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COUNTRY CASE STUDY: DRC

JUSTICE-SENSITIVE SECURITY SYSTEM REFORM IN THE DEMOCRATIC REPUBLIC OF CONGO

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JUSTICE-SENSITIVE SECURITY
SYSTEM REFORM IN THE
DEMOCRATIC REPUBLIC
OF CONGO

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ACRONYMS

AFDL	Alliance des Forces Démocratiques pour la Libération du Congo-Zaïre
BDK	Bundu Dia Kongo
CIAT	Comité International de l'Accompagnement à la Transition
CNDP	Congrès National pour la Défense du Peuple
CSM	Conseil Superior de la Magistrature
CSP	Country Strategy Paper
CSRFP	Comité de Suivi de la Réforme de la Police
DfID	UK Department for International Development
DAC	Development Assistance Committee
DDR	Disarmament, demobilisation and reintegration
DGM	Direction Générale des migrations
DRC	Democratic Republic of Congo
EC	European Commission
EDF	European Development Fund
ESDP	European Security and Defence Policy
EUPOL RD Congo	EU Police Mission in the DRC
EUSEC RD Congo	EU Mission to provide advice on and assistance with security sector reform in the DRC
FARDC	Forces Armées de la République Démocratique du Congo
FDLR	Forces démocratiques de libération de Rwanda
FNI	Front des Nationalistes et Intégrationnistes
GMI	Groupe d'intervention mobile
GMRRR	Groupe Mixte de Réflexion sur la Réforme et la Réorganisation de la Police Nationale Congolaise
IfP	Initiative for Peacebuilding
ICC	International Criminal Court
ICD	Inter-Congolese Dialogue
IDASA	Institute for Democracy in South Africa
MLC	Mouvement de Libération du Congo
MONUC	UN Mission in the DRC
MRC	Mouvement Révolutionnaire Congolais
NGOs	Non-governmental organisations
OECD	Organisation for Economic Cooperation and Development
PARECO	Coalition des Patriotes Résistants Congolais
PIR	Police d'intervention rapide
PNC	Police Nationale Congolaise
RCD	Rassemblement Congolais pour la Démocratie
SSR	Security system reform
TRC	Truth and Reconciliation Commission
UNDP	UN Development Programme
UPI	Unité de police intégrée

EXECUTIVE SUMMARY

In October 2008, fighting erupted in the North Kivu province in eastern Democratic Republic of Congo (DRC) between rebel troops of Laurent Nkunda's *Congrès National pour la Défense du Peuple* (CNDP) movement, local militia groups, and troops of the *Forces Armées de la République Démocratique du Congo* (FARDC), the national Congolese army. While this represents the worst outbreak of violence involving massive forced displacement, targeted massacres of civilians and widespread rape among other abuses, violence has been simmering among these groups for the last two years. Among the most disturbing elements of the recent clashes in eastern Congo is the fact that once attacked by the CNDP, governmental FARDC troops not only retreated out of ineptitude and fear, but systematically looted, pillaged, raped and otherwise abused civilians in the process of their retreat. This outbreak of violence is a clear sign that despite the international community's investment in accompanying the DRC through a strenuous peace process and political transition for over a decade, the Congolese security system remains not just a fragile, but destructive force. Not only is the current Congolese security system¹ incapable of defending the state and the state's authority, it also poses a serious threat to the population as a whole, and to women and children in particular. Impunity within the security system allows serious human rights violations, including sexual and gender-based violence, to go unchecked. This culture of impunity within the law enforcement and security services must change to render the security system a protector of Congolese citizens' rights rather than the principal abusers.

This paper argues that strengthening the accountability and integrity of the security system, including vetting and removing human rights abusers from the army and police in particular, is a necessary and urgent part of security system reform (SSR), also often known as security sector reform, in the DRC which has yet to be addressed and without which violence among rebel factions, militias and government security forces will continue. At least those suspected of the most serious violations must be brought to trial. Tackling the culture of impunity for the most egregious offences will not only help to prevent future abuses by removing at least the worst abusers, but also by instituting effective internal disciplinary measures and external accountability mechanisms that are essential to transforming the culture of normalisation of human rights violations within these institutions. In addition to contributing to building public confidence in the security system, which is essential for its proper functioning, these measures can also help to break down criminal networks that exist within the institutions, particularly those networks engaged in illicit natural resource extraction – notably in the East of the country and often in collusion with armed groups. Tackling criminal networks within the security system thus improves command and control, and strengthens democratic oversight. Reform of security institutions cannot happen in a vacuum, however; greater and more concerted focus must be put on transforming the population's relationship with the state, including its security institutions. Not only must the police and army become defenders of the rights of the population; the Congolese must cease to be victims of oppression at the hands of state security agents and become fully rights-bearing citizens to whom the police and army are democratically accountable. The paper then offers recommendations for ways in which the EU² may incorporate justice-sensitive reform initiatives within SSR programmes to address the legacy of impunity for human rights violations and the ongoing human rights violations committed by elements within the security forces.

Keywords: DRC, SSR, justice-sensitive, gender, violence, human rights, impunity.

1 The Organisation for Economic Cooperation and Development's (OECD) Development Assistance Committee (DAC) defines the security system as including: core security actors (e.g. the police, gendarmerie, army, civilian and military intelligence); security management and oversight bodies (e.g. government, parliamentary and financial oversight bodies, and civil society organisations); justice and law enforcement institutions (i.e. the judiciary, prison service, customary and traditional justice); and non-statutory security forces (e.g. militia groups and private security companies). For more information, see <http://www.oecd.org>.

2 The EU is taken to mean the relevant European institutions i.e. the European Commission, European Council, EUSEC, EUPOL and the Member States engaged in SSR in the DRC.

INTRODUCTION

The focus of this paper is to offer recommendations for ways in which the EU may incorporate justice-sensitive reform initiatives within SSR programmes to address the legacy of impunity for human rights violations and the ongoing human rights violations committed by elements within the security forces. The primary focus is therefore on those sectors of the security system that are currently both abusive and engaged in reform processes – the FARDC and police (*Police Nationale Congolaise*, or PNC). It is beyond the scope of this paper to examine in detail the justice and penal systems, although the importance of these in addressing impunity, as well as in a holistic approach to SSR, is clear. The author interviewed stakeholders and observers from civil society, national authorities, and the international community in Kinshasa, Bunia, Goma and Brussels between November 2007 and June 2008.

BACKGROUND

The DRC is a vast territory, with a surface area of nearly 2.5 million square kilometres over which state institutions have only limited control.³ Often referred to as a "country continent", its estimated population is around 66.5 million and it has a complex and diverse social fabric.⁴

An estimated 5.4 million people have died in the DRC since 1998 from war-related causes.⁵ Conflict has internally displaced 1.4 million people in the DRC; a further 322,000 people have sought refuge in neighbouring countries.⁶ It has ravaged the economy and destroyed social cohesion. About 80 percent of the population live on less than US\$1 per day⁷ and the DRC is ranked 177th out of 179 countries in the the UN Development Programme's (UNDP) Human Development Index (HDI).⁸ Corruption is endemic: the DRC ranks 168th of 179 countries in Transparency International's Corruption Perceptions Index 2007.⁹ Education and healthcare of even basic quality are the privilege of the rich. Today, the vast majority of Congolese face an ongoing struggle for survival; chronic poverty and underdevelopment are everyday problems in the DRC.

Independence from Belgium in 1960 was followed by decades of oppression, kleptocracy and state collapse under President Mobutu. With the end of the Cold War, and faced with internal opposition he could no longer suppress, Mobutu attempted to stage-manage a move to multi-party democracy in what was then Zaire. The 1994 genocide in Rwanda precipitated his downfall; neither the Zairean army nor the UN could prevent Hutu Power and the Interahamwe from launching attacks on Rwanda from refugee camps in the Kivus (the eastern provinces of the country). In 1996, Congolese dissidents with the support of neighbouring Angola, Rwanda and Uganda, established the *Alliance des Forces Démocratiques pour la Libération du Congo-Zaïre* (AFDL), headed by Laurent-Desiré Kabila. The AFDL invaded the country from the East, Mobutu fled and the AFDL entered

3 Central Intelligence Agency, *The 2008 World Factbook*. Available at <https://www.cia.gov/library/publications/the-world-factbook/geos/cg.html>.

4 Ibid.

5 International Rescue Committee (2008). *Mortality in the Democratic Republic of Congo: An ongoing crisis*. Available at http://www.theirc.org/resources/2007/2006-7_congomortalitysurvey.pdf.

6 Amnesty International (2008). *Amnesty International Report 2008: The State of the World's Human Rights*. London, UK: International Secretariat. p.11. Available at <http://thereport.amnesty.org/eng/download-report>.

7 African Development Bank, OECD Development Centre and UN Economic Commission for Africa (2008). *African Economic Outlook 2008*. p.254. Available at http://www.afdb.org/portal/page?_pageid=473,20970243&_dad=portal&_schema=PORTAL.

8 UN Development Programme (UNDP). *Human Development Indices: A statistical update 2008 – HDI rankings*. Available at <http://hdr.undp.org/en/statistics/>.

9 Transparency International (2007). *Surveys and Indices: Corruption Perceptions Index 2007*. Available at http://www.transparency.org/policy_research/surveys_indices/cpi/2007.

Kinshasa in May 1997; Laurent Kabila became President of the country, which he renamed the Democratic Republic of the Congo.

However, Laurent Kabila's success was short-lived. The country – and indeed the AFDL – was highly fragmented and divided, including along ethnic and geographic lines. Kabila also faced considerable opposition from powerful individuals who had benefited from Mobutu's system of patronage and who thus stood to lose their considerable power-bases under the new regime. Furthermore, Kabila angered his erstwhile allies, Uganda and Rwanda, by seeking autonomy from them, and removing Rwandan officers from the army. In the summer of 1998, two rebel movements – the *Rassemblement Congolais pour la Démocratie* (RCD) in the East and the *Mouvement pour la Libération du Congo* (MLC) in Orientale and Equateur provinces – launched attacks on the Kabila government. The RCD was primarily backed by Rwanda and the MLC by Uganda, while Zimbabwe and Angola supported the government. Several other African states and militias were also engaged at various times. The ensuing Congo War thus combined local, national and international conflicts.

By 1999, the war had reached a military stalemate. The country was divided into four zones controlled by the government, the MLC in the North, and the two RCD factions (RCD-Goma backed by Rwanda, and RCD-ML backed by Uganda) in the East and Northeast. The government and the rebel-controlled areas alike continued the patterns of governance dating back to the colonial era: of distributing access to land, economic resources and rights to select local communities to ensure their loyalty, while fuelling competition with other communities to prevent united local opposition.¹⁰

The 1999 Lusaka Accords between Rwanda, Uganda, Kabila's government and its international allies, made provision for a ceasefire, withdrawal of foreign troops, the arrival of a UN peacekeeping mission (MONUC) and the Inter-Congolese Dialogue (ICD) process. Laurent Kabila was assassinated in January 2001 and replaced by his son, Joseph. The ICD opened in Sun City, South Africa in 2002, and the Global and All-Inclusive Agreement laying out the architecture of the political transition was signed in December 2002.

The Global and All-Inclusive Agreement established a Transitional Government, closely supervised by the international community in the form of the *Comité International de l'Accompagnement à la Transition* (CIAT), brought an end to the conflict and prepared the way for democratic elections. The agreement was essentially a power-sharing deal between the government, MLC and RCD, with some civil society engagement. Elections were held in 2006. In the second round of voting, Joseph Kabila (winning 58 percent of the vote) beat his rival Jean-Pierre Bemba of the MLC (with 42 percent), and was duly elected President of the Republic.

¹⁰ M. Nest, F. Grignon and E.F. Kisangani (2006). *The Democratic Republic of Congo: Economic dimensions of war and peace*. International Peace Academy. Introduction.

THE SECURITY CONTEXT IN THE DRC TODAY

The settlement at Sun City was incomplete. Armed groups in Ituri (in the East) were “pacified” by a series of separate negotiations, but at the heart of the conflict, in the resource rich and densely populated border provinces of North and South Kivu just to the South of Ituri, violence continued and escalated during 2006. The East of the DRC has porous borders with Burundi, Rwanda, Sudan and Uganda. Armed groups (including those with foreign backing) proliferate, especially in the East. Illegal resource extraction is a major source of financing for these groups, which are often extremely well connected and supported by regional elites.¹¹

FORCES DÉMOCRATIQUES DE LIBÉRATION DE RWANDA

The presence of armed groups perceived to be foreign is still an open wound and repatriation, or neutralisation, of foreign fighters remains critical to security in the East. The most important of these groups is *Forces Démocratiques de Libération de Rwanda* (FDLR), consisting of the predominantly Hutu remnants of the former Rwandan army, militiamen and others who fled to the DRC in the wake of the Rwandan genocide, their offspring and others, including Congolese and non-Hutus. Although the majority of the FDLR has already been repatriated, a rump group remains. The Rwandan government suspects the FDLR of planning a second genocide. That the FDLR indeed continues to harbour at least several suspected authors of the Rwandan genocide, or *génocidaires*, within its ranks, provides some legitimacy to Rwandan and Congolese ethnic Tutsis' grievances towards the FDLR. The FDLR has been the subject of numerous agreements, as their presence has continued to fester through the transition and elections. The FDLR problem was most recently addressed in the 2007 Nairobi Communiqué agreed between Kinshasa and Kigali, which stipulates the ways in which the Congolese and Rwandan governments should work together to effectively demobilise and repatriate FDLR forces remnant in the DRC. Progress has been slow. A festering rebellion led by a Congolese Tutsi, Laurent Nkunda, leader of the CNDP and a dissident general, claims to be motivated by the need to protect Tutsis from the FDLR. In order for sustainable peace to take hold in eastern Congo, significant progress needs to be made in the demobilisation and repatriation of the FDLR, as stipulated in the Nairobi agreement.

DOMESTIC ARMED AND VIOLENT GROUPS

Following the relatively successful and peaceful national elections in 2006, fighting resumed in North Kivu late that same year. Laurent Nkunda, leader of the CNDP and a dissident general, Laurent Nkunda had refused to disarm during the pre-election transition, claiming that the Tutsi population was not adequately protected by the integrated government troops. A deal between the Kinshasa government and Nkunda (brokered by Rwanda)¹² led to the compromise of *mixage*¹³ for Nkunda's men, resulting in divided loyalties within brigades. This strengthened Nkunda's forces, and fighting broke out again in the second half of 2007 in North and South Kivu. Throughout late 2007, the government sought to bring the CNDP to heel by force. When this ended in the military humiliation of integrated Congolese troops, the Congolese government was forced to the negotiating

11 For example, see: Global Witness, 'Control of mines by warring parties threatens peace efforts in eastern Congo', 10th September 2008. Available at http://www.globalwitness.org/media_library_detail.php/663/en/control_of_mines.

12 There is no written record of the agreement between General Numbi (then Air Force commander for the government of the DRC) and Laurent Nkunda, facilitated by General Kabarebe (Rwandan Chief of General Staff) in December 2006. There was considerable disagreement afterwards as to what exactly had been agreed on.

13 A compromise negotiated in 2007 that mixed elements of Laurent Nkunda's forces with the FARDC, but without retraining or integration (as in *brassage*).

table. With international facilitation led by the UN, EU and US, the Congolese government, CNDP and most of the remaining armed groups – notably various Mayi Mayi groups,¹⁴ including the *Coalition des Patriotes Résistants Congolais* (PARECO) militia¹⁵ – signed two statements of commitment (*Actes d'Engagement*) for peace, security and development in North and South Kivu, referred to as the January 2008 Goma Agreement. Although this ceasefire may have temporarily prevented the catastrophic humanitarian situation for the civilian population from deteriorating further, it did not provide any real respite for the population.

Indeed, shortly after the Goma Agreement was signed, the CNDP and other armed groups violated the terms of their ceasefire agreement. The peace process set forth in the Goma Agreement has thus broken down, particularly with the outbreak of intense fighting in October 2008 spurred by CNDP aggression. And although the conflict may appear to be local, it is believed that Nkunda at least has the consent of Rwanda, and that the government in Kinshasa supports a variety of the Mayi Mayi groups and PARECO.¹⁶

The Goma Agreement provided a framework for disarmament, demobilisation and reintegration (DDR) in general terms for the signatories, and included an amnesty provision for combatants for acts of war, insurrection and sedition, and crimes of political opinion.¹⁷

Parallel to the ceasefire negotiations held in Goma in January 2008, the Congolese government convened a large conference of over 1,000 delegates to discuss peace, security and development in the Kivus. Kinshasa-based Kivutiens Abbé Malumalu, head of the Independent Electoral Commission, and Vital Kamerhe, President of the National Assembly, showed real leadership at the conference, generating momentum for crucial issues to be discussed. The reports from the two workshops (one each for North and South Kivu) included very specific recommendations for vetting, to prevent those guilty of committing massacres, sexual violence or inciting (racial) hatred from holding positions of responsibility.¹⁸ But there was no mention of vetting in either the official text of the Goma Agreement or the final conference recommendations. Lacking any legal force, the call for vetting at the Goma conference will not likely carry any weight in influencing the implementation of the Goma peace agreement, a process which has in any event broken down with the latest outbreak of violence in late 2008.

Broad-stroke descriptions of the conflicts mask a complex landscape of local conflict and economic interest. Local FARDC commanders, for example, are believed to collaborate with FDLR units on resource extraction, and certainly control of natural resources across the Kivus is an important source of income for armed groups and their patrons in the DRC and abroad.¹⁹ This complex dynamic has contributed to the breakdown of the Goma peace process, as well as renewed fighting in the Ituri district in late 2008.

Meanwhile, on the other side of the country in the West, the state faces continued challenges to its authority in Bas-Congo. In this economically and strategically important province, Mobutu instituted a system of appointing outsiders to key administrative and commercial posts in the province, and Bas-Congo continues today to be marginalised from political decision-making in Kinshasa. The *Bundu Dia Kongo* (BDK), a violent politico-religious movement, has exploited the inability of the central administration to address local grievances and the weak presence of the authorities to establish parallel administrative and justice systems in some parts of the province. Clashes between the BDK and the state security forces have resulted in a considerable number of deaths in Bas-Congo since 2000. In February 2008, at least 100 people, mainly members of the BDK movement, were

14 Mayi Mayi groups were originally local community defence militias organised primarily to resist Rwandan forces and Rwandan-backed rebels during the 1998–2002 conflict. Many are now engaged in banditry.

15 PARECO is an armed group claiming to represent primarily non-Rwandophone Congolese against Laurent Nkunda's CNDP.

16 Interviews, civil society representatives, MONUC officials and European diplomats, Kinshasa and Goma, 2008.

17 Amnesty for combatants is often included in DDR processes – including in the DRC, because amnesty is seen as a precondition for rebel groups to join the national army, bringing them under central command and control and into centralised training processes. The amnesty provision in the Goma Agreement explicitly excluded genocide, war crimes and crimes against humanity – crimes so heinous they have attained the status of international crimes under international law. However, as with previous amnesties, there is some question as to how far they will be applied or enforced in practice. Amnesties excluding international crimes have little value if they are not accompanied by prosecutions of those guilty of these crimes. The arrest warrant issued by the ICC for Bosco Ntaganda (Nkunda's chief of staff) for crimes allegedly committed in Ituri was unsealed on 28th April 2008, yet a question mark still hangs over the fate of Laurent Nkunda, who has been accused of serious human rights violations, suggesting that once again those in high positions may avoid justice.

18 Report South Kivu working group Recommendations III c) 3; Report North Kivu working group Recommendations III 3. A. 1.

19 Interviews, MONUC, Kinshasa, May 2008. See also: Global Witness. Op. cit.

killed due to, 'in large part, unwarranted and excessive use of force by the PNC, and in some cases by arbitrary executions'.²⁰

The intense outbreak of violence in September 2008 in North Kivu and Ituri, as well as clashes in the Bas-Congo region, revealed the tenuous hold the Congolese government has exercised over its territory. But even where there is no direct threat from armed or violent groups, on top of chronic poverty and underdevelopment, elements of the state security forces prey on the population. In part, this can be explained by the atrocious living conditions of most of the security forces – inadequate pay which is routinely withheld or siphoned off by senior ranks, and the lack of basic provision of food, accommodation or support for family members. With inadequate or non-existent logistical support, including the provision of food, the security forces literally must live off the population to survive.

However, while petty criminality may be explained by the living conditions of members of the security forces, this cannot explain the high levels of human rights violations attributable to members of the security services and militia, as documented by the Human Rights Division of the UN Organisation Mission in the DRC (MONUC),²¹ and numerous national and international non-governmental organisations (NGOs).²²

RAPE AND SEXUAL VIOLENCE

In the words of Major General Patrick Cammaert, former MONUC Deputy Force Commander for the eastern DRC: 'It is more dangerous to be a woman than a soldier right now in eastern Democratic Republic of Congo'.²³ The ongoing epidemic of rape and sexual violence in the DRC, notably in the East but also nationwide, is a vicious example of the security threat to the population. Of the countrywide sexual violence cases documented by the UN Human Rights Office in the first half of 2007, 54 percent were committed by the FARDC and 43 percent by the PNC.²⁴

Although armed groups are believed to commit only three percent of cases of rape and sexual violence nation-wide,²⁵ this percentage hides the concentration of cases particularly in the Kivus where they are most active. According to the UN Population Fund, there were 2,000 cases of rape reported in North Kivu alone between January and September 2007, with a 60 percent increase in cases between August and October.²⁶ In addition to the sheer numbers, the brutality of rape and sexual violence is also particularly horrific: 20 percent of rapes reported in the first half of 2007 in South Kivu alone were so violent that the victims required surgery.²⁷ In South Kivu, the FDLR and associated groups such as the *Rastas* have developed a reputation for the abduction, gang-rape and sexual

20 MONUC Human Rights Division, UN (May 2008). *Special inquiry into the Bas-Congo events of February and March 2008*. Special Report. Office of the United Nations High Commissioner for Human Rights. Available at <http://www.unhcr.org/refworld/docid/48624eae2.html>. Government spokesman Emile Bongeli 'dismissed the report as "mendacious"'. See: 'DRC: UN "lied" in report on Bas-Congo killings – gov't', *IRIN*, 17th June 2008. Available at <http://www.irinnews.org/report.aspx?ReportID=78800>.

21 For more information, see: <http://www.monuc.org>.

22 For example, see: Amnesty International (October 2007). *Democratic Republic of Congo: Torture and killings by state security agents still endemic*. London, UK: International Secretariat. Available at <http://www.amnesty.org/en/library/info/AFR62/012/2007/en>. This report states that the Intelligence and Special Services Branch of the Police (*Direction des Renseignements Généraux et Services Spéciaux de la Police*) arrested and tortured supposed political opponents of the ruling party in Kinshasa during and after the 2006–2007 elections, and documents grave human rights violations by the President's Republican Guard (*Garde Républicaine*) in the wake of fighting in Kinshasa in March 2007.

23 Wilton Park (May 2008). *Report on Wilton Park Conference WP914 – Women targeted or affected by armed conflict: What role for military peacekeepers?* 27th–30th May 2008. Available at <http://www.wiltonpark.org.uk/documents/conferences/WP914/pdfs/WP914.pdf>.

24 MONUC Human Rights Division, UN (September 2007). *The human rights situation in the DRC during the period January to June 2007*. Office of the United Nations High Commissioner for Human Rights. Available at http://www.monuc.org/downloads/Report_January_June_2007_English.pdf. It should be noted that statistics in the DRC are notoriously difficult to ascertain, not least in reported cases of rape and sexual violence. Incidents of rape and sexual violence are highly likely to be significantly under-reported, given the social stigma attached to victims of the crime, lack of trustworthy authorities and the remoteness of many communities. In some instances, cases may be double-reported, with one case registered both by (for example) a human rights organisation and a healthcare facility. Furthermore, many victims have difficulty in identifying their attackers either as individuals or as members of a particular group or institution. Finally, additional cases may be hidden if the victim is killed and the case registered as arbitrary killing, as in the example given for the CNDP.

25 Ibid.

26 'DRC: Rape cases up by 60 percent in North Kivu', 17th October 2007, *IRIN*. Available at <http://www.humanrights-geneva.info/DRCRape-cases-up-by-60-percent-in-2362>.

27 UN Security Council (February 2008). *Final report of the Group of Experts on the Democratic Republic of Congo*, S/2008/43. Available at <http://www.un.org/sc/committees/1533/egroup.shtml>.

enslavement of young girls;²⁸ in North Kivu, *Groupe Cobra*, a Mayi Mayi group, are notorious for this latter practice, known locally as '*ndogondogo*'.²⁹ Sexual abuse of woman and girls is also widely reported in territories controlled by PARECO, other Mayi Mayi groups and CNDP. In the case of the latter, the incidence of rape and sexual violence are believed to be even more under-documented than is usual in the DRC, because the CNDP tend to kill the victims afterwards – thus the crime is registered by the UN as an arbitrary killing, rather than as rape.³⁰

The effects of rape on this scale are disastrous – not only in terms of health (HIV infection rates reach 27 percent amongst rape survivors; fistulas, urinary and faecal incontinence and permanent damage to the woman's reproductive organs are widespread). They also lead to a rise in malnutrition, as women are afraid to work in the fields; a decrease in economic activities as women avoid market places; and interrupted education as children are kept at home for fear of their safety. The social fabric of communities is destroyed for the long term as rape survivors, their children and children resulting from rape are rejected, stigmatised or otherwise re-abused by their communities. Rape can be used as part of a systematic attempt to wipe out a particular ethnic group, and many communities view it as such. It is often associated with “foreigners”, an image perpetuated by the phenomenon of perpetrators pretending to be Rwandophone or *Interahamwe*.³¹

New research into soldiers' attitudes towards rape has found that soldiers distinguish between different types of rape, even if the distinctions are often blurred. “Lust” or “normal” rapes of civilian women are seen by male and female soldiers as the result of the natural need for a man to satisfy his physical desires, particularly when he has no money to pay for sex. On the other hand, rape meant to humiliate or punish (frequently including the mutilation or death of the victim) is identified as “evil” rape. Rape is therefore both normalised and made exceptional.³²

Recent increased attention to rape as a weapon of war – “exceptional rape” – in the DRC is extremely important and a positive step forward. As this research shows, however, rape and sexual violence cannot simply be deemed a weapon of war, but rather part of a larger problem where rape is accepted or excused – even by female soldiers, who might be expected to have more sympathy for civilian rape victims – extending beyond the security system to society at large. The phenomenon is often described in French as '*banalisé*'. Although usually translated into English as “normalised”, *banalisé* carries a stronger connotation: not only is the practice widespread, but it is also dismissed as unimportant, trite or banal. The fact that sexual violence is not limited to the conflict zones of the East, nor to the “exceptional” rape as defined by the soldiers above, highlights how women's experiences of sexual violence need to be treated differently from other forms of “extraordinary” human rights violations (as experienced by both women and men) commonly associated with conflict, because the experience of sexual violence continues beyond conflict situations.

The picture that emerges is that in the Kivus, rape and sexual violence are routinely committed by armed groups and elements from within the army and police on a massive scale. Yet, rape and sexual violence are not limited to the particular warscape of the East of the country, but generalised throughout the country. The prevalence of perpetration by men in uniform suggests that tackling army and police attitudes towards rape will be crucial for reducing the number of crimes committed by security forces and in developing security institutions that can contribute to addressing the broader social problem of all “types” of rape, rather than exacerbating it.

The security situation in Congo is therefore dire on two fronts: firstly, the state lacks the credible and visible military force needed to neutralise the armed groups and the law enforcement agencies necessary to extend its authority throughout the whole territory; secondly, in addition to the atrocities committed by armed groups, where the army and/or police succeed in ousting the armed groups, they simply continue to prey on – or punish – the local population. And throughout the country, not just in conflict zones, state security agents pose a serious threat to the security of the population, particularly women and girls.

28 Ibid.

29 Interview, human rights defenders, Goma, May 2008.

30 Interview, MONUC, Kinshasa, 2008.

31 USAID/Bureau for Democracy, Conflict and Humanitarian Assistance (DCHA) (2004). *Sexual terrorism: Rape as a weapon of war in Eastern Democratic Republic of Congo – An assessment of programmatic responses to sexual violence in North Kivu, South Kivu, Maniema, and Orientale Provinces, January 9-16, 2004*. Assessment report. Available at <http://www.peacewomen.org/resources/DRC/USAIDDCHADRC.pdf>.

32 M.E. Baaz and M. Stern, 'Why do soldiers rape? Gender, violence and sexuality in the DRC armed forces', *International Studies Quarterly*, forthcoming 2009.

IMPUNITY: A SHAKY FOUNDATION FOR DEMOCRACY

The Global and All-Inclusive Agreement, signed in Pretoria in December 2002, encompassed the agreements reached in the Sun City negotiations that year. It established a Transitional Government to end the conflict and prepare the way for democratic elections and the Third Republic. The accords were essentially a power-sharing deal between the warring factions of the 1998–2002 conflict, with some civil society engagement. They did not address the root causes of the conflict, or the need for justice and human rights in any meaningful way. During the transition, the international community focused almost exclusively on integrating the armed groups into a common army and the upcoming elections.

The resumption of fighting in the East in December 2006 illustrated two things: first, the settlements reached at the Sun City negotiations and incorporated into the Global and All-Inclusive Agreement were incomplete; second, force of arms was the only way to gain a seat at the table, and thus membership of the political elite. The agreement signed in Goma in January 2008 brought an apparent end to the military stand-off in the Kivus. But these peace negotiations mirrored those of 2002 by failing to address the root causes of the conflict or address the legacy of massive crimes committed during the decade of conflicts in Congo.

Although the Transitional Government (2003–2006) brought a formal end to the war, it largely failed to usher in democracy or sustainable peace. Rather, the Global and All-Inclusive Agreement froze the conflict dynamics and entrenched both the power of the military leaders and impunity for even the most egregious crimes committed during the conflicts. The Transitional Government, supposedly in order to prepare the way for elections and democracy in Congo, not only failed to address justice or human rights issues, but the ways in which the political institutions and army were formed led to entrenched impunity. Impunity for crimes of sexual violence raises the question as to the extent to which women can participate in a democracy as fully rights-bearing citizens, especially if their security is under constant threat. As formal security institutions are part of the state apparatus, the role of the government in SSR is crucial. It is therefore necessary to place the security system within the political context in which it operates, and to consider how the political institutions and environment of the Third Republic were created.

COMPOSITION OF THE POLITICAL INSTITUTIONS

The Global and All-Inclusive Agreement and the Constitution of the Transitional Government (2003) laid out the new political order: the Kabila government held the presidency; and the government, MLC, RCD and the political opposition each held one of the four vice-presidencies. The composition of the National Assembly and Senate was also divided between the main factions, other entities and civil society.

Five institutions to support democracy were also created, including a Truth and Reconciliation Commission (TRC). Each of these institutions had a member of civil society at its head, while its executive committee comprised representatives of the parties to the All-Inclusive Agreement, the majority of whom were the belligerents.³³ Thus, the interests of the warring parties were firmly and structurally ensconced within each institution.

³³ Constitution de la Transition de la République démocratique du Congo (2003). Chapitre II: des institutions d'appui à la démocratie, Article 157.

The TRC is a good example of the extent to which human rights and accountability for systematic human rights violations were brushed under the carpet during the transition period by national elites, as the international community either looked on or looked away. Beyond engaging in some inter-ethnic dialogue in the East, the TRC contributed nothing towards beginning the painful, difficult, yet necessary process of establishing the truth of what happened in the DRC.³⁴

THE CHALLENGES FOR CIVIL SOCIETY

During the Mobutu era, civil society developed as the main voice of political opposition and the champion of human rights in the DRC, as well as the primary provider of social services for the population. Towards the end of the Mobutu era, civil society was able to mobilise significant parts of the population, and was influential in the national as well as local and international arenas. While civil society played an active and constructive role in the peace negotiations leading up to the Sun City agreements in 2002, its role and voice were weakened in the transition; this trend has been exacerbated since the 2006 elections due to its politicisation during and after the war, in-fighting, a lack of resources and capacity, and the general impoverishment of the population. Repression of human rights defenders continues to be widespread and includes intimidation, illegal detention and murder.³⁵ In the post-election period, the role of political opposition has been taken up by political parties (including many former civil society activists) and civil society is struggling to find its role. Strong and courageous individuals and organisations are still active, even though they face considerable repression – particularly if deemed to be political opponents. This is especially evident with regard to human rights activists. Furthermore, genuine national networks and platforms are few and far between, with many “national” organisations in Kinshasa having little or no reach beyond the capital.

Despite these challenges, however, a campaign led by local and international civil society organisations has succeeded in raising awareness of the extent of rape and sexual violence in the DRC, particularly in the East of the country. Importantly, the campaign has also brought about political change, bringing the question of impunity for sexual violence in the DRC onto the international agenda – particularly with UN and EU ministers and ambassadors repeatedly raising the question with government officials. If the pressure and momentum can be maintained, this may be an important first step in mobilising political will to truly address the problem.

In summary, the new political class is dominated by the belligerents from the conflict, who are also able to prevent any attempts to address the legacy of massive human rights violations committed during the war. At the same time, civil society – the most likely champion of justice and human rights – is seriously weakened and unable to generate the political will to address the past.

A PREDATORY SECURITY SYSTEM

The DRC has never had a security system designed to protect its population; in the pre-war years, colonial and post-colonial security agencies were designed to protect and reinforce the interests of the rulers, not the ruled.³⁶ The current security system is unable to protect the territorial integrity of the country, and worse still, not only is it not able to protect even the basic rights of the population, but elements within the various security agencies pose a serious threat to the population. For the purposes of this paper, the army and police will be examined in most depth.

34 The Truth and Reconciliation Commission is analysed in more detail in L. Davis and P. Hayner (forthcoming 2009). *Difficult peace, limited justice: Ten years of peacemaking in the DRC*. International Center for Transitional Justice.

35 The murder of human rights defender journalist Serge Maheshe is only the best-known example. Human rights groups regularly cite intimidation, illegal detention and destruction of their property by security forces, often, it is believed, with the connivance of political authorities. Women human rights defenders are also reportedly subjected to targeted rapes and threats of rape/sexual violence against themselves and their children. Interviews, civil society representatives, MONUC officials, Kinshasa, Kisangani, Goma, Bunia, 2007 and 2008.

36 For example, see: International Crisis Group (February 2006). *Security Sector Reform in the Congo*. Africa Report No. 104. Available at <http://www.crisisgroup.org/home/index.cfm?id=3946&CFID=54906706&CFTOKEN=18006491>.

DISARMAMENT, DEMOBILISATION AND REINTEGRATION AND THE FORMATION OF THE FARDC

Impunity for human rights violations was established as the basis for the new political order as a result of the domination of the political institutions by the belligerents. Concomitantly, impunity was firmly entrenched within the new national army, the FARDC, created from the forces of the Sun City signatories and some other militias. This process had two components: various disarmament, demobilisation and reintegration (DDR) programmes – in some cases including repatriation and rehabilitation, or DDR(RR) –³⁷ on the one hand, and the *brassage* process on the other. *Brassage* was the process of integration that sought to (re)train ex-combatants that chose to join the national army rather than demobilise. *Brassage* sought to dismantle former lines of command and geographic ties by disbanding former militia units, integrating soldiers of different backgrounds and moving them away from their areas of origin, thus creating a unified, republican army.

The objective of the international community was to reduce the overall number of men-at-arms, to (re)train those who stayed within the army and, through *brassage*, break down old loyalties and establish a unified chain of command. However, security measures and control over regional power bases, resources and fighters were very politically sensitive during the transitional government. Although Vice-President Ruberwa (RCD) in theory controlled the ground forces, in practice control of the various factions remained largely unchanged. Proposed DDR programmes met with considerable resistance from the military establishments. One observer commented that as soon as the military establishment realised in June 2005 that up to two-thirds of combatants were choosing demobilisation, they reacted by making the option of joining the army more attractive and set out to sabotage DDR processes.³⁸ Lack of cooperation and coordination between the various national and international agencies tasked with implementing DDR stymied the process further.

Integration into the army technically excluded anyone suspected of crimes against humanity.³⁹ But this was only a commitment on paper; no administrative procedures were put in place that could have implemented it. To the contrary, on 26th July 2006 an agreement was signed between the government and the Iturian armed group, the *Mouvement Révolutionnaire Congolais* (MRC), and witnessed by MONUC,⁴⁰ agreeing on the terms for the MRC's participation in the DDR process in Ituri. One of the terms agreed on was a general amnesty for all members of the MRC engaged in the process.⁴¹ In mid-November, MRC leader Matthieu Ngudjolo⁴² and Peter Kharim,⁴³ leader of another Iturian armed group, the *Front des Nationalistes et Intégrationnistes* (FNI), accepted an amnesty that would include '*inter alia*, the retraction of international arrest warrants'.⁴⁴ By the end of the month, following public criticism of the amnesty, the UN tightened it further to 'similar terms to the amnesty law adopted in 2003', which would exclude crimes against humanity, war crimes and genocide.⁴⁵ The UN stated that in witnessing the original 'general amnesty', 'general' had been understood to mean applying to all those entering DDR rather than covering all crimes. In any case, the amnesty was eventually limited to exclude international crime. But experts engaged in DDR at the time believe there was a climate of 'DDR at any price'⁴⁶ and certainly even where the amnesty language was in line with international standards, the lack of sanction for human rights violations, perpetuating impunity, suggests the amnesty was hardly enforced.

37 Referred to collectively as DDR for simplicity in this paper.

38 Interview, US official, Goma, June 2008.

39 Stipulated in the *Plan National DDR* (PNDDR).

40 Accord entre le GoDRC et le Mouvement Révolutionnaire Congolais (MRC) en présence de la MONUC, Kambutso, 26th July 2006 [Agreement between the GoDRC and the MRC in the presence of MONUC, Kambutso, 26th July 2006].

41 'l'amnistie générale pour tous les membres du MRC engagés dans le processus', Accord entre le GoDRC et le Mouvement Révolutionnaire Congolais (MRC) en présence de la MONUC, Kambutso, 26th July 2006 [General amnesty for all members of the MRC engaged in the process', Agreement between the GoDRC and the MRC in the presence of MONUC, Kambutso, 26th July 2006].

42 Dispositions pratiques additives à l'accord signé à Kambutso le 26 juillet 2006, entre le gouvernement de la RDC et le MRC, en présence de la MONUC, Kambutso 16th November 2006 [Additional clauses to the accord signed at Kambutso on 26th July 2006 between the GoDRC and the MRC in the presence of MONUC, Kambutso, 16th November 2006].

43 Dispositions pratiques additives à l'accord signé à DDOY, le 13 juillet 2006, entre le gouvernement de la RDC et le colonel Peter KHARIM, DDOY, 17th November 2006 [Additional clauses to the accord signed at DDOY on 13th July 2006 between the government and Colonel Peter KHARIM, DDOY, 17th November 2006].

44 Dispositions pratiques additives à l'accord signé à Kambutso le 26 juillet 2006, entre le gouvernement de la RDC et le MRC, en présence de la MONUC, Kambutso 16th November 2006 [Additional clauses to the accord signed at Kambutso on 26th July 2006 between the GoDRC and the MRC in the presence of MONUC, Kambutso, 16th November 2006].

45 In 2008, Matthieu Ngudjolo was arrested by the Congolese authorities and transferred to the ICC, where he awaits trial for suspected war crimes and crimes against humanity.

46 Interview, Belgian official, Brussels, May 2008.

Some expert observers also suggest that the way in which DDR was carried out encouraged the worst elements of each militia to stay in the army rather than demobilise. As one expert pointed out, living conditions within the army were even worse than for the civilian population. With the exception of a few idealistic officers, therefore, only those people who could but live by the gun chose to remain in the army rather than demobilise.⁴⁷

The DDR process is not yet complete, particularly in the Kivus (the scene of systematic human rights violations, the epidemic of sexual violence and widespread illicit natural resource extraction). Where DDR is largely completed, continued attention will need to be paid to the reintegration element to prevent remobilisation. DDR remains a priority in both the Nairobi and Goma processes. At the time of writing, there was no agreement on the modalities of DDR, and the form in which DDR and subsequent *brassage* will take place is a major sticking point for implementing the Goma Agreement, particularly for the CNDP.

As noted above, previous DDR processes appear to have encouraged the worst elements to choose a military rather than civilian future, and lessons from previous DDR experiences, particularly in Ituri, have informed current discussion about DDR. European officials – who expect to play a significant role in these processes, supported by other international actors, are insistent on two points: firstly, child soldiers will not and cannot count in any calculations for allocating rank or quotas to armed groups in the course of negotiating army entry. Rendering child soldiers “worthless” in this way removes an incentive for recruiting and using child soldiers.

Secondly, the ideal arms-to-man ratio will be 1:1, with the exception of crew-operated weapons, so as to ensure that the real fighters are demobilised. Although there may need to be some room for manoeuvring on this ratio, officials are not keen to see a repeat of the Ituri example, where the ratio of arms recovered to men entering DDR programmes rose as high as 1:10. There is a distinction to be made between the men and the fighters in each armed group. The CNDP is well-armed and well-trained, in marked comparison with many of the co-signatory Mayi Mayi groups at Goma, which are barely armed and largely untrained. The risk is that armed groups such as the CNDP only turn in their untrained men and low-quality weapons, and “demobilise” their best fighters, who in reality remain ready – with their arms – for remobilisation.⁴⁸ And whilst increasing the number of genuine combatants passing through DDR programmes is both necessary and desirable, this will render fewer women eligible for DDR, as they generally fill more logistical military functions. Therefore, dedicated programmes addressing the specific needs of female combatants will be even more necessary as DDR programmes are refined to maximise the fighters and arms processed. So DDR programmes will need to strike a difficult balance: bringing the fighters in, which is important both for demobilising the armed groups and for creating a more effective army, and combining DDR with SSR, which is a crucial lesson learnt from elsewhere. The question of precedent is also important in the follow-up to Goma. Because using stricter selection criteria – including on human rights grounds – has not been a part of DDR processes in the DRC to date, the risk is that the armed groups would not accept it now, when there is no accompanying scrutiny of the current FARDC.

47 Interview, UK official, Kinshasa, May 2008.

48 Interviews, MONUC and European officials, Goma, Kinshasa, June 2008.

THE CURRENT STATE OF THE SECURITY SYSTEM IN THE DRC

THE ARMY

The local leadership is crucial in SSR, yet domestic will amongst the political and military establishment to reform the security system is largely lacking in the DRC. This is due at least in part to the way in which impunity was entrenched in the political and military classes, as discussed above. As a result, attempts to create a national, republican army with clear lines of command and control, as well as democratic oversight, will challenge the power bases and income-generating sources of influential people.

Furthermore, it is not clear how many members of the armed forces there are, let alone exactly who they are; establishing this information is an essential prerequisite for any accountability mechanism. There have been several partial attempts to establish, through audits, the exact numbers of members of the armed forces. The EU Mission to provide advice on and assistance with security sector reform in the DRC (EUSEC RD Congo)⁴⁹ is currently finalising a complete census of the members of FARDC; 160,000 are currently on the payroll, of which 20–30,000 are probably “ghosts”, or non-existent soldiers.⁵⁰ The majority of the army is badly trained, if trained at all – a problem compounded by the integration of militiamen and their leaders who had spent the previous years in the bush. Despite the intentions of the *brassage* process, a unified chain of command has not yet been successfully established. Soldiers’ pay is routinely withheld or siphoned off by officers, with the result that the soldiers rob and extort the communities where they are based. Although measures such as EUSEC RD Congo’s chain-of-payment programme⁵¹ may address some forms of corruption and has improved the lives of soldiers by ensuring their payment, pay is still pitifully low and the custom of extorting the local population continues in most places.⁵²

Since the Transitional Government, and increasingly since the elections, the government has also been particularly resistant to any perceived intrusions on its sovereignty, especially in the field of security. The EU – such as EUSEC – is criticised for insisting on a reform-based agenda, including in the field of human rights.⁵³

The lack of an overall vision and doctrine is another serious challenge to consistent and coherent SSR, particularly of the army. In 2007, the Congolese convened the Security Sector Roundtable, bringing together Congolese and international stakeholders on SSR. Originally only army and police reform were tabled, but justice system reform was added in February 2008. The Roundtable is a welcome development from the previous Security Sector Contact Group, which was led by the international community and met outside the DRC. With the Roundtable, the Congolese authorities can take their rightful place at the helm of the reform process. However, participants are disappointed that the Roundtable has not yet addressed an overarching vision for reform.

49 The EU Mission to provide advice and assistance for security sector reform in the DRC established by Joint Action, 2005/355/CFSP, May 2005.

50 Interview, European official, Kinshasa, February 2008.

51 Established in December 2005, this technical assistance project with the Ministry of Defence seeks to ensure regular payment of FARDC salaries.

52 In response to the author’s enquiries, it does not appear that an evaluation of the effect of the programme on soldiers’ behaviour, particularly towards the civilian population, has been carried out and/or published.

53 Interviews, senior European officials, Kinshasa, 2008.

There is deep concern amongst observers that strengthening parts of the army without addressing the abusive nature of the state, and particularly the army, will fail to improve the population's security in any meaningful sense. A credible and viable military force is clearly needed to address the security problems in the East, particularly in operations against the FDLR in South Kivu. Yet, deploying FARDC units in the prevailing climate of impunity for systematic human rights abuse, especially if they lack adequate logistical support, simply risks replacing one abuser with another. Belgian officials cite their own experience: after receiving Belgian training, including on human rights, the first integrated brigade later went on the rampage in the Kivus, raping, murdering and pillaging. Belgium had requested assistance from other donors in following up the training with adequate monitoring, but none had been forthcoming.⁵⁴ Without a competent police force able to replace the FARDC after military operations and install civilian rule of law, the fear is that security forces will punish the local population and themselves commit grievous human rights violations.

Shoring up a certain level of security in the DRC during the transition was a top priority. This certainly helps explain the international community's willingness to forgo justice and human rights considerations in the DDR processes and the formation of the FARDC for fear that the country would descend again into all-out war. However, the consequences of those compromises are now clear: the FARDC is an ill-disciplined and badly paid force that includes within its senior ranks men suspected of having orchestrated serious human rights violations.⁵⁵ That those accused of serious human rights violations have not, to any meaningful extent, been brought to justice is not only a question of retributive justice for past crimes, but also means a missed opportunity to *prevent* current and future crimes. Soldiers themselves identify impunity, particularly for the leadership, as contributing to a normalisation of human rights violations within the culture of the army (in violation of the Military Code, or *Règlement Militaire*) and feel punishment is necessary to address it.⁵⁶ Holding perpetrators to account for their crimes may have some deterrent value; it will establish the boundaries of what is and what is not deemed acceptable behaviour. Whilst other factors may play a role in motivating soldiers – as well as other security agents – to commit human rights violations, the high incidence of serious crime and the impunity for perpetrators – particularly in the senior ranks – suggest an acceptance, and even normalisation of human rights violations within the organisational culture of the security system.

THE POLICE

In comparison with the army, the structure and future composition of the law enforcement sector was largely neglected by negotiators at Sun City – the only provision relating to the police in the Global and Inclusive Accord stated that 'an integrated police force shall be responsible for the security of the Government and population'.⁵⁷ During the transition, the international community's focus on police reform was largely on securing the elections and mainly in Kinshasa – ensuring, for example, a basic level of training in crowd control, rather than in investigating crime.

During the conflict, outside the government-controlled areas most "law enforcement" activities were carried out by the armed forces of the belligerent groups, if at all. The PNC was created by decree in 2002⁵⁸ and brought together a mix of former *Force publique*, the civil guard, urban police and gendarmerie. The "police" forces of the former belligerent groups were then added to this group, including quotas for officers for each belligerent, irregardless of the individuals' training or experience. The result was a police service that comprised trained and untrained police officers, ex-militia and ex-servicemen, and widows and orphans of former agents.

The phenomenon of widows and orphans on the payroll is not unique to the police, and can be found in other public institutions. Whilst "ghosts" – non-existent soldiers or police officers – inflate the numbers of a unit and

54 Interview, Belgian official, Brussels, May 2008; UK official, Kinshasa, June 2008.

55 Reports by independent human rights organisations, including: Human Rights Watch (August 2002). 'War Crimes in Kisangani: The response of Rwandan-backed rebels to the May 2002 mutiny', *Democratic Republic of Congo*, Vol. 14, No. 6 (G). Available at <http://www.hrw.org/en/reports/2002/08/20/war-crimes-kisangani-0>; also interviews, MONUC and European diplomats, Kinshasa and Bunia, 2007 and 2008.

56 M.E. Baaz and M. Stern (2008). 'Making sense of violence: Voices of soldiers in the Congo (DRC)', *Journal of Modern African Studies*, Vol. 46, No. 1.

57 Annex V 2a.

58 Décret-loi 002/2002, 26th January 2002.

therefore increase the salary allocations pocketed by senior officers, the presence of widows and orphans on the police payroll represent the failures of the institution (and the state) in basic welfare provision. In the absence of any form of pension or welfare provision for widows and orphans of police officers, they often “inherit” or assume their husband or father’s position upon his death. Addressing the question of widows and orphans is not necessarily therefore a question of corruption, but must be addressed through a wider process of reform, particularly of social insurance and welfare provision for officers and their dependents.

The *Groupe Mixte de Réflexion sur la Réforme et la Réorganisation de la Police Nationale Congolaise* (GMRRR)⁵⁹ stated: ‘The Congolese police in its current state can in no way claim to be a pillar of the rule of law [...] in sum, its capabilities have been limited since inception and it cannot alone assure the security of the citizens in the present context’.⁶⁰ The police remain largely incapable of investigating crime, particularly sexual violence and crimes against children. Worse still, in addition to widespread reports of extortion, illegal detention, torture and arbitrary killing by police officers, cases of sexual violence perpetrated against women and girls by police officers – often whilst the victim is being held illegally at a police station – are regularly documented.⁶¹ A need to reform the police and detention facilities (where women and girls are at risk from both police officers and other inmates) is a key concern for women across the country.⁶²

The GMRRR was tasked with preparing the *Comité de Suivi de la Réforme de la Police* (CSRP), a mixed committee to monitor the police reform process and the basis for most future donor engagement, which was created and began meeting in 2008, but continues to search for a definition of its role. The other essential element for reforming – or perhaps forming – the PNC has also stalled. An organic law elaborating the structure of the PNC is yet to be passed, due to conflict between the Ministries of Justice and Interior: the organic law proposed that the *police judiciaire* come under the jurisdiction of the Ministry of the Interior, which the Ministry of Justice opposes.

A fundamental question remains over the role of the police, its nature, and particularly the different roles police services and armed forces play in a democracy. This can be seen quite clearly in threat analysis: the police have a mission to protect the population and goods, using minimum force, rather than protecting the integrity of the state, which is the role of the army. However, senior police officers still understand their mission as to protect the state from its enemies, internal or external, by any means.⁶³ Although some progress was made in redefining the role of the police among the police themselves, the appointment in early 2007 of the former Air Force commander, John Numbi as the new police chief appears to have reversed this trend. A key criticism of the MONUC report into the events in Bas-Congo in early 2008 was that Commissioner Numbi deployed military trained forces within the PNC, armed for military operations, rather than other available battalions which had received French and Angolan anti-riot policing training.⁶⁴ This decision may well have directly contributed to the use of excessive force and other human rights violations committed by the PNC in this operation. Such a mentality is also reflected in the readiness to arrest those identified as a political threat (and therefore an enemy of the state), such as human rights defenders and political opponents.

Whilst demilitarisation is still a pressing concern, democratic oversight remains a serious challenge. In part this is due to resistance from the police hierarchies themselves, which are unaccustomed to operating within a democratic environment. As with the army, a lack of clear command and control enables senior officers to engage in corruption. Finally, the parliament itself, through its defence and security committees, is yet to fully engage in oversight of the security system in general.

59 The Mixed Reflection Group on the Reform and Reorganisation of the National Congolese Police (GMRRR) was established in 2005, and comprised national police experts and participants from MONUC, CIVPOL, EUPOL, the EC and the Angolan, British, French and South African embassies. Its mandate was to evaluate the state of the PNC, make recommendations for the future, and draft the legal framework for the organisation and functioning of the police force.

60 GMRRR Final Report, May 2006.

61 For example, see: MONUC Human Rights Division, UN (September 2007). Op. cit.

62 According to participants at an ICTJ seminar, ‘Gender and Transitional Justice’, Kinshasa, June 2007.

63 Interview, European official, Kinshasa, March 2008.

64 MONUC Human Rights Division, UN (May 2008). Op. cit. p.11.

THE JUSTICE SYSTEM

The justice system is, in general, unable to deliver day-to-day rule of law for the population, let alone tackle serious crime, including the serious crimes and abuses committed during the wars. The ability of courts to deliver justice for victims of rape and sexual violence is shockingly low.

Although the DRC has ratified the Rome Statute establishing the International Criminal Court (ICC), it has yet to adopt the necessary implementing legislation that would codify international crimes as justiciable in Congolese civilian courts. However, the current Military Penal Code establishes military court jurisdiction over international crimes and several cases have been brought before military courts throughout the DRC prosecuting Congolese security system officials pursuant to these military penal code provisions. While there have been some successful convictions in these cases, none of the convicted perpetrators have remained in jail or paid damages pursuant to court judgments.

Furthermore, the scope of military jurisdiction is problematic, as these courts can hear a case implicating any crime committed using a 'weapon of war'⁶⁵ regardless of the nature of crime or status of suspect, whether an official or civilian. Although military tribunals have therefore made the most progress in trying human rights cases and of referring directly to the Rome Statute in their rulings, the potential for further use of military jurisdictions is limited. Sitting military prosecutors and judges are not awarded ex-officio rank (of, for example, General) to allow them to investigate and try senior officers. Few garrisons have a military judge above the rank of Major, a lowly rank in the FARDC and, by implication, generally held by those without political connections. As a result, few military tribunals are able to hear a case against an officer ranking higher than Major, and there is the problem of interference from higher up the military hierarchy.

Despite the attempts before military courts, not a single senior officer has successfully been tried. The Congolese government requested the ICC's involvement in the DRC in 2004 and to date three Iturian warlords – Thomas Lubanga, Germaine Katanga, and Mathieu Ngujolo – have been transferred to the ICC by the Congolese authorities for trial for international crimes.⁶⁶ So far, the authorities have been cooperative with the ICC, but the extent of that cooperation would be tested should a member of the establishment be indicted. The ICC's presence in the DRC also seems to be an alibi for failing to address many international crimes through the domestic system. There were discussions about opening the Lubanga trial in the DRC, a move supported by many national human rights activists. The government quashed the idea, citing security concerns, but observers believe that many within the government were keen that the trial be as far away from Congo as possible and seen as foreign justice.⁶⁷

In 2006, 12 FARDC soldiers were tried by a military tribunal for crimes against humanity for the gang-rape of 119 women and girls in 2003. Seven officers were sentenced to life in prison when found guilty. Known as the Nsongo Mboyo case, this raised expectations for the prospects of rule of law and for some justice for victims of rape.⁶⁸ But all those found guilty escaped from jail and remain at large, and the convicted were low-ranking officers – the highest rank amongst those found guilty was Captain.

In addition to its international prohibition,⁶⁹ rape and sexual violence are outlawed in the DRC by the Constitution,⁷⁰ and by military and civilian law. The 2006 update of the 1940 penal code⁷¹ concerning rape and sexual violence is an extremely sophisticated piece of legislation. Sadly, it is rarely implemented by judges in the few cases that come to court, as judges routinely encourage out-of-court settlements to avoid bringing perpetrators to justice.

65 A term not in itself defined in Congolese jurisprudence.

66 Bosco Ntaganda, also wanted by the ICC, remains at large.

67 Interviews, UN and European officials, Kinshasa, 2008.

68 The gang-rape took place in the context of a mutiny by soldiers against an officer who was withholding their pay (a routine occurrence within the FARDC). Some commentators believe that being seen to punish mutineers was probably the primary reason behind the prosecution. Interview, civil society representative, Kinshasa, December 2007.

69 The Rome Statute explicitly recognises rape, sexual slavery, enforced prostitution, forced pregnancy, forced sterilisation and other grave forms of sexual violence as war crimes.

70 Article 15 of the Constitution (2006) states that public institutions are committed to eliminating sexual violence, and goes on to define certain forms of sexual violence as a crime against humanity, punishable by law.

71 Loi no. 06/018, 20th July 2006.

And very few cases do come to court: a case study in South Kivu for the period 2005–2007 estimates that less than one percent of rape cases registered in 2005 were reported to the justice authorities; by mid-2007, 56 percent of these cases were still under investigation, and of the 102 cases, 60 percent had been under investigation for over a year. Sixty cases had been registered for trial before the courts – in 80 percent of cases the alleged perpetrator had been granted bail and never faced a justice official again. The heaviest sentence handed down was 20 years in prison and the payment of US\$10,000 in reparation to the victim. However, not a single reparations payment has been made, as the victims were poor rural women lacking the money to pay for the legal fees required by law for executing the judgment.⁷²

The obstacles for women seeking justice for rape and sexual violence through the courts are almost insurmountably high. Above and beyond the considerable social stigma of sexual violence, there is no provision for witness protection under Congolese law, and victims and witnesses genuinely fear reprisal.

The costs involved in bringing a case to court put justice well beyond the reach of most women, who are expected to pay for filing a complaint, for a medical certificate and for extensive legal assistance. There are few courts in rural areas, so the chances are high that a woman would have to travel to another town, which may be completely unfamiliar to her. But in addition to the direct costs of pursuing justice, there are the indirect costs to a female victim or witness, which are frequently overlooked. Women have primary responsibility for the care of their families and particularly their children. Few rural (or other poor) woman can afford to make the necessary food, healthcare and education provisions to care for their children if they are absent from their village at court in a distant town.

Women and girls are also victims of other forms of human rights violations (such as arbitrary killing, illegal detention and extortion) at the hands of security agents, although this is often overlooked and downplayed. In addition to drawing attention to sexually-based violence in the DRC, there is also the need to draw special and urgent attention to gender-based violence and women's experience of other human rights violations.⁷³

The judiciary is not independent, as evidenced by President Kabila's dismissal of 89 magistrates and appointment of 28 others (including a new chief justice of the supreme court and prosecutor-general) by presidential ordinances in February 2008. The main magistrates union, Synamac,⁷⁴ called a strike and many NGOs and human rights organisations protested (public opinion was divided on the matter, however, with many calling for a further "cleansing" to rid Congo of arbitrary judges).⁷⁵ And although an organic law was developed concerning the statute of the magistracy, including mechanisms for appointment, dismissal and promotion in 2007, progress remains slow in establishing the *Conseil Supérieur de la Magistrature* (CSM), the judiciary's governing body. The body as described in Article 152 of the Constitution is largely unworkable due to its size. Worryingly, there is no legal provision for a personnel selection mechanism, vital for an independent judiciary.

As well as the threats to rule of law posed by corruption, political interference with judicial processes represents an enormous challenge in any attempt to bring a well-connected suspect to trial, particularly if accused of a serious crime. Independent observers to key trials – such as those of the presumed murderer of human rights defender Serge Maheshe,⁷⁶ or alleged war criminal Gédéon Mutanga⁷⁷ – express concern at political interference.

72 MONUC Human Rights Division, UN (September 2007). Op. cit.

73 'The distinctive element of gender-based violence is that the violence originates from behaviours, norms and attitudes based on set notions of gender. These gender-based behaviours, norms and attitudes tend to have at their core prescribed notions about what it means to be a man or a woman. As a result, they embody structural inequalities and power hierarchies that in turn form the basis for and result in violence. While gender-based violence includes sexual violence, it is a broader term that also encompasses physical violence, psychological violence, the restriction of freedoms, coercion and threats. Additionally, this violence can take place in both public and private spheres'. UN International Research and Training Institute for the Advancement of Women (INSTRAW). *Ending men's violence*. Available at <http://www.un-instraw.org/en/index.php?option=content&task=view&id=909&Itemid=182>.

74 Syndicat national autonome des magistrats du Congo.

75 'Magistrature: aller jusqu'au bout du nettoyage' [Cleansing of the magistracy], *Le Potentiel*, 18th February 2008.

76 For example, see: 'Democratic Republic of Congo: Murder appeal marred by rights violations', *International Freedom of Expression eXchange (IFEX)*, 27th May 2008. Available at <http://www.ifex.org/en/content/view/full/94059>.

77 Supplément au périodique des Droits de l'Homme SPDH 006, June 2008, ASADHO/Katanga.

Political interference can also be inferred by the unbalanced nature of cases brought against suspects: despite evidence against high-ranking individuals within the military establishment of alleged human rights violations,⁷⁸ no high-ranking officer has yet to be charged. And although large numbers of presumed BDK supporters have been arrested on a range of charges, no charges have been brought against security agents for alleged human rights violations committed whilst suppressing BDK activity.

Even when perpetrators are sentenced, they usually abscond. The penitentiary system is almost completely dysfunctional: on the one hand overcrowded with petty criminals and the poor languishing while awaiting trial; on the other incapable of holding those found guilty of the most serious crimes, so long as they have a little money or influence. The conditions are so dire that most prisons pose a serious health risk, including malnutrition. Women and children are at risk of sexual violence from inmates and guards. Prisoners have to rely on family members being able to obtain access (usually through bribery) in order to feed them. In Mbuji Mayi Central Prison in Kasai Orientale, 18 prisoners starved to death in January and February 2008.⁷⁹

Thus, the inability of the justice and penal systems to deliver justice exacerbates violations committed against the civilian population, worsens public security (especially of vulnerable groups) and strengthens impunity. To be successful, reform of the police, judiciary and penal systems must necessarily be seen as intertwined and approached in a coordinated manner.

⁷⁸ Interviews, MONUC, Kinshasa, 2007 and 2008; Bunia, October 2007.

⁷⁹ MONUC (April 2008). *Human Rights Monthly Assessment: February 2008*. UNHCR Refworld. Available at <http://www.unhcr.org/refworld/docid/4832a9312.html>.

TRANSITIONAL JUSTICE AND SECURITY SYSTEM REFORM

According to the Organisation for Economic Cooperation and Development's (OECD) Development Assistance Committee (DAC), SSR should aim for: i) the establishment of effective governance, oversight and accountability in the security system; ii) improved delivery of security and justice needs; iii) development of local leadership and ownership of reform processes; and iv) sustainability of justice and security service delivery.⁸⁰ The European Commission (EC) states that 'the objective [of SSR] is to contribute explicitly to strengthening of good governance, democracy, the rule of law, the protection of human rights and the efficient use of public resources'.⁸¹

Transitional justice aims to deal with the legacy of systematic and massive human rights abuse, recognising and acknowledging victims, and contributing to the processes of peacebuilding and democratisation. It is not in itself a special form of justice, but a set of approaches that seek to bring about justice in extraordinary conditions, usually in transitions from authoritarianism and/or violent conflict, to democracy and peace. A key element of transitional justice is placing the victim at the centre: ensuring that the victims of oppression are recognised as such, are empowered as fully rights-bearing citizens and have their dignity restored to them. Transitional justice approaches include prosecutions, truth-seeking, reparations for victims, the reform of abusive institutions and memorialisation.

As these approaches to transitional justice share the same goal, they are inter-related and should be designed to mutually reinforce one another. For example, recognising that it would be impossible to prosecute all those guilty of human rights violations during conflict, prosecutions will tend to focus only on those most responsible. Truth-seeking measures do not have the authority to impose sanctions on perpetrators, similar to a court of law, but truth is, of itself, an aspect of justice. By investigating and publicising events that took place, truth-seeking contributes to generating a common historical narrative, key for (re)establishing trust between population groups, and between citizens and the state, but must not replace or prevent future prosecutions to sanction individuals. Thus, the different processes should reinforce – and not replace – each other; a holistic approach is likely to be most successful in meeting the justice needs of the population.

A JUSTICE-SENSITIVE APPROACH TO SECURITY SYSTEM REFORM

A justice-sensitive approach to SSR is an important component of any transitional justice approach, particularly in a context like that of the DRC, where state security agents have committed and continue to commit human rights violations on a massive scale. A justice-sensitive approach to SSR seeks to reform abusive public institutions in the security system by addressing the past record of the institution as such, but by also holding individual perpetrators to account, rather than ignoring past abuse. It aims to make the institutions accountable to the population and become protectors – rather than abusers – of all citizens' rights and defenders of – rather than a threat to – the safety of citizens (especially vulnerable populations) and the security of communities. Reforming abusive institutions so that they are accountable to the population and trusted by it, transforms not only the

80 Organisation for Economic Cooperation and Development (OECD) (2007). *OECD DAC Handbook on Security System Reform: Supporting security and justice*. Paris, France: OECD. p.21. Available at <http://www.oecd.org/dataoecd/43/25/38406485.pdf>.

81 Commission of the European Communities (2006). *Communication from the Commission to Council and the European Parliament: A concept for European Community Support for Security Sector Reform*, COM(2006) 253 final. p.253. Available at http://eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006_0253en01.pdf.

institutions but also the people who become fully rights-bearing citizens, rather than objects of state oppression. Reform of public institutions may also be a key enabling factor for other transitional justice measures; for example, spoilers within key public institutions may well be able to block efforts to establish the truth.⁸²

To achieve these aims, a justice-sensitive approach to SSR focuses on three main areas of reform within a broader SSR programme: building the integrity of the security system; strengthening its legitimacy; and empowering citizens.

The integrity of a security system refers to its adherence to the rule of law in the provision of safety and security. This goes beyond building the capacities of the security agency. Crucial elements for building the integrity of an institution will be establishing multiple, overlapping mechanisms and processes for accountability, based on international best practices. Reforms within the institution will include developing professional standards and codes of conduct, accompanied by disciplinary measures to ensure adherence.

The legitimacy of a security system refers to the level of civic trust it enjoys. A legacy of serious abuse fundamentally undermines the legitimacy of the security system. Building the integrity of the security system may not be sufficient in itself to overcome the fundamental crisis of trust that is characteristic of such a legacy. Security institutions can only be successful if they are responsive to the security needs of the public and earn the confidence of the population by treating all citizens fairly, addressing their security concerns effectively. As well as building the integrity of the institution, efforts to promote the legitimacy of the security system may include verbal or symbolic measures such as memorials, apologies and changing insignia that reaffirm a commitment to overcoming the legacy of abuse, and an endorsement of democratic norms and values.

Thirdly, the empowerment of citizens is an integral component of a justice-sensitive approach to SSR. Victims of state repression or conflict-related violence and other marginalised or vulnerable groups must become truly citizens with rights, responsibilities and needs that public institutions are called to serve. Efforts to assist subjects of state oppression and victims of violence to recognise themselves as rights-bearing citizens include, among others, empowerment measures such as public information campaigns, citizens' surveys to identify their security and justice needs, and training civil society organisations to monitor the security system.

VETTING

Vetting is part of a justice-sensitive approach to SSR, which, when combined with other SSR programmes designed to improve the accountability, functioning and oversight of public institutions, can contribute to both building the integrity and the legitimacy of the institution concerned.

"Vetting" is used here to mean 'processes [...] aimed at screening public employees or candidates for public employment to determine if their prior conduct (including, most importantly from a transitional justice perspective, their respect for human rights standards) warrants their exclusion from public institutions'.⁸³ The exclusion of human rights abusers will increase the integrity of the institution by establishing that no one is above the law. But rather than seeing vetting as a one-off process, it should be understood to include developing internal disciplinary processes and external oversight mechanisms to help change the nature of the institution and therefore prevent recurrence of abuse.

Vetting is a measure that, if conducted properly, should contribute to building the integrity of the security institution, increasing public trust in it and empowering citizens. It should also increase effectiveness of the institution. For example, if women do not report incidents of rape because they fear being raped again by officers at the police station, rapes will go unreported and there can be no investigation, regardless of the technical capacities of the police to investigate the crime. The reputation of the police as human rights abusers therefore directly undermines their capacity to do their job. Thus, removing known abusers from the police, and establishing and adhering to clear disciplinary mechanisms for all officers, demonstrates that human rights abuse is contrary to

⁸² Pablo de Greiff (2007). 'Vetting and transitional justice' in A. Mayer-Rieckh and P. de Greiff (Eds.). *Justice as prevention: Vetting public employees in transitional societies*. New York, US: Social Research Council. p.528.

⁸³ R. Duthie. 'Introduction' in *Ibid.* p.17.

the ethos of the institution, and that it is punishable and punished. This in turn should contribute to increasing public trust in the police, which is necessary for its proper functioning.

If successful and implemented alongside other reform measures, vetting may also interrupt organised irregular and criminal activity within abusive institutions. The lack of clear command and control of the army, for example, is believed to hide a complex web of illegal economic activities, particularly connected to natural resource extraction, often in collaboration with armed groups. As long as these informal, powerful and highly lucrative structures continue to exist, they will present a major obstacle to unity of command and control, and democratic oversight. The interests of the networks are likely to conflict directly with the stated aim of the army – to neutralise armed groups – and of course deny the state substantial potential tax revenue. Significant power-bases of influential individuals are therefore likely to be affected by vetting.

Vetting can therefore contribute to broader needs for justice. But the process must itself respect the rights of those vetted: the emphasis on the personal record of each individual is important. Even those guilty of the most heinous crimes have rights which must be respected by due process. The sanctions are not as severe as for criminal prosecution, as the maximum sanction in a vetting process is usually loss of employment. Although a considerable sanction in the DRC, where there are few employment prospects, this is not as serious as a prison sentence.

There is no single model applicable in every case. Indeed, the process of designing a vetting programme needs to take into account a whole range of considerations, including taking decisions on the institutions and positions to be vetted (which must take into account questions of feasibility); the criteria for screening for misconduct; the sanctions for those who are positively vetted (i.e. those who fail to meet the necessary standards); the structure and procedures; the scope of the process; its timing and duration; its justification; and its coherence with other institutional reform and transitional justice measures.⁸⁴

The role of information is crucial at each step of the reform process: information is needed on exactly who is – and is not – a member of the institution. This information, particularly in a context like the DRC, is hard to establish. However, an audit or snapshot assessment is not enough; an important part of a census and identification process is to close the boundaries of an institution so that no one can join or leave informally after the census is taken. Those within the institution are therefore formally and individually identified and identifiable by, for example, carrying official identity cards. And, by extension, those not formally identifiable as part of the institution, yet attempting to represent it, are breaking the law.

The information available will also form a vital part of the design and implementation of vetting processes; designing the process should take into account the information needed, a process to gather necessary information, and a reconciliation of the expectations, goals, persons targeted and resources available, all within an acceptable timetable, before implementing the process.⁸⁵

Justice-sensitive approaches to SSR are not therefore stand-alone projects, but rather should be an integral part of SSR projects seeking to establish effective and accountable public institutions in a democracy. In the context of the DRC, where the security forces continue to be abusive, adopting a justice-sensitive approach may help address the concern that building the technical capacity of the security system may actually enable elements within them to continue to be abusive, only more efficiently.

84 Ibid; See also: UNDP (2006). *Vetting public employees in post-conflict settings: Operational guidelines*. New York, US: Bureau for Crisis Prevention and Recovery. Available at <http://www.ictj.org/static/Vetting/UNDPVettingGuidelines.pdf>.

85 S. Rumin (2007). 'Gathering and managing information in vetting processes' in A. Mayer-Rieckh and P. de Greiff (Eds.). Op. cit. p.433.

EUROPEAN ENGAGEMENT IN SSR IN THE DRC

The main international actors in the security system in the DRC have been the UN (MONUC has been on the ground since 1999 and is now the largest peacekeeping operation in the world), World Bank, US, EU (and its Member States), Angola, South Africa and, increasingly, China.

The DRC is in many ways a test case for the EU in the field of coordination and coherence between European and Member State SSR programmes.⁸⁶ There are currently two European Security and Defence Policy (ESDP) missions,⁸⁷ both of which are mandated to support SSR in the DRC:⁸⁸ the EU Police Mission in the DRC (EUPOL RD Congo), designed to provide advice on SSR and contribute to Congolese efforts in reforming the PNC, and to improving the interaction between the police and criminal justice system;⁸⁹ and EUSEC RD Congo, designed to provide advice and assistance to the Congolese authorities in integrating, restructuring and rebuilding the Congolese army.⁹⁰ EUSEC and EUPOL, which report to the EU Special Representative for the Great Lakes, also have a coordinating function for projects by Member States, and are mandated to take care to promote policies compatible with human rights and international humanitarian law, democratic standards and the principles of good governance, transparency and respect for the rule of law.⁹¹

Particular areas of engagement for the European institutions and Member States have been in providing equipment, infrastructure and technical support to, and training personnel within, the relevant ministries.⁹² However, officials express frustration that very little has been done in the way of reform – the focus is rather on (technical) capacity-building, without addressing the fundamental issues of how the security institutions should serve the needs of the population.⁹³ For example, EUPOL have trained personnel in the *unité de police intégrée* (UPI), *police d'intervention rapide* (PIR) and the *groupe d'intervention mobile* (GMI), and worked to strengthen the *police judiciaire*, while France has also trained PIR personnel and set up the *Ecole de police judiciaire*.

Through the Stability Instrument and the ninth European Development Fund (EDF), the EC has been active in developing systems within the police, particularly in areas of human resources management and auditing the members of the police service, including collecting biometric data. This is intended as a basis for future reform to be managed by the CSRP, including for example, possible future integration of the judicial police and the *Direction Générale des migrations* (DGM) into the PNC. These measures aim to improve the professionalism and the working conditions, including training and salaries, equipment and infrastructure, of the police. They have not to date included justice-sensitive measures, such as the strengthening of internal disciplinary procedures.

The EC has also supported the preparatory work of the CSRP, and provided offices and equipment, but as noted above, the process of establishing the CSRP and the passage of the organic law necessary for generalised reform of the PNC have been slow. Defining a clear role for the CSRP and ensuring that it is operational, will be

86 For a more detailed discussion, see: H. Hoebeker, S. Carette and K. Vlassenroot (2007). *EU support to the Democratic Republic of Congo*. Centre d'analyse stratégique. Available at http://www.egmontinstitute.be/papers/07/afr/EU_support_to_the_DRC.pdf.

87 Although they are expected to be merged into one mission in 2009.

88 Two previous ESDP missions, Artemis in Ituri (2004) and EUFOR in Kinshasa (2006), were short-term missions mandated to provide security rather than contribute to SSR.

89 Council Joint Action 2008/485/CFSP June 2008. EUPOL RD Congo is essentially an extension of EUPOL (Kinshasa), established by Council Joint Action 2004/847/CFSP in 2004 to focus on the Integrated Police Unit.

90 Council Joint Action 2008/491/CFSP June 2008. EUSEC was first established in 2005.

91 Council Joint Action 2007/406/CFSP and Council Joint Action 2007/405/CFSP.

92 For example, see: R. Keane (2008). 'The EU and SSR in the Congo' in D. Spence and P. Fluri (Eds.). *The European Union and Security Sector Reform*. Geneva, Switzerland: Geneva Centre for the Democratic Control of Armed Forces.

93 Interviews, European and Member State officials Kinshasa, March 2008 and Brussels, May 2008.

key for future European engagement in police reform, as it will provide the focus for European activities, as is clear from EUPOL's mandate and the EC's Country Strategy Paper (CSP). The UK Department for International Development (DfID) alone has earmarked £40 million for police reform for 2008–2010,⁹⁴ which is also a high priority of the EC's main funding programme, the tenth EDF. However, the DRC Government has yet to either ratify the 2005 amendment to the Cotonou Agreement or sign the CSP, both of which are necessary for the total aid envelope of over €560 million to be made available by the EC for the period 2008–2013.⁹⁵

Similarly, defence reform is mostly focused on technical capacity-building projects. Experts observe that coordination in defence reform is always a delicate area, in which states are most reluctant to share sensitive information – although more information is probably shared between European actors in the DRC than elsewhere precisely because bilateral defence reform projects are largely limited to technical capacity-building.⁹⁶ Indeed, bilateral projects almost always focus on relatively short-term goals; despite the desperate need to improve the logistical support to army units, few donors wish to be involved, as it is low-visibility, difficult, expensive and long term, preferring instead to train combat troops, for example.⁹⁷ Although EUSEC has a coordinating function amongst the EU Member States, to date strategic coordination has been lacking. EUSEC's own position during 2007 became more difficult with deteriorating relations between the mission and the Minister of Defence. Projects so far have not focused on democratic oversight of the army. The chain of payments project may well go some way to addressing corruption within the system, reducing the ability of senior officers to embezzle soldiers' pay. Finally, EUSEC and EUPOL share a gender advisor (one of the very few women employed by the missions), but a gender strategy is yet to be integrated into the work of the missions, with gender-related projects treated somewhat separately.⁹⁸

As found by the mapping exercise for the Initiative for Peacebuilding (IfP),⁹⁹ the EU and active Member States in this field use a range of policy and funding tools to contribute to SSR beyond technical assistance to the security actors themselves. Civil society, usually restricted to Kinshasa or to discrete locations, has been engaged in discussions around the reform of the police, often facilitated by the EC, EUPOL and NGOs such as the Institute for Democracy in South Africa (IDASA). Such projects also include women's associations and/or hold workshops dedicated to bringing women's associations and the police together. The EC, Netherlands, UK, Belgium and Sweden have all funded projects designed and implemented by NGOs such as IDASA, Search for Common Ground, RCN Justice et Démocratie, and Pax Christi Netherlands and their national partners, which facilitate community interaction and dialogue with the police and army, often in conjunction with training; IDASA have engaged the parliament in democratic oversight projects.

Despite policy-level commitments for coordination and coherence, there are two significant obstacles. First, as illustrated above, the Congolese government prefers bilateral to multilateral partnerships. This enables the government to maintain greater control over individual relationships, and undermines attempts at international donor coordination and cohesion. Key figures, including the President and Ministers, respond angrily to any perceived conditionality on aid or intrusions on sovereignty, in particular in relation to security and human rights.¹⁰⁰ Since the elections, President Kabila has reduced contact with the international community; for the EU, the situation has been exacerbated by perceived interference by Commissioner Louis Michel in Congolese politics and the deteriorating relations between the DRC and Belgium. 'There is no political dialogue' stated one senior European official.¹⁰¹

94 UK Department for International Development (DfID) (May 2008). *Democratic Republic of the Congo Country Plan 2008-2010*. Available at www.dfid.gov.uk/pubs/files/DRC-countryplan08-10.pdf.

95 The government of the DRC has not explained why it has not taken these necessary steps to make the aid available, but the texts were to be adopted in 2008. Interview, European official, Brussels, 2008.

96 Interview, Belgian official, Brussels, May 2008.

97 Interview, UK and Dutch officials, Kinshasa, May 2008.

98 Interview, European official, Kinshasa, February 2008.

99 S. Babaud and E. Kets (2008). *Initiative for Peacebuilding Security Cluster: Security mapping exercise*. Available at www.initiativeforpeacebuilding.eu/pdf/IfP_Security_mapping.pdf.

100 On the other hand, some European officials bemoan the lack of conditionality on EU aid, especially EDF. Interviews, Kinshasa, April 2008 and Goma, June 2008.

101 Interview, European official, Kinshasa, April 2008.

Second, despite policy frameworks agreed between the Council and Commission, Member States' bilateral strategies continue to be developed in national capitals, without joint strategic planning with other Member States or the European institutions. Furthermore, particularly in areas such as defence reform, particular projects may be designed and decided upon in the national capital with little or no participation from the Member State's in-country embassy. And finally, bilateral projects will naturally tend to be branded as such: ministries are, after all, responsible to their domestic parliaments and constituencies for overseas spending. These structural factors can be partially overcome by good in-country coordination, as seems to be the case in the DRC where diplomats share information about independent, bilateral projects.

OPPORTUNITIES FOR A JUSTICE-SENSITIVE APPROACH TO SSR IN THE DRC

A justice-sensitive approach to SSR is not separate from, nor seeks to replace, other forms of SSR projects intended to build the capacity of a state to secure its territory and protect the rights of the population. Rather, it should be seen as complementary to reforms such as building technical capabilities, ensuring security actors are adequately trained, paid and equipped, and those that seek to ensure that the security system functions effectively and efficiently. Justice-sensitive SSR aims in particular to build the integrity, legitimacy and accountability of institutions, and empower citizens in their relationship to security institutions and those who are responsible for formulating security policies.

Given the extent of the threat posed by the security forces to the Congolese population, and particularly women and girls, it is now time to consider integrating justice-sensitive approaches to SSR. As noted above, the effect of the civil society-led campaign against impunity for sexual violence has drawn considerable international attention to the problem, and brought it onto the international political agenda. Some European diplomats have been instructed to raise the issue at every meeting with government officials, regardless of the subject matter, and government officials at the highest levels are becoming increasingly embarrassed by the constant attention drawn to sexual violence.¹⁰²

Embarrassment and words are clearly not enough to address the issue, but could provide an important first step in developing political will internationally and domestically to consider justice-sensitive approaches to SSR as an important contribution to addressing the broader, separate yet interconnected questions of: i) sexual and gender-based violence in the DRC, including and beyond the security system; and ii) the necessity to reform security institutions into a security system that protects and serves the population, rather than harms it.

International political will may now be more open to these approaches: MONUC's mandate was extended in December 2007 to include vetting (e.g. of the armed forces);¹⁰³ and EUSEC's mandate was extended in June 2008 to include a particular emphasis on the 'human resources function', especially within the FARDC's new Rapid Reaction Force, and to contribute expertise on the selection of staff more generally.¹⁰⁴ There are indications that the Ministry of Defence and international community might now be able to address some questions of army reform as part of the DDR aspects of Goma (see above), which could be an important step forward. Selection criteria for joining the army are yet to be discussed, but this could be a good opportunity for screening applicants on the basis of their human rights record among other things, as one component in a broader strategy to introduce greater accountability into the armed forces.

Another relevant opportunity is the UN Justice Mapping Exercise, which began in mid-2008. With the permission of the Congolese government, a UN team will gather evidence of human rights violations committed in the DRC between 1993 and 2003 – the timeframe is particularly important given that the ICC's temporal jurisdiction is limited to crimes committed after 2002. The team will make recommendations for transitional justice measures through which Congo can begin to address its bloody legacy.

¹⁰² Interviews, European diplomats and UN officials, Kinshasa, 2008.

¹⁰³ UN Security Council Resolution 1794 (2007), 21st December 2007, Paragraph 15.

¹⁰⁴ Council Joint Action 2008/491/CFSP.

“Reform” is included as one of these transitional justice measures. The Mapping team should extensively investigate options for reforming the security institutions, including through justice-sensitive approaches. Recommendations for SSR and other types of “reform” must be rigorously examined to ensure coherence with other proposed transitional justice mechanisms.

Unfortunately, the Mapping Exercise concept does not explicitly include rape and sexual violence; nor does it refer in any way to a strategy to take into account gendered patterns of human rights violations, including but not limited to rape and sexual violence. There is no indication that the team will include either an expert gender advisor or develop a strategy to address different needs of women and men participating in the process, whether as victims, witnesses or agents for positive change. These are serious shortcomings which should be urgently addressed.

If the Mapping team can address these weaknesses and is able to engage international and most importantly *national* actors in the exercise, explicitly including women, in generating the recommendations, enough momentum could be generated locally to support transitional justice mechanisms with true national ownership to help the DRC address its past.

With the collapse of the Goma process and the outbreak of renewed intense fighting in North Kivu in October 2008 between the CNDP, Mayi Mayi militia and FARDC troops, resulting in massive forced displacement and wide-scale human rights abuses against civilian populations, including systematic rape, pillage and looting by all belligerents, two things have become increasingly clear. On the one hand, effective SSR is a critical step in breaking the cycle of simmering violence, but on the other, the ongoing violence can be used by all sides as an excuse to say that in this state of emergency, institutional reforms will be secondary to the primary task of maintaining order.

Finally, increased attention to engaging the Congolese population in demanding an end to impunity and the transformation of the security system into protectors rather than predators may help sway Congolese decision-makers. Projects intended to empower citizens and civil society developed by NGOs and supported by European donors, as described above, are valuable contributions towards citizens’ empowerment on a local level and could provide an important first step for the systematic engagement of the population across the country. Investing in citizens’ empowerment in relation to the security system could help increase political will to address the deficits of integrity and legitimacy within the army and police.

CONCLUSIONS AND RECOMMENDATIONS

The political and security contexts in the DRC raise formidable challenges to all those committed to holistic SSR: entrenched impunity for massive and systematic human rights violations is the historical legacy not only of the conflicts, but also of peace accords and patterns of governance. Soldiers and police officers today pose a serious threat to the security of the population. This paper argues that building the accountability and integrity of the security system, including through the exclusion of human rights abusers – from the army and police in particular – is a necessary and urgent part of SSR in the DRC which has yet to be addressed. Tackling the culture of impunity for the most egregious offences, explicitly including rape and sexual violence, will not only help to prevent future abuses by removing at least the worst abusers, but by instituting effective internal disciplinary measures and external accountability will help change the culture of normalisation of human rights violations within these institutions. It will also contribute to building confidence in the security system, which is a prerequisite for its proper functioning.

The EU and its Member States identify SSR as a high priority for the DRC. In terms of addressing threats to human security, reforming the security system is clearly of the utmost importance. To date, however, most EU programmes have focused on technical projects, rather than addressing reform of the security system, its mission, its behaviour, its culture and its relationship to the civilian population (and especially women and girls). This will be a difficult process, requiring long-term commitments and political and diplomatic support. It will meet fierce resistance from powerful elites who benefit from the *status quo*. But unless the fundamental role of the security system in the DRC is transformed, technical capacity-building endeavours, including those supported by the EU, risk increasing the ability of elements within the security system to abuse the population, and therefore jeopardise steps towards peace and democracy in the DRC. Moreover, gender-sensitive implications of all levels of reform need to be integrated across the board in SSR programmes, rather than being seen as a separate add-on, in order to address women not only as victims of the security system, but also as agents for positive change.

Where possible, the EU should always seek to accompany Congolese endeavours. However, where the authorities fail to act in good faith, the EU should be prepared to apply conditionality on human rights grounds and further targeted sanctions if necessary.

The EU is an important part of the international community in the DRC. Now is the time to increase pressure and support for justice-sensitive approaches to SSR in order to see better returns, and the EU is well-placed to take the lead on this. The EU institutions and Member States should agree not only on a common strategic approach to SSR, but also a common agenda, both diplomatic and technical. They should seek to include as many non-EU partners as possible, particularly MONUC, South Africa and the US.

PROSECUTIONS OF PERPETRATORS OF HUMAN RIGHTS VIOLATIONS

The EU should bring the range of diplomatic and development tools at its disposal to encourage the successful prosecution, preferably through the Congolese system, of perpetrators within the security system of at least the most serious human rights violations.

Given the extent of rape and sexual violence committed by men in uniform, the successful prosecution of men holding public office and who commit crimes of sexual violence – or at least condone or otherwise tolerate any form of sexual violence committed by men under their command – is particularly necessary. Where possible,

these prosecutions should be domestic, under Congolese law, not an instance of “judicial imperialism”, as rape and sexual violence are *Congolese* crimes.

The attention given to rape as a weapon of war and the inclusion of sexual crimes in indictments issued by the ICC for crimes committed in the DRC are welcome. However, international trials cannot replace domestic prosecutions. Firstly, the ICC will only ever be able to prosecute a limited number of offenders. Secondly, the level of evidence required to prove sexual violence as an international crime such as a war crime is very high. This means that cases where crimes of sexual violence have been committed, but where there is insufficient evidence to prove an international crime has been committed, would go unpunished.

Given the failings of the domestic system, additional safeguards will be necessary. These will include: witness protection; legal assistance; smart aid projects enabling women to participate in trials by ensuring the well-being of her family in her absence; court monitors to ensure international standards are met; and persistent follow-up to ensure fulfilment of judgments, particularly of reparation payments to victims. Many of these provisions would also be relevant for trials conducted by the ICC in The Hague.

If and when the prosecutor of the ICC provides information to the domestic judicial system obtained in the course of his or her investigations (in application of the “principle of complementarity” enshrined in the ICC Statute), concerted effort will need to be made by the international community to ensure that these cases are prosecuted satisfactorily domestically, including ensuring the safety of female victims and witnesses. There is a risk that referring cases to the domestic system could further entrench impunity, by failing to successfully prosecute perpetrators (including guarantees that they serve their sentences), and/or by maltreatment of women participants in the trials in such a way as to intimidate women to such an extent that they refuse to participate in future trials.

Domestic prosecutions pre-suppose a police service, or units within the police, which are able to successfully investigate sexual crime. Capacity-building of specialised units could be a useful first step in equipping the police with the skills necessary to meet its obligations to protecting the security of the population.

Finally, prosecutions alone, particularly if focused only on sexual crime, cannot address the broader enabling environment for gender and sexually-based violence. Gender and sexually-based violence is clearly a social problem extending beyond the security system; prosecution of offenders will contribute to addressing this problem, but is insufficient by itself.

VETTING AND OTHER REFORMS TO ESTABLISH ACCOUNTABILITY AND OVERSIGHT OF THE SECURITY SYSTEM

The EU should support a reflection and consultation process with the Congolese authorities, international community and relevant technical experts and other stakeholders, to examine in depth what options there may be for vetting processes, using the human rights records (including for sexual violence) of individuals as a criterion for selection for or exclusion from the police and army, and to make recommendations for the implementation of such a proposal. It will not be feasible to vet every member of the police or army, so strategic choices will need to be made. It may be most appropriate to vet only the most senior ranks, and/or members of internal disciplinary units. The potential security threat of those excluded from the institutions will also be an element that has to be taken into account. As described in this paper, there is no single model applicable to each case, so best practice and lessons learnt from other examples across the world should be carefully examined, including giving adequate attention to the process of designing, as well as implementing, such a process.

As with criminal prosecutions, the exclusion of human rights abusers (which may or may not include prosecution, although the possibility of future prosecution should be safeguarded) as a one-off, standalone event, is unlikely to reform the culture of an institution. Exclusion of abusers must be accompanied by long-term and sustainable reforms, including effective and fair internal disciplinary measures and democratic external oversight. In order to be effective, it is likely that members of a disciplinary unit would need to be screened on human rights grounds, as well as for competence. These measures will be reinforced by personnel training, not only in professional

competence and codes of conduct, but also in human rights; recruitment procedures should ensure that the institution reflects the social, ethnic and gender make-up of the community it serves.

EMPOWERING THE POPULATION

Two years after the elections in the DRC, the population has experienced little or no peace or democracy dividend, and the outbreak of renewed violence in October 2008 threatens the marginal gains in stability even further. Whilst the *status quo* in the security system may serve the interests of the elite few, the population as a whole faces not only ongoing human rights abuses, but a daily struggle for survival. It remains unclear what impact the current outbreak of violence will have on local elections, which were scheduled to take place in 2009. Nevertheless, such elections should be used as a means for mobilising public opinion to create an effective movement to pressure the elites to effectively engage in reform initiatives.

Reform processes have not to date sought to engage the population as a whole. Although some locally-based (or Kinshasa-based) civil society organisations have been involved in some reform projects, there has been no national discussion of the future role of the security system. An important element of justice-sensitive reform will be to increase efforts to transform the relationship between the population and the security system; particular attention will need to be paid to the relationship between Congolese women and these institutions. This will include building on existing projects, bringing them to scale at a nation-wide level to empower citizens to engage with the security system, and the processes for its reform.

Finally, the EU should support the work of the UN Mapping Exercise, particularly in assisting it in addressing the gender perspectives of its work, which have apparently been overlooked to date. The EU should make funding and diplomatic support quickly available to facilitate local engagement in the process, and local ownership of the implementation of its recommendations – as well as the active inclusion of women at each stage.

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