

## Tackling the Threat of Mass Atrocities in the Democratic Republic of Congo: Applying the Responsibility to Protect

### Key Messages

- Over the past fifteen years conflict in the Democratic Republic of Congo (DRC) has claimed millions of lives, resulted in significant displacement, and led to rampant rape and sexual assault.
- Civilians in eastern DRC continue to experience the daily threat of war crimes and crimes against humanity.
- Pursuant to the commitment made in 2005 when states accepted the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity, the government of the DRC, with international assistance, must take comprehensive measures to protect its population and prevent further atrocities.
- These measures should include: systematic and coordinated security sector reform; efforts to strengthen the judicial system to bring an end to impunity; and improving programs for disarmament, demobilization and reintegration of former combatants.

### Introduction

Since 1996, conflict in the DRC has claimed, according to the International Rescue Committee, over five million lives, either as a direct result of hostilities or because of disease and malnutrition associated with the fighting. Considered the deadliest conflict since World War II, the targeting of civilians has been a hallmark of the violence. Millions have been killed and forcibly displaced. Women, men and children have been brutally raped, children have been abducted and forcibly conscripted, and towns have been pillaged. Committed with impunity and perpetrated by foreign and domestic armed groups, and by state and non-state actors including the armed forces of the DRC (FARDC), these crimes pose an ongoing threat to populations in the DRC, with those in the east facing the greatest threat.

Despite ongoing military and peacekeeping operations and multiple rounds of negotiations and peace treaties, civilians continue to experience gross human rights violations on a daily basis that rise to the level of crimes against humanity and war crimes, two of the four crimes that states committed themselves to prevent and halt in agreeing to the responsibility to protect (R2P) at the 2005 World Summit.

This brief seeks to explain the applicability of R2P to the current situation in the DRC. It examines the current risk of atrocities, analyzes domestic and international efforts to protect populations and identifies steps that can be taken to prevent and halt atrocities. This analysis acknowledges the magnitude of the challenges facing the government of the DRC and the multiple factors that make protection of civilians in the vast country a daunting task. However, there are a number of measures that, if properly

implemented by the government with international assistance, could help reduce the risk and incidence of the crimes. Most notable among these are efforts to improve protection of civilians, security sector reform (SSR), strengthening rule of law to bring an end to impunity and improved programs for disarmament, demobilization and reintegration (DDR).

### Brief Background

In 1965 Mobutu Sese Seku seized control of the recently independent Republic of the Congo, renaming the country Zaire. Mobutu instituted a corrupt authoritarian regime which quickly became known for its rapacity, exploiting the country's vast natural resources and sacrificing the wellbeing of its citizens in order to maintain the regime's wealth and power. Mobutu continued to rule the country for thirty years. In 1996 Rwanda, supported by Uganda, invaded the eastern DRC to remove the threat posed by extremist Hutu militias, believed to include many genocidaires who had fled in the aftermath of the 1994 Rwandan genocide. With Rwandan and Ugandan support, an anti-Mobutu rebel force led by Laurent Kabila was able to capture the capital of Kinshasa, overthrow Mobutu, and install Kabila as President in May 1997. Kabila's victory led to a brief pause in the fighting but violence erupted again in 1998 when a rift opened up between Kabila and his former Ugandan and Rwandan allies, whose troops Kabila ordered to leave the country. The ensuing conflict drew in governments from around the region with Angola, Namibia and Zimbabwe supporting Kabila and Uganda and Rwanda supporting proxy militias fighting the government. In this highly internationalized conflict, all sides committed atrocities while engaging in the lucrative plundering of natural resources.

In January 2001, President Kabila was assassinated and replaced by his son, Joseph, sparking hopes that an end to the conflict could soon be at hand. International hostilities officially ended with the Sun City Agreement in 2002 but numerous armed groups continued to fight against the FARDC, and one another, and persisted in perpetrating atrocities against civilians in North and South Kivu. In recent years, such groups have included: the Congress for the Defense of the People (CNDP), which was established by Laurent Nkunda and received support from the Rwandan government; the Democratic Forces for the Liberation of Rwanda (FDLR), which included Rwandan genocidaires and had, until early 2009, often been allied with the government of the DRC against the CNDP; and *Mayi Mayi*, local militias often organized on ethnic lines. In late 2008, relations improved between the governments of Rwanda and the DRC and the two countries agreed to jointly pursue the eradication of the FDLR.

On January 5, 2009, Nkunda was replaced as the leader of the CNDP by Bosco Ntaganda and was subsequently arrested by Rwandan forces on war crimes charges. Ntaganda, the subject of an International Criminal Court (ICC) arrest warrant for war crimes and crimes against humanity, entered into an agreement with the government of the DRC to integrate CNDP troops into the FARDC, pursuant to which he became a general in the FARDC. The rapprochement with Rwanda, along with the integration of the CNDP into the FARDC, has failed to end the conflict and the security situation for civilians in eastern DRC remains dire.

#### **Applying the Responsibility to Protect**

As a signatory of the 2005 World Summit Outcome Document (WSOD), the government of the DRC has committed, along with every other United Nations (UN) member state, to protect its population from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility requires the government to ensure that all units of the FARDC, including those incorporated from former militias, act in accordance with International Humanitarian Law (IHL) and do not perpetrate abuses against civilians. R2P also obligates the government to take action to prevent and halt crimes committed by non-state actors.

On 1 October 2010, the Office of the UN High Commissioner for Human Rights published a report documenting hundreds of gross violations of international human right and humanitarian law committed between March 1993 and June 2003 in the DRC. The report finds that war crimes and crimes against humanity were perpetrated against civilians throughout this period. Tragically such crimes did not end in 2003. Populations in the DRC today continue to face a threat of murder, rape and forcible displacement. These crimes are offenses that can constitute crimes against humanity when carried out in

a widespread, and or systematic manner and directed at civilian populations. The evidence suggests that in the DRC this criteria is met.

#### **Ongoing Mass Atrocities**

##### *North and South Kivu*

Populations in the provinces of North and South Kivu, bordering Uganda, Rwanda and Burundi, currently face the greatest threat of crimes against humanity and war crimes. The security situation in this region remains dire with attacks against civilians commonplace. Reports suggest that in 2009 alone over 1500 civilians were killed and 8000 women raped as a result of conflict. The FARDC (including recently incorporated CNDP units) has in some cases been the primary perpetrators of these crimes.

Sexual assault is widespread throughout North and South Kivu and much of the DRC and is regularly perpetrated with impunity. While many rapes in eastern DRC are associated with opportunistic violence and the region's lack of any sense of law and order, sexual assault has also been used as a means to subdue the civilian population in contested areas. In September 2010 the Special Representative of the UN Secretary-General on Sexual Violence in Conflict, Margot Wallstrom, stated that "In the DRC, sexual violence is not a *byproduct of war*, but a deliberate *tactic*."

In a shocking example of the ineffectiveness of the efforts of the government and UN forces to protect civilians, between 20 July and 2 August 2010, armed groups sexually assaulted more than 300 people from more than a dozen villages in the Walikale region. Evidence suggests that the attacks were organized and systematic with armed men surrounding villages to prevent women and children from fleeing. Beginning on New Year's day 2011 FARDC Lt. Col. Kibibi Mutware allegedly led soldiers serving under his command on a spree of sexual violence in the town of Fizi, South Kivu, that lasted just over a week and resulted in the rape of more than fifty women.

Over the past two years more than one million individuals have been displaced as a result of military operations and instability in the east. There are more than 2 million internally displaced persons (IDPs) in the DRC. 1.5 million of those are in North and South Kivu who remain at particular risk of violence, human rights abuses, disease and starvation. There are also hundreds of thousands of refugees in neighboring countries, with chronic instability preventing them from returning home.

Reports indicate that during clashes with the FARDC, the FDLR has been using civilians as human shields. Looting, pillaging, forced labor and forced conscription, including of children, by armed groups and government troops are also commonplace.

### *Lord's Resistance Army*

In the areas of Haut-Uele and Bas-Uele, in Orientale province in the northeastern part of the DRC, the Lord's Resistance Army (LRA) continues to commit massacres, abductions, rapes and mutilations, resulting in the displacement of thousands. The attacks launched by the LRA directly target civilians and are deliberately designed to terrorize the population. The UN High Commissioner for Refugees noted in May 2010 "since December 2008 [the LRA] has killed over 1,800 people, abducted some 2,500 others, and displaced 280,000" in Orientale province. Between January and March 2011, there have been 84 reported LRA attacks in the DRC resulting in dozens killed, over one hundred abducted and more than 30,000 newly displaced. While Congolese troops, often with the support of UN peacekeepers and Ugandan forces, have taken limited steps to protect civilians, very few resources have been allocated to preventing LRA attacks, making it clear that addressing this threat is not a priority of the government of the DRC and other affected countries in the region.

### *Southwestern Congo*

Since September 2010 authorities from Angola and the DRC have carried out a wave of expulsions of the other's nationals from their countries. Refugees from both sides have claimed to have been suddenly apprehended, forcibly expelled and subjected to degrading treatment, including torture and over 1,357 confirmed cases of sexual assault. Margot Wallström stated that systematic sexual violence occurred in detention facilities on both sides of the border by uniformed security forces.

### **The Risk of Future Mass Atrocities**

For close to two decades civilians living in the east have been the targets of mass atrocities. The government has taken steps to prevent and halt such atrocities, including through the implementation of its plan for stabilization in the east (STAREC), aimed at consolidating state authority and addressing the many challenges to security in eastern DRC, and through efforts to improve access to justice for victims of sexual violence. Yet these measures have clearly been insufficient. Despite continued efforts, as well as the presence of the UN Organization Stabilization Mission in the DRC (MONUSCO), crimes continue unabated and the security situation shows few signs of stabilizing. Instead there is concern that, particularly in South Kivu, conditions may be deteriorating. Institutional weaknesses, persistent high levels of impunity, conflict over resources, and a number of other obstacles indicate that, without concerted action there is little reason to believe that crimes will subside in the near future.

### *Institutional Weaknesses*

The capacity of the FARDC to effectively protect its population is hampered by several related factors, including the absence of a single, clear command and

control structure, the high-level of corruption within the armed forces and the lack of integration of the security forces into the communities they serve. The FARDC is an amalgamation of units from various demobilized rebel groups, many of which continue to operate quasi-independently even after their incorporation in the national armed forces. The majority of these troops have never received significant training in civilian protection techniques or human rights standards. Where training is provided it is often done in a piecemeal, rather than systematic, fashion. Donors have engaged in SSR only in an uncoordinated manner. The need for coordinated, top-down SSR is clear, and is discussed further below.

Furthermore, in some cases, the government does not pay deployed FARDC soldiers, nor does it provide support for soldiers' dependants that travel with them. This contributes to looting, extortion and other abuses against the communities they are mandated to protect. Even where payments are provided, high levels of corruption are present within the army with officers using their military position as a means to enrich themselves rather than acting in the interest of those they are assigned to protect.

### *Impunity*

Many FARDC unit commanders are known human rights abusers who have yet to be held accountable for their crimes. The continued employment of such commanders undermines efforts to prevent abuses by rank and file soldiers. The belief held by prospective perpetrators that they will not be held accountable only further emboldens them to commit atrocities, particularly rape and sexual assault.

President Kabila's "Zero Tolerance Policy" for sexual violence, announced on 30 June 2008, has done little to end the culture of impunity. The policy has not translated into significant additional funds, resources or support for investigations into incidents of sexual assault or for prosecutions of alleged abusers. Few high ranking soldiers have been brought to justice pursuant to the policy, although in one high profile exception those allegedly responsible for the New Year's rapes in Fizi were put on trial and several were convicted of rape as a crime against humanity.

### *Conflict over Resources*

Experts have long noted that competition for control of natural resources, including minerals and timber, is a major issue in the conflict in the DRC. Government forces and armed groups continue to clash over the control of valuable mines. Armed groups, including criminal networks within the FARDC, often resort to pillaging, extortion or informal "taxation" to extract funds from functioning mines in areas under their control. The armed militias use the resources extracted to fund the purchase of arms and other supplies, which in turn allows them to

continue the fight. In addition, the desire to accumulate wealth has led criminal networks within the FARDC to prioritize gaining control over mines at the expense of civilian protection.

A recent mining ban that was in place for several months in the eastern DRC has not measurably improved the situation and may actually have increased the illegal and coercive exploitation of mines. This is because the ban predominantly affected legitimate mine operators acting through the formal economy. Ironically, this measure strengthened the hand of criminal networks within the security forces who manipulated their role in enforcing the ban to gain control of the mines and exploit them for their own financial gain.

#### *Presence of Burundian National Liberation Forces*

One additional factor that may lead to an increase in crimes comes from the potential for the reactivation of the National Liberation Forces (FNL), a Burundian armed rebel group active during that country's civil war. While the FNL signed a peace agreement with the government of Burundi in 2006, its leader, Agathon Rwaso, unhappy with the FNL's political wing's performance in Burundi's parliamentary election, fled into the DRC in the summer of 2010. He has reportedly been rearming for a possible resumption of hostilities and is believed to have entered into a mutual cooperation agreement with the FDLR. This suggests that the FNL may threaten populations in both Burundi and the DRC. There are reports of several civilians in South Kivu having been killed as a result of clashes between the FNL and the FARDC in early November.

#### *Electoral Instability*

An additional source of concern relates to the potential for violence in the period surrounding the presidential and parliamentary elections scheduled for November 2011. There is the possibility that political actors may seek to use connections with armed groups to manipulate the outcome of the elections. Armed groups in the DRC maintain ties with local and national politicians and may intimidate voters into supporting a particular candidate, seek to disrupt the electoral process by preventing access to polling stations, or use violence against civilians attempting to exercise their right to vote. Political actors may also seek to use their relationship with armed groups as a bargaining tool to gain ministerial positions or other political concessions.

In January 2011, President Kabila enacted a number of constitutional reforms. Most notable among them are changes to the electoral process that includes a shift from a multi-round run-off election to a single-round plurality vote. Critics have denounced the move, expressing concern that the reforms were designed to consolidate power in the hands of the president as well as to make

Kabila's re-election more likely. This belief stems from that fact that the fractured nature of the opposition will lead to the nomination of numerous candidates who will split the opposition vote, thereby improving Kabila's Presidential chances. A widespread view that election results are illegitimate, possibly including a situation in which Kabila is elected with a minority of votes, could lead to rioting and an increase in the resort to violence to settle political disputes.

#### International Engagement

Given ongoing mass atrocities in the east, the significant risk that such atrocities will continue or increase, and the government of the DRC's manifest failure to protect its population, UN member states must uphold their responsibility to take action to prevent and halt crimes in the DRC. UN member states and international institutions have sought to do so primarily through the deployment of one of the largest UN peacekeeping forces in the world as well as through other measures that include investigation by the International Criminal Court (ICC) and the implementation of targeted sanctions against individuals believed to be responsible for abuses in the DRC.

#### *MONUSCO*

For the past ten years there has been a UN peacekeeping force, now known as MONUSCO, in the DRC. With approximately 17,000 troops, and several thousand additional personnel MONUSCO "has been authorized to use all necessary means to carry out its mandate relating, among other things, to the protection of civilians, humanitarian personnel and human rights defenders under imminent threat of physical violence and to support the government of the DRC in its stabilization and peace consolidation efforts."

MONUSCO's ability to fulfill this mandate is hampered by, among other factors: the vast size of the region where civilians are at risk; the region's difficult terrain, consisting in many places of dense forests ideal for hiding armed rebel groups; inadequate resources including lack of helicopters – nine helicopters provided by the Indian government have recently been removed and more helicopter withdrawals are expected; the stationary nature of troop contingents which have proved unable to respond quickly to locations where populations come under threat; the unwillingness of some troop contingents to deploy in dangerous areas and take the necessary action to protect populations; and weak intelligence capacities including poor communication with local communities which inhibits the mission's ability to receive real time information about threats to civilians. All these factors have tragically contributed to a chain of protection failures. The mass rapes in the Walikale region in the summer of 2010 are a symbol of such failures. Although a MONUSCO base was only twenty miles from the crime

scene, the peacekeeping mission only learned of the attack several days after it had occurred.

In 2009 the UN instituted a conditionality policy for MONUSCO whereby its troops are not permitted to provide support to, or operate jointly with, FARDC units where known human rights abusers maintain command positions. The UN Secretary-General's Special Representative in the DRC, Roger Meece, has claimed that this policy has resulted in the removal of several such FARDC commanders, and in the prevention of crimes against civilians in the regions where MONUSCO has a strong presence. However, others have argued that the policy has led to an increase in unilateral missions by the FARDC, conducted without MONUSCO support or oversight, and thus has had little impact on the ability of Congolese troops to perpetrate abuses.

### *ICC*

In 2004, the government of the DRC requested the ICC to open an investigation into crimes committed in violation of the Rome Statute in the east. The ICC did so and trials have begun for three individuals arrested for crimes related to the conflict in Ituri province between 2002 and 2003. Callixte Mbarushimana, the Executive Secretary of the FDLR, was apprehended in October 2010 in France and handed over for trial on an ICC warrant that alleges the commission of war crimes and crimes against humanity committed in North and South Kivu in 2009. While these prosecutions are an important step, they do not resolve the issue of widespread impunity amongst FARDC troops. In addition, concerns about the need to prevent a return to conflict with the CNDP has led the government of the DRC to permit Bosco Ntaganda, charged with war crimes by the ICC, to remain a commander in the FARDC. This decision has significantly blunted the efficacy of the ICC's efforts to ensure accountability for those who perpetrate war crimes and crimes against humanity in the DRC.

### *Sanctions*

On 29 November, after receiving a report from the Group of Experts on the DRC, the UN Security Council renewed its sanctions related to the DRC. These include, with respect to non-state armed groups, an embargo on the sale of arms as well as restrictions on participation in commercial activity, in particular the mineral trade. They also set out targeted sanctions – travel bans, and asset freezes – on particular individuals judged to be committing serious violations of international law. The mandate of the Group of Experts to monitor and report on the situation was also extended through November 2011. While the situation may be worse absent such sanctions, because many of those targeted for asset freezes and travel bans operate only in the eastern DRC and primarily through the informal economy, their actual impact is minimal. That these same sanctions have been in place for several years with little improvement in the security situation

demonstrates that such sanctions alone are not sufficient to prevent the commission of mass atrocities.

### **Upholding the Responsibility to Protect**

Pursuant to its 2005 commitment to R2P the government of the DRC must take immediate action to protect its population and halt atrocities. In addition, with assistance from international actors, the government must focus efforts on the long-term stabilization of the security situation in the east. This requires SSR as well as improving programs for DDR of former combatants. International actors should encourage the government to implement such measures and provide the necessary support, including through MONUSCO, to assist the government in ending the commission of crimes.

### *Protection of Civilians*

The government must take immediate steps to prevent the FARDC from committing atrocities, in particular sexual assault, against civilians. MONUSCO must abide by its conditionality policy to ensure that it does not support abuses of civilians perpetrated by FARDC troops. Despite obvious weaknesses, MONUSCO is currently the only force capable of providing even minimal protection to civilians in the eastern DRC and it is thus imperative that there be no drawdown of troops until the government of the DRC is capable of protecting its population.

Additionally, MONUSCO should take steps to deploy preventatively rather than reactively, and to improve communication with local populations so that it can react more quickly. Specifically, MONUSCO should increase the use of Joint Protection Teams (JPTs), made up of military and civilian staff, to assess security risks and to identify high priority protection needs. It is crucial that the recommendations made by JPTs are carried out by relevant MONUSCO troop contingents. MONUSCO should also increase the use of Community Liaison Interpreters (national staff that serve to facilitate communication between local populations and MONUSCO units) to better assess, and respond to, the protection needs of the population. In light of the high prevalence of gender based violence in the eastern DRC it is crucial that the JPTs, as well as Community Liaison Interpreters, ensure that they are hearing from women, as well as men, in the communities they serve.

### *Security Sector Reform*

The security sector in the DRC is plagued by significant institutional weaknesses. The FARDC, the Congolese National Police (PNC), and the country's judicial system are all in dire need of large-scale reform. Yet the government continues to fail to implement a systematic plan for comprehensive SSR. Instituting real SSR will help prevent the commission of crimes by government troops and address many of the challenges facing the eastern DRC, including those related to the militarization of mines

and control of natural resources. Creating a professional military and police force will also better situate the government to combat atrocities committed by non-state armed groups.

Many UN member states have sought to assist the government with its efforts at SSR including through the piecemeal training of individual FARDC units. However, absent a coordinated effort to overhaul the security sector, creating independent and professional military and police forces along with a clear system of accountability for abuses, such training programs are unlikely to have a measurable impact on security in the eastern DRC. While the magnitude of the challenge of restructuring the armed forces cannot be underestimated, the Congolese government has not been motivated to create a strong independent army with clear mechanisms for civilian oversight, as many politicians appear to prefer a weaker fragmented FARDC that is easier for powerful individuals to manipulate. The presence of criminal networks within the FARDC involved in looting, extortion and the exploitation of natural resources, also provides access to illicit revenue streams for government officials with ties to various units within the armed forces. Intergovernmental organizations and UN member states, particularly major donors to the DRC, such as the United States, the United Kingdom and the European Union, must coordinate their efforts and use all available leverage to encourage the government to undertake comprehensive SSR.

To be effective a comprehensive SSR plan must include, among other things: a program to turn the FARDC from a factionalized set of units into a unified institution under a clear command and control structure; a standardized training and education program that includes instruction on matters related to protection of civilians and compliance with international humanitarian law; the timely payment of salaries and the provision of sufficient food and supplies to soldiers; and the creation of a system for civilian oversight. Similarly, a structural overhaul and the implementation of comprehensive training for the PNC should be undertaken.

As part of any SSR program impunity for crimes committed by military and government officials against civilians must also be addressed. The prosecutions for the New Year's rapes in Fizi represent an important step in creating accountability for the commission of crimes against humanity but much more needs to be done. Strengthening the rule of law must be a priority. As part of this effort the government must remove from military leadership any known perpetrators of abuses, including Bosco Ntaganda.

### *Disarmament Demobilization Reintegration*

One of the most effective ways for the government to reduce the threat from armed groups is by incentivizing desertion, making it more attractive for low ranking members of armed militias to leave those militias and rejoin civilian society. DDR programs have been undertaken in the east for a number of years with mixed success. Current programs focus on disarming combatants and assisting them in leaving armed groups. While these programs often provide some short-term economic assistance or training, they do not generally provide sufficient long-term reintegration assistance. This often results in demobilized combatants returning to armed groups.

An additional problem with existing DDR programs is that they often treat individuals in widely divergent manners. For example, the differing standards applied to combatants in possession of a firearm – eligible for significantly greater benefits than those without – fosters resentment and creates perverse incentives to carry firearms. Criticism of DDR programs also often focuses on the insufficient assistance provided to former child soldiers who are prime targets for re-recruitment.

An effective DDR program must make civilian life (something which is quite difficult in the poor and unstable eastern DRC) more attractive than life as part of an armed group. Also crucial to the success of any DDR program is ensuring that demobilized combatants do not rejoin the armed group they left, or form new armed groups. Thus to improve the results of such programs, more needs to be done to follow up with as many former militia members as possible and assist them in effectively reintegrating into society. This requires somewhat of a shift in focus and funding by donors from demobilization and disarmament to reintegration efforts. It also requires that such efforts be coordinated with broader peace, security and reconciliation efforts. Those administering such programs should involve local communities in program design to better tailor the approach to local realities and needs.

### Conclusion

Civilians in North and South Kivu as well as Haut-Uele and Bas-Uele are currently experiencing mass atrocities committed with impunity. Elections are scheduled to take place in six months, on 27 November 2011, but in order to implement a true democratic process the security situation for citizens in the East must be improved. The government of the DRC must step up to protect its population and international actors must provide crucially needed assistance to prevent the very crimes that states committed themselves to no longer tolerate when they agreed to uphold the responsibility to protect.