

Contributing to an Effective UN Action For Peace and Respect for Human Rights in The Democratic Republic of Congo

*A Note by
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October 2009*

**Better Protect Civilians and Defenders
Reform the Army
Support the Fight against Impunity**

FOCUS 1 – Protection of Civilian Populations and Fight against Impunity

Positive aspects

- MONUC is carrying out its program to integrate armed group members into the Armed Forces of the DRC (*Forces Armées de la RDC*, FARDC). Completion of the integration of troops belonging to the National Congress for the Defense of the People (CNDP) into the FARDC (April 2009); start of the integration of former Maï-Maï Yakutumba group fighters (October).
- MONUC contributes to the DDRRR process (*Démilitarisation, Démobilisation, Rapatriement, Réinsertion, Réintégration*).
- MONUC contributes to the pacification of the country through the implementation of joint FARDC/MONUC operations against rebels belonging to the Democratic Forces for the Liberation of Rwanda (FDLR) (in northern North and South Kivu), against the militia soldiers of the Revolutionary Front for Peace in Ituri (FRPI), and the Popular Front for Justice in the Congo (FPJC) (in Ituri), and in the north against the Lord's Resistance Army (LRA). MONUC is active.
- The government has announced a « zero tolerance » policy for the crimes committed by the armed forces, leading to some arrests and judgments. Example: **5 June 2009**: sentence of 30 years imprisonment accompanied by the payment of damages to over 135 female victims handed down by a Congolese military tribunal to five militia fighters for rape and other sex crimes.¹

Issues

- Despite the program of integration, some elements of the CNDP who are said to be integrated continue to control some territories they were administrating before, without supervision of the army.
- Despite the offensives against the armed groups, they still have considerable ability to do damage and they continue to commit serious human rights violations against the civilian population. Example: resurgence of FDLR attacks in September.²
- MONUC's troops are insufficient to support the FARDC in their offensives.
- FARDC and MONUC's presence is still insufficient in some areas where the LRA operates, in particular in Ango and Dingila, leaving the population in total insecurity, which explains the existence of self-defense militias.

¹http://www.securitycouncilreport.org/site/c.gIKWLeMTIsG/b.2880409/k.91D6/Democratic_Republic_of_the_Congobr_Historical_Chronology.htm.

² http://www.radiokapi.net/index.php?i=76&word_tag=FDLR.

- The illegal exploitation of natural resources in conflict zones continues with complicity of members of security forces with quasi-total impunity.
- During the military operations (Umoja Wetu and Kimia II, Rudia II, Iron Stone), some members of the FARDC, including child soldiers, committed serious crimes against the civilian population: summary executions, rape, pillage.³ These exactions were highlighted in the 28th and 29th reports of United Nations Secretary General (UNSG) (June and September 2009) and by the Group of Experts (May 2009).⁴
- Since these are joint operations with MONUC, the latter may be perceived by the population as complicit! Distrust of its soldiers.
- The most recently integrated forces (CNDP and Mai-Mai) are particularly well known for their exactions against the civilian population.
- In view of the serious violations of human rights against the civilian population, and the sex crimes on a large scale in particular, there are too few arrests and trials.
- Feeling of increased impunity because of the adoption of a law granting amnesty to the militias in the east of the country (North Kivu and South Kivu) under the 23 March agreements. The amnesty covers acts of war committed since 2003, but not war crimes, and it does not apply to the crimes committed by foreign rebel groups.
- The presence of Bosco Ntaganda in the FARDC, when an arrest warrant has been issued by the International Criminal Court (ICC), is seen as a denial of justice and a failure on the part of the Congolese authorities to become involved in the fight against impunity. His joint actions with MONUC in the offensives against the FDLR are harmful to the UN image.
- No law adapting Congolese legislation to the ICC Statute.
- Mass perpetration of sex crimes.

Recommendations

- Reaffirm the importance of MONUC's mandate to protect the civilian population.
- Call on Member States to help to strengthen MONUC troops as desired by the UN Security Council (UNSC), ensuring they are properly trained and French-speaking.
- Call for real joint coordination and planning of MONUC-FARDC "common" operations.
- Commit MONUC to a strategy of non-military disarmament of the armed groups.
- Support, with substantial financial resources, a reform of the army, in particular by reinforcing FARDC training in humanitarian international law and human rights, focusing particularly on the most recently integrated forces; Commit Congolese authorities to an effective reform of the army.
- Ensure that the integration of child soldiers into the FARDC is brought to an end.
- Take an unequivocal public position of firm condemnation, each and every time, of the human rights violations committed by FARDC or MONUC soldiers.
- Make the MONUC mandate widely known to ensure it is understood by local populations. Need in that regard for a clear communication and integration mechanism.
- Firm, public communication by the UN about the need for cooperation between the DRC and the ICC and about the need for the DRC to meet its obligations with regard to the fight against impunity for the most serious crimes, by transferring Bosco Ntaganda to the ICC, by fighting against impunity for the most serious crimes at a national level⁵ and by passing a law to adapt Congolese legislation to the Rome Statute.
- Call on the Congolese authorities, in a UNSC resolution, to establish special sections in the military tribunals and ordinary courts of law to deal with sex crimes, and call on the Member States to fund these, in accordance with the MONUC Action Plan to combat impunity in cases of sexual violence.⁶
- Strengthen the capacity of the MONUC Office of the Senior Adviser and Coordinator to combat sexual violence and give it the means to implement its strategy and coordinate the activities of the various UN agencies in this field.

3 Cf. the Human Rights Watch report « *Soldiers who rape, Commanders who condone* », July 2009, available at <http://www.hrw.org/en/reports/2009/07/16/soldiers-who-rape-commanders-who-condone-0>.

4 <http://www.un.org/french/docs/sc/reports/2009/sgrap09.htm>.

5 In accordance with Resolutions 1820, 1756 and 1794 of the UNSC.

6 <http://monuc.unmissions.org/Default.aspx?tabid=982>.

FOCUS 2 – Protection of Human Rights Defenders

Positive aspects

- On occasion, MONUC responds to the problems encountered by defenders. Example: support for Dismas Kitenge when the latter was prevented from taking a Kisangani / Kinshasa flight by two representatives of the National Intelligence Agency (beginning of October); observation of some trials involving defenders.
- MONUC maintains good relations with defenders in order to assess the human rights situation on the ground.

Issues

- The situation of human rights defenders is extremely precarious. They are constantly threatened, harassed and faced with iniquitous legal proceedings for having denounced the failings of the rule of law, the failure to combat impunity for the most serious crimes, the pillage of natural resources, etc. The government seeks to impose silence or discredit upon any critical voice.⁷ Recent examples: infringement of the freedom of movement of Dismas Kitenge, president of Groupe Lotus. Legal proceedings against Golden Misabiko, Director of Asadho/Katanga, for having published a report on the pillaging of natural resources. Proceedings against Robert Ilunga, national president of the Friends of Nelson Mandela for the Defense of Human Rights, for having criticized the working conditions of workers of the Société Générale Industrielle company; death threats received by Messrs Emmanuel Umpula, Executive Director of Action Against Impunity for Human Rights (ACIDH), Timothée Mbuya, Vice-President of ASADHO/Katanga, Grégoire Mulamba of the Centre des Droits de l'Homme et du Droit Humanitaire (CDH) and Mrs. Dominique Munongo, of the Centre for Women's Development (CDF); Death threats received by the husband of Mrs. Carine Bapita, a member of "Women and Children for Human Rights" (FEDHO) and a Congolese lawyer representing victims at the International Criminal Court in The Hague in the Thomas Lubanga case.
- MONUC is limited in its support for defenders because it does not have an explicit mandate for it.

Recommendations

- Include, when renewing the MONUC mandate, a specific provision enabling it to act to protect defenders at risk, document violations of defenders' rights and promote defenders' action to the political, military and judicial authorities, in accordance with the 1998 Declaration of the UNGA.
- Give the necessary funds to create posts in the MONUC Human Rights Division to deal specifically with the situation of defenders.
- Strengthen MONUC's links with defenders in order to better analyze the human rights situation on the ground and draft strategies to protect the civilian population.
- Place the situation of human rights defenders at the heart of the discussions between the Special Representative of the UNSG to MONUC and the national authorities.
- Obtain a declaration from the UNSG on the essential nature of the protection of defenders and the importance of their work with regard to strengthening the rule of law.

FOCUS 3 – Strengthening the Rule of Law

Positive aspects

- MONUC supports programs to strengthen the rule of law.

Issues

⁷ Cf. the very numerous recent cases denounced by the Observatory for the Protection of Human Rights Defenders, a joint FIDH-OMCT programme <http://www.fidh.org/-Defenseurs->.

- Security is dealt with by a political police force with full powers: arbitrary arrests of students, of defenders and of members of opposition political parties.⁸
- Judges often respond to government orders and the media are tightly controlled, as in the case of the President of the National Assembly (beginning of 2009).
- Prison conditions are very poor and torture is practically systematic.
- The resources allocated to MONUC to strengthen the rule of law are insufficient, although this is a prerequisite on which to base sustainable peace in the DRC.

Recommendations

- Reinforce the MONUC Civil Affairs Section by giving it the human and financial resources needed to contribute to the proper administration of justice and improvement of prison conditions, including in the west of the country.
- Reinforce MONUC's Rule of Law Unit.
- Call on the authorities to provide MONUC and NGOs access to all places of detention.

8 Cf. FIDH report no.526f « *DRC : la dérive autoritaire du régime* », July 2009.