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The Congo: Solving the FDLR Problem Once and for All

I. OVERVIEW

The continued existence in the Democratic Republic of the Congo of 8,000 to 10,000 Hutu rebels with links to the 1994 genocide in their home country, Rwanda, is a key source of regional instability. Though too weak to imperil Rwanda's government, and though many of its members are not themselves *genocidaires,* the FDLR (*Forces Démocratiques de Libération du Rwanda*) gives Kigali justification for continued interference in the Congo and threats to invade. It remains a menace to Congolese and Rwandan civilians and a potential tool with which hardliners in Kinshasa could sabotage the Congo's fragile peace process. New urgency is required from the Transitional Government in Kinshasa, Rwanda and the wider international community alike to solve the FDLR problem once and for all -- non-violently if at all possible, but by military force (by the new Congolese army, with international support) if necessary.

On 31 March 2005 in Rome, representatives of the FDLR announced the movement was willing to cease military action against Rwanda and return home. This declaration followed negotiations with representatives of Congolese President Kabila, sponsored by the Community of Sant'Egidio, and appeared to present an opportunity to remove one of the main obstacles to peace and security in the Great Lakes. In the same declaration, the FDLR denounced the Rwandan genocide and committed to working with the instruments of international justice. More concretely, it stated that, provided it was assured of unspecified "measures of accompaniment", it would transform its struggle from a military to a political one; voluntarily demobilise and repatriate its troops to Rwanda; and seek the repatriation of all Rwandan refugees. The FDLR and the Congolese Transitional Government issued a timetable that envisaged demobilisation would begin by early May 2005 and repatriation would be completed by the end of June.

There are serious reasons to doubt matters will go so smoothly. The Rwandan government, which was not at the Rome meeting, has always refused political negotiations with a group it, not unreasonably, considers to be criminal. FDLR leaders, who have had little incentive to go back to a country where some face imprisonment and others would lose status and assets, have in the past made return dependent on unrealistic conditions including opportunity for their movement to operate politically and for an Inter-Rwandan Dialogue between the ruling party in Kigali, the Rwandan Patriotic Front (RPF), and the opposition in exile. The Rome Declaration, which cited no conditions, looks like a step forward but the reference to unspecified "measures of accompaniment" and subsequent statements suggest troublesome conditions are likely to be forthcoming.

If peaceful avenues for disarming the FDLR are exhausted, the only solution left will be a military one. The UN Mission in the Congo (MONUC) will not undertake this task; the new Congolese army, which would ultimately have to do the job with UN and other international help in logistics and training, is not yet fully ready but it could make a beginning. While this would likely result in more displacement and deaths of innocent civilians, at least in the short run, letting the problem continue to fester is not an option: it could well provoke another crisis and an outbreak of more general fighting in the region. Much as he did in late 2004, Rwandan President Paul Kagame has recently renewed threats to invade the Congo again, and tensions in both countries have increased substantially.

To enhance the prospect of a non-violent solution, there are a number of steps that each of the relevant actors should take.

The Congolese Transitional Government should:

- pressure the FDLR to refrain from setting political conditions for a return to Rwanda and to follow through on its Rome Declaration commitments, including the repatriation timetable; and
- make plans to begin to use force to compel the FDLR to demobilise if diplomatic efforts fail.

The Rwandan government should seek to split more moderate FDLR commanders off from hardliners by:

- holding non-political, technical discussions with FDLR leaders about return modalities;
- providing monetary and other incentives for return, including an offer to integrate eligible commanders into its army; and
- identifying which commanders are, and which are not, sought by Rwandan courts for crimes of

genocide and accepting an option of third-country asylum for those not sought for serious crimes by its own courts or the International Criminal Tribunal on Rwanda in Arusha.

MONUC should:

- prepare to provide logistical support to the Congolese army in forceful disarmament of the FDLR should that prove necessary.

The African Union should:

- give active political support to efforts to achieve peaceful disarmament of the FDLR and some substance to its declared intention to establish a force to assist in forceful disarmament should that prove necessary; and
- support efforts to expand the international community's role in enhancing the capacity of the Congolese forces.

The international donor community, including the international financial institutions, should:

- more closely condition its aid -- on which both the Congolese Transitional Government and the Rwandan government are heavily dependent -- to concrete measures to advance the Congo peace process, including a definitive solution to the FDLR problem.

II. THE CHANGING ENVIRONMENT

A. DEVELOPMENTS WITHIN THE FDLR

The Rwandan Hutu rebels, currently assembled under the FDLR label, are drawn from several sources: remnants of the forces that took part in the 1994 genocide and fled into the neighbouring Congo after they lost the civil war that year, *Forces Armées Rwandaises*, who are known as ex-FAR, and Interahamwe militia; other ex-FAR who did not participate in the 1994 genocide; and -- the majority -- post-genocide recruits, mostly attracted from the refugee camps in eastern Congo and Tanzania between 1994 and 1996.[1]

Invoking a security threat, the new Rwandan government in 1996 invaded the Congo (then called Zaire), dispersed the camps for the predominantly Hutu refugees along the border, and pursued remnants of the ex-FAR and Interahamwe across the country. That campaign precipitated the collapse of the regime of President Mobutu and elevated the long-time rebel Laurent Kabila unexpectedly to power in Kinshasa. It was also marked by massacres of predominantly Hutu refugees by the Rwandan army, which was a consequence, in part at least, of the ex-FAR and Interahamwe tactic of using those refugees and Congolese civilians as human shields and the refugee camps as sanctuaries and recruiting bases. When Kabila attempted in 1998 to gain independence from his Rwandan (and Ugandan) backers, they went to war against him and transformed their military presence into occupation of large swaths of the eastern half of the country. Kabila responded by taking thousands of ex-FAR and Interahamwe into his armed forces, where they renamed themselves the Rwandan Liberation Army (*Armée de Libération du Rwanda*, AliR). This consisted of two branches, one fully integrated in the Congolese army and used in the frontline, the other fighting a guerrilla war in the east against the Rwandan army and the ANC (*Armée Nationale Congolaise*), the armed wing of Rwanda's local allies, the RCD-G (*Rassemblement Congolais pour la Démocratie-Goma*).

Today's FDLR was formed in 2000 from the two branches of AliR. It set up a political representation in Europe, led by Dr Ignace Murwanashyaka, and renamed its armed wing in the Congo *FDLR-Forces Combattantes Abacunguzi* (FOCA), led by General Paul Rwarakabije. Yielding to international pressure, President Joseph Kabila, who the previous year had succeeded his assassinated father, formally outlawed the FDLR in 2002. Some senior officers were arrested in Kinshasa, while 1,900 FDLR troops were restricted to an army base in Kamina. The Congolese army attacked those troops in late 2002 after they refused voluntary demobilisation, forcefully repatriating 359 combatants and dispersing the rest into the forest.

Under this pressure, the remnants of the western branch of the FDLR moved eastwards to link up with their comrades in the Kivus in 2003. The fusion created deep tensions. Colonel Sylvestre Mudacumura, the leader of the western forces, accused Rwarakabije of mismanaging the eastern insurgency and blamed him for the failed 2001 offensive in northwestern Rwanda. Code-named *Oracle du Seigneur* (Operation Lord's Oracle), that offensive, involving 5,000 combatants, was the FDLR's last significant attack on Rwanda and proved a fiasco --

[1] The FDLR is organised into five brigades, each of 1,200 to 1,500 soldiers, and several reinforced reserve battalions. These figures represent a mean of estimates that vary depending upon who is asked. For more on FDLR origins, see Crisis Group Africa Report N°63, *Rwandan Rebels in the Congo: A New Approach to Disarmament and Reintegration*, 23 May 2003, and Crisis Group Africa Report N°38, *Disarmament In The Congo: Jump-Starting DDRRR To Prevent Further War*, 14 Dec 2001.

1,000 fighters killed, 1,000 captured -- from which the movement has never recovered.[2] Leadership styles also conflicted; Mudacumura was in President Habyarimana's presidential guard in 1994 and has been implicated in the genocide, Rwarakabije was a moderate *gendarmerie* officer.

Rwanda exploited these internal tensions and in November 2003 brokered the desertion of General Rwarakabije and four other top FDLR officers, who were then incorporated into its army. This triggered further desertions of senior officers and soldiers, who followed their former commander back home.

While the FDLR long nurtured the hope of launching another insurgency inside Rwanda, it has scaled back its aims. The current strategy is to sting Rwanda sufficiently to provoke it into another war in the Congo. With this objective, in 2004 it launched *Operation La Fronde* (Operation Slingshot), infiltrating small units into southern and northern Rwanda[3] to attack infrastructure and civilians.

According to Kigali, the FDLR conducted eleven armed incursions during the year, eight in the northwest and three in the south. International observers have confirmed at least three of these.[4] All were very small, never more than 100 troops or causing more than a half-dozen casualties. The Congolese response was weak. Despite declaring the FDLR illegal two years earlier, Kabila has hesitated to take it on militarily. Some of his staff retain ties to the movement, especially General John Numbi,[5] who organised flights to re-supply the FDLR in 2001 and 2002. At least as late as November 2004, FDLR representatives were in Kinshasa and in touch with members of the international community, although obviously concerned about arrest.[6]

While the new national Congolese army began military operations against the FDLR in South Kivu in April 2004, it did not sustain them and finally halted them when a mutiny broke out in Bukavu in May. In November it launched a new operation with minimal MONUC support but its objectives were never clear; the commander said he had not received orders to attack and his forces were still in the process of negotiating with the militia.[7] At the end of 2004 in South Kivu, isolated skirmishes between army and FDLR alternated with friendly discussion and even joint roadblocks and tax collection points. Several Maï-Maï groups in South and North Kivu[8] are guilty of cohabitation and even joint operations with the FDLR.[9]

Nevertheless, the FDLR has been severely weakened since Kinshasa cut off its supplies in 2002. It has sufficient light weapons but ammunition is low, and it must buy provisions from local Maï-Maï groups.[10] Its grip on several trade routes and small mines in the Kivus has allowed the leadership to enjoy small luxuries, but this is insufficient to augment the group's military capabilities.[11] Troop morale is very low -- the accounts of deserters suggest some 80 per cent may be willing to return to Rwanda. However, strict discipline and indoctrination hold them back. On several occasions the FDLR has executed captured deserters and their families.[12]

B. RWANDAN IMPATIENCE

Richard Sezibera, Rwanda's Special Envoy to the Great Lakes Region, acknowledged to Crisis Group that the FDLR "no longer constitute an immediate threat to our government", but, he added, "they are a security problem to people's lives, property and our economic growth".[13] Earlier Rwandan interventions

[2] Crisis Group Report, *Rwandan Rebels in the Congo*, op. cit.
[3] Crisis Group interviews with MONUC disarmament, demobilisation and reintegration (DDR) officers and the Rwandan security service, Bukavu and Cyangugu, December 2004.
[4] The three attacks confirmed by either MONUC or foreign diplomats were in Kabuhanga, Gisenyi province, on 8 April 2004, Nyungwe forest, Gikongoro province, in late 2004, and Cyanzware, Gisenyi province, on 16 November 2004.
[5] Chief of the Air Force.
[6] Crisis Group interview with MONUC official, Kinshasa, January 2005.
[7] Crisis Group interview with MONUC official, Bukavu, December 2004.
[8] The Maï-Maï consider themselves "traditional warriors" and believe that the use of magic makes them invisible. The name Maï-Maï cuts across various ethnic groups that spread from North to South Kivu. Ethnic groups which are loosely allied with them include the Banande, Batembo, Banyaga and Hunde. See Crisis Group Africa Report N°1, *North Kivu -- Into the Quagmire? An overview of the Current Crisis in North Kivu*, 13 August 1998.
[9] Letter dated 15 July 2004 from the chairman of the Security Council committee established pursuant to Resolution 1533 (2004) concerning the Democratic Republic of the Congo addressed to the president of the Security Council, S/2004/551. The Maï-Maï commanders include Colonel Nakabaka Baudouin and Commander Kayamba in South Kivu, and Commanders Akilimali and Jackson in North Kivu.
[10] For example, a repatriated FDLR officer said his battalion headquarters in Ngando had two 107mm mortars with only three shells; one 82mm mortar with eight shells; and one 60mm mortar with two shells. Crisis Group interview with MONUC official, Bukavu, December 2004.
[11] Ibid.
[12] Crisis Group interview with MONUC DDR officer, Bukavu, December 2004.
[13] Crisis Group interviews, Kigali, November/December 2004.

reduced the insurgents from 125,000 to their present strength between 10,000 and 15,000, he said, but "if you ignore them, their number will grow in the long run".[14]

The 19-20 November 2004 summit of the International Conference on the Great Lakes Region (GLC),[15] held in Dar-es-Salaam, whose declaration President Kagame signed, was meant to draw attention to the consolidation of peace and reconciliation processes in the Great Lakes region. However, in a letter to the AU only days later, Kagame made his security concerns clear:

> Rwanda has patiently awaited the reaction of the International Community, including the African Union, to the repeated attacks launched against her by these terrorist forces for ten years now. Clearly, simply waiting is not an option. It is an abdication of our responsibility.[16]

The letter advised that Rwanda would send its army back into the Congo to operate for two weeks against the FDLR. Kagame had already justified an incursion in an address to the Rwandan Senate and a letter to the UN Security Council on 20 November 2004, suggesting that "it may already be happening".[17] Sezibera defended these threats at Rwanda's annual meeting with its donors, in Kigali on 11 December 2004. Subsequently he argued that since there is no effective international mechanism to disarm the FDLR forcefully, Rwanda had to deal with the problem itself:

> We know that there is an argument that the FDLR does not constitute a threat to the Rwandan government and that in recent years, there are no reports of them killing Rwandans. Fine! But for us we start counting the dead from the 1 million plus in the 1994 genocide. In our view, even one death today caused by the FDLR is a continuation of the genocide.[18]

While MONUC lacks conclusive evidence that a Rwandan incursion into North Kivu in November and December 2004 actually occurred, many other sources confirm it. According to border officials at the customs posts in Goma and Bunagana, army trucks crossed the border in late November and headed for Rutshuru. This was confirmed by diplomats in Kigali and officers within the ANC, Rwanda's former Congolese proxy.[19] While Rwanda has a range of motives for involvement in the eastern Congo, the lack of effective Congolese or international measures to deal with the continued presence of the FDLR is undeniable. Until such measures are taken, Rwanda's position will deserve some sympathy. The cornerstones of the Congolese peace process -- the Lusaka Accords of July 1999 and the July 2002 Pretoria Agreement -- both placed the onus on the Kinshasa government to take action on the demobilisation and repatriation of the FDLR in exchange for the withdrawal of Rwandan troops.

C. ACCEPTANCE OF FORCED DISARMAMENT

The lack of progress in disarming and repatriating the FDLR is primarily due to the limits of the voluntary approach that has allowed the Transitional Government in Kinshasa to do as much or as little as it wants while the UN maintains its neutrality. The voluntary process has achieved some results: MONUC figures as of 6 December 2004 show 11,300 ex-combatants and civilians repatriated to Rwanda, Burundi and Uganda, of whom 6,975 were Rwandans, including 3,528 ex-combatants.[20] Nevertheless, the MONUC figures also indicate the program has run out of steam. It is unlikely that it can do much in the current environment to reduce the remaining numbers of FDLR. In August 2004 UN Secretary General Kofi Annan reported to the Security Council that:

> ...it has become clear that MONUC's current mandated efforts toward encouraging voluntary defections from foreign armed military formations will not succeed in resolving this problem within an acceptable time period. A more comprehensive approach, with the full participation of the Transitional Government and the active cooperation of Rwanda, is required.[21]

Although not all UN staff in New York or MONUC are on board, this suggests the UN has recognised that the use of force in the disarmament process[22] may well

[14] Ibid.
[15] More information on the GLC is available at http://www.icglr.org/.
[16] "Letter from President Paul Kagame to His Excellency Olusegun Obasanjo, President of the Federal Republic of Nigeria and Chairman of the African Union", Ref. RWA/01/ AP04/435, 25 November 2004.
[17] Frank Nyakairu, "Great Lakes: Another Power keg?", *The Monitor*, 12 December 2004.
[18] Crisis Group interview, Kigali, January 2005.
[19] Crisis Group interviews with diplomat, Kigali, January 2005 and ex-ANC officers, Bukavu, December 2004.
[20] DDR figures obtained by Crisis Group from MONUC December 2004.
[21] Third special report of the Secretary General on the United Nations Organisation Mission in the Democratic Republic of the Congo, S/2004/650, 16 August 2004, p. 20.
[22] Although the term "forced disarmament" was not specifically used it was suggested that: "An augmented and fully deployed MONUC military presence in the Kivus, acting in support of FARDC [the new Congolese army] operations, would take a

be a necessary component of solving the FDLR problem, though it makes clear that its own troops will definitely not undertake the task.[23] Indeed, the shift, prompted by the Secretary General's August 2004 report, was endorsed in Security Council Resolution 1565 (1 October 2004). Any expectation that Kinshasa can carry out forced disarmament, however, must be limited by the slow integration of the new Congolese army, which is being formed from the fighting units of all the participants in the peace process, as well as by lack of clarity about how MONUC will provide it political and logistical support.

Nevertheless, while the new army is weak and disorganised, it has untapped potential, including upwards of 10,000 troops deployed close to FDLR positions in South and North Kivu. Most units are poorly disciplined and trained, but some have displayed ability to deploy effectively. Colonel Philemon's brigade based at Kavumu airport in Bukavu, for example, includes many "Katangan Tigers" officers trained by the Angolan army. It conducted the operation against the FDLR on the Kamina base in 2003. While such units cannot solve the FDLR problem overnight, they can begin to apply more pressure. Many ANC officers in North Kivu were trained by the Rwandan army and have raided FDLR camps before. Until now, however, Kinshasa has focused on protecting its borders against Rwanda rather than dealing with the FDLR. If a solution is to be reached, it needs to refocus its military deployment and strategy towards the FDLR rather than toward Kigali.

There would be political advantages should the Transitional Government and its new army take the lead against the FDLR. It would substantially boost confidence between Kigali and Kinshasa and could initiate greater cooperation on a range of security and other issues. It would also help reduce inter-communal tensions in the Kivus.

South Africa has spoken in support of use of force,[24] and the African Union is showing interest. In January 2005, it urged "AU Member States to extend the necessary security assistance, including troops, to contribute to the effective disarmament and neutralisation of the armed groups".[25] More recently, the AU has spoken of raising an armed mission of 6,000 to 7,000 to help, though its capacity to deliver such a large force is uncertain given the difficulties it has had in deploying fully and promptly a smaller contingent in Darfur. The initiative is, nevertheless, at least politically and psychologically important because it helps the FDLR to recognise its isolation. The AU should continue to advance its proposal both for its own credibility and to increase pressure. It is vital, however, that any AU action to deal with the FDLR be carried out in coordination with the efforts of Kinshasa's army and MONUC. The AU should also support efforts to expand the international community's role in enhancing the capacity of the Congolese forces.

D. REGIONAL DYNAMICS

Poor relations, particularly between the Congo, Rwanda and Uganda, have been a significant impediment to the solution of the region's problems. The GLC is a useful multilateral process for longer-term development issues, but it does not focus adequately on the immediate problems of the eastern Congo, which have been the source for so much of the last decade's violence.

The establishment of a Joint Verification Commission (JVC)[26] and a Tripartite Commission[27] supported by the U.S. provides the possibility for genuine cooperation and confidence building. The JVC brings Rwandan and Congolese army officers together to investigate allegations made by either country, while the Tripartite Commission convenes leaders from the three countries. However, despite numerous treaties and other agreements, relationships between the three are generally unsatisfactory and marked by considerable mutual suspicion. While

more active and robust role in disarmament, demobilisation, repatriation, resettlement and reintegration, including through measures such as cordon and search operations, declaration of weapon-free zones and operations to ensure respect for the arms embargo, with a view to preventing the resupply of the foreign armed groups, from whatever source", and that "MONUC disarmament, demobilisation, repatriation, resettlement and reintegration teams would be put in place to take advantage of the physical scattering of the ex-FAR/Interahamwe units following stepped up FARDC actions against them".

[23] Crisis Group interviews, Kinshasa and New York.

[24] South African media quoted Deputy Foreign Minister Aziz Pahad as saying, "It is a South African view that we must get the UN to move to the stage of forced disarming of the negative forces that are in the DRC", IRIN News, 26 November 2004.

[25] Communiqué of the 23rd Meeting of the Peace and Security Council, PSC/AHG/Comm. (XXIII), 10 January 2005.

[26] The JVC was created in September 2004 to monitor allegations of FDLR activity and Rwandan army incursions into the Congo. Its teams are composed of Rwandan and Congolese army officers, as well as MONUC officials.

[27] After the Bukavu crisis in mid-2004, the U.S. sponsored a tripartite agreement between Rwanda, the Congo and Uganda that established committees to deal with diplomatic and security issues.

there is much posturing for domestic consumption, each basically distrusts the other's commitment to cooperation.

The JVC and the Tripartite Commission are limited to information exchange and investigation; neither was intended to address how to get the FDLR to leave the Congo. The tripartite Lubumbashi meeting in April 2005 typically reaffirmed commitments to the peace process but did not engage on the tough immediate questions.[28] The two initiatives could, however, be used to push the FDLR issue. The JVC, for example, could be a forum for direct technical discussions between the Rwandan military and the FDLR. Indeed, in mid-February 2005, a JVC team, including two high-ranking Rwandan officers, met with an FDLR captain in Kalonge, South Kivu. While nothing resulted, a further meeting could be used to build confidence and encourage repatriation.[29]

III. MOTIVATIONS AND AGENDAS

A. KINSHASA TO ROME

In late 2004, Samba Kaputo, Kabila's national security adviser, presented the international community in Kinshasa with a new plan for dealing with the FDLR, which included a vague deadline of early 2005 for it to leave the country. In February 2005, Kaputo, together with the Community of Sant'Egidio,[30] launched another attempt to persuade the FDLR to depart. Transitional Government representatives met in Rome with members of the FDLR's political and military wings,[31] reportedly to discuss repatriation of its armed forces.

The Rome negotiations are President Kabila's personal initiative, implemented by his close advisers but apparently not discussed with the other vice presidents or relevant ministers.[32] He seems to have had several objectives. First was to demonstrate a genuine attempt to solve the FDLR problem. If that happens, he will gain much credit and international recognition. Secondly, even if the negotiations fail, he can claim to have done his best, thereby reinforcing the notion that the issue can only be solved between Rwanda and the FDLR. It is highly unlikely that he expects Kigali to accept the conditions the FDLR is likely to put forward, which is probably why his delegation strongly resisted the initial FDLR insistence on including political demands in the declaration as well as why Rwanda was not invited to the first talks.[33] However, the flaws in the process will soon be apparent unless there are important changes in FDLR and Kigali positions.

Participation in the talks was restricted on the Congolese side because the anticipated objections from a number of parties in the Transitional Government, especially the RCD-G, would have prevented any progress. However, keeping the negotiations to such a tight circle around Kabila will exacerbate tension within the Transitional Government, particularly that between Kabila and the RCD-G, which is already one of the main factors sustaining violence in the Kivus.[34]

Kabila's traditional allies, including some Maï-Maï in the Transitional Government who were close to the FDLR, are also unhappy at being excluded from negotiations.[35] Mbusa Nyamwisi, the minister for regional cooperation and head of the RCD-K/ML movement (*RCD Kisangani-Mouvement de Libération*),[36] is now reviewing his alliance with Kabila, as he feels he has not received sufficient credit for bringing the FDLR to the table. He also resents that he has not received a central role in dealing with Rwanda and Uganda, his former supporters.

[28] "DR Congo, Rwanda and Uganda agree to end rebel presence in DRC", Agence France-Press, 22 April 2005; Crisis Group interview with UN officials, New York and Congolese officials, Kinshasa, April 2005.

[29] Crisis Group telephone interviews with Rwandan government and MONUC officials, February 2005.

[30] The Community of Sant'Egidio, a lay movement affiliated to the Catholic Church, played a key role in the peace negotiations in Mozambique between 1990 and 1992; available at: www.santegidio.org.

[31] Several FDLR commanders from the Kivus were in the FDLR delegation. The military side of the negotiations was apparently led by Colonel Kanyandekwe, the movement's Deputy Force Commander. Crisis Group telephone interview with Rwandan official, April 2005.

[32] The Congolese delegation to Rome, in addition to Kaputo, included Antoine Ghonda, Kabila's itinerant ambassador; Robert Mbwinga, the deputy minister of foreign affairs; and Mbusa Nyamwisi, the minister for regional cooperation. Crisis Group interviews, Kinshasa, April 2005.

[33] Crisis Croup interviews April 2005.

[34] See Crisis Group Africa Report N°91, *The Congo's Transition Is Failing: Crisis in the Kivus*, 30 March 2005. The RCD-G is highly mistrustful of Kabila's methods and motives and suspects he may be preparing a dangerous pre-election ploy of trying to associate it with any reluctance on the part of Rwanda to conclude an agreement (no matter how unreasonable) with the FDLR.

[35] Already existing tensions within the Maï-Maï were exacerbated by the fact that some were closely involved in the talks while others were excluded.

[36] Formerly a faction of the RCD that split from the Goma-based movement in March 1999.

B. FDLR TACTICS

A number of signs suggest the process as it is unfolding may be limited in what it can deliver. External factors pressured the FDLR to negotiate, and it is hard to believe its leaders genuinely expect to be able to return to Rwanda if they attach conditions. They may see the talks and the declaration as tactics for gaining credibility and time. The Rome meeting came soon after the AU expressed its intention to use force against the FDLR, thereby ending any hope the movement had for support in its call for an Inter-Rwandan Dialogue. The declaration shifted critical attention to Rwanda, which refused a subsequent invitation to discuss technicalities, saying that its disarmament, demobilisation and reintegration (DDR) program is already functional, so there is nothing to negotiate.

While the FDLR may wish to continue its opposition to the Rwandan government politically inside the country, Kigali has ruled this out.[37] Nevertheless, immediately after the Rome Declaration, there were signs the FDLR would soon set political conditions for its return. In a BBC interview[38] an FDLR official linked return to a liberalisation of Rwandan politics with recognition by the government that there had been widespread massacres of Hutus as well as Tutsi in 1994. In an interview with Crisis Group, the president of the FDLR, Ignace Murwanashyaka, said that there would have to be an opening of Rwandan politics so that the FDLR could establish itself as a domestic political party.[39] Such demands will certainly derail any process.

While FDLR troops in the field are aware of the Rome Declaration and have said they will respect their leaders' decisions,[40] it does not appear likely an order for return will be given any time soon. High-ranking FDLR commanders indicated to MONUC in May 2005 that they would only return if Kagame made political concessions.[41] The movement's political leadership is weak compared to other exiled Rwandan opposition parties. Since it derives its legitimacy from the military wing operating in the Congo, discussions with it have limited utility. If repatriation of fighters is to proceed, ways will need to be found to isolate the hard-liners in both wings of the movement.

There is doubt as to whether the FDLR delegation in Rome represented the organisation as a whole, and there is some evidence that Kabila offered it monetary incentives.[42] The FDLR is not a homogenous organisation with a common ideological or strategic view. The fusion of two separate armed wings has not ended their differences, and the political wing, which in any event is subordinate to the military, has suffered its own internal splits in the past. The military commanders work hard to maintain a high degree of cohesion and control over their troops but if a substantial part of the FDLR should decide to return to Rwanda, fighting would likely break out with units controlled by hardliners.

Nevertheless, there could be long-term political calculation in the FDLR's manoeuvres. If it finds a way to return as a reasonably coherent movement to Rwanda, it may believe it could build a network that would give it a chance to appeal to the Hutu majority with a candidate free of any links to the genocide when President Kagame's seven-year constitutional term expires in 2010.

IV. THE WAY FORWARD

A. *GÉNOCIDAIRES* AND IMPUNITY

In addition to the political conditions the FDLR may yet seek to attach to its Rome Declaration, the justice issue is another serious obstacle to a comprehensive solution. Although the FDLR stated in Rome its intention to cooperate with "international justice", the meaning of this is unclear. The first task is to determine who within the movement is vulnerable to charges relating to the genocide. Rwanda has said that 10 to 12 per cent of the current FDLR leadership was involved, although it has provided only a few names. It possibly bases its estimate on expected indictments by the traditional *gacaca* courts, which recently began public trials.[43]

[37] Political parties are allowed to operate in Rwanda but must comply with a strict code of conduct and refrain from "ethnic divisionism", which has been interpreted to ban all mention of ethnicity and even religion from politics. As even moderate parties such as the Democratic Republican Movement (*Mouvement Démocratique Republicain,* MDR) have been banned under these rules, it is highly unlikely that a party such as the FDLR, which often argues that a second genocide was perpetrated in 1994 against Hutus, would be allowed to function.

[38] BBC French Service, 1 April 2005.

[39] Crisis Group telephone interview, 6 April 2005.

[40] Crisis Group telephone interview with MONUC official, Bukavu, April 2005.

[41] Crisis Group telephone interview with MONUC official, Bukavu, May 2005.

[42] Crisis Group interview, Kinshasa, April 2005.

[43] The *gacaca* courts were launched in 2002 to reduce the burden on the conventional court system, which would have taken decades to try all the suspects. There are 11,000 such courts throughout the country, each presided over by nineteen judges who are elected from among local leaders. They try the following crimes of genocide: Category II (those guilty of or

Other sources, however, believe the number of *génocidaires* in the FDLR to be much smaller. In order to make clear to the FDLR its responsibilities, the Rwandan government should give it a list of all FDLR officers who are suspected by either Rwandan courts or the International Criminal Tribunal for Rwanda (ICTR) in Arusha of genocide crimes falling under Category I or II (the most serious offences and offenders). Rwandan intelligence has detailed rosters of the FDLR commanders, and the Rwandan justice system has the names of those accused of genocide, so it should be relatively simple to establish who is wanted. This would isolate the hardliners and encourage others to return home.[44]

The FDLR should then hand the accused *genocidaires* over to the ICTR or Kigali and enlist the remainder of its personnel in the voluntary DDR process run by MONUC. FDLR leaders facing court charges might attempt to bargain for third country resettlement. Rwanda has said this is unacceptable, as it should be also to the international community.

While none of its members should enjoy impunity, however, relatively few may risk the most severe judicial penalties. Neither the ICTR nor Rwandan courts are likely to launch new investigations into crimes committed during the 1994 genocide. The ICTR has 29 outstanding cases, while the Rwandan courts have lists comprising several thousand individuals indicted for Category I and II crimes. A quick review of the lists by Crisis Group indicates that very few known FDLR commanders have been indicted in either Rwanda or Arusha.[45] For most returning FDLR, the courts to which they might be liable would be the *gacaca* courts.

Many FDLR commanders may still have reservations about return to Rwanda. In the days preceding and immediately after the Rome Declaration, *gacaca* courts began action against several of the highest-ranking Hutus who were integrated into the new government and army after the genocide, including General Marcel Gatsinzi, the current minister of defence, and Major General Laurent Munyakazi, a division commander in the army.[46] Both officers were accused of genocide crimes, a move that some international observers say was timed to discourage the FDLR. *Gacaca* proceedings have named 761,000 people to date, including 650 national and local leaders, so it is probable many FDLR leaders would be indicted for some level of genocide crimes, although most not for the more serious crimes.

B. KIGALI'S ROLE IN BRINGING THE FDLR HOME

Rwanda's position is that FDLR members are free to return, as individuals or in groups, as long as political conditions are not set, and all who took part in the 1994 genocide are held accountable.[47] Its Special Envoy to the Great Lakes Region, Sezibera, told Crisis Group:

> We don't care how it is done and by whom. But you can not ask us to have any political negotiation with them because the process of dealing with them is set out in the Lusaka Accord and other agreements through voluntary or forced DDR or a combination of both.[48]

The only incentive Rwanda has offered is a standard and modest demobilisation package of roughly $200, regardless of seniority. The government has refused to meet with the FDLR to discuss details -- a rigid stance that has contributed to the stalemate. On the other hand, the FDLR has consistently raised demands that are non-negotiable for Kigali, such as recognition of a second genocide against the Hutu, and the opportunity to operate as a political party in Rwanda. While there is a real need, as Crisis Group has consistently argued, for liberalisation of Rwandan politics, the nature of the FDLR and its violent past make the latter condition an inappropriate one upon which to condition return. What is needed now, therefore, is for the FDLR to recognise that it cannot expect political concessions and for the Rwandan government to be more flexible in providing incentives for return.

It is unlikely that all FDLR will return since some hardliners may want to continue fighting[49] or fear judicial

complicit in homicide); Category III (those who committed violent crimes without the intent to kill); Category IV (those guilty of property crimes). *Gacaca* courts can reduce sentences upon confession of guilt; some of each sentence must be carried out as community labour. *Gacaca* courts can impose the death sentence for Category II crimes. They can also refer cases that they have established belong in Category I, the most serious, to the formal Rwandan judiciary.

[44] Crisis Group telephone interview with MONUC official, April 2005.

[45] Rwanda recently indicated it is compiling an updated list. The last list was published in 2001. As Rwandan courts have concluded their investigations, it is possible that this new list will include some current leaders.

[46] Other high-ranking Hutu officials who have been named in *gacaca* proceedings include the Governor of Ruhengeri, Boniface Rucagu, and a parliamentarian representing the ruling party, Jean Baptiste Butare.

[47] Crisis Group communications, April 2005 and letter dated 4 April 2005 from the Permanent Representative of Rwanda to the president of the UN Security Council, S/2005/223.

[48] Crisis Group interview, Kigali, 19 April 2005.

[49] Possibly in an anti-Tutsi alliance with the Burundian FNL and/or disaffected Maï-Maï in South Kivu.

proceedings. The return of a significant number, however, would be a victory for Kigali, which should be accordingly magnanimous towards those who go home without political conditions. Many FDLR leaders seem willing to take this step: Crisis Group interviews with commanders in the field and demobilised combatants suggest the military leadership is tired after eleven years of armed struggle that has decimated its troops. President Kagame should take advantage of this opportunity to separate moderate commanders from political and military hardliners.

While Kigali refuses to negotiate with the FDLR, it should be willing to engage in a technical discussion of modalities. The Rwandan government should be prepared to discuss the mechanics with FDLR military commanders who wish to return, as it has previously done with would-be defectors. This should be coordinated with the Congolese government, which now seems eager to be rid of the movement.

Incentives Rwanda can provide include integration of FDLR commanders into its armed forces. Many want to continue a military career. As already noted, Kigali orchestrated repatriation of the FDLR Force Commander, General Rwarakabije, in 2003 by offering him and three other FDLR officers army positions. A similar offer should be extended to current leaders not guilty of atrocities. Thus far the government has only made ambiguous comments such as this from Ambassador Sezibera:

> The Rwandan government was clear and we still stand by the same position. We allowed them to return like any other Rwandan and be integrated into the community. But if they want to join the army, there are normal procedures to follow. Those who qualify and want to join the army will join as stipulated under army procedures.[50]

In discussion with Crisis Group, however, Kigali ruled out a deal similar to that given to Rwarakabije.[51] Any integration, it appears, would only be negotiated after return to Rwanda, which would require an act of faith likely to discourage the extremely distrustful FDLR officers.

Some officials are concerned that a large-scale return might further exacerbate latent tensions in Rwandan society that have already been stirred by the *gacaca* proceedings. In March and April 2005, 2,000 people crossed from Rwanda into northern Burundi and 1,118 into Uganda, fearing prosecution in the *gacaca* trials. The minister of local government, Protais Musoni, alleged that these refugees were being recruited by the FDLR.[52]

Another inhibiting factor is pressure placed on the government by survivor groups not to reward those who associated in any way with the genocide. But the FDLR can do less damage to Rwanda if it is demobilised and integrated into society, and this in turn may eventually contribute to relaxation of the harsh security measures and restrictions on personal freedoms that have contributed to ethnic resentment in the country. Provided Rwandan and international law is respected, the government should be proactive in bringing the rebels home.

C. PRACTICAL MEASURES

The estimated 8,000 to 10,000 FDLR combatants are accompanied by some 15,000 to 25,000 dependants. Implementing voluntary disarmament and return of a large proportion of these would be a considerable logistical challenge for all involved.

Pursuant to the understandings reached in Rome, the first step is to be the establishment, by the Transitional Government and the FDLR, of a Steering Committee (*Comité de Suivi*) in Kinshasa, with two branches in Bukavu and Goma. MONUC has indicated it will establish six reception centres in North and South Kivu: Kanyabayonga, Sake, Walungu, Sange, Hombo and Lubero. This is a big task but it has funding and other resources to carry it out.

The Transitional Government has begun its own planning and submitted an initial schedule calling for the repatriation operation to be completed in 90 days.[53] However, there are multiple uncertainties, the greatest being whether the FDLR genuinely intends to return to Rwanda. If some elements do head for the reception centres, hardline commanders might try to block them. Should that happen, it is unlikely that either the Congolese army or MONUC would be able to provide the necessary protection. Also, the plan says nothing about how to deal with FDLR members who are identified as liable for prosecution for genocide or other serious crimes. The Transitional Government has no authority to grant impunity or agree to third-country settlement for such persons and will need to negotiate a procedure with Rwanda, since any loophole

[50] Quoted in Emmy Karemera, "FDLR can join army -- Sezibera", *The New Times*, 20 April 2005. The newspaper is aligned with Rwanda's ruling party, the RPF.
[51] Crisis Group interview with Rwandan government official, Kigali, 19 April 2005.
[52] "Refugees could be joining rebels, minister says", IRIN News, 21 April 2005.
[53] "Calendar for the Repatriation of the FDLR & Their Dependants", unofficial translation, Rome, 1 April 2005.

through which such persons could escape justice would likely bring the entire process to an end.

Rwanda, which has managed much larger repatriations, notably in 1996 when hundreds of thousands of civilian refugees returned from camps in the Congo within weeks, has begun its own preparations. The government has set up a political committee headed by the minister of local government, Protais Musoni, to examine the political, social and logistical challenges. The Rwanda Demobilisation and Reintegration Commission (RDRC) says it is expanding the capacity of the demobilisation camps at Mutubo, Nyakatare, Ntendezi, Mudende and Gati.[54]

V. CONCLUSION

The FDLR's declaration that it intends to end military operations against Rwanda, disarm and return home voluntarily is, on the surface, a very significant development that would go far toward ending conflict in the eastern Congo. However, much detail needs to be worked through, particularly the specifics of the "measures of accompaniment" the FDLR vaguely referred to in its Rome Declaration. If these prove unacceptable to Rwanda, it is likely the initiative will go no further.

The stakes are high. In mid-April 2005, government-run Radio Rwanda began broadcasting news about Congolese Hutus and Tutsis fleeing FDLR attacks around Goma.[55] The authors of the attacks, which caused over 3,000 "rwandophones" to seek refuge in Rwanda, have not been identified, and Congolese sources indicate the fighting was due to tensions between Congolese factions involved in the integration of the new army.[56] However, the reports and their prominence in the Rwandan media are cause for concern because they suggest Kigali may be preparing a justification for another cross-border military operation. On 19 April, President Kagame repeated that his government would be obliged to send forces into the Congo to repulse the FDLR, even though no new attack inside Rwanda had been substantiated.[57] Also in April, MONUC troops intercepted a truck that was smuggling weapons into the Congo from Rwanda, allegedly for use by North Kivu Governor Eugene Serufuli, who is close to Kigali.[58] Another Rwandan incursion or a mutiny by Serufuli's men would have a disastrous impact on the region's fragile peace process.

The international community has the means and motive to be more active in addressing these issues before they explode. The FDLR presence is a key obstacle to definitive resolution of the Congo conflict, toward which the international donors invest more than $1 billion a year: supplying 53 per cent of the Congo's budget and almost half of Rwanda's, they have great influence. Despite repeated provocations, however, they continue to funnel aid to Kigali without setting meaningful conditions. Just days before the latest Kagame threat to send troops back into the Congo, the World Bank and IMF announced the cancellation of $1.4 billion in debt, and the Rwandan president met with the U.S. president in Washington.[59] The Transitional Government is only the most recent Kinshasa authority to dither on promises to get rid of the FDLR. Western governments should be prepared to tie more of their assistance to conflict resolution actions and should coordinate better among themselves and with the international financial institutions.

For its part, the Rwandan government should pick up on the opportunity provided by the Rome Declaration to establish contact with relatively moderate FDLR military commanders and give them concrete incentives to return home. At the same time, the Congolese Transitional Government should genuinely pressure the FDLR to live up to its promises. The goal for both Kigali and Kinshasa should be to marginalise the FDLR's hardliners. Concurrently, however, the new Congolese army needs to plan for an offensive against the FDLR and be prepared to carry it out if the Rome Declaration's promise of a non-violent solution proves false.

Nairobi/Brussels, 12 May 2005

[54] Crisis Group interview with RDRC official, Kigali, 19 and 20 April 2005.
[55] Radio Rwanda News Bulletin (in Kinyarwanda), 15 April 2005, 19h00.
[56] Crisis Group telephone interview with Congolese official, Goma, 16 April 2005.
[57] "Rwanda may send troops into Congo", *San Francisco Chronicle*, 19 April 2005.
[58] Crisis Group telephone interview with MONUC official, 22 April 2005.
[59] "Rwanda: World Bank, IMF cancel Kigali's $1.4 billion debt", IRIN News, 14 April 2005.

APPENDIX A

MAP OF THE DEMOCRATIC REPUBLIC OF CONGO

Map No. 4007 Rev. 8 UNITED NATIONS
January 2004

Department of Peacekeeping Operations
Cartographic Section