



Situation Report

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Peace in the Kivu's? An analysis of the Nairobi and Goma Agreements

Introduction

Since the end of the political transition in the Democratic Republic of Congo (DRC), conflict in the Kivu provinces has hardly diminished. This situation continues to undermine regional stability as well as the legitimacy of the Congolese state. Attempts to deal with the crisis also demonstrate the key weaknesses and fragility of the Congolese political constellation, including the slow Demobilisation, Disarmament and Reintegration (DDR) and Security Sector Reform (SSR) processes. At the end of 2007 and the beginning of 2008, two critical agreements, the 9 November 2007 'Nairobi Agreement' and the 23 January 2008 'Goma Acte d'engagement', framework of the Amani process³, were signed. They deal with key issues that were not adequately dealt with in the previous agreements, such as the all-inclusive agreement, which concluded the inter-Congolese dialogue. The continued presence of Rwandan Hutu rebels, the *Forces Démocratiques de Libération du Rwanda* (FDLR), as well as the existence of Congolese armed groups, such as the Nkunda group, Congrès National pour la Défense du Peuple (CNDP) and Mai Mai militia continue to be a threat to stability.

These issues are interlinked and are related to the lack of a comprehensive political process for the Eastern DRC. Both agreements provide a framework for an integrated process, a possibility to end the status quo. Although the neighbours of the DRC have their share of the responsibility, the implementation will depend largely on the political will and operational capacities of the Congolese government, in partnership with the international community – mainly The United Nations Mission to the Democratic Republic of Congo (MONUC). An important recent development is the increased recognition, also at the level of the Congolese government, that the Goma and Nairobi agreements are interdependent and that both are linked to the implementation of SSR.

The DDR of the armed groups and the *brassage* of those willing to integrate the *Forces Armées de la République Démocratique du Congo* (FARDC) are the biggest challenges to the implementation of the Goma process. The work on the technical modalities preparing the start of the DDR is proving quite long. So far the cease-fire has held but the danger remains that the dynamic of the Goma process will be lost. This is especially true since the implementation of the Nairobi agreement and the Demobilisation, Disarmament, Reintegration, Repatriation and Resettlement (DDRRR) of the FDLR, which is a key bone of contention between the CNDP and the DRC government, shows little progress so far.

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The signing of both agreements came at a time when the relationship between the DRC and the international community became increasingly strained. Recent examples of this are the publication by MONUC of the human rights report on the crackdown on Bundu Dia Congo in June 2008 and the difficulties encountered in prolonging the European Union's EUSEC mission.

This Situation Report analyses the 9 November 2007 Nairobi agreement, in relationship to the 30 July 2002 Pretoria agreement. It looks at the actions that have been taken since 30 July 2002 to address the DDRRR of the ex-FAR/Interahamwe/FDLR combatants. It also looks at the current situation in the East of the DRC with an assessment of the Goma agreement and how it affected the problem of the CNDP – General Nkunda. The situation report concludes with possible options on how to deal with both issues.

Symbolised by the signing of the 'All Inclusive Agreement' in Pretoria in December 2002, the end of the Congolese war, did not bring peace and stability to the Kivu Provinces. Various initiatives by the international community to bring peace to the DRC focused mainly on the international and national dimensions of the conflict, leaving the local level largely unattended. It was in the East that the transition faced its worst setbacks especially in the Ituri province (the Bukavu and Gatumba crises in 2004). The main determinants of the Kivu crisis remain in place to this day, the transition and the 2006 elections did not produce a tangible change. Especially North Kivu remains in the grip of violence, including a massive crisis of popular displacement. Horror accounts of brutality including sexual violence are widely reported, the perpetrators belonging to a myriad of armed groups, including the Congolese armed forces (the FARDC), the ex-FAR/Interahamwe/FDLR, the CNDP (Nkunda), Mai Mai groups and 'armed gangs'. The Congolese government has responded by reinforcing its military presence in the Kivu provinces – further increasing the militarisation of the area. Given the dire state of the FARDC this has effectively worsened the security situation. The army is often considered to be the main source of insecurity; the command and control structures are very weak. The strategy to resolve the issues by military means has resulted in a series of foreseeable catastrophes for the FARDC, further weakening the DRC governments' legitimacy in the Kivu's. The last defeat in December 2007 of the FARDC proved important and opened the way for a comprehensive peace conference for the Kivu Provinces, the start of the Amani process.

The structural causes for the crisis in the Kivu's are multiple, they include:

- the current status-quo provides numerous opportunities for different actors in the DRC and the wider region;
- the lack of political attention to the local dimension of the DRC conflict by both the international community and the Congolese government;
- the lack of a political solution for the central issues of citizenship, inter-community tensions and access to economic resources (land);
- the continued presence of foreign armed groups, mainly the ex-FAR/Interahamwe/FDLR and the Lord Resistance Army (LRA) offering a continuous excuse for Rwanda and Uganda to remain involved in the internal affairs of the DRC;
- the lack of progress in the DDR and SSR processes as critical elements in the extension of state sovereignty over the national territory of the DRC;
- the lack of an effective management system for the region's natural resources, including regional trade agreements, border control and taxation systems.

Apart from MONUC, the most potent forces in the Eastern DRC are Nkunda's CNDP and the FDLR. From the perspective of the Congolese Government, the main priority so far has been to deal with the CNDP and Nkunda, who poses a direct political challenge to the regime. Although it exercises a *de facto* control over large areas of the Kivus, the presence of the FDLR does not constitute such a threat – the FDLR's political aim being in Kigali. From the perspective of Nkunda and his support base, the FDLR is the main security threat to the Rwandophone communities, closely followed by the FARDC. It is very likely that Kigali continues to support Nkunda as a substitute force to maintain pressure on the FDLR.

Especially since the FARDC is not likely to do so in the near future, because of lack of capacity, motivation as well as the need to use the FDLR to maintain pressure on Nkunda. This situation presents a *de facto* stalemate on the ground. It also demonstrates that an integrated process is key – with a realistic timetable for a phased, progressive demilitarization of the Kivu Provinces. The picture is further complicated by the existence of numerous smaller armed groups that present a real threat as they can easily be instrumentalised by any of the other political and military groups in the DRC and the region. The Goma conference has actually resulted in the growth of the number of these groups, hoping to get advantage from the DDR or looking for political advantages. In the current context, militia members are easily recruited since the reintegration phase of the DDR process remains extremely difficult.

Despite their presence in the DRC since 1994, the FDLR remains an autonomous military player in the region. It has an estimated strength of about 6000 combatants, consisting of the remnants of the ex-FAR/Interahamwe and refugees from Rwanda after 1994. Created in 2003, it is the successor of the so-called *Armée pour la Libération du Rwanda* (ALIR). Its leadership was involved in killings during the Rwandan genocide. At the start of the first Congo War, in 1996, the number of ex-FAR/Interahamwe combatants active in Zaire/DRC was estimated at about 40,000. At the moment of the retreat of the Rwandan army, its numbers had diminished to about 15,000. In 2003, the Rwandan government managed to organize the repatriation of the FDLR military commander, General Rwarakabije. This represented a major publicity victory for the Rwandan government. A number of returnees have also secured positions within the Rwandan military.

The aim of the FDLR remains ‘regime change’ in Rwanda in view of the ‘democratisation’ of the country. The organization calls for ‘a frank and direct dialogue between the FDLR and the Kigali regime’ as the basis for a lasting peace. This is the so-called inclusive ‘inter-Rwandan dialogue’. According to its communications unit, the ‘political problem of Rwanda’ (*sic.*) is at the root of many conflicts in the African Great Lakes Region.⁴ In the field, FDLR commanders state that their objective is to overthrow the current Government of Rwanda and to replace it with a majority Hutu government⁵. Given the genocidal ideology of the FDLR leadership, the Rwandan government maintains its position to refuse any form of negotiation or discussion with them and continues to welcome individual FDLR fighters that return through the DDRRR. The FDLR uses the outcome of the 2005 Rome talks with the DRC government facilitated by the Sant’Egidio community as the basis for their official strategy. This process was however fundamentally flawed from the start, as it was clear that the conditions posed by the FDLR were totally unacceptable to the Rwandan government. This process seems to be more a delaying tactic to avoid international military action than a real commitment.

A key issue in dealing with the DDRRR of the FDLR is justice and impunity. A considerable number of the returning FDLR is likely to face the *Gacaca* court system and the leadership faces more serious prosecution in Rwanda or internationally. This is likely to be one of the key reasons why the FDLR will not leave the bush.

For Rwanda, the sheer existence of the FDLR as a military actor hampers the development of a genuine political opposition. Although the direct military threat is limited, it keeps the ‘genocidal agenda’ alive, effectively limiting the political space in Rwanda.

Numerous reports⁶ on the Eastern DRC detail the complex interaction between the FDLR and the local Congolese population. In many areas the FDLR has been present for more than a decade and they have mixed with the local population. They have often replaced local administrative and traditional authorities, have inter-married and often dominate the local trade and economic networks. There is and has been a form of cohabitation with the Congolese armed forces. This makes the situation all the more difficult to untangle and demonstrates the need for an open, creative process. A recent report by the Goma based POLE institute

lists a number of handicaps for dealing with the FDLR: their integration in the national army (in bringing security as well as managing the economic resources), intermarriage, the lack of a clear plan on how to deal with the FDLR (including the local and national authorities) and the lack of a real army⁷.

The FDLR and FARDC share a common enemy in the person of Nkunda and his mainly Banyarwanda troops. Any military confrontation between FARDC and Nkunda bears the risk of ex-FAR/Interahamwe/FDLR cooperating with the FARDC at the tactical level (although the Congolese authorities might not encourage this and would most certainly deny it). In October 2007, Richard Sezibera, Special Envoy to the Great Lakes Region of President Kagame stated that Rwanda had proof of such collaboration between the FARDC and the FDLR in fighting against Nkunda.⁸ Such collaboration of the FARDC with the ex-FAR/Interahamwe/FDLR risks having far reaching political and military consequences. It would jeopardize the government's as well as MONUC's credibility by indirectly supporting foreign-armed groups and provoking negative reactions by Rwanda.⁹ The Rwandan army, whose troops are concentrated on the frontier, would be ready to intervene if there were massacres of Tutsis or a direct attack by the ex-FAR/Interahamwe/FDLR on Rwandan territory.¹⁰ It was against this background that the international community intervened in an effort to address the issue of the ex-FAR/Interahamwe/FDLR, leading to the signing of the Nairobi communiqué.

On 9 November 2007 the Government of the DRC and Rwanda reached an agreement whereby the DRC agreed to forcibly disarm Rwandan Hutu rebels (the FDLR) on its soil. The United Nations (UN), in the presence of the United States (US) and the European Union (EU), facilitated the negotiations. As a deal between two national governments, the accord represents a new step in the recent history of the region. The international community remains engaged since it believes that a strong, united, and well-governed DRC is a precondition for regional peace and security. The agreement is considered to 'go a long way' towards the future security of both Rwanda and the DRC.

The Nairobi Agreement has been confirmed by UN Security Council resolution 1804 of 13 March 2008. The Security Council calls upon the Rwandan armed groups to lay down their arms and maintains the MONUC mandate for support in voluntary DDRRR and to support operations led by the integrated FARDC brigades to disarm the remaining armed groups.

The implementation of the agreement is supported through a joint monitoring group composed of representatives of the DRC, Rwanda and international partners. It held its first meeting on 16 December 2007. It is also monitored through the tripartite +1, a mechanism established by the United States to reinforce dialogue between the DRC, Rwanda, Burundi and Uganda on regional security issues.

The basic principles of the Nairobi Agreement are very familiar,¹¹ they reflect the Pretoria Agreement of 30 July 2002 signed after the South African Government facilitated a similar meeting between the DRC and Rwanda. The agreement also referred to as the 90-Day agreement had almost the same intentions.¹² The result of the agreement is well known: within a number of weeks, the Government of Rwanda withdrew the 20,000+ Rwandan soldiers that were deployed in Eastern DRC, expecting the DRC to repatriate (through the DDRRR process) the than estimated 8,000 plus ex-FAR/Interahamwe/FDLR within 90 days, with the known result.

The Pretoria agreement was brokered by South Africa in an effort to break the deadlock in the talks on bringing peace to the DRC. The Pretoria agreement amounted to an acknowledgement by the DRC government that it had been supporting the Interahamwe/ex-FAR/FDLR, and a commitment to cease such support. In turn, Rwanda committed itself to the withdrawal of all its forces from the DRC.¹³ This effectively opened the way for the breakthrough in the inter-Congolese dialogue that arrived at a conclusion in December of the same year.

The prerequisite measures for the withdrawal of some 20,000 Rwandan troops were detailed in a programme and timetable for implementation that was key to the success of the whole agreement and that includes, *inter alia*:¹⁴

- the finalization of United Nations Mission in the Congo (MONUC) phase three deployment within 15 days of signature;
- the establishment and operationalisation of the assembly points for the holding of ex-FAR and Interahamwe, including securing of the assembly points in terms of MONUC and JMC processes, within 25 days of signature;
- tracking down, disarming and dismantling Interahamwe and ex-FAR leaders and Troops, to be completed within 90 days of signature;
- repatriation of ex-FAR and Interahamwe forces, and verification of process of repatriation, within 90 days of signature; and
- withdrawal of Rwandan troops, also to be completed within 90 days from signature.

What happened between the signing of the Pretoria Agreement on 30 July 2002 and now is history. The biggest challenge at the time of signing the Pretoria agreement was that of who would forcefully disarm the ex-FAR/Interahamwe/FDLR. When the agreement was signed there was no Congolese peace agreement and fighting between the FAC, Mai Mai, MLC, RCD-G and the ex-FAR/Interahamwe was ongoing. At that stage the idea was to deploy four MONUC Battalions to the East of the DRC to support the DRC/Rwanda and South Africa through the Third Party Verification Mechanism (TPVM)¹⁵ to demobilise and repatriate the ex-FAR/Interahamwe/FDLR.

The TPVM Mission was quickly terminated but MONUC continued with the DDRRR process focusing on voluntarily repatriation of ex-FAR/Interahamwe/FDLR combatants. Since then 4, 446 ex-combatants and 4,230 Rwandan citizens have been repatriated by MONUC.¹⁶ Since the signing of the 2002 Pretoria agreement, the political and military environment has however fundamentally changed. A Transitional Government was put in place on 30 June 2003 after all the parties to the conflict signed the Pretoria Peace Agreement on 17 December 2002 ending the war in DRC. Shortly after the launch of the Transition, the Disarmament, Demobilisation and Reintegration of the Congolese Government Forces and the rebels started, leaving the ex-FAR/Interahamwe/FDLR still not demobilised or repatriated in the Eastern DRC. The DDR and SSR programs ran into problems since part of the RCD-G, regrouped around General Nkunda refused to participate in the brassage process, because of political and security concerns. The presence of the FDLR is therefore one of the key factors contributing to the problems in the DDR process. One of the main concerns in the run-up to the 2006 presidential elections was that the ex-FAR/Interahamwe/FDLR would disrupt the process. The concern for the security of the electoral process, the fall-out of the 2004 Bukavu crisis and the need to increase the pressure on the FDLR were key factors for the reinforcement of the MONUC presence in the East. MONUC deployed a Division size force to the East, deploying a brigade size force in Ituri, North Kivu, South Kivu and Katanga. The force had a robust mandate, the will and increased capacity (helicopters) to implement it.¹⁷ During 2005 and 2006 the Eastern Division executed a number of relatively successful operations against the ex-FAR/Interahamwe/FDLR to dislodge them and put pressure on them to go back to Rwanda. The second part was not very successful and only a few were repatriated to Rwanda. The ex-FAR/Interahamwe/FDLR was however never a threat to the electoral process and the elections in the Eastern DRC did take place in a peaceful environment.¹⁸ The increased pressure on the FDLR had negative consequences for the local population having to face violent revenge attacks by the FDLR.

It is clear from the agreement that the major responsibility lies with the government of the DRC, particularly with regard to the disarmament and repatriation of the ex-FAR/Interahamwe/FDLR to Rwanda. In that sense, the 30 July 2002 Pretoria agreement was very similar. The main difference was that Rwanda had the responsibility to withdraw 20,000 soldiers from the Eastern part of DRC in exchange for the repatriation of the rebels to Rwanda. The Rwandans kept their

part of the agreement with South Africa as guarantor. The repatriation process stipulated by the Pretoria agreement, has, however, had only limited success. So far, MONUC has repatriated a total of about 15,000 combatants: Ugandans, Rwandans and Burundians. These volumes have steadily dropped because of a number of reasons, some directly tied to the organisation of the process¹⁹ as well as the intimidation within the armed groups, leaving an estimated 6,000 FDLR in place.

Rwanda's commitment to the Nairobi declaration remains rather limited. It should have taken all necessary measures to seal its border to prevent the entry into or exit from its territory by members of any armed group or renegade militia leaders, Nkunda's group in particular. This would prevent any form of support; military, material or human, being provided to any armed group in the DRC, including verbal support of certain armed forces. This would only be possible if joint MONUC, FARDC and Rwandan Defence Force patrols take place on the borders between Rwanda and DRC. Following its obligation under the agreement, Rwanda produced a list of *génocidaires* including up to 6,000 names – a figure that almost equals the number of FDLR present in the Eastern DRC. The publication of this long list is problematic. A more limited list naming the political and military leadership and a few dozen people was expected. This element will surely hamper the voluntary nature of the DDRRR of those concerned. It also underscores the very political and sensitive nature of the question. A potential middle of the road solution is to be found in the provision made in the agreement that those of the ex-FAR/Interahamwe/FDLR not willing to be repatriated to Rwanda are to be accommodated in the DRC until the situation is more favourable for their repatriation.

The FDLR immediately rejected and discarded the joint plan, as it was not involved in its creation²⁰. FDLR president Ignace Murwanashyaka, stated that he had not been consulted about the disarmament deal agreed by Congo and Rwanda “This accord does not concern us. We are not committed to doing anything at all, we say no to forced disarmament. We will defend ourselves,” he added. Murwanashyaka said his group wanted a negotiated solution, not a military one. “If someone wants to drag us into a war, I can assure you that will not solve the political problem that exists²¹”.

The important challenge for the DRC revolves around the provision for the launching of military operations, to dismantle the ex-FAR/Interahamwe/FDLR as a military organization. This crucial part of the agreement, seems unlikely to succeed, at least in the short term, largely due to the lack of capacity and motivation of the FARDC. For the first time there is real agreement but in fact it focuses mostly on the military option that could worsen the situation on the ground²², as was the case during previous attempts to increase military pressure on the FDLR. A real offensive can only be launched once the Rapid Reaction Forces have been trained – an important phase of the new plan for SSR in the DRC (cf. *infra*). This, however, will take a considerable time. These units are also intended to progressively replace MONUC, once the mission starts to scale back its presence in line with the priorities defined in its set benchmarks.

In December 2007 the DRC government produced a detailed plan to disarm, the ex-FAR/Interahamwe/FDLR, which included military operations. The FARDC will be supported by MONUC, as was confirmed by Resolution 1804 (2008). On 11 February the DRC government created a steering committee to deal with the implementation of the plan. The first phase of the plan consists of renewed sensitization efforts for voluntary DDRRR with field missions being carried out, meeting the FDLR in the bush. The sensitization phase also included a meeting between the DRC government and the Rwandan armed groups in Kisangani. The FDLR did not participate in the Kisangani meeting. It was accepted by the FDLR/RUD a smaller, breakaway faction of the FDLR comprising of about 300 fighters. The FDLR/RUD opted to be accommodated within the DRC. The initial timeline for the implementation of the plan was delayed and it seems that military operations are being prepared for the summer of 2008, which is too early for the FARDC.

So far, the DRC government reinforced its military capacity in the East with 8 Battalions to deal with the FDLR²³. The FARDC could considerably weaken the FDLR by deploying in areas of strategic and economic importance to the FDLR, such as markets and mines. This would affect the trade of minerals, most importantly coltan and gold between the DRC and Rwanda as well as Uganda. This might also give FDLR members willing to repatriate more opportunities to contact MONUC/FARDC elements and to surrender²⁴.

In November and December 2006 forces loyal to Nkunda carried out attacks on government positions in North Kivu, whereby they captured the town of Sake, and threatened to seize Goma. This situation that occurred in the sensitive final stages of the electoral process, led to a strong intervention by MONUC, including the heavy use of attack helicopters. The fighting also resulted in massive displacement of civilians and ended a period of relative calm during the electoral process. In December, just after taking office as the newly elected President of the DRC, Joseph Kabila offered an olive branch to Nkunda by proposing a process of reconciliation. Rwanda also stepped in offering mediation between Nkunda and the DRC government. This led to a controversial agreement on 31 December 2006 between Nkunda and the then Air Force Commander General John Numbi, a close ally of Joseph Kabila. The core of the agreement was fully in line with Nkunda's refusal to include his troops in the DDR and *brassage* process, which is the basis for the integration of the different militia in the newly formed FARDC. In an initial stage Nkunda's troops were to be 'mixed' with the non-integrated FARDC forces in North Kivu. Both sides decided to reintegrate the brigades (rebel brigades of Nkunda and the FARDC non-integrated brigades) by mixing and renaming them under a new structure, in a process called '*mixage*'. In essence, the mixing process aimed at equally combining Laurent Nkunda's 81st and 83rd brigades, and the rest of the combatants, with the FARDC's 110th and 116th brigades, as well as the 1st Reserve brigade. An estimated 4,500 to 5,000 of Nkunda troops, according to Nkunda's figures, were due to be combined with a similar number of FARDC troops.

This exercise was doomed from the beginning because of a number of factors: the process was not supported by the international community (including MONUC); there was little 'ownership' from the Congolese government, since it was immediately clear that it reinforced Nkunda's military and political position. The mixed brigades were rapidly deployed in operations against the ex-FAR/Interahamwe/FDLR operating in North Kivu. These operations resulted in human rights violations and mass displacement of the population. During the summer of 2007, the agreement disintegrated. It seems to have been little more than mutual stalling for a predictable confrontation. Nkunda's aims have always been: to ensure the safe return of 45,000 Tutsi refugees from Rwanda, the freeing of political prisoners, operations against ex-FAR/Interahamwe/FDLR and his appointment as an officer in the FARDC. The position of the Government of the DRC was that the *mixage* process was purely for the purpose of completing the *brassage* process and that it did not intend to appoint Nkunda in the FARDC.²⁵

Nkunda used the *mixage* process as an opportunity to further consolidate his position in North Kivu. He also established a political party, the National Congress for the Defence of the People (CNDP for the French acronym) and attempted to extend his influence to South Kivu and the Ituri district. The CNDP's main selling point was the 'protection of civilians'. At rallies he made promises to communities that he was going to develop community facilities including free education to children, medical facilities and provision of electricity. CNDP loyalists were acquiring machines to repair roads and were also replacing Congolese police at police stations with CNDP recruited police. It seems clear that Nkunda was putting in place an alternative or 'shadow state' in North Kivu, directly menacing the position of President Kabila in his own backyard. The FARDC was in no real position to act. Only MONUC could oppose him²⁶, acting however within the limits of the mandate to protect the civilian population against the imminent threat of physical violence.

The mixing process was ended during the summer of 2007, when tensions resumed between the Government and Nkunda. The FARDC sent massive reinforcements to the North Kivu Province in a clear attempt to augment military pressure on Nkunda. The standoff was of about 3,500 to 5,000 Nkunda troops, versus 20,000 FARDC – which included reinforcements by the *Garde Républicaine* (president guard) with heavy weapons (artillery and armoured vehicles). A heavy handed approach seemed also to be favoured by the local population, which had massively voted for Joseph Kabila to deal with the continuing insecurity and General Nkunda, widely considered to be a war criminal. After initial fighting in August/September 2007, a major offensive by the FARDC was launched in December 2007, followed by an ultimatum to Nkunda to go into DDR before 15 October 2007²⁷. The offensive, as expected turned out to be a fiasco for the army. After some initial successes, the army was clearly defeated by the CNDP troops. The fighting led to a further massive increase in IDPs in North Kivu, further worsening the humanitarian situation. There were also reports of FARDC contacts with the FDLR during this episode.

The defeat of the FARDC led directly to the organisation of a major, inclusive peace conference for the Kivu Provinces: the Goma conference that was held from 6 to 23 January 2008. The conference resulted in the signing of the Goma declaration on 23 January. The follow-up and implementation is entrusted to an elaborate system of commissions, under the leadership of Abbé Malu Malu, President of the Goma Conference and former President of the Independent Electoral Commission. The Commission on Peace and Security only started functioning in April. The *Acte d'engagement* clearly links the work of the technical committee on peace and security to the Nairobi declaration and the DDRRR of the FDLR. Since the signing of the agreement, the ceasefire between the FARDC and the CNDP seems to have been largely respected, although distrust between the Kabila government and Nkunda still remains. There has been some continued fighting with a number of Mai Mai movements, including the Coalition of Congolese Patriotic Resistance (PARECO)²⁸ in Masisi and Lubero districts. The PARECO has also been fighting the FARDC and regularly cooperates with the FDLR. The civilian population remains caught between the different armed groups including the FARDC. Large parts of North Kivu remain out of control of provincial and national authorities.

The issue of the Congolese troops' ineffectiveness is creating concern both in Rwanda and among the international sponsors of the agreements. A recent confidential audit by a team from Belgium and South Africa as well as a separate audit by the European Military Section of the 18 Integrated Brigades paints a bleak picture. The audit concluded that the FARDC capacity to conduct military operations is very limited and worrisome and will remain so for the near future. The latest UN report clearly states: "FARDC lacks the capacity to undertake significant offensive operations in the near future"²⁹. Training, equipment, discipline, C2, logistics, corruption and incompetence are at an unacceptable level³⁰. In the course of July 2007, MONUC commenced to provide basic military training to FARDC aimed at enhancing their military capacity and to enable them to conduct joint operations with MONUC. In accordance with the military plan MONUC intends to train a total of 11 brigades. This effort will slightly enhance the FARDC capacity; the lack of equipment, logistic support and discipline of the participants are likely to make results less impressive. However, it is unrealistic to believe that MONUC's training efforts would result in a well-trained and integrated army and would enable the FARDC to take on the FDLR³¹.

Increasing military pressure would have been a sensible strategy, if it had been combined with an adequate and realistic timetable and political process. As a purely military strategy it turned out extremely costly, with dramatic consequences for the FARDC. The government further lost face by being incapable of exploiting its numeric and material advantage. It demonstrated clearly that the process of army integration and reform had been badly and inefficiently managed. The new master plan for army reform, presented at a round table in Kinshasa in February 2008, with the planned creation of a Rapid Reaction Force³², could, within a

realistic timeframe, create initial operational capacities for the FARDC. This will depend on the management of this process by the Congolese government and especially the establishment of a realistic and functional support structure. There is some apprehension as to the current plans since the re-organisation of the brigades and their reconstitution as new units could further weaken the results of two years' work on the unification of the army³³. So far however, the Congolese government has shown little real commitment in the process of SSR, thereby contributing to the insecurity and the resumption of violent conflict in large parts of the Eastern DRC. The current problems between the EU and the DRC in prolonging and defining the mandate of the EU advisory mission (EUSEC) serves as another clear indication that the DRC is not yet fully committed to the SSR process.

After completion of the Multi-Country Demobilization and Reintegration Programme (MDRP), the DDR programme ran into serious problems regarding the management of the funds. During the first months of 2008 there has been a positive evolution in this field and an agreement has been signed which will release additional funding for the national programme, *Commission Nationale de Démobilisation et Reinsertion* (CONADER). This is crucial since an estimated 70,000 to 80,000 combatants still have to be demobilized – to a large degree these elements are concentrated in the East. A strong sensitization campaign is needed to encourage soldiers to go for *brassage*³⁴. The *brassage* of Nkunda's CNDP is perhaps the key issue in the Goma process – providing a potential confidence building mechanism for the wider 'Amani' process. There are currently indications that the Kabila government would finally agree with a restricted *brassage* of Nkunda's troops within the limits of Kivu. This is one of the key demands of Nkunda since he and his troops fear for their security in other parts of the country. Those fears were reinforced with the incidents in the Kamina CBR in February of 2008. If this is confirmed, it would depart somewhat from the general *brassage* process and provide middle ground to the earlier, flawed, *mixage* process. The main difference is the 'individual' nature of the *brassage*, whereas the *mixage* process was based on collective integration.

Conclusion

In order to stabilise the situation in the Kivu Provinces an integrated approach is necessary, taking into consideration the different structural causes of the conflict, including access to land, justice and reconciliation, nationality and political rights. However, in the current context of rampant insecurity this rather seems unlikely. The precondition would be to re-establish basic security, which makes SSR and DDR first priorities. The problem of the FDLR should also be a priority of the Government. Their presence serves as a justification for the Nkunda camp to maintain its posture in 'defense' of the Rwandophone communities.

The only realistic option in dealing with the FDLR would then be a combination of economic (freezing of assets of FDLR leaders abroad and cutting off the coltan and gold trade) and military pressure by FARDC/MONUC as well as the continuation of the current, voluntary, DDRRR program. It however requires some prerequisites such as:

- political will from both the Government of the DRC and Rwanda to implement the agreements;
- pressure from the international community to implement the Nairobi and Goma agreements;
- continuous liaison between MONUC, the DRC and Rwanda on the implementation of the Nairobi agreement;
- progress in the DDR process of the FARDC in the Eastern DRC (Goma agreement);
- use of the lessons learned by MONUC Eastern Division during their 2005/2006 military campaign against FDLR.

It clearly appears that there is no exclusively military solution to the problems of the Eastern DRC, which includes the FDLR. Both Rwanda and the DRC have tried by military means to resolve the issue over the last years and both have failed. The consequences of the military campaigns by the FARDC and Nkunda's

integrated brigades earlier this year have clearly demonstrated what can happen: mass displacement of the population, summary executions, rape and more human rights violations. The FARDC have no capacity to fight for the foreseeable future and even for a well-trained and equipped army it would be difficult to come to terms with the FDLR, given the nature of guerrilla war they practise. The Amani process and the Nairobi declaration present for the first time the opportunity to deal with the Kivu crisis in a comprehensive way. However, the long duration of the implementation and the setting up of the follow-up structures creates the danger of incidents between the different parties that could result in the failure of the entire process. The key uncertainty for Nkunda remains the question of the Government's sincerity in dealing with the FDLR. At that level there has been little real progress, in line with the lack of Government's capacity to increase the pressure on the ground. A failure to build on these processes runs the risk of the resumption of the conflict on a national and regional level.

A delicate issue in this respect is dealing with justice and reconciliation. The DRC is currently clearly the test case for the ICC with the arrest of three relatively low-key warlords from the Ituri region³⁵ and especially former vice-President and opposition leader Jean-Pierre Bemba. However, this latest arrest is particularly problematic. Bemba's prosecution is not related to the events in the DRC but to his involvement in the civil war in the neighbouring Central African Republic in 2002–2003 where his troops are said to have committed massive human rights violations. Bemba's transfer to The Hague poses the general problem of human rights violations during the Congolese war that were committed by all actors, including those in the current government. The reaction of the CNDP has been in support of Jean-Pierre Bemba; the Government has seemingly delivered every service possible to the ICC in the political elimination of its major opponent, while at the same time lobbying in the UN to discontinue the mandate of the UN Human Rights rapporteur for the DRC. The need for independent verification only became clear in the report on the human rights violations in the Bas-Congo Province. The issue of transitional justice is absolutely relevant to the current processes in the Kivu Provinces. The FDLR leadership is suspected of involvement in the 1994 Rwandan genocide and a warrant of arrest was issued against General Nkunda in the DRC, for his behaviour in Kisangani and during the 2004 Bukavu crisis. The 2nd in command of the CNDP, Bosco Tanganda faces arrest by the ICC for his activities in Ituri. So far, no government official has been issued an arrest warrant. International justice risks becoming a victor's justice, hampering or blocking peace and reconciliation processes as a single trip to the Scheveningen prison is not very appealing to most – more than likely including Laurent Nkunda.

Annex I: The 9 November 2007 Nairobi Agreement.

The Nairobi Agreement signed between the DRC and Rwanda on 9 November 2007 addressed the following arrangements³⁶:

The Government of the Democratic Republic of Congo commits to:

- (a) prepare, by 1st December 2007, a detailed plan to disarm and address the threat posed by the ex-FAR/Interahamwe. MONUC will be requested to provide support in the planning and subsequent implementation consistent with its mandate and capacities. The plan will be shared with the Rwandan Government by 1st December 2007;
- (b) launch military operations, as a matter of urgency, to dismantle the ex-FAR/Interahamwe as a genocidal military organization in the DRC. Such operations should be simultaneously conducted with operations to dismantle illegal armed groups in North and South Kivu;
- (c) identify and commit the necessary resources to implement the military components of the plan;
- (d) a plan that shall include the following elements:

- i) reactivation and streamlining, in parallel with military requirements, existing efforts to sensitize ex-FAR/Interahamwe elements to disarm and repatriate to Rwanda;
 - ii) temporary relocation of disarmed ex-FAR/Interahamwe elements to reception centres/cantonment sites in the DRC; registration by MONUC under the existing DDRRR procedures and repatriation of those who choose to return to Rwanda;
 - iii) with the help of relevant international organizations, moving away from the border the disarmed ex-FAR/Interahamwe who do not wish to return to Rwanda and who are not wanted for genocide by Rwandan justice or the International Criminal Tribunal for Rwanda (ICTR), until the situation is normalized;
 - iv) arrest and handing over to the ICTR and Rwanda of those indicted for crimes of genocide, crimes against humanity or war crimes.
- (e) refrain from statements in support of any armed group in the DRC;
 - (f) publicize the contents of this joint communique.

The Government of the Republic of Rwanda commits to:

- (a) take all necessary measures to seal its border to prevent the entry into or exit from its territory of members of any armed group, renegade militia leaders, Nkunda's group in particular, and prevent any form of support – military, material or human – being provided to any armed group in the DRC;
- (b) share with the Government of the DRC and MONUC a list of wanted *génocidaires* (all categories);
- (c) refrain from statements in support of any armed group in the DRC;
- (d) encourage, through appropriate programs, ex-FAR/Interahamwe members and their dependents to return home and facilitate their effective socio-economic reintegration;
- (e) publicize the contents of this joint communique.

The Government of the Democratic Republic of Congo and the Government of the Republic of Rwanda agree to:

- (a) establish strict border controls and prevent illicit cross-border movement of combatants or recruits, arms, military material, food or medical support for any armed groups;
- (b) refrain from aiding and abetting (arming, facilitating movement, allowing recruitment for, financing, providing sanctuary to, etc) any armed group;
- (c) call upon all Congolese associated with the ex-FAR/Interahamwe to leave the group immediately and conclusively. Disarmed combatants that are found to be Congolese or are eligible to become Congolese in accordance with relevant national legislation, shall not be subject to repatriation; these will be registered and a list identifying them will be shared with the Government of Rwanda;
- (d) cooperate in bringing to justice those accused of having committed war crimes, crimes against humanity and genocide;
- (e) commit to take all necessary measures to encourage and enable refugees to return home;
- (f) commit to actively support and facilitate the provision of humanitarian assistance to civilians in need, irrespective of political and ethnic affiliation;
- (g) undertake to minimize the negative impact of the agreed operations against the ex-FAR/Interahamwe on civilian populations and take measures to ensure the protection of civilians, as well as compliance of their forces with international humanitarian and human rights law;
- (h) commit to continuously share intelligence on the implementation of these actions through the existing bilateral mechanism.

The Government of the Democratic Republic of Congo and the Government of the Republic of Rwanda call upon the International Partners witnessing this Communique, and other partners that the two signatories to this Communique may agree on:

- (a) to mobilize support to help implement the commitments expressed in this Communique;
- (b) to actively support the protection of civilians and the provision of humanitarian assistance to IDPs, refugees and those in need;
- (c) MONUC will protect civilians, in accordance with its mandate, against the negative impact of operations against the ex-FAR/Interahamwe and monitor compliance with recognized standards of international humanitarian and human rights law;
- (d) the signatories of this Communique urge the Security Council to pass a resolution establishing sanctions against the Ex-FAR/Interahamwe and call upon all member states to prevent all fund-raising, mobilization or propaganda activities of the ex-FAR/Interahamwe;
- (e) the United Nations, the African Union, the European Union, the United States, South Africa and other partners that the two signatories to this Communique may agree on, together with representatives of the two parties, shall be invited to facilitate and monitor the implementation of this agreement.

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- 1 Henri Boshoff is a Military Analyst in the African Security Programme, Institute for Security Studies, Pretoria.
 - 2 Hans Hoebeker is a Senior Researcher in the Central Africa Programme, Egmont – Royal Institute for International Relations, Brussels.
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 - 5 Romkema, Hans; Opportunities and Constraints for the Disarmament & Repatriation of Foreign Armed Groups in the Democratic Republic of Congo. The cases of the FDLR, FNL and ADF/NALU, Conflict & Transition Consultancies, June 2007, pp . 45.
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 - 9 Interview with Major General Patrick Cammaert, 10 October 2007, The Hague.
 - 10 *Great Lakes Echoes*, Monthly Publication of the European Network for Central Africa, No (37), November 2007.
 - 11 Joint Communiqué of the Government of the Republic of Congo and the Government of the Republic of Rwanda on a common approach to end the threat posed to peace and stability in both countries and the Great Lakes Region, 9th November 2007, Nairobi.
 - 12 See Mark Malan and Henri Boshoff, *An analysis of the Pretoria Agreement of 30 July 2002*, Institute for Security Studies, Occasional Paper No 61, September 2002.
 - 13 Ibid.
 - 14 Ibid.
 - 15 A mechanism set up between South Africa, the DRC and Rwanda, supported by MONUC to oversee the implementation of the Pretoria Agreement of 30 July 2002.
 - 16 See William Lacey Swing, MONUC Mission brief April 2006.
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 - 18 Author's Interview with Major General Patrick Cammaert, 10 October 2007, The Hague.
 - 19 Romkema, H 2007 , pp. 91–95.
 - 20 All Africa Global Media, The News Times, 14 November 2007, The D.R. Congo Should Deliver on FDLR this Time Round, 2007. <http://allafrica.com/stories/printable/200711140219.html>, accessed on 3 June 2008.
 - 21 Polity. Rwandan rebels in Congo vow to resist disarmament. 15 November 2007, online available at http://www.polity.org.za/article.php?a_id=121261, accessed on 3 June 2008.
 - 22 Ibid.
 - 23 Radio Okapi, Accords de Nairobi: le CCDP dée plore la non-application, l'armée nationale note des progrès aus Nord Kivu, 17 June 2008, online available at <http://www.radiookapi.net/index.php?i=53&a=19107>, accessed on 4 July 2008.
 - 24 Author's interview with Major General Patrick Cammaert, 10 October 2007, The Hague.

- 25 See Henri Boshoff, The Demobilisation, Disarmament and Reintegration process in the Democratic Republic of Congo. A never-ending story! Situation Report, ISS Pretoria, 2 July 2007 .
- 26 See Henri Boshoff, Laurent Nkunda – A New “Governor” For North Kivu? *ISS Today*, 9 July 2007.
- 27 Ambassador Swing, the then Special Representative of the Secretary General for the United Nations Mission in the DRC (MONUC) took the initiative to defuse the situation by organising a meeting on 15 October 2007 in Goma between MONUC, the DRC, represented by President Kabila and the Ambassadors of South Africa, Belgium, France, the United Kingdom and the United States of America. As a result of this meeting the ultimatum was extended with three weeks. This was possibly the opportunity that the United Nations and the international community were waiting for. The Secretary General, Mr Ban Ki Moon appointed the UN Under-Secretary General for Political Affairs Haile Menkerios as his Special Representative for the Eastern DRC immediately after the Goma meeting.
- 28 A movement claiming to unite non-Rwandoaphone peoples as well as some Rwandoaphone Hutu of North Kivu.
- 29 25th Report of the Secretary-General on the United Nations Mission in the Democratic Republic of the Congo, 2 April 2008, S/2008/218.
- 30 Interview with MONUC officer. 24 November 2007; Hoebeke, H; The EU and “Conflict Peacebuilding” in the DRC, *Studia Diplomatica*, Vol. LX, (1)2007, N°1,; pp. 43–57.
- 31 Swing, Lacey. The United Nations Mission in the Democratic Republic of Congo (MONUC): Experiences and Lessons. Presentation at the Institute for Security Studies, Pretoria, 21 November 2007.
- 32 The rapid reaction force is to consist of 12 battalions drawn from elements that have still to undergo *brassage* as well as from the 18 existing FARDC integrated brigades. It is a key element of the master plan for army reform presented by the DRC government. A clear risk for the cohesion and operational capacity of the rapid reaction force consists of the number of countries and different training methods that are likely to be used. This presents a key challenge for donor coherence and co-ordination.
- 33 Telephone interview with a MONUC official, 17 October 2007.
- 34 Ibid.
- 35 One of them, Thomas Lubanga, has recently been freed by the ICC due numerous procedural mistakes on the side of the prosecution. This release certainly poses a problem of credibility for the ICC
- 36 Joint Communiqué of the Government of the Republic of Congo and the Government of the Republic of Rwanda on a common approach to end the threat posed to peace and stability in both countries and the Great Lakes Region. 9 November 2007, Nairobi.