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## PULLING BACK FROM THE BRINK IN THE CONGO

### I. OVERVIEW

The crisis provoked by the struggle in late May and early June 2004 for control of Bukavu, the capital of the Democratic Republic of the Congo's strategically sensitive South Kivu province that borders Rwanda, is a stark reminder that the political transition agreed in May 2003 is not synonymous with peace. Instead, it should be seen as another phase of the war that began in 1998, cost the lives of millions, and has never been conclusively ended.<sup>1</sup>

The Congo<sup>2</sup> is in transition from a country ravaged by a major war to what is intended to become a reunified polity legitimised by democratic elections. This is meant to happen through a process outlined in several agreements that were mediated by South Africa and concluded among the Congolese and external belligerents in what was both a civil and an international conflict. However, that process has not yet reached the crucial stage at which all concerned have concluded that the benefits of peace outweigh the illusory gains of further fighting. The political transition mapped out in the Sun City agreement must be pursued with more resolution and more resources if genuine elections are indeed to be held in 2005 and Central Africa is to achieve a degree of stability.

The Bukavu crisis has dramatically shown that peace-building in North and South Kivu remains an urgent priority.<sup>3</sup> The Congo's wars of 1996 and 1998 both started in the Kivus. There will be lasting

peace in the country only if it has a strong foundation there. To a large extent, the intertwined conflicts that are still brewing in these eastern provinces are not different from others in the rest of the country, almost all of which was left destitute and ridden with ethnic antagonisms and communal rivalry over land and natural and mineral resources by 32 years of Joseph Mobutu's repressive and divisive politics. But these rivalries have reached no higher levels of violence than in the Kivus. This is due partly to local characteristics (land scarcity, high population densities) but mainly to the influence of the conflicts in the neighbouring states of Rwanda, Burundi and Uganda.

As many other Congolese provinces, the Kivus are home to communities that straddle international borders. The Kivus' neighbours, however, have all suffered from disastrous civil conflicts and, in the cases of Rwanda (1994) and Burundi (1972), genocide. The fear of extermination and the ideology of genocide, which crossed into the Kivus, give them their potential for extreme violence. Between 8,000 and 12,000 *Forces Démocratiques de Libérations du Rwanda (FDLR)*,<sup>4</sup> Rwandan Hutu rebels, still roam the hills of South Kivu with no significant national or international effort to disarm them.<sup>5</sup> Although

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<sup>1</sup> The present situation results from a series of agreements concluded over the past five years, including: the Lusaka ceasefire agreement 1999, Pretoria and Luanda agreements 2002, and the Sun City agreement April 2003 (Inter-Congolese Dialogue).

<sup>2</sup> The Democratic Republic of the Congo (DRC) is referred to in this briefing as "the Congo" for reasons of familiarity and convenience. It is not to be confused, of course, with the Republic of Congo, with its capital of Brazzaville.

<sup>3</sup> A detailed ICG report on the Kivus is in preparation.

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<sup>4</sup> Democratic Forces for the Liberation of Rwanda, a generic term for the politico-military movement of Rwandan Hutu rebels.

<sup>5</sup> ICG Africa Report N°63, *Rwandan Hutu Rebels in the Congo: A New Approach to Disarmament and Reintegration*, 23 May 2003. The FDLR was entirely formed in the Congo, with strong backing from President Laurent Desiré Kabila, the father of the current president. It gathered in remnants of the ex-FAR (*Forces Armées Rwandaises*), which was the former predominantly Hutu Rwandan army, and the Interahamwe -- the name in Kinyarwanda means "those who pull or work together" -- a militia established by the former Rwandan government. The two shared responsibility for the 1994 genocide. A large majority of the FDLR rank and file fighters, however, are second generation Rwandan Hutus, who were too young to have taken part in the genocide. To considerable international scepticism, the movement has attempted to distance itself from the genocidal

these fighters no longer have the strength to represent a genuine security threat for Rwanda, they offer it both a real incentive and an ideal excuse to remain deeply involved in the political affairs of the two Kivus through the manipulation of frightened Rwandophone communities and periodic threats of military intervention. It is widely acknowledged that Rwanda's governing elite has developed important commercial interests in the Congo that alone may be sufficient to motivate continuing involvement in its internal affairs.

Moreover, it is only in the Kivus that national and regional forces opposed to the current peace process have the opportunity to confront one another and the Kinshasa government and ultimately weaken the transition. Spoilers -- Congolese and non-Congolese alike -- who have nothing to gain from a successful transition concluded by free and fair elections regularly manipulate the acute ethnic and political tensions in the Kivus to contest some of its key components such as the territorial reunification of the country, the transfer of tax revenues to Kinshasa, the disarmament, demobilisation, and reintegration (DDR process<sup>6</sup>) of militias and the creation of a national army under a unified command.

Since the beginning of the transition, dissenting elements of the *Rassemblement Congolais pour la Démocratie* (RCD), a rebel group strongly backed by Rwanda during the civil war, have resisted reunification. The most important of these, RCD-Goma, fears that despite the large gains it made during the inter-Congolese negotiations, it would be the ultimate loser.<sup>7</sup> Simultaneously, anti-RCD extremists in Kinshasa did everything they could to frustrate the former *Armée Nationale Congolaise* (ANC, the RCD's military wing) soldiers and humiliate them, as if they had lost the war. Finally, discontent with the poor performance of the

government of transition has contributed to loss of momentum in the peace process.

At the end of 2003, Rwanda resumed military support to several Kivu militias, generally promoted a rebellious environment in Goma and Bukavu, and thereby gave some of its old allies the belief that they could maintain the status quo. Despite some DDR progress in the past few months, including the voluntary return of a few key Hutu rebel leaders, Kigali has given the impression that the restoration of effective Congolese sovereignty generally or Kinshasa's authority in the Kivus specifically is not in its interest in the present political context.

The crisis is far from over. None of the problems that rocked Bukavu in February 2004 and degenerated into a more direct confrontation in May-June that shook the very foundations of the Congolese peace process have been solved. Goma could easily become the next centre of turmoil, and Bukavu could fall again to the renegades.

The international community and its principal representative, the UN Mission for the Congo (MONUC), have failed to develop a strategy that could radically change the environment of political competition. The agonisingly slow transfer of MONUC military resources to the east -- not yet completed -- has not had the desired stabilising effect as it has not been backed up by the proactive initiative to disarm the rebellious elements that has been awaited for more than a year.

Coming a year after the transition began, the May-June Bukavu crisis was a wake-up call for all parties to the peace process and the international community. Unless peace-building in the Kivus receives new priority and resources, a repetition could destroy the peace process before any elections can be held. The transitional government must demonstrate that it is capable of finding political solutions, while taking the necessary decisions, for example on the law on nationality and amnesty. At the same time, MONUC's shortcomings, which were evident during the crisis, need to be overcome, and it must implement its mandate more assertively.

The international community should put pressure on Rwanda to cease all military involvement in the Congo, whether through its own armed forces or through arming or otherwise encouraging Congolese surrogate forces. Rwanda should recognise that this

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ideology of the ex-FAR and Interahamwe, professing commitment to international humanitarian law and claiming it is opposing an autocratic regime in order to restore democracy, not wipe out an ethnic minority.

<sup>6</sup> ICG has attempted to popularise the simpler term DR to identify all aspects of the post-conflict process of disarmament, demobilisation, reintegration, rehabilitation and repatriation of former combatants. For consistency with what appears to be the developing international consensus, it will henceforth use the term DDR as shorthand for these concepts.

<sup>7</sup> The original RCD split into a number of groups. Only the RCD-Goma faction remains a significant factor in the current situation although the RCD-ML and the RCD-National are also represented in the transitional government.

peace process is the best security pledge it can expect, and accordingly let it proceed.

## II. BACKGROUND OF THE CRISIS

Intense international pressure forced the internal belligerents in the Congo's 1998-2002 war to establish a transitional government in Kinshasa in June 2003.<sup>8</sup> However, the supporters of Joseph Kabila's earlier government and the former factions of the RCD and other armed groups represented in it have little trust in each other and maintain their own military structures under the leaky umbrella of the newly "restructured" national army. The contradictions came to a head in the Bukavu events, revealing the extreme fragility of the political transition and the difficulties in the way of creating a new military.

The prelude was a dispute in February 2004 between the freshly appointed commander of the military region, General Prosper Nyabiolwa, and the governor of the province of South Kivu, Xavier Chiribanya.<sup>9</sup> Following negotiations on the sharing of the military regions between members of the former Kabila government and the RCD-Goma,<sup>10</sup> Nyabiolwa obtained the command of South Kivu, which had until then been under RCD-Goma control. He accused Chiribanya of fomenting a new rebellion and stockpiling

weapons.<sup>11</sup> On 3 February, fighting broke out over those weapons.

MONUC intervened and organised meetings between the military and the governor, which reduced tensions. The transitional government sent an inquiry commission made up of the ministers of internal affairs, defence and justice. After receiving the commission's report, the Council of Ministers suspended Chiribanya and the head of his security services. MONUC and the military persuaded him to accept this judgement.

On 24 February, however, fighting resumed in Bukavu between the forces of General Nyabiolwa and those of his ex-RCD-Goma deputy, Colonel Jules Mutebutsi.<sup>12</sup> The reason was the arrest three days earlier of another ex-RCD-Goma officer, Major Joseph Kasongo,<sup>13</sup> the military commander of Bukavu city. Following these events, the ex-RCD-Goma partisans threatened to withdraw from transitional government institutions, arguing that President Kabila was acting unilaterally. Under pressure from MONUC, Kasongo was freed and sent back to Bukavu the following day. Subsequently, however, Nyabiolwa was relieved of his duties and replaced by General Felix Mbuza Mabe, a government supporter during the civil war. Mutebusi, was also relieved of his duties, but refused to return to Kinshasa and remained in Bukavu with his personal guard.

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<sup>8</sup> The very broad transitional government includes, in addition to representatives from the armed groups such as several RCD factions, political parties opposed to the previous Joseph Kabila-led government (the "political opposition"). The Congo's civil society movement also plays a key role in the transition process.

<sup>9</sup> Xavier Chiribanya, a member of the RCD-Goma, was appointed governor of South Kivu in early 2003 on Kigali's insistence. He had previously been sentenced to death in absentia by President Joseph Kabila's earlier government for responsibility in the assassination of former president Laurent Desiré Kabila, Joseph Kabila's father. Chiribanya is considered part of the Anselme Masasu group, named after the leader of one of the four political parties/militias that supported the elder Kabila's seizure of power in 1996-1997. After the elder Kabila was assassinated in his palace on 17 January 2001, Masasu supporters were under immediate suspicion.

<sup>10</sup> CIAT (*le Comité de Suivi de la Transition*) decided. RCD-Goma had refused to give up control of the province of South Kivu.

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<sup>11</sup> In the absence of a reaction from the president to demands for pardon, or a general amnesty law, the Masasu group, led by the governor, began to study the possibility of a new rebellion. A new organisation, *Front de Libération de l'Est du Congo* (FLEC, Liberation Front for the Eastern Congo) organised on 7 January 2004 a series of meetings in Bukavu with a hard-line group from North Kivu, led by General Laurent Nkunda, to discuss that possibility.

<sup>12</sup> Colonel Jules Mutebutsi is the former commander of the Uvira Brigade of the ANC -- the army branch of the RCD-Goma. He was part of the offensive in 2002 to put down the Banyamulenge insurrection led by Patrick Masunzu against the Rwandan occupation. He himself is a Munyamulenge. His troops occupy the Banyamulenge area of Bukavu, which he claims to protect. The Banyamulenge are the Congolese Tutsi community in South Kivu.

<sup>13</sup> Joseph Kasongo is another member of the Masasu group who was sentenced to death by the previous government in Kinshasa in connection with the assassination of the elder Kabila. His arrest was ordered by the president without consulting with the chief of the general staff.

Bukavu was, therefore, controlled by two sets of troops, one supporting the pro-government commander of the military region, the other a colonel who was theoretically an officer of the new national army but in fact a rebel. This demonstrated that the integration of the transitional government's army in South Kivu was highly problematic. The transitional government's inability to find a political solution to this division led directly to the crisis of May-June 2004.

From the initial establishment of the transitional institutions, the divisions inside RCD-Goma have resurfaced more distinctly, weakening the entire government. Those divisions centre on differences between one-time rebels who have accepted the transitional government and their former colleagues in the east who feel that the positions they acquired during the years of rebellion are threatened. It is also apparent that elements within President Kabila's camp oppose the transition and want to provoke a fight and dismantle it. Their ultimate objective is to put an end to the so-called "1+4" power-sharing agreement<sup>14</sup> and restore their previous powers and privileges.

To this simmering internal dispute, was added, in mid-April, the intensified movements of Rwandan troops, which Kigali justified as a response to an alleged attack launched by FDLR forces based in the Kivus. These movements ended only when MONUC declared that it had identified the presence of Rwandan army elements on Congolese territory in North Kivu. Following this declaration, the transitional government accused Rwanda of attempting a new invasion under the pretext of countering the ex-FAR and Interahamwe, who had carried out the 1994 genocide. Tension rose until the Congolese, Rwandan and Ugandan foreign ministers met in Washington on 12 May. Their talks calmed the situation but did not address the fundamental problems between Rwanda and the Congo.

The political relationship between these two countries is meant to be based on the Pretoria agreement of July 2002, which called for

disarmament and repatriation of the ex-FAR and Interahamwe and the withdrawal of Rwandan troops. At the end of 2002, the Kinshasa government asserted it had cut its ties with FDLR, which includes the great majority of the armed groups in the country that are essentially Rwandan but hostile to its current government. However, the DDR process for these groups -- substantially entrusted to MONUC because most are on territory beyond Kinshasa's effective reach -- has had few results.<sup>15</sup> MONUC only supports voluntary disarmament, and FDLR will not disarm without military pressure.

FDLR remains an armed force, which is now fully concentrated in the Kivus, though it seems to realise that it has no chance for a successful invasion of a Rwanda that has a much superior army.<sup>16</sup> Its strategy seems to be rather to hold fast and wait upon events. FDLR suffered a blow when its chief of staff surrendered at the end of 2003. A new leadership has had to reorganise the movement and take control of the troops more inclined to accept DDR. FDLR is less a current threat to Rwanda than it is to the peace process,<sup>17</sup> in the sense that it blocks all normalisation of relations between Congo and Rwanda.

### **III. EVENTS ON THE GROUND**

#### **A. THE FALL OF BUKAVU**

Fighting broke out in Bukavu on 26 May 2004 between forces loyal to General Mabe, the new regional military commander in the city, and those of Colonel Mutebutsi, due to the arrest of one of the

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<sup>15</sup> MONUC's latest figures indicate that it has repatriated 3,336 former Rwandan combatants, most of whom it says have shown up for repatriation without any arms. MONUC says it has disarmed very few combatants. Therefore, an estimated 8,000 to 12,000 armed FDLR fighters remain in eastern Congo.

<sup>16</sup> FDLR's attempts to infiltrate fighters into Rwanda in 2001 and 2002 were soundly defeated. It is a measure of Rwanda's confidence in its military that thousands of those who were infiltrated and captured were sent to re-education camps and then released to return to their communities in Rwanda. During the active fighting inside the Congo, FDLR and other Hutu combatants captured by the Rwandan army were recycled into Kigali's war effort there after a brief training and re-education procedure.

<sup>17</sup> The FDLR have also committed many acts of serious violence against Congolese civilians.

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<sup>14</sup> The term "1+4" refers to the political power-sharing formula under which the transitional government has one president (Joseph Kabila) and four vice-presidents, each from a different party.

latter's lieutenants by transitional government troops, the *Forces Armées de la République Démocratique du Congo* (FARDC).<sup>18</sup> This occurred simultaneously with the appointment by the transition government of the new governor of South Kivu. That appointment had been the central object of negotiations within the transitional government. RCD-Goma, whose insistence on keeping control of South Kivu was directly related to its need to get positions for its members in the east or risk losing them, came out on the short end of the power struggle.

Essentially, the May-June events, therefore, were a contest for control of the province between the transitional government and the elements of RCD-Goma supported by Rwanda. These rebellious elements have no interest in a transition based on the reconstruction of a unitary state. They aspire to an immediate federalism that would give them security through political and economic control of the Kivus. The two provinces would then become satellites of Rwanda, which considers the economic and political control of these regions to be necessary for its own stability and long-term development.

Colonel Mutebutsi received help from General Laurent Nkunda and the several thousand troops from North Kivu he controls. Both men were officers in the ANC, which is meant to become part of a unified Congolese army under the global ceasefire agreement. Nkunda used the alleged threats to the Banyamulenge in the province as justification for his involvement. That intervention and the claim that the Banyamulenge community risked genocide were seen by the transitional government and many Congolese as proof that Rwanda was behind the new instability.<sup>19</sup>

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<sup>18</sup> FARDC attempted to take over the Banyamulenge area of Nguba then under the control of Colonel Mutebutsi.

<sup>19</sup> General Laurent Nkunda was a member of the Rwanda Patriotic Army (RPA) before joining the RCD-Goma. He is not from the Banyamulenge community -- the Congolese Tutsi community in South Kivu -- but rather is a Congolese Tutsi from North Kivu. Rwanda invoked protection of the Banyamulenge as justification for its invasions of the Congo in 1996 and 1998. That claim was undermined in 2002 when it violently quelled an insurgency among Congolese Tutsi who sought to distance themselves from its abusive occupation. A measure of the complexity of the local context is the reported participation of Commander Patrick Masunzu, who led the 2002 Banyamulenge insurgency against Rwanda's occupation, on the side of loyalist forces during the recent events in Bukavu.

The two commanders held Bukavu from 2 June to 9 June,<sup>20</sup> withdrawing only after Belgian foreign minister Louis Michel raised the possibility of introducing a European Union-led rapid intervention force similar to the three-month Operation Artemis that had helped stabilise the Ituri region in the Congo's northeast in 2003.<sup>21</sup>

Several hundred people, both civilians and fighters, were killed in Bukavu and in Kamanyola further south,<sup>22</sup> and more than 30,000 Congolese (including about 10,000 Banyamulenge from South Kivu, who are related ethnically to the Tutsis in Rwanda), fled into Burundi and Rwanda. Mutebutsi eventually withdrew to Rwanda where he and his men were disarmed by the authorities. Nkunda pulled his troops back to the border between the two Kivus, fuelling fears of further fighting in the north.<sup>23</sup>

The fall of Bukavu was a blow to the credibility not only of the transitional government but also of MONUC, whose ability to support the transition was thrown into doubt after it was unable or unwilling to stop the capture of the city by the mutineers and the subsequent violence. Demonstrators in Kinshasa vented their fury at the UN peacekeepers and the government during protests that resulted in the deaths of several, shot by MONUC forces protecting their warehouses. Violent demonstrations also broke out in several other cities.

MONUC's mandate is limited in this respect to protection of the civilian population according to the means at its disposal.<sup>24</sup> It viewed those terms as not allowing it to oppose the attack on the city.

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<sup>20</sup> See below; MONUC attempted to negotiate a ceasefire between the belligerents but it was not respected.

<sup>21</sup> Minister Michel made an emergency visit to the Great Lakes region from 5 to 8 June 2004 and met with Presidents Kabila, Kagame and Museveni.

<sup>22</sup> According to MONUC, the majority of civilians were killed during the occupation of the city by the dissident troops.

<sup>23</sup> "D.R. Congo: War Crimes in Bukavu", Human Rights Watch Briefing Paper, June 2004. The report concludes that no genocide was committed in Bukavu.

<sup>24</sup> UN Security Council Resolution 1493, 28 July 2003, Articles 25 and 26: "Authorizes MONUC to take the necessary measures in the areas of deployment of its armed units, and as it deems it within its capabilities:...to protect civilians and humanitarian workers under imminent threat of physical violence and to contribute to the improvement of the security conditions in which humanitarian assistance is provided....Authorizes MONUC to use all necessary means to fulfill its mandate in the Ituri district and, as it deems it within its capabilities, in North and South Kivu".

MONUC did succeed in protecting several hundred civilians and moving them to safety at one stage of the fighting but it was unable to protect many others or to prevent the plundering that occurred during the occupation of the city. Its recent deployment to the east<sup>25</sup> had created expectations among the population that were probably beyond its capacity to fulfil. But MONUC's behaviour appeared timid and somewhat naive. It did not risk opposing Nkunda's troops on the ground although it had opposed the entry of Mabe the day before, allegedly to avoid a bloodbath. Less than six hours after it declared a negotiated ceasefire, Nkunda marched into the town.

As it turned out, MONUC might have been better advised to have taken the side of the loyalist FARDC from the beginning. Its mandate, after all, is to support the transition and, if necessary, the transitional government's legitimate forces, the FARDC. Instead it negotiated with insurgents, who broke the deal and then proceeded to kill, rape, and loot without serious opposition.

## **B. TRANSITION UNDER THREAT**

On the night of 10-11 June 2004, a coup attempt against Kabila, the second in 2004, was reportedly staged by a member of his presidential guard. A week later Kabila fired the army chief of staff and, more importantly, the head of his military household (*maison militaire*) -- a parallel body set up by associates of his assassinated father -- as well as the head of presidential security.

The exact relationship between the events in Bukavu and those in the capital is unclear but it appears likely that elements from the government of Kabila senior (1997-2001), fearful for their positions in the new order, sought to use the uncertainties produced by the fighting in the east to strike a blow against a transition process from which they have increasingly been excluded. Chaos in the capital and the insurgency in the east would have been used to declare a permanent state of emergency and suspend the institutions of transition indefinitely.

President Kabila's subsequent decision to redeploy thousands of FARDC troops to the east, allegedly to halt insurgency and confront a possible

Rwandan invasion, was less a military move than a political initiative, an attempt to seize the opportunity presented by the unsettled situation to establish his power in the eastern part of the country while he took parallel diplomatic steps to ease the immediate friction with Kigali. On 23 June, he acknowledged that war was not in his country's interest and that he believed Rwanda also wanted peace.<sup>26</sup>

Kabila's efforts to restore the central government's effective control over the entire nation are both necessary and legitimate, but if they are to succeed, they, as well as the general process of national reunification, must proceed in a transparent manner that respects the peace agreements and upholds the principles of the transition.

The war scare over Bukavu also underscored the failure to disarm and repatriate the Rwandan Hutu rebels. Pursuant to the Pretoria agreement, the Kinshasa government was to disarm FDLR forces on the territory under its control while MONUC did the same in the Kivus, but the process was to proceed on a voluntary basis.<sup>27</sup> A new approach is needed since the political transition and peace process cannot succeed while the FDLR remains under arms.

## **IV. THE WAY AHEAD**

### **A. THE POLITICAL PROCESS**

Both Kabila and the international community need to concentrate now on the political process. This is the only way the president can achieve the legitimacy he seeks and the transition from war to peace can be assured. To protect that political process and make it widely acceptable within the country, legislation must be drafted, debated and enacted that defines Congolese citizenship in a manner that reassures those in the Kivus whose citizenship was withdrawn a decade ago and who remain identified, rightly or wrongly, with Rwanda and its policies.<sup>28</sup> The

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<sup>25</sup> Since February 2004, MONUC has been in the process of redeploying a brigade to the Kivus.

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<sup>26</sup> Interview with President Kabila in Kinshasa, Reuters and *Financial Times*.

<sup>27</sup> ICG Report, *Rwandan Hutu Rebels in the Congo*, op. cit.

<sup>28</sup> ICG Africa Report N°56, *The Kivus: The Forgotten Crucible of the Congo Conflict*, 24 January 2003. The issue of Congolese citizenship is extremely sensitive. Congolese of Rwandan ancestry have been willing to assert their

amnesty law for political crimes is also a key, and needs to be drafted in parallel with a credible new investigation of former president Laurent Desiré Kabila's 2001 assassination.

In general, the Bukavu incident demonstrates the need for accountability for past abuses and an end to impunity for war crimes in the Congo as an imperative for a stable national transition. One reason Tutsi Congolese commanders and soldiers are resisting integration into the national army is memory of the 1998 massacre of hundreds of young military recruits who were members of their ethnic group (Banyamulenge) in Kamina, Kinshasa and Kisangani by the elder Kabila's security agencies in retaliation for Rwanda's invasion. Human Rights Watch has identified General Nkunda as the commanding officer who led his soldiers in the killing of civilians in Kisangani in June 2002.<sup>29</sup> At the beginning of the transition, RCD-Goma nominated Nkunda to become commander-in-chief of the national army but he refused, in part for fear of being prosecuted for those killings.

The transitional government has already authorised the International Criminal Court (ICC) to inquire into human rights abuses throughout the country, a process that the ICC has begun with respect to the Ituri region.<sup>30</sup> That court's statute limits it to exercising jurisdiction only over cases arising after 1 July 2002, when it came into force, and there are practical reasons for starting the effort to establish accountability with the relatively discrete and recent events in Ituri. It would also be understandable if neither the transitional government nor the ICC wished to move immediately on criminal investigations against individuals like Nkunda who

are still significant players whose actions need to be influenced.

It would be important, however, for both the transitional government and the court to indicate that the time is coming when national or ICC investigations will be opened into the conduct of the insurgents and loyalist forces not only during the Bukavu events but more extensively with respect to the events of the war. One purpose of such an indication would be to encourage active players like Nkunda to support the peace process in the expectation that their cooperation would be taken into account at such time as a judicial accounting was under way.

Security sector reform is also vital for achieving FDLR disarmament and stability in the Kivus. This involves moving seriously and rapidly to develop an effective military leadership that can take charge of integrating the disparate militia, former rebels and government soldiers into a new national army. To this end, the Katangan-dominated military household in President Kabila's office should be abolished. It is in reality a parallel command staff that favours the status quo and is inconsistent with the principle of army integration. Implementation of legislation on the reorganisation and operations of the new army as well as creation of a clear chain of command are also required, as is establishment of a civilian-led High Council of Defence to resolve disputes during the integration process.<sup>31</sup> It would be helpful for donors to develop a mechanism to coordinate their various bilateral efforts on security sector reform.

## **B. MONUC**

MONUC has a total strength of 10,800, mainly deployed in Ituri and the Kivus. While it planned to spread 3,500 troops (the Brigade of the Kivus) throughout the Kivus, it seems to have overestimated its capacities to manage a crisis the gravity of which it apparently did not fully foresee despite the February prelude. When the test came in May-June, it had only 600 soldiers in Bukavu, which it considered too few to control events. General Nkunda's force of around 4,000 was larger and well armed.

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entitlement to citizenship by force; Congolese nationalists have accused them of loyalty to Rwanda even as it invaded the Congo. While the legal debate is intense, local communities largely reconciled with the insurgent Banyamulenge during the 2002 events and now express willingness to compromise on the issue of their nationality.

<sup>29</sup> Human Rights Watch, "War Crimes in Kisangani", August 2002.

<sup>30</sup> On 23 June 2004, Luis Moreno-Ocampo, Chief Prosecutor of the International Criminal Court, formally announced that he would open the ICC's first investigation in the Congo, following the DRC's referral of the situation in the country to the court in March 2004. Available at [www.icc-cpi.int/newspoint/pressreleases/26.html](http://www.icc-cpi.int/newspoint/pressreleases/26.html). The Office of the Prosecutor has been analysing the situation in the Congo since July 2003 with an initial focus on crimes committed in the Ituri region.

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<sup>31</sup> This is meant to be a political control body, led by the president. See the transitional constitution of April 2004, chapter 4, section III.

Three conclusions appear to suggest themselves from those events: MONUC is stretched thin and needs more troops; it also needs the capacity to react more quickly with what it has in the face of an imminent threat; and it needs more will to act forcefully and even proactively to implement its Chapter VII UN Charter mandate and support the transition and, if necessary, the armed forces of the transitional government.

The Security Council is due to review MONUC's mandate, which is up for renewal at the end of July 2004. The immediate requirement is to enable the mission to carry out the terms of its current mandate, which include in addition to DDR responsibilities, monitoring the movement of armed groups in North and South Kivu and carrying out round-the-clock surveillance of the Congo-Rwanda border for the presence of foreign troops and the illegal transport of weapons and equipment.<sup>32</sup> The Bukavu events indicate the importance of this latter task. Nkunda's troops were heavily armed, which implies that they had received outside support, almost certainly from across the Rwandan border. Indeed, it is essential that MONUC radically improve its capacity for monitoring movements of weapons across the Congo's borders not only to curtail such movements but also for early-warning of possible violence.

To patrol sensitive points along the borders, MONUC should be capable of deploying armed troops on land and in the air. It needs to pay particular attention to Idjwi Island in Lake Kivu

and undertake both air and water patrols of the Congolese part of the lake, night and day, to prevent the arming of rebel groups in eastern Congo. To be effective, it also has to maintain day and night surveillance of the key eastern airports, at Goma, Beni, Bukavu, Kindu and Kisangani, and surveillance at North Kivu flashpoints like Kanyabayonga and Bunagana.

So that MONUC can react more efficiently when faced with a crisis == and indeed can more readily identify an emergency in its early stages -- it should establish a permanent crisis cell in the office of Ambassador William Swing, the Secretary General's Special Representative. MONUC might also consider taking the initiative to propose organisation of a Kivu pacification commission, which could involve the government of transition, the different Mai Mai leaders,<sup>33</sup> civil society representatives, traditional leaders and all other armed groups. Such a body might usefully draw up a roadmap for the sustained pacification of the Kivus.

The Security Council should provide MONUC with the necessary additional manpower and material. An additional brigade (4,000 to 5,000 troops) would seem a minimum.<sup>34</sup> At least as important as numbers would be the composition of the reinforcements. Not all national components are equally suited to the characteristics of operation in the Congolese environment.<sup>35</sup> A portion of the additional troops should have the training and equipment to operate as a rapid deployment force. The quick movement of troops across the expanse of eastern Congo requires transport assets that MONUC presently lacks.

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<sup>32</sup> UN Security Council Resolution 1493, 28 July 2003, Article 19: "Requests the Secretary General to deploy MONUC military observers in North and South Kivu and in Ituri and to report to the Security Council regularly on the position of the movements and armed groups and on information concerning arms supply and the presence of foreign military, especially the use of landing strips in that region". UN Security Council Resolution 1553, 12 March 2004, expands on this as follows: "...3. Requests MONUC to continue to use all means, within its capabilities, to carry out the tasks outlined in paragraph 19 of resolution 1493, and in particular to inspect, without notice as it deems it necessary, 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; 4. Authorizes MONUC to seize or collect, as appropriate, the arms and any related materiel whose presence in the territory of the Democratic Republic of the Congo violates the measures imposed by paragraph 20 of resolution 1493, and to dispose of such arms and related materiel as appropriate;..."

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<sup>33</sup> The Mai Mai are traditional ethnic militias which operate mostly in the Kivus. See ICG Report, *The Kivus*, op. cit.

<sup>34</sup> While an additional brigade would be a minimum, a doubling of the current force level would be needed to undertake all the necessary and likely tasks concurrently, including continuance of current protection, establishment of units with the requisite mobility and surveillance assets to undertake border control operations, and creation of a strong operational reserve (rapid reaction force) for offensive operations in the various sectors. Some special/reconnaissance ground forces (a key element of the Artemis mission in Ituri in 2003) would help fill many gaps.

<sup>35</sup> ICG interview with a Belgian official, Brussels, 1 July 2004.



Even before the Council completes its review, however, MONUC should undertake its own candid examination of lessons from the Bukavu experience. One conclusion from such an internal examination might well be that it needs to be better prepared to act at the limit of its mandate, at least in crisis situations when both many lives and the peace process can be at stake. This involves the conception the mission has of itself, as well as the tasking, training, composition and commitment of its various contingents.<sup>36</sup>

The Security Council should in turn consider giving MONUC further guidance with respect to action in such crisis situations, whether by expressing itself generally during the process of reviewing and renewing the mandate, or more explicitly by revising the terms of that mandate. The bottom line is that MONUC must be more capable, and it must be more willing -- and more confident that this is the desire of the international community -- not only to protect civilians and people working for humanitarian and non-governmental organisations but also, more generally, to support the security component of the peace process.

### **C. DIPLOMATIC MEASURES**

Summoned by Nigeria's President Olusegun Obasanjo in his role as chairman of the new Peace and Security Council of the African Union, President Kabila and President Paul Kagame of Rwanda met in Abuja on 25 June 2004 to lower the temperature.<sup>37</sup> After several hours of talks behind closed doors at the airport, they emerged to say they had agreed to set up a "joint verification mechanism" to investigate claims and counterclaims stemming from the fighting over Bukavu and subsequent deployment of government troops to eastern Congo. They also

agreed to implement fully the terms of the 2002 Pretoria agreement that concern the complete withdrawal of Rwandan forces from the Congo and disarming of the predominantly Rwandan Hutu FDLR. While it is heartening that both leaders have renewed their commitment to the Pretoria principles, this expression of goodwill alone will not be sufficient.

To deal with the problem more fundamentally, it will be necessary to review the Pretoria agreement. Rwanda has used the presence of ex-FAR and Interahamwe in the Congo as a pretext for invading that country twice. The FDLR issue will not be resolved simply by demanding that the transitional government and MONUC disarm that group. Rwanda had exclusive and total military control over the eastern half of the Congo between 1996 and 2002 and failed to neutralise and repatriate all its nationals. It is not fully in the power of the transitional government and MONUC to accomplish this now.<sup>38</sup>

Rwanda needs to assist by starting informal negotiations with the FDLR leadership concerning disarmament and by opening up the domestic political scene to make voluntary repatriation more attractive. Simultaneously, the Congolese transitional government and MONUC should attempt to contain FDLR and prevent any infiltration across the border.

Congolese security concerns over Rwanda's military, political and economic ambitions in the Kivus must also be addressed. Otherwise, hardliners in Kinshasa desperate to hold on to their privileges will take heart in their belief that they can put an end to the transition. Were they to succeed in that, it would plunge the Congo into a new war and probably lead to permanent partition. All the militias created by Rwanda before its army withdrew from the Congo must be disbanded, therefore, and MONUC should systematically

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<sup>36</sup> It involves also the problem of the civil-military bifurcation within the UN structure, organisational deficiencies of the UN in management of military operations, as well as "philosophical" issues as to whether UN peacekeepers should involve themselves in offensive military operations with the intention of killing people.

<sup>37</sup> Chris Mullin, Minister for Africa in the British Foreign Office, and U.S. Deputy Assistant Secretary of State for African Affairs Donald Yamamoto were in Kinshasa and Kigali from 22 to 24 June 2004. Their diplomatic initiative put useful pressure on the Rwandan and Congolese governments.

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<sup>38</sup> Rwanda pursued and killed the ex-FAR and Interahamwe aggressively between December 1996 and March 1997. It was accused by many NGOs of committing human rights abuses during this campaign and subsequently acted with more restraint. Rwanda also has made serious efforts to repatriate those of its nationals in the Congo who want to return (see fn. 16 above). The point is that while the constraints faced by the transitional government are not identical with those that limited Rwanda's own efforts, the FDLR problem can no more be solved instantly and unilaterally by the Congo and MONUC today than it could be over six years by Rwanda.

verify that it retains no military presence in the country.

The U.S., British, French, Belgian and South African governments should caution not only Rwanda but also Uganda to halt immediately all supplies of weapons and ammunition to their respective proxies in the Kivus and state that any indication such assistance was continuing would cause them to review their current aid to that government.<sup>39</sup>

**Kinshasa/Nairobi/Brussels, 7 July 2004**

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<sup>39</sup> On the rivalry between Rwanda and Uganda for influence in the Kivus, see ICG Report, *The Kivus*, op. cit.

