

Practical Application of the CAC Accountability Framework

Case Example: Democratic Republic of the Congo (DRC)

June 2015

1

Introduction

Note to reader: The information presented in this case example is intended to illustrate the practical application of Conflict Dynamics International’s Children in Armed Conflict Accountability Framework in the context of the Democratic Republic of the Congo (DRC). It is not intended to provide a comprehensive review of the state of accountability for serious violations of international law committed against children in armed conflict in DRC.

This case example is a complementary resource to the *Children in Armed Conflict Accountability Framework: A Framework for Advancing Accountability for Serious Violations against Children in Armed Conflict* (“The CAC Accountability Framework”).¹ It demonstrates the practical application of the *CAC Accountability Framework* in the Democratic Republic of the Congo (DRC). This is the first in a series of case examples² by Conflict Dynamics International to demonstrate how individuals and organizations working in child protection, justice, peacebuilding, and other fields³ can apply the *CAC Accountability Framework* in a specific context.⁴

Definition and structure of CAC accountability:⁵ CAC accountability refers to the prevention and remedy of serious violations of international law committed against children in armed conflict. This includes both judicial and nonjudicial actions that may take place at any point in a conflict cycle and at different levels of intervention. The definition and structure of CAC accountability are underpinned by international, as well as relevant national laws and norms, and build on the roles and responsibilities of State, non-State, and other actors. CAC accountability consists of four interrelated components (see Figure 1):

- **assigning responsibility** for violations through gathering, analyzing, and/or publicly releasing information about perpetrators;
- **enforcing laws and norms** through sanctions, prosecutions, and/or imposing other (legitimate) consequences on perpetrators;
- **reforming systems** by negotiating, developing, adapting, implementing, and/or raising awareness of relevant institutions, laws, policies, and/or standards;⁶
- **empowering children** and their communities by involving those affected in accountability processes and decisions (appropriately reflecting differences in gender and age) and ensuring that they benefit from tangible remedies and redress.

Guidance for developing strategic approaches to CAC accountability:⁷ This case example demonstrates the practical application of the Framework’s step-by-step methodology in DRC, which draws on the CAC accountability definition and structure to provide support for identifying opportunities and challenges related to CAC accountability and for developing and prioritizing options for implementation.

Figure 1: Components of CAC accountability

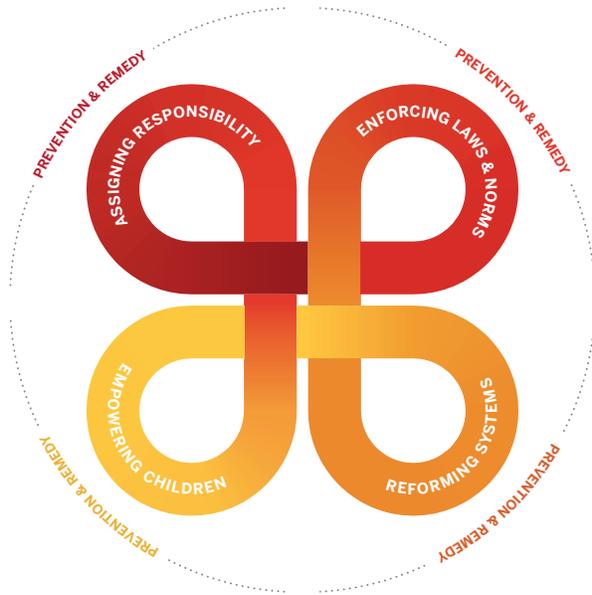
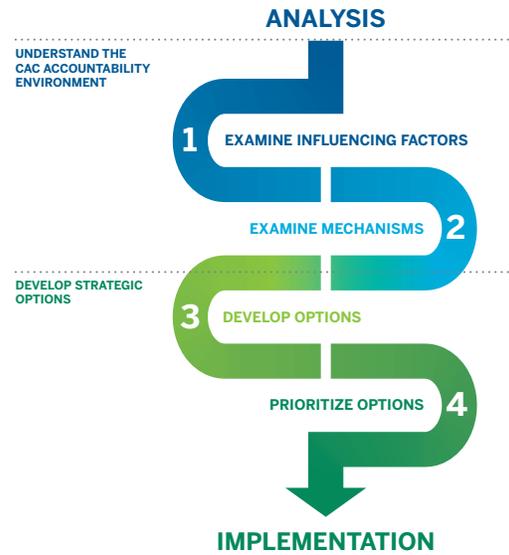


Figure 2: Guidance for developing strategic approaches to CAC accountability



2

Understanding the CAC accountability environment in DRC

From 1996 to the establishment of a transitional government in 2003, DRC experienced successive wars and violence throughout the country—fuelled by a variety of factors such as poor governance, land conflicts, ethnic divisions, criminal networks and exploitation of natural resources. Though violence abated across much of the country following presidential and parliamentary elections in 2006, armed conflict and instability have persisted in the eastern region. In large part, this is due to the activity of multiple parties to armed conflict, including over 50 active non-State armed groups (NSAGs),⁸ which seek to maintain territorial control, and commit atrocities against the local population and/or commit ethnic violence.

Caught in cycles of violence, children in eastern DRC continue to suffer serious violations of international law, such as killing, maiming, recruitment and use for military purposes, abduction, rape and other forms of sexual violence, and other forms of physical violence, as well as attacks on schools, hospitals, orphanages, and refugee/displacement camps. All parties to conflict, including various NSAGs and some members of the national army, the FARDC (Forces Armées de la République Démocratique du Congo), have targeted children with such violations.⁹ According to the 2014 report of the UN Secretary-General, NSAGs are responsible for committing the majority of crimes against children.¹⁰

2.1 Influencing factors¹¹

There are various contextual factors that may have positive, negative, or mixed influence on CAC accountability outcomes in DRC. For example, some individuals interviewed as part of the research underpinning this case example explained that children make up a significant percentage of several NSAGs operating in eastern DRC.¹² This could negatively influence CAC accountability as commanders may be less willing to reform policies to end underage recruitment and/or use due to their varied interests for maintaining children in their ranks.

Table 1 presents some additional influencing factors that interviewees in DRC identified, which are categorized by the four components of CAC accountability. This list is intended to provide a starting point for developing and analyzing a more detailed list of influencing factors.

Table 1: Examples of influencing factors categorized by the four components of CAC accountability in DRC

Component	Examples of Influencing Factors
Assigning responsibility	<ul style="list-style-type: none"> • Lack of coordinated data collection efforts among human rights, justice, and child protection actors, despite existence of multiple coordination forums (see Section 2.2.3 - Linkages among mechanisms)¹³ • Desire of Congolese children interviewed to assume a stronger role in documentation of CAC and other child rights violations (see Section 2.2.2 - Level of activity)
Enforcing laws and norms	<ul style="list-style-type: none"> • Previous integration into the FARDC of some members of NSAGs who are alleged perpetrators of CAC violations¹⁴ • Exclusion of war crimes, crimes against humanity, and genocide from national amnesty laws¹⁵ • Uncertainty among affected communities and local authorities consulted regarding the deterrent effect of cases of the International Criminal Court (ICC) (e.g., Thomas Lubanga and Bosco Ntanga)¹⁶ • Enforcement of the US Child Soldiers Prevention Act, resulting in limited US military assistance to DRC due to evidence of continued recruitment and use of children¹⁷
Reforming systems	<ul style="list-style-type: none"> • Signing of the Peace, Security and Cooperation Framework for the Democratic Republic of the Congo and the Region in February 2013¹⁸ • Signing of a UN Action Plan by Congolese authorities in October 2012 to end and prevent the recruitment and use of children, sexual violence, and other grave violations against children by the national armed and security forces¹⁹ • Poor governance and weak State structures, particularly in the judiciary and the security sector (see Section 2.2.1 - Functionality of mechanisms)²⁰ • Stalled implementation of the third national disarmament, demobilization, and reintegration (DDR) program (2014)²¹
Empowering children	<ul style="list-style-type: none"> • Persistent armed conflict and insecurity, lack of State presence, and lack of humanitarian access in many parts of eastern DRC • High levels of youth unemployment and poverty²² • Persistent cases of exploitation and abuse of children, particularly sexual violence against girls²³ • Successive DDR processes of children failing to ensure adequate reintegration of children, resulting in high re-recruitment rates²⁴

The UN and some international nongovernmental organizations (NGOs) offer some judicial assistance in DRC, such as mobile courts (“audiences foraines”), which travel to sites of serious crimes in eastern DRC to support investigations and prosecutions of members of armed forces or groups accused of having committed serious violations. As of mid-2015, these initiatives had primarily focused on cases of sexual violence.²⁹

2.2.2 Level of activity

Example: Opportunities for increased empowerment of affected children and communities

Individuals interviewed for this case example generally agreed that empowering children (i.e., involving affected children and communities in accountability processes, supporting their recovery, and building their resilience) is critical for prevention and remedy of CAC violations, yet these types of actions have been limited in scope in DRC. Many interviewees attributed the low level of activity in this area to limited attention and funding by donors and government agencies and officials in the face of other urgent humanitarian and emergency needs of children.

There are some notable community-based mechanisms and local and international NGO programs intended to empower affected children and communities in eastern DRC. For example many child protection actors support local children’s clubs, which serve as a focal point for children in a community to report on-going violations and inform local authorities and protection actors. In addition, School Clubs (“Clubs Scolaires”) are composed of children and trusted adults who follow up on allegations of abuse, exploitation, and other violations in North Kivu. In cases of grave violations, the Children’s Parliament, which supports these clubs, may refer cases to the Child Protection Unit of the UN Stabilization Mission in DRC (MONUSCO). In another example, an international NGO has worked with the Ministry of Social Affairs in North Kivu to operate a hotline that enables children and communities to report child rights violations, including CAC violations, in an effort to seek redress and contribute to prevention of future violations. Some cases may be referred to relevant justice mechanisms, as well as child protection organizations and social services.

2.2.3 Linkages among mechanisms

Example: Potential coordination among human rights, justice, and child protection mechanisms/actors

Interviewees highlighted that there are insufficient linkages among judicial and human rights mechanisms working to enforce laws and standards, such as national courts, and those mechanisms working to empower children and assign responsibility for CAC violations, such as child protection working groups and/or the Monitoring and Reporting Mechanism (MRM) Country Task Force.³⁰ Increased communications or other forms of interaction (e.g., coordination in program design and/or implementation) among the actors associated with these mechanisms have potential to positively contribute to CAC accountability by leveraging their respective knowledge and expertise. For example, child protection working groups operating at provincial and national levels could support human rights actors in obtaining the specialized, technical capacity required for documenting CAC violations.

2.3 Options for advancing CAC accountability³¹

Drawing on analysis of the CAC accountability environment, individuals and organizations can identify emerging opportunities and challenges and develop a range of potential options towards advancing CAC accountability in DRC. Table 2 presents some sample options based in part on inputs from interviewees.

Table 2: Examples of potential options

Points of Analysis	Sample Opportunity/Challenge	Examples of Potential Options for Various Actors
Influencing factors (See Section 2.1)	Signing of the 2013 Peace, Security and Cooperation Framework for the Democratic Republic of the Congo and the Region	<ul style="list-style-type: none"> • [Various actors] integrate CAC accountability issues within other strategic initiatives in DRC, such as judicial assistance (e.g., MONUSCO's prosecution support cells) and reform projects (including sexual violence initiatives), stabilization programming, security sector reform, and regional peacebuilding. [Relates to "Reforming systems"] • [Government of DRC and donors] prioritize funding of relevant institutions, such as the Ministries of Social Affairs and Gender, Family and Children, and National Human Rights Commission, to support implementation of the 2013 Framework. [Relates to "Reforming systems"]
Functionality of mechanisms (See Section 2.2.1)	Weak capacity of national judiciary	<ul style="list-style-type: none"> • [UN and/or NGOs] work with national courts on emblematic cases to obtain precedent-setting jurisprudence related to the recruitment and/or use of children. [Relates to "Assigning responsibility" and "Enforcing laws and norms"] • [International and regional organizations] as an alternative, develop and implement sanctions, such as asset freezes and/or travel bans, for alleged perpetrators of CAC violations. [Relates to "Enforcing laws and norms"]
Level of activity (See Section 2.2.2)	Opportunities for increased empowerment of affected children and communities	<ul style="list-style-type: none"> • [Various actors] further develop and implement programs and policies to involve affected children, youth, and communities in accountability processes and decisions. [Relates to "Empowering children"] • [Civil society actors] enable children and youth to communicate their perspectives and experiences on CAC accountability through alternative media (e.g., theater, film, and music). [Relates to "Empowering children"] • [Various actors] develop safe and constructive roles for youth in efforts related to documentation of CAC violations. [Relates to "Empowering children"]
Linkages among mechanisms (See Section 2.2.3)	Potential coordination among mechanisms and actors working on human rights, justice, and child protection	<ul style="list-style-type: none"> • [Various actors] use existing platforms, such as the Child Protection and Rule of Law Working Groups, to enable justice, human rights, child protection mechanisms/actors to exchange resources and information on CAC accountability. [Possibility to relate to any of the four components of CAC accountability] • [Donors] provide incentives for increased strategic cooperation and coordination as relevant among national authorities, UN agencies, international NGO and civil society actors. [Possibility to relate to any of the four components of CAC accountability]

Having developed a set of potential options, it is useful to narrow down priority options based on practical and contextual considerations (e.g., feasibility, potential impact, anticipated risk, and other important factors) and develop a plan to ensure that the CAC accountability strategy is successfully implemented.³²

3

Next Steps

As these practical examples illustrate, relevant actors, such as national authorities, the UN, NGOs, civil society, and others, can adopt and use the *CAC Accountability Framework* to advance their efforts to prevent and remedy CAC violations in DRC.

Overall, the *CAC Accountability Framework* enables individuals and organizations to:

- **draw attention to the urgent need** to achieve accountability for CAC violations and engage key decision makers toward that goal;
- **develop innovative approaches** to advance CAC accountability based on a comprehensive analysis of the context, existing and potential new mechanisms, and opportunities for linkages between accountability mechanisms;
- **make well-informed decisions** to ensure the direction of limited resources toward accountability actions that are feasible, realistic, and likely to lead to high-impact results for children and their communities;
- **increase cooperation** among actors working at various levels and in fields related to CAC accountability (e.g., child protection, justice, peacebuilding, or related fields), such as facilitating joint analysis or planning;
- **conduct impact assessments of CAC accountability efforts** and identify areas for targeted technical, financial, or other support.

For additional guidance on designing and implementing strategic options to enhance CAC accountability, please visit the Children and Armed Conflict (CAC) Accountability Resource Database www.cacaccountability.org or contact Conflict Dynamics International's CAC Accountability team directly info@cacaccountability.org

End Notes

- 1 Conflict Dynamics International, *Children in Armed Conflict Accountability Framework: A Framework for Advancing Accountability for Serious Violations against Children in Armed Conflict* (Cambridge: 2015).
- 2 The other three case studies are Colombia, Nepal, and Uganda.
- 3 Related fields include human rights, transitional justice, rule of law, and security.
- 4 The DRC case example is based on desk research, key informant interviews and focus group discussions conducted in 2014 involving approximately 60 stakeholders in the cities of Kinshasa, Bukavu, and Goma. The field research targeted actors in several sectors, such as child protection, stabilization, justice, and security. Interviewees included State actors, donors, the diplomatic community, international and local nongovernmental organizations (NGOs), and children affected by armed conflict.
- 5 For more information, refer to *CAC Accountability Framework* Section 2 - Foundations of CAC accountability and Section 3 - Definition and structure of CAC accountability.
- 6 Reforms may relate to State and non-State institutions and/or policies.
- 7 For more information, refer to *CAC Accountability Framework* Section 4 - Guidance for developing strategic approaches to CAC accountability.
- 8 République Démocratique du Congo, Ministère de la Défense Nationale et des Anciens Combattants, *Plan global de désarmement, démobilisation, et réintégration* (DDR III) (2014).
- 9 UN Security Council, *Report of the Secretary-General on Children and Armed Conflict in the Democratic Republic of Congo*, S/2014/453 (30 June 2014).
- 10 Ibid.
- 11 For more information, refer to *CAC Accountability Framework* Section 4.1.1 - Step 1: Examine influencing factors.
- 12 For instance, approximately 30 to 40 percent of the NDC/Sheka Mai Mai group allegedly consist of children under the age of 18. UN Stabilization Mission in the DRC (MONUSCO), *Child Recruitment by Armed Groups in DRC From January 2012 to August 2013* (24 October 2013), pg. 6.
- 13 Interviewees noted, for example, a lack of transparency on re-recruitment of children formerly associated with armed forces or groups, and a lack of analysis regarding the quality of the reintegration process for children. See also Natalia Ojewska, IRIN, "Analysis: Targeted assistance needed for DRC's former child soldiers," 3 July 2014, <http://www.irinnews.org/report/100300/analysis-targeted-assistance-needed-for-drc-s-former-child-soldiers> [accessed 1 May 2015].
- 14 *Report of the Secretary-General*, S/2014/453 (2014), para. 5.
- 15 The exclusion of amnesty for these crimes creates the possibility to make progress toward ending impunity for perpetrators. See also UN News, "New DR Congo amnesty law welcomed by UN envoys," 5 February 2014, <http://www.un.org/apps/news/story.asp?NewsID=47081&#.VUPoFvIvHbc> [accessed 1 May 2015]; International Center for Transitional Justice, *Amnesty Must Not Equal Impunity* (New York: 2009); International Center for Transitional Justice, "DRC: Refusal to Pardon Serious Crimes Signals Justice Could be On the Way," 15 May 2014, <https://www.ictj.org/news/drc-refusal-pardon-serious-crimes-signals-justice-could-be-way> [accessed 1 May 2015].

- 16 Some interviewees noted a diminished deterrent effect of ICC cases due to poor prosecutorial strategy and insufficient outreach to conflict-affected areas outside of Ituri. See also Human Rights Watch, *Unfinished Business: Closing Gaps in the Selection of ICC Cases* (New York: 2011); International Center for Transitional Justice, *Democratic Republic of Congo: Impact of the Rome Statute and the International Criminal Court* (New York: 2010), pgs. 5-6; Olivia Bueno, International Refugee Rights Initiative, "In Ituri, Katanga Verdict Viewed as a Limited Success," 21 March 2014, <http://www.refugee-rights.org/blog/?p=481> [accessed 4 May 2015]; UN Office of the High Commissioner for Human Rights (OHCHR), *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), pg. 459, paras. 1019-1026.
- 17 Child Soldiers International, "US restricts military assistance to some states that recruit and use children," 1 October 2014, http://www.child-soldiers.org/news_reader.php?id=783 [accessed 1 May 2015].
- 18 The CAC Accountability Framework encompasses commitments at the national, regional, and international levels to bring peace and stability to eastern DRC and the Great Lakes region. See also UN Security Council, *Report of the Secretary-General on the Implementation of the Peace, Security and Cooperation Framework for the Democratic Republic of the Congo and the Region, S/2015/173* (13 March 2015).
- 19 Note that as of mid-2015, neither the government nor supportive donors had provided the funding needed for activities related to implementation of the Action Plan. See also Child Soldiers International, *Briefing on the recruitment and use of children in the Democratic Republic of the Congo (DRC) to the UN Security Council Working Group on Children and Armed Conflict* (London: 2014).
- 20 Transparency International ranked the DRC 154th out of 175 countries in its Corruption Perceptions Index in 2014 (with 1 being the least corrupt). Transparency International, *Corruption Perceptions Index 2014* (Berlin: 2014), pg. 5. See also OHCHR, *Report of the Mapping Exercise* (2010), pgs. 368-443, paras. 783-979.
- 21 See Enough Project, "Joint NGO Letter Urging the Swift Implementation of Robust DDR Program," 17 March 2014, <http://enoughproject.org/reports/joint-ngo-letter-united-nations-security-council-renewal-monusco-mandate> [accessed 1 May 2015].
- 22 In 2013, the youth (15-24 years) unemployment rate in DRC was 14.3 percent compared to the national unemployment rate of 8 percent. World Development Indicators, The World Bank, "Unemployment, youth total (% of total labor force ages 15-24) 2010-2014 (modeled ILO estimate)," updated 14 April 2015, <http://data.worldbank.org/indicator/SL.UEM.1524.ZS> [accessed 1 May 2015]; World Development Indicators, The World Bank, "Unemployment, total (% of total labor force) 2010-2013 (modeled ILO estimate)," updated 14 April 2015, <http://data.worldbank.org/indicator/SL.UEM.TOTL.ZS> [accessed 1 May 2015].
- 23 Human Rights Watch, *Democratic Republic of Congo: Ending Impunity for Sexual Violence* (New York: 2014).
- 24 The International Peace Support Training Centre, *Reintegration of Child Soldiers in Eastern Democratic Republic of Congo: Challenges and Prospects*, Occasional Paper Series 4, No. 2 (Nairobi: 2013). See also Child Soldiers International, *Briefing on the recruitment and use of children in DRC* (2014).
- 25 For more information, refer to CAC Accountability Framework Section 4.1.2 - Step 2: Examine CAC accountability mechanisms.
- 26 "CAC accountability mechanism" refers to any institution, program, policy, legislation, or other arrangement that is designed to address a specific aspect of accountability for serious violations against children in armed conflict. CAC accountability mechanisms may not exclusively address violations against children or relate solely to conflict settings, but may also deal with broader populations and nonconflict settings. These mechanisms can operate at the local, national, regional (including subregional), and/or international level, as well as across these levels. See Conflict Dynamics International, *CAC Accountability Framework* (2015).
- 27 In 2006, a Military Tribunal in Bukavu convicted Jean-Pierre Bijoyo, a former leader of a Mai Mai militia faction in South Kivu renowned for abducting and using children, of the crime of "abduction by deceit under Congolese law." However, this was not technically a conviction for the war crime of recruitment and/or use of children and did not involve application of the Rome Statute for the conviction. While the DRC Military Justice Code does not include the crime of child recruitment and use, the Rome Statute's provisions related to crimes against children can be directly applied in DRC, which has signed and ratified the Rome Statute. See *Avocats Sans Frontières, The Application of the Rome Statute of the International Criminal Court by the Courts of the Democratic Republic of Congo* (Brussels: 2009). For more information see also *Judgment of Bijoyo case*, DRC National Ministry of Defense, Military Justice, Tribunal Militaire de Garnison de Bukavu, Pro-Justicia, Jugement R.P. 096/2006 and RP 101/2006, RMP 292/KMC/06 and RMP 206/KMC/06, 17 March 2006; Child Soldiers International, *Briefing on the recruitment and use of children in DRC* (2014).
- 28 Child Soldiers International, *Briefing on the recruitment and use of children in DRC* (2014).
- 29 In the case of sexual violence initiatives, several humanitarian and child protection actors consulted for this study emphasized that interventions are not tailored to meet the specific needs of girls.
- 30 UN Security Council Resolution 1612 (2005) established the UN-led Monitoring and Reporting Mechanism (MRM) to provide timely and reliable information on grave violations committed against children in armed conflict to the UN Security Council and others. In the field, the MRM is implemented through UN-led Country Task Forces, co-chaired by the highest UN authority in the country and by UNICEF.
- 31 For more information, refer to CAC Accountability Framework Section 4.2.1 - Step 3: Identify options.
- 32 For more information, refer to CAC Accountability Framework Section 4.2.2 - Step 4: Prioritize options.

Mission Statement

Conflict Dynamics International is an independent, not-for-profit organization founded to prevent and resolve violent conflict, and to alleviate human suffering resulting from conflicts and other crises around the world.

©2015 Conflict Dynamics International.
All rights reserved.



Conflict Dynamics International

1035 Cambridge Street
Suite 10A
Cambridge, MA 02141
USA

+1 617 661 1066 Phone
+1 617 661 1686 Fax

info@cdint.org
www.cdint.org
www.cacaccountability.org