

No war, no peace: a protection crisis continues in the DRC

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Abstract

The Democratic Republic of Congo (DRC) has been affected by civil war and state decay for many years causing a humanitarian catastrophe on an unimaginable scale. Following a series of peace accords, a Transitional Government was set up in June 2003 to implement the various agreements made and prepare elections for the first time in 40 years. The DRC remains, however, in a fragile position of there being no war and yet no peace. Furthermore, as this article explains, a protection crisis continues on a massive scale in the DRC with the civilian population being the principal target of the insecurity that pervades the east of the country. The transition process has had only a minimal impact on the continued violation of human rights. There are state, international and non-governmental responses to the protection crisis in the DRC, but they remain weak in the face of the scale of the problem. Protection issues should feature more centrally in the international community's support to the DRC and in a post-war environment there is more opportunity for this to happen.

1.0 Introduction

Successive wars in the Democratic Republic of Congo (DRC) in 1996 and again in 1998 led to one of the world's worst humanitarian disasters. More people have died as a result of armed conflict in DRC than in any other African state and in any other war since the World War II. Amazingly, peace agreements signed in 2002 put an end to major hostilities. In July 2003, a Transitional Government was inaugurated and a two-year transition process embarked upon. The transition process, however, has looked like failing on a number of occasions and the country is still in a fragile position of there being no war and yet no peace. Despite reports that the DRC is moving towards a post-conflict situation the humanitarian situation is still bleak and the scale of human suffering massive. According to the International Rescue Committee (IRC), 31,000 die every month in the country. Since 1998, an estimated 3.8 million people have perished because of the war, mostly from hunger and disease.¹

Massive human rights violations have been a key aspect of the armed conflict in the DRC. Despite advances in the transition process this article argues that a protection² crisis still continues in the DRC today. As well as outlining the dimensions of this protection crisis the article provides a brief assessment of the responses there have been to halting and alleviating the violations taking place. The analysis does not represent a comprehensive 'protection assessment' of the DRC, but rather an analysis of the key trends and issues of what is arguably a neglected issue. During the war there was widespread recognition of the human rights violations taking place, but little was done to prevent them because of the imperative to stop the fighting. In a post-war context there is, in fact, greater opportunities for addressing protection issues, which are no less important now for progressing the peace process and alleviating the human suffering.

2.0 Background: Transition falters, war continues

Over the last two years the fragile DRC peace process has been plagued by a series of crises that have brought the country to the brink of full-scale war. The Global and All

Inclusive Peace Agreement signed by the Congolese warring parties in December 2002 was based on a 1 + 4 formula whereby the former President, Joseph Kabila, retained his position as head of state, but was joined in a Transitional Government by four vice presidents representing: the two main rebel groups during the war, the political opposition and the former government. This carving up of power, however, led to the creation of political fiefdoms with each group striving to retain control of the areas they controlled at the time of ceasefire. All parties to the Transitional Government have failed to show the political will necessary to advance the peace process and the international community has expended a great deal of energy to help resolve their disputes. Two attempted coups in March and June 2004, in particular, exposed the fragility of the Transitional Government. While the former belligerents appear to believe that their future lies within the peace process rather than outside, they prefer the *status quo* to the uncertainty that implementing the specific agreements brings.

The first serious test of the transition process came in mid 2004 when dissident soldiers attacked the strategic eastern town of Bukavu. In September 2003, the Transitional Government had nominated eleven regional military commanders from the various armed groups during the war. Some hardliners, however, refused to take up their positions in the newly-created national army, the *Forces Armées de la République Démocratique du Congo* (FARDC), and even where officers from different factions were brought together the commanders found it impossible to control the different armed factions. Such was the tension in Bukavu that in February 2004 the forces of Colonel Jules Mutebusi, from the rebel group *Rassemblement Congolais pour la Démocratie* (RCD), clashed with soldiers of his superior General Nyabiyolwa who had been appointed by Kinshasa from the former government army. The incident proved a forerunner to further crisis in Bukavu in June 2004 when soldiers loyal to a suspended Colonel Mutebusi, joined by those of dissident General Laurent Nkunda, took control of the town for more than a week and there was widespread concern that there could be a return to war in the DRC. Government forces retook Bukavu, putting an end to the crisis, but the United Nations' mission in DRC, MONUC, was heavily criticised for not acting more robustly to prevent the violence and the transition process looked in serious trouble.

The transition was sent into further turmoil in December 2004 with the outbreak of fighting in North Kivu. On 25th November 2004 the Rwandan Government sent a letter to the African Union saying that it might send its troops into DRC to attack Rwandan Hutu rebels it said had become a direct threat to its national security. A week later MONUC confirmed that Rwandan troops could be on DRC soil.³ In response to the Rwandan threats the Transitional Government announced the deployment of 10,000 FARDC troops to North Kivu to secure the territorial integrity of the state. The regional face-off between Rwanda and the DRC led to clashes across North Kivu between rival units of the FARDC. The crisis only began to be defused when a 51-strong government delegation from Kinshasa arrived in Goma and MONUC created a buffer zone between the opposing forces. Eventually, under intense international pressure, Rwanda withdrew its threat to invade DRC, but once again the transition process had looked like collapsing as armed conflict flared up in eastern DRC.

Both the crises in Bukavu and North Kivu were symptoms of deep-seated problems within the transition process, providing graphic examples of the ongoing tensions between the former warring parties and continued insecurity throughout the east of the

country. Both the Transitional Government and the international community lacked the will or the resolve to prevent the crises and deal with the spoilers to the peace process. The transition process should have been completed by the end of June 2005, with the holding of national elections. Shortly before this deadline, however, the Congolese parliament voted to extend the country's transitional period for six months, with elections now expected to take place in March 2006.⁴

As elections approach and the transition process draws to an end, the stakes in the DRC peace process are rising. A schedule has been agreed for the holding of elections, but the timeframe is extremely tight and despite intense pressure from the international community there could be delays.⁵ Progress has been made in many areas, but past crises show that the transition could still be derailed if one of the parties feels its interests lie outside the process. At best, the transition process has been characterised by minimal political reform and ongoing insecurity. Although the whole country is not embroiled in full scale war as it was only a few years ago, when the DRC conflict was dubbed “Africa’s first World War” due to the involvement of neighbouring countries, large parts of the country are still experiencing acute insecurity. It is for these reasons that a protection crisis continues in the DRC today.

2.1 Humanitarian needs still massive, but require a more differentiated response

Persistent armed conflict in the DRC has continued to cause massive humanitarian needs. There has been a dichotomy of relative stability in west and continued catastrophe in the east, according to the UN 2004 Consolidated Appeal Process (CAP). The funding document claimed that despite the end to the war the humanitarian needs in provinces of the east had in fact increased.⁶ It argued that:

“Despite an increase in donations from financial institutions and increased capacity of human rights actors alike, humanitarian needs will go unmet due to an increase in newly identified ones. Humanitarian actors will be unable to assure the smooth transition from emergency assistance to development assistance, leading to a demand from external sources.”⁷

The CAP in 2005 went further still, claiming that the deterioration of the transition had had a negative impact on the humanitarian situation and brought about new constraints for concerned actors. The increase in humanitarian need had been greater than the capacity of the humanitarian community to respond.⁸ Although not always a precise reflection of humanitarian needs, the table below of DRC CAPs in the last few years shows how there has been no significant tailing-off in what has been requested by aid agencies.

Overview of CAPs for the DRC – 2000 to 2005⁹

	Funds applied for	Funds received	% Received
DRC CAP 2000	37,039,207	11,772,710	31.78
DRC CAP 2001	122,856,090	81,971,040	66.72
DRC CAP 2002	202,201,192	98,431,641	48.68
DRC CAP 2003	229,407,473	107,912,091	47.04
DRC CAP 2004	162,602,463	118,386,333	72.81
DRC CAP 2005	192,909,665	71,578,857	37.10

Despite contextual changes in the DRC during the transition period there has not been a universal lessening of the humanitarian crisis; if anything the situation has gotten worse. Even if a positive view of the transition is taken the impact of the developments in the wider political-military arena have had only a minimal, delayed effect on the scale of human suffering. As a recent ECHO evaluation stated:

“ECHO should basically maintain its areas of intervention in 2005, since indicators of worst vulnerability must still be used, rather than contextual ones.”¹⁰

The evaluation argued that it would be dangerous to change programmes on the basis of contextual developments as opposed to indicators, which are unlikely to change for many a years. DRC is nowhere near normal post-crisis levels both in terms of indicators and also institutions’ capacity for response to these.¹¹ Instead the DRC is experiencing chronic humanitarian problems, exacerbated by acute crises brought about by ongoing localised armed conflict and insecurity, particularly in the east and northeast of the country. Such a multidimensional context requires a differentiated response by humanitarian actors. However, as was stated in the 2004 CAP,

“In terms of humanitarian response there has not been adequate planning or an internalised strategy to reflect provincial differences. Some parts of the country are in a transitional phase, some in development phase and others are stuck in an emergency phase.”¹²

The DRC has now been chosen as one of the pilot countries for the Good Humanitarian Donorship (GHD), launched in June 2003 by a range of donors aimed at allocating aid more accurately according to humanitarian need. Faced with a shortfall of funding and the added constraint of ongoing insecurity this will not be easy. A more differentiated response to the humanitarian situation in the DRC is evolving, although the response overall still struggles to have an impact on what is a catastrophe on a massive scale.

3.0 Overview of protection issues in the DRC

A key feature of this evolving humanitarian crisis is a lack of protection for the civilian population. The physical security of the civilian population continues to be at great risk in many parts of the country and they are deprived even the most basic of services. The following sections outline the different aspects of this protection crisis in the DRC and identifies the principle threats and risks to the civilian population. In particular, it focuses on the eastern provinces of North and South Kivu, Orientale, Maniema and Katanga, which have been most affected. The analysis of the situation is not exhaustive, but instead outlines some of the main issues.¹³ It demonstrates that a protection crisis still continues in the DRC despite the transition process, which has had only a minimal impact on the security and safety of the civilian population.

3.1 Deliberate personal violence

Killings, rape, abductions and other violence against civilians have been common features of the armed conflict in the DRC. Ethnic tensions, particularly between Rwandophone¹⁴ and other Congolese communities in the Kivu provinces in the east of the country, have remained high if not worsened in some instances. For example, on 13th August 2004 nearly 160 Banyamulenge (Rwandophone) refugees at a camp in Gatumba in Burundi were massacred.¹⁵ A Burundian Hutu rebel group, the National Liberation Front (FNL), insisted that it alone was responsible for murdering the Congolese refugees.¹⁶ However, there was widespread speculation that Mai Mai

elements of the FARDC and Interhamwe based in the DRC were complicit in the killings. The Gatumba massacre was just one of the more reported incidents where civilians have been targeted by violence in post-war DRC.

The continued presence of Rwandan Hutu rebels on Congolese soil, some of whom were responsible for the 1994 Rwandan genocide, has been a particular menace to the civilian population. Under agreements signed between Rwanda and DRC in 2002 the Congolese government was meant to disarm the rebels. However, UN-supported voluntary demobilisation and repatriation efforts have run their course and in late 2004 a potentially more robust approach to disarmament was launched. However, neither MONUC nor the FARDC had adequate plans to protect civilians, who have experienced intense violence perpetrated by the rebels.¹⁷ The main Rwandan rebel group, the *Forces Démocratiques pour la Libération du Rwanda* (FDLR), did announce at the end of March 2005 that it was prepared to return to Rwanda, but few of its troops still active in the DRC have returned subsequently. In May 2005, the UN reported that Rwandan Hutu rebels operating in eastern Congo have killed, raped, or kidnapped more than 900 civilians over the past year.¹⁸

Even in areas that escaped the most serious fighting in the war and have been relatively stable after the peace accords, the transition period has been marred by low-level insecurity. In July 2005 the medical humanitarian organisation Médecins Sans Frontières (MSF) drew attention to the ongoing clashes between Mai Mai militiamen and the FARDC in the copper-rich Katanga province and their impact on the civilian population.¹⁹ A particular problem has been the lack of salaries paid to soldiers. Instead, those with guns have continued to prey on the civilian population inflicting mass rape, killings, arbitrary arrests, illegal taxes and looting.²⁰ The salary for all soldiers is set at approximately \$10 per month, but the money has not until recently been received regularly by military units and even when funds have been sent a portion has usually been misappropriated by corrupt officials. A national Disarmament, Demobilisation and Reintegration (DDR) programme was launched in June 2004, but has failed to get started in any meaningful way. Most of the estimated 350,000 combatants in the DRC have not been demobilised and continue to target civilians.

There have also been reports of increased violence related to forthcoming elections, including arbitrary arrests and detention of political party members, although not as bad as was originally thought. Demonstrations that followed the 30th June 2005 deadline when elections should have been held, led to the excessive use of force, including shooting unarmed civilians in the cities of Mbuji-Mayi and Kinshasa with a number of civilian casualties. The various rounds of elections, starting with a referendum on the constitution in November 2005 and leading up to presidential elections in March 2006, are likely to be accompanied by further violence.

A particularly highlighted feature of the DRC conflict has been the scale and prevalence of sexual violence. It is impossible to put a figure on the number of women and girls that have been victims of sexual violence, although it is estimated in the tens of thousands. In March 2004 the UN reported that from 1998 to 2004, 40,000 women had been raped.²¹ In April 2004, Médecins Sans Frontières (MSF) published a report on sexual violence in Baraka, a town in South Kivu province, where MSF doctors have treated over 600 victims of sexual violence between August 2003 and March 2004.²² Most rapes have been committed by armed combatants, often several at a time, and rape has been used as a military strategy or 'weapon of war' in the conflict. Only recently have women been able to come forward to

describe and seek help for the atrocities that they have endured. Although there has been greater attention to the problem it has continued to be a feature of the insecurity. In May 2005 the UN reported that in the first half of 2005, 200 women and girls were raped in Walungu alone.²³

A large number of the combatants in the DRC have been child soldiers. Particularly in the Ituri region of Orientale province local warlords and militia have coerced, armed and used children in their disputes. A voluntary Disarmament and Community Reinsertion (DCR) programme was launched in September 2004 in Ituri to demobilise an estimated 15,000 combatants, many of whom were child soldiers. The DCR programme ended on 25th June 2005 with 15,607 combatants including 4395 children (of whom 840 were girls) disarmed. There has been little assistance provided to those demobilised and their reintegration back into society remains a key concern.

3.2 Deprivation

In addition to deliberate personal violence, the civilian population in the DRC has been deprived of economic assets, including property and livelihoods, through looting, pillaging and extortion by armed groups, and also access to basic services such as water, health and education. Armed combatants continue to target the civilian population and, when a flare up of violence does occur, it is normally accompanied by the destruction of peoples' homes, theft and looting. Pushed from their homes the civilian population becomes that much more vulnerable. As the International Rescue Committee (IRC) has documented in its mortality survey, the vast proportion of deaths in the DRC have occurred as a result of disease and hunger, rather than direct violence.²⁴

Many communities have been driven from their lands and are unable to undertake agricultural activities. The food security in the DRC is still the worst in the world with 75% of the population malnourished and in need of food aid.²⁵ The public health system has collapsed in large parts of the country. With an essentially privatised health system the cost of health care is beyond the reach of most families. It is estimated that fewer than 30% of Congolese have access to health services.²⁶ HIV/AIDS is rapidly becoming one of the leading causes of death in the DRC with prevalence rates ranging from 5-10 % regionally, although reliable data is not available. None of these problems is likely to go away quickly – with problems such as HIV/AIDS likely to get much worse. Moreover, an adequate response to them is still a long way off, meaning that the civilian population are still deprived of their rights to basic services.

The Transitional Government has introduced an economic policy committed to stabilisation and real GDP growth is expected to reach 10% in 2005.²⁷ In November 2004, international donors pledged a large part of the US\$7 Bn economic plan presented to them by the Transitional Government for reconstruction in the DRC over the next three years. Some roads have been rehabilitated and the Congo River from Kisangani to Kinshasa opened for commercial traffic for the first time in many years in 2003. The reopening of the railway from Katanga to Kindu in the east of the country has also had a serious impact on economic activity. However, the DRC still ranks as one of the poorest countries in the world.²⁸ In July 2004 an IMF study predicted that the country will take 45 years to reach the level of development it had in 1990.²⁹ Against this backdrop humanitarian aid remains the priority, but at current levels is insufficient to meet the needs of the civilian population.

3.3 Limited movement and restricted access

Another aspect of the protection crisis in the DRC has been forced displacement, which has pushed the civilian population into destitution and further from access to basic services. Displacement peaked in the DRC at 3.4 million in 2003 and today there are still an estimated 2.3 million IDPs.³⁰ The DRC has the highest number of IDPs in the world after Sudan. With the transition process many thousands of IDPs had begun to return (albeit with little or no assistance) home.³¹ However, even though, the number of IDPs may have fallen marginally during the transition, there have been fresh waves of displacement caused by renewed insecurity, particularly in Ituri and the Kivu provinces, causing the return process to slow. For example, fighting between rival units of the Congolese army in North Kivu in December 2004 forcibly displaced more than 180,000 civilians.³² Furthermore, only a fraction of IDPs in DRC receive support since they are so difficult to access. In most instances communities take refuge in the forest or are hosted by other families, rather than settling into organized IDP camps. Even today many families are still too scared to return home or lack the means to survive once they arrive. While there are a number of agencies involved in the return and reintegration of IDPs, there is still no overall strategic framework.

In terms of displacement across the DRC's border, the Office of the United Nations High Commissioner for Refugees (UNHCR) is assisting some 388,000 Congolese refugees located in all nine countries bordering the DRC. Of these, 152,000 are in Tanzania, 40,000 in Rwanda and 30,000 in Burundi.³³ Few of these refugees have decided to return yet to the DRC despite the transition process and in some instances there have been fresh refugee flows into neighbouring countries. Thousands of people fled the Bukavu crisis in June 2004 and the Gatumba massacre, in particular, was a massive failure of refugee protection. Although the voluntary return of refugees is happening in some places, there are few assisted return programmes for the vast majority of refugees. In January 2005, Tanzania and DRC signed a tripartite agreement with the UNHCR allowing the repatriation of Congolese refugees which started in October 2005. Further agreements are expected with Burundi, Rwanda, Uganda, Sudan, Zambia and Angola, but the security situation is still not deemed appropriate for most refugees to return. Refugees in Rwanda have begun to return by the hundreds without assistance from UNHCR. The voluntary, secure and dignified return of Congolese refugee remains a key protection concern.

For years during the war in the DRC large parts of the country remained inaccessible to aid agencies and the humanitarian assistance provided only scratched the surface of the needs of the civilian population. With the transition process there has been improved security in some geographical areas as MONUC has improved its reach, allowing for aid to be provided in places that had been cut off for years. However, ongoing insecurity has continued to render certain areas inaccessible and made the situation worse in other cases. During the Bukavu crisis in mid 2004 twenty agencies lost \$1.5 million in humanitarian supplies, equipment, vehicles and cash that was looted by the combatants. In North Kivu in December 2004 a host of others agencies had to suspend their programmes because of attacks on their property and assets. In August 2005, MSF announced that more than 100,000 people had been deprived of medical care after the kidnapping of staff working for the agency in Ituri forced it to scale back its operations.³⁴ These are just a few examples of attacks against aid worker during the transition which continue to hamper the accessibility of the civilian population.

Even in areas that have seen improved access there is still a massive lack of funding and operational capacity. Maniema was not a significant battleground during the war yet its remoteness meant the population suffered as much if not more than others. In May 2004 the UN Office for the Coordination of Humanitarian Affairs (OCHA) estimated that at least 1.5 million had insufficient food and suffered endemic disease in the province.³⁵ According to the UN there are 107 international NGOs present in the DRC which is not sufficient to respond to the humanitarian need.³⁶ As the figures above show there is still a massive shortfall in the funds required to meet the humanitarian needs in the DRC. As of September 2005, only \$92 million, or 48 per cent, of the \$193 million requested through the 2005 CAP had been funded.³⁷

4.0 Responses

The civilian population in the DRC suffers the dual effect of being the principle target of the violence that occurs, which in turn exacerbates their vulnerability to hunger and disease. It is difficult to measure the scale and extent of the protection concerns, a huge part of which goes unreported. There are no reliable data as in other areas of the humanitarian sector, such as food security or health. A recent ethnographic study, however, concluded that opinion amongst stakeholders was that an improvement in civilian protection in the DRC is unlikely in the near future.³⁸ From the anecdotal evidence above and analysis of key issues it seems fair to say that a protection crisis continues in the DRC on a massive scale and the transition process has had little impact on abating the attacks on civilians and deprivation.

This section looks at the evolving responses to protection issues during the transition period, including responses by state, international and non-governmental actors. It is not an exhaustive survey of protection activity in the DRC, but rather attempts to identify some of the critical issues. The issues have been clustered in terms of the protection framework that emerged from interagency discussions led by the ICRC: responsive action, remedial action and environment building action.³⁹

4.1 Responsive action: Evolving MONUC mandate

The most direct response to violence against civilians in the DRC has been by MONUC and its peacekeepers in particular. After being established as a monitoring mission in 1999 and following years of criticism for not doing more to protect civilians, the mandate of MONUC was elevated to Chapter VII in 2003 as a result of the crisis, and fear of genocide, in Ituri resulting from inter-ethnic conflict between the Lendu and Hema. As well as having wider responsibilities for supporting the transition process, MONUC is now mandated by the UN Security Council to use military force in the event of civilians being in “imminent danger of physical violence.”⁴⁰ There has always been a lack of clarity, however, about what this actually means in practice.

When armed conflict broke out in Bukavu in June 2004, MONUC did act to avoid civilian bloodshed. However, UN officials were quick to point out that, because the armed groups had started fighting, the peace had gone and therefore their role as peacekeepers had ceased. A subsequent internal UN report, though, identified the peacekeeping mission’s serious lack of resolve to use force where necessary in the Bukavu crisis. The lack of confidence in the UN mission in the DRC, at the time, led

to violent demonstrations by Congolese across the country, targeting UN personnel and property.

In response to these criticisms, the UN Secretary General, in his August 2004 report to the Security Council, made a series of recommendations to strengthen the mandate of MONUC and called for more peacekeepers to be deployed.⁴¹ He pointed out, however, that the elevation of MONUC's mandate to Chapter VII had unrealistically raised expectations that it would enforce peace in the DRC, whereas there has always been a wide gap between the desire for MONUC to play such a role and the capacity or will of the peacekeeping mission to fulfil it.⁴² MONUC has a more limited and circumscribed role of protecting civilians rather than attempting to force the belligerent parties towards peace. However, when the armed groups are targeting civilians as much as – if not more than – each other during the conflict it has been impossible to separate a civilian protection from a peace enforcement role of MONUC. This quandary has been at the heart of the problem of interpreting the MONUC's mandate and in turn its actions.

Nevertheless, resolution 1565 adopted by the Security Council in October 2004 did increase MONUC troop numbers to 16,700 (they were previously 10,800), although this was below the 23,900 called for by the Secretary General. The revised mandate aimed to locate the additional peacekeepers in more strategic hot spots, such as North Kivu, and give MONUC a stronger role to play in operations such as the disarmament of Rwanda Hutu rebels. MONUC, however, failed to take decisive action during the upsurge of violence in North Kivu in December 2004, when its peacekeepers had not deployed quickly enough to where the fighting occurred. Again it was a story of too little, too late with not resolute enough action due to the reluctance of troop-contributing countries to put their soldiers in danger.

Since the start of 2005, however, MONUC has interpreted its mandate more robustly. In Ituri, in particular, MONUC has taken a more proactive approach to the forcible disarmament of militias. In March 2005, with the passing of the ultimatum to voluntarily disarm and in response to the killing of 9 Bangladeshi peacekeepers, MONUC implemented a series of cordon and search operations, and a more forceful intervention to disarm the militia.⁴³ In one particular attack in Loga MONUC peacekeepers killed 60 militiamen, leading some commentators to suggest that perhaps it had gone a too far in the interpretation of its mandate. With the completion of operations in Ituri MONUC is now moving on to a second phase of forcible disarmament in the Kivu region.

As the transition process has evolved then, so too has MONUC's resolve and capacity to protect civilians. With an increased number of peacekeepers, more strategically placed than before, MONUC is having a stronger role in 'protecting through presence'. The arrival of Pakistani and Indian troops has also aided the more robust approach. MONUC, however, still lacks a serious intelligence capacity to be able to react quickly as the situation changes. There remains ambiguity about what its mandate to protect civilians actually means on the ground. Some have called for it to use preventative force to stop attacks against civilians before they happen.⁴⁴ However, where MONUC has acted robustly to disarm (alongside the FARDC) militia this has also caused an upsurge in retaliatory attacks on civilians to which MONUC has been unable to respond.

The UN mission in the DRC has also been marred by the involvement of its peacekeepers and civilian staff in the sexual exploitation of local Congolese women and girls. When it has been mandated to protect civilians and has turned out to be a source of insecurity to them the credibility of MONUC has plummeted. From 25th December 2004 to 30th June 2005, 77 investigations have been completed into allegations made against UN staff. 17 military personnel have been repatriated for cases of rape, sex with minors, sex for employment and engaging in relations of an exploitative nature. In March 2005, MONUC set up an office specifically tasked with addressing Sexual Exploitation and Abuse.⁴⁵

In sum, the responsive action of MONUC to attacks against civilians makes it a key actor for the protection of civilians in DRC. For many it is the transition process and relative stability that has helped the protection of civilians rather than the elevation of MONUC's mandate to Chapter VII.⁴⁶ However, MONUC has one of the smallest numbers of peacekeepers per head of population when compared to other UN missions around the world worked in what geographically is a terribly difficult country to conduct peacekeeping. Furthermore, the FARDC remains a fundamental source of insecurity, and not safety, for the civilian population. It is unlikely to assume its protection role any time soon making MONUC's position still essential.

4.2 Remedial action: Referral to the International Criminal Court (ICC)

With years of war the judicial system in the DRC completely collapsed. There has been little redress for the mass violations of human rights perpetrated against the civilian population. The state legal system is only just beginning to be rebuilt with the influx of external aid. Corruption is still endemic in the DRC judicial system, which is unable to act autonomously from manipulation by the political parties. Despite stipulations in the peace accords senior judges in Kinshasa have not been replaced. For many communities in war-torn DRC, seeking justice is far down the list of priorities when compared to the daily challenges of ensuring that children have enough to eat and can access medical care. The pursuit of justice is difficult, if not impossible, when there has not been an end to fighting. Justice can be an obstacle to peace when the armed factions are unprepared to disarm for a fear of retribution. Despite increased attention to problems such as sexual violence, few perpetrators have been convicted for the crimes they committed during the war. The most basic elements of the judicial system are not yet in place so even if improved laws are passed to address sexual violence, war crimes and crimes against humanity they are unlikely to be enforced. Unfortunately a culture of impunity still pervades the DRC.

Against all odds judicial officers have been deployed in Ituri, but they have faced significant personal threats and many accused have been acquitted for a lack of evidence. Renegades such as General Laurent Nkunda have only recently been stripped of their military rank and although international arrest warrants have been issued, they have not yet been brought to justice. In a positive development seven prominent Ituri militia leaders were arrested at the start of 2005 as a result of the upsurge in fighting in the region and killing of UN peacekeepers. However, there is concern that the arrests were not based upon evidence that would lead to criminal convictions.⁴⁷

With such a weak state judicial system the importance of international mechanisms has come into focus. In June 2004, the Prosecutor of the International Criminal Court (ICC), Louis Moreno Ocampo, announced that he was opening the court's first

investigations in the DRC, for crimes committed since July 2002. The Office of the Prosecutor had been conducting a “preliminary analysis” of the situation in DRC, initially focusing on the situation in Ituri, Oriental Province, as “the most urgent situation to be followed.”⁴⁸ When the Prosecutor announced the launch of the investigation in DRC, he made clear that the scope of the investigation would cover the whole territory of the DRC. The DRC signed the Rome Statute establishing the ICC on September 8, 2000, and ratified it on April 11, 2002. It may be a long time, however, before such cases are brought before the ICC. The ICC will also only be able to prosecute a very small number of cases against those who bear the greatest responsibility for crimes committed.

In sum, referral to the ICC at least provides some remedial action to the crimes that have been committed during the war in the DRC in the absence of a functioning state judicial system. There still remains, however, a massive legal vacuum and a culture of impunity persists for the mass of human rights violations that continue to take place daily. The judicial system has not been prioritised sufficiently in external assistance provided to the DRC and should receive more support.

4.4 Environment building action: The role of humanitarian actors

Humanitarian actors in DRC – both UN and NGO – have not been particularly active in the area of protection, when compared to other crises such as Darfur. In the face of such massive humanitarian needs, priority has been given to getting what little material assistance has been available to those populations that are accessible and in desperate need. The issue of humanitarian protection (i.e. humanitarian actors undertaking protection activity) has not gained as much prominence as perhaps it should have simply because it has not been practically possible for humanitarian actors to engage in rather than for any lack of interest. Many actors have vocally advocated the need for better protection of civilians in DRC, but there has not been so much in the way of operational impact to date and programmes on the ground.

By sheer resources and capacity it is probably the civilian branch of MONUC – albeit not strictly a humanitarian actor – that is most active in the area of humanitarian protection. Civilian branches of MONUC for human rights, child protection, and less so humanitarian affairs are responsible for monitoring violations, launching investigations, and supporting the Transitional Government in its protection responsibilities. Arguably, these MONUC sections have been as active, if not more so, than other UN agencies with protection mandates such as UNICEF and the Office of the High Commissioner for Human Rights. Latterly, the appointment of a Deputy Special Representative of the UN Secretary General, who is also the Humanitarian Coordinator, has given the issue of civilian protection more prominence within the UN system in the DRC. However, his inclusion in such a political position within a UN integrated mission has also raised concern about whether he can uphold humanitarian principles on the ground. The UN Secretary General has announced that a framework for protection of civilians is currently being drafted for the DRC.⁴⁹ While there have been previous initiatives of this kind, it appears that protection issues are moving up the agenda of the UN’s humanitarian response in the DRC albeit it slowly.

For its part, the ICRC has been constrained in its protection work after a lethal attack on six of its staff in Ituri in 2001, which led to a scaling back of activities in the east of the country. In terms of its role of disseminating international humanitarian law it

is only beginning to engage seriously with armed groups.⁵⁰ Within the international NGO community there are not as many protection programmes and protection officers as compared to other crises. Protection working groups are not that common in the various aid hubs in the east of the country. Humanitarian security for staff and property has been a greater priority for NGOs than the safety of beneficiaries on which they have been unable to have a serious impact.⁵¹ NGOs have been particularly active on key issues such as sexual violence, but they have not yet placed a strong emphasis on integrating a protection approach to their humanitarian programming in general.

In sum, humanitarian actors in the DRC are helping to build a stronger environment for protection issues to be addressed in terms of investigating specific cases and building the capacity of those institutions responsible for civilian protection. Protection is not, however, at the forefront of humanitarian programming and comprehensive a plan is still lacking to make the issue more of a priority.

5.0 Conclusion

Despite two years of transition in the DRC there is an ongoing, and evolving, humanitarian crisis in the country in which the protection of the civilian population remains a key concern. The peace process may itself unravel as preparations for election put pressure on an already fragile Transitional Government. Protection issues remain a key element to understanding the DRC context and should be at the forefront of international community's approach to assisting the country. If relative stability continues to take hold there will be more possibilities for addressing the protection of civilians. There are a number of priorities that need to be addressed.

Firstly, there needs to be a stronger application of MONUC's mandate. It is not so much the words included in the mandate that cause the problem, but rather MONUC's inability to interpret and carry out the tasks it has been given. There was scepticism that increased numbers of peacekeepers would provide the answer and that supporting such a move by donors could be "throwing good money after bad." The more robust approach, in 2005, to disarming rebels by force, although causing retaliatory attacks on civilians in the short run, is having the desired affect of neutralising spoilers to the peace process which will improve overall security. The UN Security Council has agreed an additional 2,580 peacekeepers for the DRC and extended its mandate until September 2006. This may, however, be again "too little, too late" to avert an upsurge of violence during the holding of elections. The problem remains one of ensuring that adequate resources are in place so that troops are able to respond quickly to situations that endanger civilians.

Secondly, a comprehensive programme of security sector reform (SSR) urgently needs to be developed and implemented. A lack of military integration of the former warring parties has remained the most important conflict risk throughout the transition period and in turn threat of violence to the civilian population. Even when military integration has been successful the FARDC has continued to prey on the civilian population. DDR is important, however, only once the FARDC is properly supplied and trained will it cease being a source of insecurity for civilian population and instead fulfil its role of protecting them. There has been \$200 million committed for DRR, but not a commensurate amount for SSR (although it is a far greater priority) because donors have been too timid to commit the technical assistance to ensure the successful integration of the FARDC.

Thirdly, the scale of humanitarian need is still massive in the DRC and the response woefully inadequate. The Transitional Government has just drawn up a special action plan with external partners to address the humanitarian situation in the DRC, with a preliminary budget of \$800 million. There still needs to be a massive scaling up of the humanitarian effort in DRC. With an increased response to humanitarian needs, the civilian population's ongoing deprivation will begin to be addressed. Furthermore, humanitarian actors will be able to develop a more concerted response to their other protection needs.

Damian Lilly, November 2005

¹ International Rescue Committee and Burnet Institute, Mortality in the Democratic Republic of Congo: Results from a Nationwide Survey, December 2004.

² Protection is defined as: 'All activities aimed at ensuring full respect of the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law, i.e. human rights law, international humanitarian law and refugee law.' See Giossi Gaverzasio, Sylvie (2001) Strengthening Protection in War: a search for Professional Standards. Geneva: ICRC, p19

³ IRIN, 7th December 2004

⁴ As provided for in the peace accords the transition period can be extended by six months on two occasions. It will most likely be extended for a further six months at the end of 2005.

⁵ 'A Congo Action Plan', Policy Briefing, International Crisis Group, Nairobi/Brussels, 19 October 2005, p3

⁶ UN Consolidated Appeal Process for the DRC (2004), New York and Geneva, United Nations, November 2003, p8

⁷ Ibid p23

⁸ UN Consolidated Appeal Process for the DRC (2005), New York and Geneva, United Nations, November 2004

⁹ See OCHA website at <http://ochaonline.un.org>

¹⁰ Evaluation of ECHO's Action's in the DRC, ECHO, November 2004, p6

¹¹ Ibid p7

¹² UN Consolidated Appeal Process for the DRC 2004 p14

¹³ The different sub-sections of protection issues described here reflect the typology developed in the 'Protection: An ALNAP guide for humanitarian agencies', Hugo Slim and Andrew Bonwick, ODI, London, August 2005

¹⁴ The term Rwandophone is used to denote the various Tutsi (including Banyamulenge) and Hutu communities, who reside in the DRC, but have originated from Rwanda at various points in time.

¹⁵ For a detailed account of the massacre see 'Burundi: The Gatumba Massacre: War Crimes and Political Agendas' Human Rights Watch Briefing Paper, September 2004.

¹⁶ IRIN, 15th August 2005

¹⁷ 'Democratic Republic of Congo: Civilians at Risk During Disarmament Operations', Briefing Paper, Human Rights Watch, 2004, p2

¹⁸ Associated Press, 18th May 2005. Most of the attacks took place around the town of Walungu, the scene of serious fighting in December 2004 between the rebels and FARDC forces

¹⁹ Reuters, 24th July 2005.

²⁰ 'Predatory governance in the DRC: Civilian impact and humanitarian response', Edward B. Rackley, Humanitarian Exchange, HPN, ODI, London, 2004

²¹ IRIN, 8th March 2004

²² 'I Have No Joy, No Peace of Mind: Medical, Psychosocial, and Socio-Economic Consequences of Sexual Violence in Eastern DRC', Médecins Sans Frontières, April 2004

²³ IRIN 31st May 2005

²⁴ IRC op cit

²⁵ ECHO op cit p7

²⁶ 'DRC Mass Rape – Time for Remedies', Amnesty International, London, October 2004

²⁷ Economist Intelligence Unit, Country Report DRC, London, December 2004, p3

²⁸ In 2003, DRC ranked 167 out of 175 in the list of UNDP Human Development Report.

²⁹ IRIN, 22nd July 2004

³⁰ 'DR Congo: renewed fighting, killings, rapes slow down IDPs return and cause new displacement', Global IDP Project, Norwegian Refugee Council, October 2005

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- ³¹ 'DR Congo: waves of displacement follow heightened hopes of peace', Global IDP Project, Norwegian Refugee Council, October 2004
- ³² Press Release, Human Rights Watch, New York, December 21st 2004.
- ³³ 'Nineteenth report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo', UN Doc S/2005/603, 26th September 2005, p10
- ³⁴ Reuters, 2nd August 2005.
- ³⁵ IRIN, 18th May 2004.
- ³⁶ CAP 2005 op cit
- ³⁷ 'Nineteenth report of the Secretary-General' p10
- ³⁸ 'In an unprotected state: civilians under fire in eastern DR Congo', Edward B. Rackley, Case Study, ODI/HPG, unpublished 2004, p16
- ³⁹ 'Strengthening Protection in War: a search for Professional Standards', Sylvie Giossi Gaverzasio, Geneva: ICRC, 2001
- ⁴⁰ UN Security Council Resolution, 1493, July 2003
- ⁴¹ Third special report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo', Un Doc S/2004/650, 16th August 2004, p23
- ⁴² Ibid p17
- ⁴³ 'A Congo Action Plan', Policy Briefing, International Crisis Group, Nairobi/Brussels, 19 October 2005, p8
- ⁴⁴ ibid, p11
- ⁴⁵ 'Eighteenth report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo', UN Doc S/2005/506, 2nd August 2005
- ⁴⁶ Edward B. Rackley, op cit
- ⁴⁷ 'Eighteenth report of the Secretary-General' , P12
- ⁴⁸ See 'The International Criminal Court: How Nongovernmental Organizations Can Contribute To the Prosecution of War Criminals', Human Rights Watch, September 2004
- ⁴⁹ 'Eighteenth report of the Secretary-General'
- ⁵⁰ Edward B. Rackley, 'In an unprotected state: civilians under fire in eastern DR Congo', ODI/HPG, 2004, p39
- ⁵¹ ibid,p32