 345 (5, 6, 13, 14). The DRC asked for \$10 billion, which has been a subject of discussion between the two countries.

5 Uganda's reaction to the Mapping Report

As was noted in the introduction, Uganda officially reacted to the Mapping Report through a letter to the UN High Commissioner for Human Rights, asking that the Report be trashed. Uganda's response unfortunately did not respond to the substance of the specific allegations made against the country's military forces. It also did not respond to the allegations made against the political leaders who orchestrated the country's involvement in the DRC conflicts. Uganda's Military and Defence Spokesman, Lieutenant Colonel Felix Kulayigye (who incidentally was one time a spokesperson of Operation Safe Haven (OSH) based in Eastern DRC), dismissed the Mapping Report as 'inaccurate and in bad taste [as] the authors did not follow the rules of natural justice by giving [Uganda] a chance to defend [itself]'.¹¹⁹ He thus concluded that it is 'mere speculation whose motive is only clear to the authors'.¹²⁰ Possibly, on the issue of natural justice, he has a point as the Mapping Team did not give Uganda an opportunity to respond to the allegations before the Report was drafted. In fact, *Daily Monitor* columnist Onyango Obbo termed this 'a big technical flaw'.¹²¹ This may well be true; however, the named countries, Angola, Burundi, Rwanda and Uganda, were given an opportunity to respond to the Report before it was published, which they did.¹²² Moreover, the Mapping Report, for example, quotes findings made by Uganda's own instituted commission as regards the issue of the illegal plunder of DRC's natural wealth.

As was noted in the introduction, Kulayigye and Uganda's response to the report also failed to point out the 'inaccuracies' in the Mapping Report. Even after the publication of the Report, one would have expected the government of Uganda to put the record straight, but it did not. One is therefore left wondering what the 'accurate record' is according to Uganda.

From the above exposition, it can clearly be seen that the allegations made against Uganda by the Mapping Team are supported by corroborating evidence by NGOs, the African Commission and the International Court of Justice. Uganda itself instituted a commission of inquiry into the illegal plunder of DRC wealth, whose report is extensively quoted by the Mapping Report. Nevertheless, it seems that when

119 'UN report pins Uganda on Congo' *Daily Monitor* 1 October 2010 <http://www.monitor.co.ug/News/National/-/688334/1021752/-/cn40clz/-/index.html> (accessed 23 November 2011).

120 As above.

121 'Kampala, Kigali "ate" in old world order, eating in new one too' *Daily Monitor* 6 October 2010 <http://www.monitor.co.ug/OpEd/OpEdColumnists/CharlesOnyangoObbo/-/878504/1026812/-/glcoe9/-/index.html> (accessed 6 October 2010).

122 Their full responses can be found at <http://www.ohchr.org/EN/Countries/AfricaRegion/Pages/RDCProjectMapping.aspx> (accessed 23 October 2011).

it comes to issues of state accountability for international crimes, denial is the rule and not the exception.

According to Uganda's bi-weekly newspaper *The Observer*, in reaction to the Mapping Report, Uganda threatened to withdraw its soldiers from peacekeeping operations in Somalia.¹²³ From Uganda's official response one can clearly detect an attempt to blackmail the UN. In fact, Foreign Minister Kutesa was quoted as saying that 'the report released by the UN will interfere about (*sic*) the peacekeeping process done by Uganda soldiers ... externally it may lead us to remove our troops from the chaotic country [Somalia]'.¹²⁴ Currently, Uganda has troops serving in the AMISOM, thus it can afford to blackmail the UN since many Western countries are reluctant to commit troops there, *The Observer* posited. This may well be true, as President Museveni has been at the forefront of calling for the increase in troop numbers serving under AMISOM in the aftermath of the 11 July 2010 bombings which were claimed by the Somalia *al-Shabab* militant group.¹²⁵ In fact, he has even pledged that he is ready to provide all the required troops (20 000) for AMISOM.¹²⁶ He could be doing this well knowing that by making such a gesture, the UN would never go after his soldiers' indiscretions in the DRC conflicts.

The stance taken by Uganda can be compared to that taken by Rwanda on the Mapping Report. Regarding Rwanda, President Kagame dismissed the Report as 'absurd'.¹²⁷ The Report *inter alia* gives a detailed inventory of instances where Hutu refugees were rounded up by Rwandan forces on the pretext of repatriation before they were executed. The Report generally documents incidents of war crimes, crimes against humanity and genocide which were committed by Rwandan troops when the country intervened in the then Zaïre and later on the DRC. When the draft of the Report was first leaked before publication, Rwanda threatened to withdraw its UN peacekeeping troops from Sudan.¹²⁸ Rwanda has 3 300 soldiers serving under UNAMID and 256 soldiers serving in UNMIS. Rwanda accused the UN of trying to deflect

123 'UN backs down under Uganda, Rwanda pressure' *The Observer* 3 October 2010 http://www.observer.ug/index.php?option=com_content&task=view&id=10386&Itemid=59 (accessed 5 October 2010).

124 'Somalia: Uganda vows to remove their soldiers' *Garowe Online* 3 October 2010 http://www.garoweonline.com/artman2/publish/Somalia_27/Uganda_Vows_to_remove_their_soldiers_in_Somalia_printer.shtml (accessed 5 October 2010).

125 'United Nations blocks change of AMISOM mandate' *Daily Monitor* 28 July 2010 <http://www.monitor.co.ug/News/National/-/688334/966154/-/x2o9ru/-/index.html> (accessed 5 October 2010).

126 '*Al-shabab* terrorists lose key sites' *The New Vision* 4 October 2010 <http://www.newvision.co.ug/D/8/12/734067> (accessed 5 October 2010).

127 'UN Publish report as Uganda, Rwanda & Burundi deny accusation' *Africa News* 2 October 2010 available at http://www.africanews.com/site/list_message/30746 (accessed 30 September 2010).

128 'Peacekeepers on standby for pull-out – Mushikiwabo' *The New Times* 1 September 2010 <http://allafrica.com/stories/201009010009.html> (accessed 5 October 2010).

attention from its own failures when it failed to stop the Rwandan genocide of 1994. After these threats, the UN Secretary-General, Ban Ki Moon, rushed to Kigali 'to speak directly with the Rwandan President and other government officials about their concern' regarding the report.¹²⁹ After the talks, assurances were given that Rwanda would not withdraw from UN peacekeeping,¹³⁰ while the UN announced that the publication of the Report would be pushed to October, to allow concerned states time to comment on its findings.

One year after the publication of the Report, not much has been heard on the steps being taken to address the issues it raised. In this connection, Levi Ochieng, one time Great Lakes region analyst for the International Crisis Group, has questioned the whole purpose of producing the report by positing that the UN Secretary-General 'shot down the report by meeting the key accused and trying to politically appease their egos'.¹³¹ To him, this further exposed the incompetence of the UN. This observation may well be correct, considering the fact that nothing has been done so far on the findings of the Report.

6 Conclusion

The Mapping Report was published much to the chagrin and anger of the countries that are named therein, including Uganda. The Report made very serious allegations against the Ugandan army as having perpetrated crimes that may very well amount to war crimes, crimes against humanity and genocide. Whilst Uganda sought the trashing of the Report, it failed to respond to the specific allegations levelled against its agents; allegations, as was indicated above, which are corroborated by institutions such as the ICJ. From the official Uganda response to the Report, one may easily conclude that Uganda is guilty of the charges against it. The Mapping Report cites Uganda's own findings of its involvement in the DRC and thus, rather than reaching a blanket conclusion that the Report is devoid of any substance, Uganda should have moved to investigate and institute criminal charges against those who are suspected to have committed the alleged crimes. Suffice it to note that the Judicial Commission of Inquiry, established to investigate allegations of the illegal plunder of DRC's natural wealth by Ugandans, made recommendations to those responsible in 2002

129 'Ban arrives in Rwanda to discuss upcoming report on rights violations' *UN News Service* 7 September 2010 <http://www.un.org/apps/news/story.asp?NewsID=35852&Cr=democratic&Cr1=congo> (accessed 5 October 2010).

130 According to the anonymous reviewer of this article, former British Prime Minister Tony Blair put pressure on President Kagame to change his mind on withdrawing Rwandan troops from UN peacekeeping.

131 Personal communication with Levi Ochieng by e-mail, 2 October 2010.

but they have not been acted upon. Thus, the time may have come to revisit the issue.

Second, the allegations of the UPDF committing odious crimes in the DRC conflict dent the image of a professional force. The government of President Museveni prides itself of building a modern, professional and disciplined army in the name of the UPDF. However, this image has been shattered by the allegations of committing atrocities in the DRC. Moreover, there are still lingering allegations that the UPDF committed crimes during the war in Northern Uganda for which it is yet to answer.

Thirdly, and connected to the second point, is the fact that the professionalism of the UPDF may just as well be a facade. The National Resistance Army (NRA), the predecessor of the UPDF, was full of child soldiers (called *kadogos*) who fought with Museveni before he came to power. At the time, when he was confronted with accusations of using children to fight his war, Museveni argued that, first, the children had joined his army for their own protection and, secondly, that in African culture children are allowed to use weapons.¹³² So, the recruitment of child soldiers during the DRC conflict by the UPDF should not surprise anyone. It was a continuation of Uganda army's tradition. In addition, the UPDF has over the years suffered from the phenomenon of ghost soldiers,¹³³ which entails over-estimating the strength of the army so that the commanders benefit from the remuneration of the non-existent troops. The recruitment of child soldiers, therefore, served the purpose of plugging the shortfall in troop numbers.

Lastly, when the Report was first published, human rights organisations fell over each other demanding that the countries named be brought to book. However, this never happened. According to Obbo:¹³⁴

The fact that [there were] no strong calls that the report be tabled [at] the UN Security Council for debate, [showed] that there are more important causes which draw more passion than human rights.

Apparently similar sentiments were expressed by Reyntjens, who observed that '*realpolitik* will let perpetrators escape prosecution and punishment'.¹³⁵ One year after the publication of the Report, this is exactly what appears to have happened.

132 See 'Museveni and child soldiers' (video) http://www.youtube.com/watch?v=uplTVcXw_Gk (accessed 10 October 2010).

133 See eg, 'How UPDF ghosts were created' *The Independent* 10 September 2008 <http://www.independent.co.ug/reports/intelligence-file/169-how-updf-ghosts-were-created> (accessed 23 November 2011).

134 C Onyango-Obbo in 'Kampala, Kigali "ate" in old world order, eating in new one too' (n 121) above.

135 F Reyntjens 'The UN report on Congo's atrocities: The end of impunity?' *International Justice Tribune* 5 October 2010 <http://www.rnw.nl/international-justice/article/un-report-congos-atrocities-end-impunity> (accessed 6 October 2010).