

A Congo Action Plan

I. OVERVIEW

More than two years into the transition in the Democratic Republic of the Congo, the peace process remains at risk. As many as 1,000 people a day still die from war-related causes -- mainly disease and malnutrition, but also continuing violence. While the main belligerent leaders are all in the transitional government, their corruption and mismanagement threaten stability during and after the forthcoming national elections, now postponed from June 2005 to March 2006. The international community needs to maintain pressure on a wide front, making specific security sector reform, transitional justice and good governance measures prerequisites for the elections, not allowing them to be postponed until there is a new government.

The 2002 Global and All-Inclusive Agreement created the present transitional government out of the main domestic warring parties and committed it to a plan for reunification of the country, disarmament and integration of armed groups, and elections. Some progress has been made. The parliament has passed a draft constitution (though it faces an uncertain referendum in November) and laws on citizenship, the national army and political parties. The former belligerents have begun to merge their separate administrative structures and armed groups. But the process with respect to reform of the security sector, as well as the judiciary and local administration, is far from complete.

The main reason for the impasse, including postponement of elections, has been the reluctance of the former belligerents to give up power and assets for the national good. All have maintained parallel command structures in the army, the local administration and the intelligence services. Extensive embezzlement has resulted in inadequate and irregular payment of civil servants and soldiers, making the state itself perhaps the largest security threat to the Congolese people.

State weakness also allows armed groups in the east to continue to abuse civilians. The Rwandan Hutu insurgent group, the Democratic Forces for the Liberation of Rwanda (FDLR), has refused to honour its March 2005 pledge to return home peacefully and has committed several massacres. In northern Katanga, Mai-Mai groups have

fought each other and the Congolese army, displacing over 280,000 people in the province. And in Ituri, despite some robust actions by the UN Mission in the Democratic Republic of the Congo (MONUC), 4,000 to 5,000 combatants still regularly attack the local population, international troops and humanitarian officials.

The coming year will be decisive for the Congo, one of Africa's largest and potentially richest countries. A successful transition is by no means guaranteed. Unfortunately it is quite possible that political leaders will continue to block critical transitional reforms and try to skew the elections in their favour. There are reasonable grounds for fearing electoral manipulation and even a relapse into mass violence that would put at severe risk both the unity of the Congo and the stability of much of the continent.

If these dangers are to be avoided, the UN Security Council and other key members of the international community must press the transitional government to take comprehensive action to stop the suffering of the Congolese people, and ensure the success of the transition by June 2006. This briefing spells out a comprehensive action plan, built around five critical objectives, with the following major elements:

- *One: free and fair elections.* The parliament must pass key electoral laws; President Kabila must keep his commitment to appoint new local administrations that fairly reflect the power-sharing agreement signed in Pretoria in 2002; and the international community must set up an effective system for monitoring the elections anticipated in March 2006.
- *Two: good governance and justice.* A joint donors/ Congolese mechanism should be implemented to curb state corruption; donor aid should be tied to specific progress on good governance and strengthening Congolese institutions, in particular the judiciary and parliamentary commissions; a specialised human rights chamber should be established within the court system to supplement the work of the International Criminal Court (ICC); and the Security Council should enact targeted sanctions against the violators of the arms embargo.

- *Three: an integrated national army and police force to establish security.* Donors should create an International Military Assistance and Training Team (IMATT) to integrate all aid and training for the new security forces; assistance for security sector reform should be increased and a working group established to coordinate support for police development.
- *Four: disarmament, demobilisation and repatriation of the FDLR.* Peaceful efforts to entice the FDLR home must be exhausted, with Rwanda clarifying which officers it intends to prosecute for genocide and offering more generous incentives for others to return; there should be international monitoring of the return process and targeted Security Council sanctions against hard-line leaders, especially those in Europe. In parallel, there should be preparation for, and commencement of, military pressure on the FDLR, with MONUC taking the initial lead.
- *Five: fulfilment of MONUC's mandate to protect civilians.* The UN Security Council needs to authorise more troops for MONUC; the EU and other donors should give it greater access to intelligence assets; and either MONUC's mandate should be formally strengthened or its concept of operations should be clarified to ensure that it acts more robustly and proactively against the FDLR and other armed groups.

II. ISSUES NEEDING TO BE ADDRESSED

A. ELECTIONS

Congolese citizens are expected to vote in 2006 in the first multiparty elections for 41 years. Preparations, however, have been hampered by logistical as well as political problems. Part of the reason for slow progress has been the unwieldy nature of the transitional government. President Joseph Kabila has four vice presidents, and his government includes 36 ministries, while the legislature includes 500 deputies and 120 senators representing the various signatories of the agreement that established the transitional government.¹ Poor internal cohesion and lack of technical expertise have compounded these institutional difficulties.

¹ The Global and All Inclusive Agreement was signed in Pretoria in December 2002 by the main belligerent parties, as well as the political opposition and a coalition of civil society and church groups. See Appendix A.

The transition was originally scheduled to be completed in June 2005. However on 17 June 2005, the parliament prolonged it until December 2005.² Another extension by the parliament is anticipated that will push the presidential, legislative and communal elections to March 2006, with a second round a month later. The formal end of the transition is scheduled for June 2006. The timetable is ambitious, and each stage presents challenges:

late October 2005	end of voter registration, including the compilation of voter lists;
20 November 2005	constitutional referendum: many provisions in the draft remain controversial, and if it is defeated there will be major delays in the electoral calendar;
1 January 2006	start of the election campaign, prior to which important legislation is needed, including the basic electoral law and measures on campaign financing and public demonstrations;
25 March 2006	presidential, legislative and provincial elections, which will require extensive monitoring;
24 April 2006	second round of elections;
10 May 2006	announcement of winners of presidential and provincial elections;
25 May 2006	indirect senatorial elections; and
30 June 2006	inauguration of the new government and formal end to the transition.

1. Registration difficulties

According to the plan put forward by the Independent Electoral Commission (CEI), the government needs to set up 9,000 registration centres and 40,000 polling stations before the constitutional referendum can take place. Each centre should be prepared to provide voters with registration cards. MONUC has been tasked to distribute these, as well as ballot boxes and sheets, to the capitals of the country's 145 territories and its 21 major cities, after which Congolese authorities are to transport them to the registration centres and polling stations.

There were difficulties in securing the funds for organising the elections but most of the costs (nearly 80 per cent) were eventually covered by the European Union. The CEI began voter registration in Kinshasa in June and by early September had begun issuing voter ID cards in eight of

² The transitional constitution scheduled elections for 30 June 2005 with the possibility of two six-month extensions.

the ten provinces. The fact that the number of voters registered, some 17,400,000 was well below estimates for the electorate was mostly due to logistical difficulties -- many registration centres are far from roads or major towns. In addition, in northern Katanga, Ituri and South Kivu security problems complicated the registration process, although to a lesser degree than was expected.³ MONUC has reallocated its resources, designating many of its planes and helicopters for the distribution of registration kits. The CEI has indefinitely extended the registration period, which was to have concluded at the end of October. Once the registration is finished, the CEI anticipates that it will need a month to compile voter lists, apparently making it impossible to meet the 20 November date for the referendum.⁴

2. The constitutional referendum

The timetable is tight, and any major delay could push the elections past the June 2006 deadline. Such a delay could cause a crisis for a government whose people already see it as inefficient and corrupt. The greatest potential for this comes from the very real possibility that the draft constitution will be turned down in the referendum. There is broad opposition to the decentralised but unitary state proposed in the current draft, as many Congolese, especially in the provinces of Bas-Congo, Katanga and the Kasais, remember the abuses of previous central governments and favour a federal system. In addition, the draft proposes to divide the current ten provinces into 26, a measure many citizens oppose.⁵ If the constitution is rejected, the parliament will have to search for a new consensus, and the entire transition will be held up.

3. Ethnic violence and elections

Politicians are likely to appeal to ethnic sentiment in their campaigns. In the Kivus and Katanga particularly, rallies

are likely to take on an ethnic tinge that could trigger violence.⁶ In South Kivu, the minority Banyamulenge population could be targeted in the territories of Fizi, Uvira and Mwenga, especially if the eventual electoral districts are drawn in a manner that the candidates of other communities consider to be to their disadvantage. In North Kivu, the citizenship question is explosive, particularly in Masisi and Rutshuru territories where many Hutu and Tutsi immigrants are accused of being Rwandan and thus ineligible to vote.⁷ Finally, in President Kabila's home Katanga province, overlapping fault lines pit southerners against northerners and Kasaians against the indigenous communities. Competition for power within Kabila's inner circle has accentuated these tensions, with Kinshasa politicians using military allies in the province to advance their claims. In the early 1990s similar tensions in North Kivu and Katanga provoked widespread violence that resulted in the deaths of more than 3,000 people in each province.

4. Monitoring the elections

Fraud at the polls could easily exacerbate matters, and the current provisions for monitoring are insufficient. International observers will not be able to cover the thousands of polling sites, and monitoring will largely be left to the representatives of political parties. This will benefit the more affluent of them, such as the People's Party for Reconstruction and Development (PPRD) and the Movement for the Liberation of the Congo (MLC). The matter is further complicated by the slow integration of the local administration, much of which remains loyal to the former belligerents who first appointed them. These officials will be able to influence and intimidate voters. Although Kabila announced again on 29 June 2005 that new administrators would begin to be named immediately, there has been little change on the ground.

Unless urgently needed international assistance is provided, much of the responsibility for preventing abuses at the polls will be left to a Congolese police force that is not yet capable of the job. The weak legal system, which will be called on to solve any electoral disputes, is tightly tied to the parties. Kabila named a majority of the highest judicial officials in Kinshasa before the transition began. Parliament has yet to pass a law guaranteeing greater independence for the court system. It has also dithered for over a year on other laws needed for fair elections, including

³ Crisis Group interviews with Congolese politicians and civil society, Kinshasa, August 2005. It is difficult to estimate the total electorate. The figure of 28 million, which is often used, is the highest possible number of voters based on the last census conducted in 1984. If accurate, it would mean that slightly more than 60 per cent of the electorate has been registered.

⁴ In order to maximise resources, the CEI has rotated its registration kits throughout the provinces, keeping registration booths open for three weeks before moving elsewhere. Since many sites were not opened on time, this process is behind schedule.

⁵ Provinces such as Bas-Congo, Katanga and the Kasais harbour strong federalist feelings that local politicians may take advantage of in order to defeat the constitution. The creation of new administrative divisions would affect provinces like Katanga in particular, whose mineral-rich south would be cut off from its poorer, agricultural north. Crisis Group interviews in Lubumbashi and Bukavu, June and August 2005.

⁶ Crisis Group interviews with political parties in Lubumbashi and Bukavu, June and August 2005.

⁷ Parliament passed a law in November 2004 that granted citizenship to all tribes which were in the Congo at independence in 1960. While many Hutu and Tutsi would qualify, there is intense debate about the many immigrants from Rwanda who arrived shortly after independence.

campaign finance and public demonstrations, as well as an amnesty for political crimes committed during the war.

B. GOOD GOVERNANCE AND IMPUNITY

1. Tackling corruption

Corruption and mismanagement are closely tied to the political conflict. Most members of government see access to power as a means of personal enrichment and use their positions in the administration and army to ensure their interests. Corruption is readily visible and has contributed to a decrease in economic growth.⁸

Graft has contributed directly to violence. The government spends \$8 million⁹ every month on army salaries but as many as half those on the rolls may be "ghost soldiers," suggesting that around \$2 million of this is embezzled.¹⁰ While ministers are paid \$5,000 a month, many generals in the army are officially paid only some \$50, making such embezzlement in effect inevitable. The rank and file are paid irregularly and very little, making the army the largest security threat to the local population since its members loot and extort to make a living. Their indiscipline has in turn allowed the Ituri militia, the Katangan Mai-Mai, and the FDLR to continue to prey on local populations.

Similar corruption can be found in the local and national administrations. A review of the National Customs Office (OFIDA) by the Crown Agents consultancy in 2004 found that large amounts of goods leaked undeclared through customs, constituting the country's largest revenue loss.¹¹ Much of the taxes and duties that do reach the Central Bank are embezzled. Of the estimated \$675 million that the Congolese state finances in its budget, very little goes to providing services for the population.

Politicians have used their power in Kinshasa to hand out generous mining concessions in return for commissions or shares in the benefiting company.¹² This not only undermines fiscal stability but can also lead to conflict. For instance, in Katanga, a power struggle between two

figures close to President Kabila reportedly sparked fighting in November 2004 that killed over 70 people and displaced several thousand.¹³ As elections approach, this kind of lethal jockeying for power is bound to intensify.

The international community must put its influence to better use. Foreign assistance makes up 57 per cent of the national budget but some important bilateral donors as well as international financial institutions insist on "stability first, good governance later". Corruption is so extensive, however, that it is itself a source of instability that threatens the transition and could skew the elections. UN Secretary General Kofi Annan recognised the need for more international action in his recent report on the elections, which proposed formation of a group of donors to act together against corruption.¹⁴ However, this initiative has been strongly opposed by President Kabila, who has argued it would violate national sovereignty and has been able to rally several members of the Security Council such as China, Russia and Tanzania behind his position.¹⁵ MONUC also has not strongly supported the idea.

2. Justice

Little attention has been paid to transitional and other justice issues, and there is a serious lack of legal mechanisms to deal with spoilers, corruption and human rights abuses. Corruption and mismanagement are rife throughout the severely compromised judicial system. There has been no progress on reforming the judicial system, particularly in creating an autonomous system free of manipulation by political parties. The high ranking judges in Kinshasa have yet to be replaced as agreed in the 2002 peace agreement.

There have been several Congolese initiatives to punish corruption but these have received little international support. The parliamentary commission led by Gregoire Bakandje and charged with auditing state-run enterprises succeeded in firing six ministers and many high-level bureaucrats in January 2005. The governor of South Kivu, Augustin Bulaimu, was similarly suspended after evidence emerged that he embezzled more than \$1 million. However, the state prosecutor has still not acted on the

⁸ "Special Report of the Secretary General on Elections in the Democratic Republic of the Congo", May 2005, p. 4.

⁹ Figures denoted in dollars (\$) are in U.S. dollars.

¹⁰ Crisis Group interview with Vice President Ruberwa, Kinshasa, July 2005.

¹¹ "Rush and Ruin -- The Devastating Mineral Trade in Southern Katanga, DRC", Global Witness, September 2004, p. 13.

¹² Some mining contracts were signed by officials in the Presidency instead of the Ministry of Mines before the transition began. Often the terms were not beneficial to the state, including concessions signed away at basement prices. Crisis Group interviews with mining officials and civil society, Lubumbashi, June 2005.

¹³ Fighting broke out in Kilwa on the Zambian border on 14 October 2005, when a local militia seized the town, which is a centre of operations for Anvil Mining Corporation. The operation to retake the town was led by troops close to General John Numbi, the air force commander. Katumba Mwanke, a close advisor to Kabila, is on the Anvil board of executives. Crisis Group interviews with MONUC officials and civil society, Lubumbashi and Kinshasa, June and August 2005.

¹⁴ "Special Report of the Secretary General", op. cit., p. 8.

¹⁵ Kabila reportedly has also argued somewhat implausibly that he can better address good governance issues at the weekly internal meeting of his presidential office (*espace présidentielle*).

cases submitted to him, and the suspects have faced no legal action. The commission led by Christophe Lutundula and tasked with inspecting all contracts signed during the two wars between 1996 and 2002 submitted its report to parliament in June 2005. However, the document has yet to be discussed or made available to the public.

The International Criminal Court (ICC) has signed a cooperation agreement with the Congolese government and is focusing on abuses in Ituri. However, it has a mandate and resources to deal only with those most responsible for atrocity crimes, so is likely to prosecute only a handful of individuals over the next few years. Many more need to be brought to account, and a new mechanism is needed to complement its efforts and address impunity more systematically.¹⁶

3. Enforcing the arms embargo

In July 2003, the UN Security Council adopted Resolution 1493, which imposed an embargo against illicit arms trafficking in the Congo and authorised MONUC to monitor points of entry into the country. Resolution 1565, adopted on 1 October 2004, gave MONUC the authority to conduct unannounced inspections and seize arms and any other material related to violation of the embargo.¹⁷ An overstretched MONUC has failed to implement this mandate forcefully. While the primary responsibility for enforcement of the arms embargo lies with the Congolese government, it currently lacks the willingness and ability to take this on. The insufficiently staffed and poorly resourced Panel of Experts is unable to monitor the arms embargo properly, and the Security Council Sanctions Committee has yet to recommend sanctions against the list of targeted individuals submitted to it by the Panel.

C. SECURITY SECTOR REFORM

Although the creation of a new, integrated army, the FARDC,¹⁸ is one of the most important tasks of the transition, progress has been piecemeal and very slow. The original estimate of troops to be integrated exceeded

300,000, but in August 2005 new estimates placed the figure at around 120,000 to 150,000.¹⁹ While the officer corps in Kinshasa and regional headquarters has been integrated, this has not affected most troops in the field. Parallel chains of command and extensive corruption make the national army inefficient and barely operational.

After years of delay, the transitional government finally put forward a strategic plan for army integration in May 2005. The three-stage plan would first create light infantry brigades in the period before the elections, then form a rapid reaction unit, and finally establish a true defence force by 2010. The new army would include eighteen brigades of 4,200 troops each, to be deployed before the 2006 elections, including nine in Ituri and the Kivus.²⁰ The rest would be demobilised through the National Demobilisation and Reinsertion Commission (CONADER). This plan is an important step forward but many questions remain regarding the exact size of the force in the medium and long term.

The army was supposed to set up ten integration centres, but only six were functional at the end of the summer, and many of these had considerable financial and logistical difficulties. Some commanders in the east have refused to send their troops to these centres.²¹ When donors realised that the army was not willing or able to push integration forward, several undertook bilateral efforts. Between January and June 2004, Belgium trained the first integrated brigade in Kisangani. Angola followed suit with the creation of the second brigade in Kitona in May 2005, while a joint South African/Belgian operation produced the third integrated brigade in the Kamina army base by June 2005. The FARDC, with some training by MONUC's Indian contingent, graduated the fourth and fifth integrated brigades in August 2005 from the centres in Nyaleke and Mushaki, respectively, in North Kivu. These brigades received only very basic training; soldiers often lack uniforms and equipment. Most importantly, when the FARDC deploys these brigades, it does not pay them regularly or provide them with resources to conduct operations.

While the international community has funded demobilisation, it has been much more hesitant to help

¹⁶ See also, "A First Few Steps: The Long Road to Peace in the Democratic Republic of the Congo", The International Centre for Transitional Justice, October 2004.

¹⁷ UN Security Council Resolution 1565 (2004) called for MONUC to inspect, as "necessary and without notice, the cargo of aircraft and of any transport vehicle using the ports, airports, airfields, military bases and border crossings in North and South Kivu and in Ituri", as well as "to seize or collect, as appropriate, arms and any related materiel whose presence in the territory of the Democratic Republic of the Congo violates" the arms embargo.

¹⁸ Armed Forces of the Democratic Republic of the Congo.

¹⁹ Two censuses are underway, one by the Congolese army, the other by the South African army.

²⁰ "Update on the Status of Army Integration in the DRC", Institute for Security Studies Situation Report, 2 September 2005.

²¹ There are numerous examples. Colonel Smith, commander of a mostly Hutu and Tutsi ex-RCD brigade in North Kivu, has repeatedly refused to send his soldiers to the integration camp in Mushaki. In South Kivu, Mai-Mai commanders Colonel Dunia and Captain Mwenyimali have also balked at the integration process.

create and train the FARDC. Compared to the \$200 million earmarked for taking soldiers out of the army and reintegrating them, only around \$14 million has been pledged for army reform.²² Donors are only slowly beginning to harmonise their projects and develop standardised training modules through a coordination structure chaired by MONUC and the Ministry of Defence. In addition, the European Union has established EUSEC,²³ a small technical advisory mission inserted into the Ministry of Defence and the Congolese army headquarters, which among other contributions has audited the army administration. The EU and MONUC are trying to set up a payroll mechanism for the integrated brigades that EUSEC would implement. The planning and coordination structure that the UN established in 2004 for security sector reform lacks the authority to make and implement decisions. Consequently, the fundamental problems of irregular payments, inadequate equipment, and poor cohesion of these brigades in the field have not been solved.

Although less problematic than the reform of the army, reform of the Congolese National Police (PNC) also presents great challenges. During the war, the police were largely unarmed and marginalised throughout the country. Many tasks usually carried out by police, such as the arrest of criminal suspects, were assumed by the various armed groups or simply did not occur. While police reform seems to be proceeding better than army reform, largely due to better international coordination and less resistance from the various Congolese actors, success depends on the trained units continuing to receive support. As army reform has shown, even well trained and equipped units can disintegrate or turn against the local population if not paid and kept under a responsible, apolitical command. The Secretary General has urged that a working group be set up to coordinate the activity of international partners contributing, or interested in contributing to development of the national police.²⁴

D. DEALING WITH THE FDLR

The Democratic Forces for the Liberation of Rwanda (FDLR) still has 8,000 to 10,000 fighters in the eastern Congo who seek to threaten their homeland.²⁵ They are organised into five brigades led by General Sylvestre Mudacumura. Rwandan intelligence believes that only

around 15 to 18 per cent of the officers, some 50 to 60 individuals, are guilty of genocide or serious war crimes, the implication being that the remaining troops and officers would have little to fear in returning home.²⁶ Several brigade commanders, for example, were low ranking officers in the old Rwandan army (the FAR), who are not accused of either category 1 or category 2 crimes related to the genocide as they are defined by Rwandan law.²⁷

The FDLR has been seriously weakened ever since Kinshasa cut its supply line in 2002. Desertions and disagreements between the hard-line and more moderate elements have further destabilised the insurgency. Nonetheless, it remains a danger to peace in the region and particularly to the civilian population. Rwanda has threatened to invade the Congo several times in the past year to root out the rebels. In addition, the FDLR periodically attacks, rapes and abducts villagers in South Kivu. A May 2005 UN report catalogued over 1,700 cases of abuse by the FDLR and other Rwandan militias in the small territory of Walungu alone during the preceding year.²⁸

Peaceful avenues must be exhausted. In the words of a MONUC commander, "there is no purely military solution to this problem."²⁹ To date, however, the FDLR leadership has thwarted all diplomatic efforts. After negotiations with Kinshasa and the Sant'Egidio community, the FDLR issued a statement in Rome in March 2005 that it would return to Rwanda peacefully. It soon became evident, however, that the leaders wanted to impose unrealistic political conditions on their return.³⁰ It is

²⁶ Crisis Group interview with Rwandan officials in Kigali, February 2005. According to Rwandan officials, the following leaders of the FDLR are among those wanted for crimes of genocide: General Sylvestre Mudacumura, force commander; Colonel Mugaragu, commander of operations; and Colonel Rumuli Michel, defence commissioner.

²⁷ Crisis Group interview with MONUC officials, Bukavu, August 2005; The Organic Law No. 08/96 of the Republic of Rwanda divides the crimes of genocide and crimes against humanity into four categories. Category 1 crimes include orchestration of the genocide, demonstration of zeal in murdering numerous people, and acts of sexual torture. Category 2 crimes involve murder and acting as an accomplice to murder. Category 3 crimes are assaults not resulting in murder. Category 4 crimes are property offences.

²⁸ "Rwandan rebels abuse Congolese civilians", IRIN, 19 May 2005.

²⁹ Crisis Group interview with MONUC commander, Kinshasa, August 2005.

³⁰ The Rome Declaration resulted from pressure by the transitional government and the international community. It was clear from the beginning of the talks that produced it, however, that the FDLR wanted to link return to political conditions unacceptable to the Rwanda government, such as the ability to operate as a political party and an end to the *gacaca* courts. As

²² These pledged funds, from the Netherlands and the EU, exclude the operational budgets of the bilateral training and advisory teams.

²³ "The European mission to provide advice and assistance to security sector reform in the Democratic Republic of the Congo".

²⁴ "Special Report of the Secretary General", op. cit., p. 12.

²⁵ See Crisis Group Africa Briefing N°25, *The Congo: Solving the FDLR Problem Once and For All*, 12 May 2005.

difficult to imagine that either the senior commanders or the political leadership that was created in 2000 to lend legitimacy to the movement would want the troops to return.³¹ While the transitional government has succeeded in breaking off a splinter group in South Kivu led by Colonel Amani, all estimates are that it is not larger than 800 combatants, leaving at least 8,000 others.³²

Poor relations between the Congo, Rwanda and Uganda have obstructed the search for solutions in the region. The establishment of a U.S.-sponsored Tripartite Commission in mid-2004 and of a Joint Verification Commission (JVC) in September 2004 both aimed at the improvement of regional cooperation and confidence building. The JVC brings officers from the Congolese and Rwandan armies together to investigate their governments' complaints while the Tripartite Commission is specifically aimed at promoting better cooperation among the three states on the FDLR. In mid-September 2005, Burundi joined, making it a quadripartite body. However, both mechanisms are limited to information exchange and investigation; neither was intended to address the tough question of how to get the FDLR to leave the Congo. Reflecting this limitation, the tripartite Lubumbashi meeting in April 2005 reaffirmed commitment to the peace process but did not address how to tackle threats to that peace in eastern Congo, the FDLR chief among them.³³

Other efforts have been more promising. In August 2005 a joint cell was set up in Kisangani for officers from the three countries to share and analyse intelligence. This could help Rwanda collaborate with the Congolese and MONUC in separating the more moderate commanders from the hard-liners. Lessons learned from past encounters, such as the mid-February 2005 meeting in Kalonge, South Kivu of two high-ranking Rwandan officers from a JVC team with an FDLR captain, should be used to encourage large-scale FDLR returns. While nothing came out of that encounter, further meetings under either the JVC

or Quadripartite Commission could be used to build confidence and encourage repatriation.³⁴ However, Kigali will need to offer incentives that go beyond the \$300 returning fighters currently receive, including clarification of their legal status and positions in the army. Kigali demonstrated with the 2003 repatriation of General Paul Rwarakabije that it is capable of striking deals with FDLR leaders.

Nevertheless, it is evident that coercive measures will also be necessary to break the hold of the hardliners over the majority of FDLR soldiers and to convince them that they have no choice but to disarm and return to Rwanda. Neither the Congolese army, which bears the primary responsibility, nor MONUC, has been sufficiently forceful or coordinated in dealing with the FDLR. President Kabila has said several times that he would use force to demobilise all foreign fighters, most recently on 29 June 2005,³⁵ but no corresponding order has been given to the commanders on the ground.³⁶ The African Union (AU) has pledged to send a force to attack the FDLR but it is stretched to the limits of its capacity in Darfur, and it would be unrealistic to expect it to be able to deploy another, larger mission to the Congo any time soon. The main benefit of the AU declaration is the message it sends to the FDLR that it is fully isolated.

MONUC has been hesitant to use force against the FDLR, even though commanders acknowledge that their mandate to protect civilians would allow them to do so.³⁷ The UN mission is currently conducting operations in South Kivu to demonstrate its capabilities but it seeks not to confront the FDLR directly.³⁸ While it has pushed the FDLR out of its brigade headquarters in Nindja, there has been no resulting increase in demobilisation. MONUC still sees its role as limited to supporting the Congolese army, which must take the lead in attacking the FDLR. In this context, the UN has sought more support for the FARDC, asking donors to give nine brigades food and fuel so they can operate against the various armed groups.³⁹

diplomatic and military pressure mounted, the FDLR split into factions. The deputy divisional commander of South Kivu, Colonel Jeribaat Amani, declared in June 2005 that he no longer recognised the authority of the force commander, Colonel Mudacumura. The political wing split as well: Lieutenant Colonel Christophe Hakizabera sided with Amani, while its president, Ignace Murwanashyaka, backed Mudacumura.

³¹ The political wing in Europe is led by President Ignace Murwanashyaka, based in Germany. It seems little more than a figurehead, though it has helped with funding and continues to insist on impractical political conditions for a troop return.

³² Crisis Group interviews with FDLR combatants in Walungu and Mwenga, July 2005

³³ "DR Congo, Rwanda and Uganda agree to end rebel presence in DRC", Agence France-Presse, 22 April 2005; Crisis Group interviews with UN officials, New York, and Congolese officials, Kinshasa, April 2005.

³⁴ Crisis Group telephone interviews with Rwandan government and MONUC officials, February 2005.

³⁵ Statement given on public television at a Kinshasa seminar held to evaluate progress made by the transitional government.

³⁶ Crisis Group interviews with FARDC commanders, South Kivu, August 2005.

³⁷ Crisis Group interview with MONUC commanders in Bukavu and Kinshasa, July and August 2005.

³⁸ The Indian brigade in North Kivu has not yet adopted the same aggressive posture, partly because many of MONUC's air assets as well as its special forces company have been supporting the Pakistani brigade in South Kivu.

³⁹ Crisis Group interview with General Babakar Gaye, MONUC force commander, August 2005.

The FDLR has indicated that if it is strongly attacked by either the Congolese army or MONUC, it will retaliate against the local population. In the words of a commander, "where two elephants fight, the grass gets trampled".⁴⁰ This presents the international community with a troubling dilemma, one that underlines the need for MONUC to improve its capacity to protect civilians. UN officials say candidly that the FDLR's threatened response is a major reason why their forces do not conduct more vigorous operations. The challenge to MONUC and the Congolese is to balance the serious risks involved in offensive action with the need to remove once and for all the continuing danger the FDLR poses.

E. MONUC

The UN Mission's mandate has expanded greatly since its inception in 1999, from ceasefire observation to include now:

- support of the transitional government;
- assistance in security sector reform;
- disarmament, demobilisation and reintegration (DDR) of armed groups;
- aid in re-establishing a state based on the rule of law;
- monitoring of the arms embargo;
- protection of civilians in imminent danger; and
- election support.

These political and military tasks have proven extremely difficult to fulfil, especially since MONUC is often forced to work through a weak and factious transitional government and army. It has also been plagued by insufficient troop numbers, inadequate equipment and an ambiguous concept of military operations, and its reputation has suffered from a sexual abuse scandal in 2004.

MONUC currently has 16,145 troops and 368 police.⁴¹ In May 2005, the Secretary General requested an additional 2,590 troops, 261 civilian police, and five formed police units of 125 members each. In response, the Council authorised only 216 additional civilian police and the five formed units (Resolution 1621, 6 September 2005).⁴²

⁴⁰ Crisis Group interview with FDLR commander, Burhinyi, August 2005.

⁴¹ "Nineteenth report of the Secretary-General on the United Nations Organisation Mission in the Democratic Republic of the Congo", 26 September 2005, p. 19.

⁴² *Ibid.*, p. 10.

While the Council has been reluctant to approve additional troops, clearly more are needed in the lead up to the elections. The Secretary General's request represented the minimum reinforcements required to meet the multiple tasks the Security Council has given MONUC in a giant country.

Even in the areas of the Congo where MONUC has had the resources to act, it has often failed to protect civilians, most obviously during the May 2002 massacre in Kisangani, the fighting in Bunia in 2003, and the mutiny in Bukavu in May 2004. Its inaction was mainly due to the reluctance of troop-contributing countries to put their soldiers in danger and a lack of clarity in the concept of operations that led the mission to react to rather than anticipate and prevent trouble. In the Kivus, MONUC has been cautious due to the terrain and FDLR strength.

In 2005 MONUC began to interpret its mandate more robustly in Ituri, carrying out aggressive cordon and search operations, demilitarising zones, and killing over 100 militiamen.⁴³ Though much of Ituri remains beyond either Kinshasa's or MONUC's control, more than 14,700 combatants entered the demobilisation program following these actions.⁴⁴ By August, however, MONUC had shifted its focus to the Kivus and cut back on operations in Ituri. This led to a loss of momentum and allowed the armed groups, who still amount to 4,000 to 5,000 fighters, to settle back in.⁴⁵

The actions in Ituri indicate that MONUC has a sufficient mandate to act under the right leadership and adequate troops. But differing interpretations of the mandate and concept of operations have led to inconsistent actions and insufficient civilian protection. With backing from the Security Council, MONUC could begin to apply the Ituri lessons to the FDLR problem without waiting for the Congolese army to act. However, in order to tackle Ituri, the Kivus and Katanga at the same time, it would need reinforcements.

⁴³ In March 2005, in response to the killing of nine UN peacekeepers, MONUC launched a series of actions. More than 50 militiamen were killed in a single fire fight.

⁴⁴ While these combatants were demobilised, the reinsertion process has been slow, leading some to rejoin their old armed groups.

⁴⁵ Combatants from the Union des patriotes congolais-Lubanga (UPC-L) and the Front nationaliste intégrationniste (FNI), now often operating as the Mouvement révolutionnaire congolais (MRC), still occupy the towns of Boga, Irumu and Mongbwalu.

III. A POLICY CHECKLIST

OBJECTIVE ONE: FREE AND FAIR ELECTIONS BEFORE JUNE 2006

Action One: Pass the laws needed for elections. Parliament is many months behind schedule in passing the electoral law, which must decide crucial issues such as the electoral districts and the form of representation (proportional or mixed). Other legislation needed before the electoral campaign is scheduled to begin in January 2006 includes laws on campaign finance, public demonstrations and the judicial system, as well as an agreed amnesty for politically motivated crimes committed during the war. The law on the judicial system would be important not least for providing a dispute resolution mechanism during the elections.

Action Two: Create an effective system for monitoring of the elections. Since it will be impossible to field enough international monitors for the whole country, the UN and EU need to work creatively with churches and civil society to come up with a comprehensive plan so that most monitoring is not, by default, done by the competing political parties -- a situation that would favour the most affluent and greatly disadvantage the political opposition and smaller parties.

Action Three: Integrate the territorial and local administrations. The local administration, which is largely unchanged from the pre-war period, can become the source of electoral manipulation through intimidation and ballot-rigging. The members of the International Committee for the Accompaniment of the Transition (CIAT) in Kinshasa⁴⁶ need to press the transitional government to stick to the 2002 Global and All-Inclusive Agreement and fulfil President Kabila's repeated promises to merge the former belligerents' territorial and local administrations by naming new authorities to reflect the power-sharing agreement signed by all parties.

OBJECTIVE TWO: GOOD GOVERNANCE AND JUSTICE

Action One: Create a joint donors/Congolese group to curb corruption. Donors, including the World Bank and IMF, should implement the initiative proposed by Kofi Annan in May 2005 for a "joint mechanism of Congolese officials and international donors to deal with the

transparent management of state resources."⁴⁷ This would allow them to act together to review allegations of corruption and mismanagement. Ideally the Security Council would mandate creation of this group and monitor its progress. Countries which have shown strong interest in the idea including the UK, Belgium and France, should take the lead in breaking down President Kabila's opposition to a proposal that has support from a number of important members of the transitional government. The U.S., which has not come down strongly on the issue, should also lend its weight to implementing the Secretary General's proposal.

Action Two: Condition foreign assistance upon specific measures. Before aid is disbursed, donors should clearly indicate and require progress on reforms, including:

- regular audits of government ministries, provincial administrations and the army;
- creation of payroll mechanisms that allow greater transparency; and
- timely prosecution of officials suspected of corruption.

Action Three: Strengthen institutions tasked with good governance. CIAT and MONUC should provide diplomatic and, as needed, security support to institutions currently paralysed by political interests, including:

- building on the EU's program in Ituri to press for reform of the judiciary. In particular, the independence of the courts needs to be assured by passage of a much delayed law on the court system and the appointment of new judges broadly representative of the factions in the transitional government; and
- implementation of the recommendations of the parliamentary commissions led by Gregoire Bakandeja and Christophe Lutundula. These commissions have produced good results. Parliament should be encouraged to consider seriously the recommendations in their reports, and the transitional government to prosecute those individuals against whom there is strong evidence of wrongdoing.

Action Four: Create a special chamber within the court system to try human rights abuses. Such a chamber, run by a mixture of local and foreign judges and prosecutors who would apply domestic and international law, should have the capacity to deal with the many cases the ICC will not pursue and which are not subject to the agreed amnesty. To avoid conflict, it should be tasked to work

⁴⁶ CIAT is tasked with overseeing the transitional process. Its members include Angola, Belgium, Canada, China, France, Gabon, Russia, South Africa, the UK, the U.S., Zambia, the African Union, the European Union, and MONUC.

⁴⁷ "Special Report of the Secretary General", op. cit., p. 8.

cooperatively with that court, and its jurisdiction should specifically exclude cases being investigated or prosecuted by it. This chamber would be considerably cheaper than an international tribunal.

Action Five: Strengthen the sanctions regime. The Security Council's Congo Sanctions Committee needs to follow up on instances in which its Panel of Experts has identified regional violators of the arms embargo and implement targeted sanctions such as travel bans and assets freezes. The Panel of Experts should receive more personnel and resources so it can monitor the arms embargo more thoroughly, and MONUC should work with it more systematically, including by using its military assets and civilian personnel to provide better information on arms trafficking in the region.

OBJECTIVE THREE: AN INTEGRATED NATIONAL ARMY AND POLICE FORCE TO ESTABLISH SECURITY.

Action One: Create an International Military Assistance and Training Team (IMATT). All donors need to integrate their security sector reform advisory and training programs through creation of an IMATT,⁴⁸ which would carry out the plan for army integration agreed to by the transitional government. The European Union's existing EUSEC mission has some of the same objectives and has gone a certain way towards harmonising the various efforts at army reform. However, while its contributions have been important, it is very small (about ten advisers) and remains, as its name indicates, a technical advisory mission, with little operational capacity. In addition, it has no control over the various bilateral efforts, such as those of South Africa and Angola. The IMATT should have a broader scope, be relatively large -- several hundred personnel -- and take a much more hands-on approach by having technical advisers accompany both training and the subsequent operations of deployed units.⁴⁹ It should be led by one or perhaps two of the key partners already active in security sector reform, such as South Africa, Belgium or EUSEC and would, in coordination with the Congolese army:

- ❑ define standards for training, equipment, logistics and facilities;
- ❑ train FARDC trainers;

⁴⁸ The IMATT concept was developed in Sierra Leone, where it was led by the UK. Many recommendations here are based on lessons learned in Sierra Leone.

⁴⁹ The lack of follow-up has been evident in many of the new army's brigades, which have received good training but often resort to extortion of the local population once sent into the field because they do not receive regular pay.

- ❑ oversee rehabilitation of army training camps;
- ❑ implement army reform according to agreed standards;
- ❑ create and control a payroll mechanism to tackle corruption in the army;⁵⁰
- ❑ provide advisers to deployed units;⁵¹
- ❑ enhance FARDC logistical capabilities; and
- ❑ unify the multiple efforts currently in existence⁵² to coordinate donor activity in security sector reform.

Action Two: Donors, especially the EU, South Africa, Belgium and Angola, should increase investment in army reform. The above named have been the most engaged in security sector reform. They should increase the funding for integration through IMATT, provide more logistical support and equipment, and send more training personnel in order to improve financing and command of the army, and allow advisers to deploy with troops on operations.

Action Three: Implement the Secretary General's call to establish a working group for coordination of international partners who are currently, or have expressed an interest in, contributing to development of the national police.

OBJECTIVE FOUR: DISARMAMENT, DEMOBILISATION AND REPATRIATION OF THE FDLR

Action One: Exhaust peaceful means of bringing the FDLR home. The components of this action include:

- ❑ the transitional government should stop dealing with the hardliners in the FDLR and concentrate on the relative moderates, including some brigade commanders, engaging them and urging them to disarm and repatriate;
- ❑ the Rwandan government should help in this process by clarifying which officers it considers subject to prosecution for category 1 and category

⁵⁰ The IMATT in Sierra Leone used such a mechanism. While EUSEC plans a similar effort, it would be only for the brigades that are already integrated and in training, leaving the remaining troops susceptible to corruption.

⁵¹ This has been the approach adopted in the training of police in the Congo, with substantial success.

⁵² For example, a sub-group of the Contact Group for the Congo (U.S., UK, Belgium, France, the Netherlands, EU, UN, supplemented by South Africa and Angola), which has met several times outside the country, EUSEC, and a group chaired in Kinshasa by the head of MONUC, Ambassador William Swing.

2 crimes related to the genocide⁵³ and informing the others of their legal status, through intelligence channels, the transitional government, the regional cooperation commissions, or any other effective means. Although some of the latter category might still face prosecution for lesser crimes, drawing this distinction would help to marginalise the hardliners in the field and entice returns;

- Rwanda should also establish more significant incentives to return than the \$300 on offer, including army commissions for eligible commanders;
- an international monitoring process for return and reintegration should be established, since after more than a decade in the bush, many FDLR soldiers are afraid of what awaits them in Rwanda;
- the international community, especially the U.S. and the UK, should press Rwanda to exhaust peaceful means; and
- unless the FDLR agree to disarm, the Security Council should impose targeted sanctions -- travel bans, assets freezes -- against the FDLR political and military leadership, especially those in Europe. Such action would increase the cost of intransigence and help convince fighters on the ground that their movement will not be able to conduct political negotiations with Rwanda.

Action Two: In parallel, prepare for and commence military pressure on the FDLR.

The required approach combines incentives with disincentives: not only giving FDLR members motivation to return home, but making clear that if they do not, they face credible military action. The Congolese army (FARDC) and MONUC should prepare to disarm and demobilise the FDLR. MONUC's approach -- only to support FARDC, which has primary responsibility but is weak and disorganised -- has failed. FARDC is incapable of disarming the FDLR fully but it can and must use its current forces to take stronger action. The partners should launch a combined offensive, including against the headquarters in Masisi, in order to encourage the majority of the FDLR to give up the fight.

However, MONUC must also treat the presence of the FDLR as an imminent threat to the local population and exercise its Chapter VII mandate accordingly. It should conduct sustained, aggressive operations to disrupt the FDLR, with the FARDC to the extent possible, but also, where necessary, on its own, including, as in Ituri, cordon and search operations, and create demilitarised zones as

authorised by Security Council Resolutions 1565 and 1592.⁵⁴ While the risk of retaliation against the civilian population is real, it is time to take action against the ongoing threat the FDLR represents both to that very population and to regional security.

While MONUC should take the lead against the FDLR in the short term, it should also work with donors to reform and strengthen the FARDC so the Congolese can increasingly take over operations. To this end, donors should fulfil the UN's request to equip and supply nine brigades.⁵⁵ The U.S. should follow through on its offer to facilitate military aid to FARDC, in coordination with other army reform efforts.

OBJECTIVE FIVE: FULFILMENT OF MONUC'S MANDATE TO PROTECT CIVILIANS.

Action One: Strengthen MONUC's concept of operations to include the use of preventive force. Crisis Group has been calling for a strengthening of MONUC's mandate to clarify the discrepancies of interpretation between UN headquarters and commanders in the field but there is apparently insufficient political will in the Security Council to take this step. However, the Secretariat's Department of Peacekeeping Operations can and should achieve the same result by issuing a clarification of MONUC's concept of operations that leaves commanders in no doubt that they are expected to use the most robust actions against the FDLR that are feasible, including cordon and search operations and creation of demilitarised zones.

Action Two: Better coordination of civilian and military DDR operations. Recent MONUC operations have revealed a disconnect between the military and civilian components of the mission. While the section responsible for disarmament, demobilisation and repatriation (DDR) of the FDLR has been dealing with the insurgents for four

⁵³ See fn. 26 above for the four categories of crimes of genocide and crimes against humanity under Rwandan law.

⁵⁴ UNSC Resolution 1565 authorised MONUC to use all "necessary means" to carry out its mandated tasks. Resolution 1592 specifically authorised MONUC to "use all necessary means, within its capabilities and in the areas where its armed units are deployed, to deter any attempt at the use of force to disturb the political process and to ensure the protection of civilians under imminent threat of physical violence, from any armed group, foreign or Congolese, in particular the ex-FAR or Interahamwe". The resolution also "stresses that in accordance with its mandate MONUC may use Cordon and Search tactics to prevent attacks on civilians and disrupt the military capability of illegal armed groups that continue to use violence in those areas".

⁵⁵ Some of the nine are intended to be used in Ituri and Katanga as well. The UN estimates it will cost \$200,000 a month to give each brigade the fuel and rations necessary to join MONUC in a combined offensive. Crisis Group interview with MONUC official, Kinshasa, August 2005.

years in South Kivu, it was not involved in or informed of those operations in advance. If FDLR fighters had wished to desert, they would not have known where to go or whom to see, since no coordinated information campaign was conducted.

Action Three: Give MONUC more troops and police. MONUC currently has a troop ceiling of 16,900 soldiers, 600 less than the UN Mission in Sierra Leone (UNAMSIL) had at its peak in a much smaller country. More troops are urgently needed in Kasai and Katanga to prevent violence in the run-up to elections and to prevent millions from losing the opportunity to vote. The Security Council should authorise the additional 2,590 soldiers (an increase in the ceiling to 19,290) the Secretary General has requested.⁵⁶ Its next opportunity to do so will come when it considers renewal of MONUC's mandate at the end of October 2005.⁵⁷

Action Four: The European Union, U.S., and other donors should provide the mission with adequate intelligence and equipment. MONUC has been tasked with a great variety of responsibilities, yet it lacks sufficient resources to carry them out. For example, in order to enforce the arms embargo and detect military movements, MONUC needs greater access to intelligence gathered by permanent members of the Security Council and much better surveillance assets.

Nairobi/Brussels, 19 October 2005

⁵⁶ Special Report of the Secretary General, op. cit., p. 10.

⁵⁷ Security Council Resolution 1628 of 30 September 2005 rolled over MONUC's mandate to 31 October 2005.

APPENDIX A

MAP OF THE DEMOCRATIC REPUBLIC OF THE CONGO



APPENDIX B

THE MEMBERS OF THE TRANSITIONAL GOVERNMENT

NAME OF COMPONENT	BACKGROUND	IMPORTANT LEADERS AND POSITIONS IN THE TRANSITIONAL GOVERNMENT
Ex-Government	President Kabila's faction that controlled 60 per cent of the country during the war. For elections it has formed the PPRD (People's Party for Reconstruction and Democracy) party.	President Joseph Kabila; Vice President Abdoulaye Yerodia; Minister of the Interior Theophile Mbemba; Commander of Air Force General John Numbi; National Security Advisor Guillaume Samba Kaputo
RCD-Goma	The former Rwandan-backed rebels led by Vice President Azarias Ruberwa. During the war, they controlled a third of the country. They are still associated with Rwanda and are unpopular with most Congolese	Vice President Azarias Ruberwa; Commander of the Land Forces General Sylvain Buki; Minister of Defense Adolphe Onusumba; Governor of North Kivu Eugene Serufuli
MLC	The former Ugandan-backed rebel movement based in the northwest and led by Vice President Jean-Pierre Bemba. It is the smallest of the three main belligerents.	Vice President Jean-Pierre Bemba; President of the National Assembly Olivier Kamitatu; Minister of Foreign Affairs Ramazani Baya; Minister of Budget François Mwamba
RCD-ML	The rebel movement was formed by dissidents from the RCD-G in 1999 and initially allied to Uganda	Minister of Regional Cooperation Mbusa Nyamwisi; Vice Minister of Higher Education Jerome Kamate; Commander of the Fourth Military Region, Sindani Kasereka
RCD-National	Another splinter movement from the RCD-G, led by Roger Lumbala, it quickly allied itself to the MLC. It was based in a small area around the gold and diamond mines in Bafwasende and Isiro.	President of the RCD-N Roger Lumbula; Minister of Tourism Jose Engwanda; Commander of the Sixth military region General Widi Mbulu Divioka
Mai-Mai	A coalition of former tribal militias supported by Kabila during the war. This faction has little internal cohesion, and many of its members have been co-opted by other groups.	Commander of the Ninth military region General Padiri Bulenda; Minister of Environment Anselme Enerunga; Minister of Rural Development, Pardonne Kaliba Mulanga
Political Opposition	An alliance of opposition parties, some of which were formed recently and have little popular support. The most important opposition party, the UDPS (Democratic Union for Social Progress), has excluded itself from the transition.	Vice President Zahidi N'Goma; Minister of Justice Kisimba Ngoy; Minister of Mines Ingele Ifoto; Minister of Scientific Research Kamanda wa Kamanda
Civil Society	The representatives of NGOs and various religious groups. Their participation in government will cease with the end of the transition.	President of the Senate Marini Bodho; Minister of Human Rights Marie-Madeleine Kalala; President of the Electoral Commission Abbe Appolinaire Malu Malu

DIVISION OF POWER IN TRANSITIONAL INSTITUTIONS

Ex-Government:	President, one vice president, seven ministers, four vice ministers, 94 deputies, 22 senators, two military regional commanders, two provincial governors
RCD-Goma:	One vice president, seven ministers, four vice ministers, 94 deputies, 22 senators, two military regional commanders, two provincial governors
MLC:	One vice president, seven ministers, four vice ministers, 94 deputies, 22 senators, two military regional commanders, one provincial governor
RCD-ML:	Two ministers, two vice ministers, fifteen deputies, four senators, one military regional commander, one provincial governor
RCD-N:	Two ministers, two vice ministers, five deputies, two senators, one military regional commander, one provincial governor
Mai-Mai:	Two ministers, two vice ministers, ten deputies, four senators, one military regional commander, one provincial governor
Political opposition:	One vice president, seven ministers, four vice ministers, 94 deputies, 22 senators, one provincial governor
Civil society:	Two ministers, three vice ministers, 94 deputies, 22 senators, one provincial governor