



Democratic Republic of Congo

8 June 2011

Open Letter to the Members of the United Nations Security Council

Before the discussions within the Security Council on the renewal of the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) mission mandate that expires on June 30th, 2011, the International Federation for Human rights (FIDH) and its member organizations in the DRC, le Groupe Lotus, la Ligue des Electeurs, et l'Association Africaine des Droits de l'Homme (ASADHO), wish to share their vision and their common recommendations.

The situation

This year, the DRC gets into a general election cycle that will start with presidential and parliamentary elections announced in November 2011, and end with the local municipal elections scheduled for 2013. To comply with democratic principles leading to stability and consolidating the rule of law, the elections in 2011 must be held in a peaceful environment and under conditions of transparency and full participation of all political forces.

To the east and north-east of the country, foreign and domestic armed groups are still active in spite of the military operations that the Armed Forces of DRC (FARDC) lead with logistical and technical troops of MONUSCO. The armed offensive of the belligerent violate fundamental principles of international humanitarian law with complete impunity.

In this context, the security of the civilian population is fragile, particularly in the east and north of the country, but also throughout the territory. The human rights situation is extremely worrying: summary executions, looting the villages, wealth and public property, abductions and forced recruitment of children into armed groups, sexual violence on a large scale performed on children and women, arbitrary arrests and assassinations of human rights defenders and journalists, restrictions on freedoms of expression, opinion and demonstration, common practice of torture by security and police forces.

If the Congolese justice system is trying, somehow, to punish certain violations, its dependence towards the authorities, its lack of resources and expertise on human rights preventing it from responding effectively to the expectations of victims.

Given these problems, and with the electoral process, the MONUSCO must fully play its role of stabilizing the DRC in placing human rights at the heart of its activities and by providing adequate means to achieve its mandate.

How to maximize the effectiveness of the MONUSCO: collaboration, conditionality, coordination

It is essential that the Security Council give to MONUSCO a realistic and effective mandate as well as the necessary resources to take up the challenges of the context and make it credible in the eyes of the Congolese population.

For the success of the objectives of the MONUSCO, three elements are essential:

1) The effective collaboration between the MONUSCO and Congolese. This cooperation tends to fail, and is the direct cause of some failures.

Collaboration with the Congolese government: Defining a clear division of the respective responsibilities. Within the mandate of MONUSCO, the Security Council must explain in details what are the tasks, fields of activity and the respective responsibilities that are incumbent upon the UN mission on one hand and upon the Congolese authorities on the other hand. This clarification is currently lacking. However, a clearer division will allow the use of indicators to better ensure the achievement of certain objectives, while being able to better assess the efforts of both sides.

Collaboration with the Congolese population: Formalize the involvement of civilians. Without it, the MONUSCO will not get the confidence of the Congolese to accomplish the most essential part of its mandate: the protection of civilians. The new mandate of MONUSCO should clearly ask that people be more involved in mission work. People should be consulted directly and regularly. This not only to gather information needed for the analysis of field situations and to better anticipate some crises or conflicts, but also so that civilians, directly concerned, can share their perceptions on how to solve some conflicts. Their views are essential, for example in the context of the problems posed by armed groups to the east of the country or the LRA. Also, in the context of sexual violence, more attention must be given to victims. For these purposes, the MONUSCO should strengthen its relations with Congolese civil society, including with human rights defenders. The Security Council should allow that the necessary resources to be granted in order to increase the number of interpreters and staff who speak local languages in the ranks of MONUSCO.

2) The conditionality of MONUSCO support.

Support that MONUSCO gives to various efforts undertaken jointly with the Congolese authorities should be routinely subject to clear conditions regarding respect for human rights. Thus, the policy of conditionality of MONUSCO which does not allow to support or participate in joint operations with officers who have committed violations of human rights must be not only continued, but the consequences must be drawn. The MONUSCO should receive a clear mandate that require it to track people identified as being involved in crimes, including judicial monitoring undertaken or lacking, and make recommendations on individual cases. This policy of conditionality should also be extended to all other MONUSCO's areas of action.

3) The coordination of MONUSCO' strategies with all other actors.

Some strategies of MONUSCO may not have the desired efficiency because they clash with other strategies. In some cases, the Congolese authorities prefer bilateral collaboration, eg in the field of reforming the security sector where many countries are involved in the national title. It is essential that the MONUSCO can really coordinate these strategies if it wants to take the role, which it is mandated. The MONUSCO must also be able to coordinate the strategies of different UN agencies on the ground. A clarification of its mandate in this regard by the Security Council is essential.

The elections and why MONUSCO must play a role beyond logistic support: analyze, expose, prevent, and protect

The election calendar provides for elections on November 28, 2011, and the announcement of provisional presidential results a week later, on December 6, 2011, the day marking the end of the current president's term. In 2006, despite a logistical support beyond compare from the international community, it took almost three weeks to announce the election results. We can therefore question how realistic the calendar is and the possible consequences post December 6. We cannot exclude tensions or violence.

The presence and role of MONUSCO throughout the electoral process can be a real stabilizing element, including facilitating the logistics of the different elections. Indeed, its logistical support, such as the safe transportation of ballot boxes, will be essential. But its role cannot afford not to go further. Without greater involvement, and if the elections are contested, the risk for MONUSCO is to be linked to it and accused of not having denounced the irregularities. If instead it is mandated to do so, its work will be a key factor in the holding of free, transparent and non-violent elections.

The work of the Special Representative of Secretary General Mr. Meece intends to accompany the electoral process through its good offices. This is important, but it is not enough to cover an election process that will last several months in a country the size of the DRC, with the tensions that can already be identified. The MONUSCO must be specifically authorized in the elections to analyze, prevent, and protect, while preserving its role as an impartial actor.

This is not to endorse a role of certification, as in Côte d'Ivoire, as the Independent National Electoral Commission (CENI) is fully responsible for this.

1) Analyze and Denounce

The MONUSCO should be granted a great capacity for substantive political analysis to prevent and identify in which areas, when and in what contexts certain conflicts can occur. For this, the MONUSCO will have to conduct a systematic political observation of the process. Particular attention should be given to political opponents, but also to human rights defenders and journalists, and to the respect that will be made for the freedoms of expression, assembly and peaceful protest. The MONUSCO should be able to alert and to report violations it observes.

2) Prevent and Protect

If the MONUSCO can do this study and evaluation of the electoral process, it will be able to develop strategies and prevention mechanisms - or even deployments of troops - upstream to discourage violence and violations of fundamental rights. The Human Rights Division of MONUSCO should in particular develop specific strategies to prevent abuses.

Furthermore, the adoption and communication on a code of good conduct to be observed by different parties in the country would strengthen the foundations for a transparent and non-violent dialogue. In this regard, the communication tools of MONUSCO will be essential.

The MONUSCO must be able to react to protect civilians, politicians and observers of the electoral process against all violence and participate in maintaining security at the polling stations. Also, if it is formally mandated to an advisory role, it will be able to participate in defusing crises. Moreover, it will serve as an advisor to the police forces that should be trained - and vetted - to prevent and control abuses of the use of force. To ensure this protection, it will

be essential that some troops be moved to other regions, and to major cities, Kinshasa as a matter of priority.

To ensure the protection of civilians, including human rights defenders and journalists and strengthen state structures to promote and protect human rights.

The presence of armed groups in eastern DRC is still a major problem in terms of security of civil society. Furthermore, several reports show the persistence of violations of human rights committed by members of the Armed Forces of DRC (FARDC). The protection of civilians is also a major issue during the fighting between the army and rebel groups.

The serious abuses against the civilian population remain mostly unpunished due to a lack of political will (despite a claimed zero tolerance policy) and the lack of willingness or ability of the national courts.

Yet the fight against impunity for serious crimes is a means of preventing further crimes and meets national and international commitments took by the DRC under the right of victims to justice.

While human rights defenders are particularly vulnerable in the east and north-east in the context of armed conflicts, there has been a trend for several months to stifle criticism towards governance, particularly with regard to the protection of human rights. The establishment of a legal regime protective of their activities has not been completed, and Congolese human rights defenders remain vulnerable.

The case of the assassination of Floribert Chebeya and Fidèle Bazana is a striking example of such repression in an area relatively peaceful and controlled by Congolese government authorities. The Observatory for the Protection of Human Rights Defenders, a joint program of FIDH and the World Organization Against Torture, has documented in recent months numerous violations of the rights of defenders: arbitrary arrests and detentions, denial of fair trial; disparagement campaigns (see www.fidh.org).

However, defenders are the actors of the consolidation of the rule of law. The establishment of a National Commission of Human Rights, in accordance with the Paris principles, requested by the UN institutions should be discussed.

The current mandate of the MONUSCO rightly mentions the protection of human rights defenders. With regard to the current election issues and the role played by these actors, it is essential that the Security Council maintain this mandate.

On these important issues, we recommend the following:

- 1) Stop all cooperation with the FARDC battalions accused of committing serious violations of human rights and international humanitarian law, and ensure that those responsible leave the battalions involved and are brought before justice;
- 2) Develop strategies for communication and protection of the civilian population a priori of all offensives led by the FARDC;
- 3) Contribute to the process of "vetting"; to reject integration into the FARDC of any person suspected of crimes against the civilian population;

- 4) Intensify the training programs of FARDC on human rights and international humanitarian law;
- 5) Adopt a public communication campaign on the necessary cooperation of the DRC with the International Criminal Court (ICC) and the necessary respect by the DRC of its obligations in the fight against impunity for serious crimes, by transferring Bosco Ntaganda to the ICC, by fighting impunity for serious crimes at a national level (in accordance with resolutions 1820, 1756 and 1794 of the UNSC) and by adopting a legislation implementing the Rome Statute into Congolese law;
- 6) Advocate for legal action against senior army officers responsible for serious violations of human rights;
- 7) Advocate for the rapid adoption of the bill establishing specialized mixed chambers in Congolese courts and ensure their independence in order to implement the recommendations of the UN Mapping Report on crimes from 1993 to 2003;
- 8) Press the Congolese authorities for the effective implementation of the National Strategy to fight sexual violence by empowering the agency responsible for implementation of this strategy to work, and by taking the necessary measures for the implementation of the two 2006 laws on sexual violence;
- 9) The "zero tolerance" policy on sexual crimes should encompass accountability of those responsible for rape and adequate compensation for victims, as well as the establishment of medical and psychological support units;
- 10) Advocate for reforms of laws discriminating against women and adopt the draft family code and a law on gender equality arising from Article 14 of the Constitution;
- 11) Advocate for the adoption of an electoral law respecting parity in accordance with Article 14 of the February 18 Constitution;
- 12) Advocate for the adoption of a law establishing the National Commission on Human Rights, in accordance with the Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights (Paris Principles);
- 13) Ensure that the draft bill amending Act No. 96-002 of 22 June 2006 on freedom of the press be submitted to Parliament, and that it includes the decriminalization of press crimes;
- 14) Advocate for the adoption of the Law on the protection of human rights defenders initiated by the Minister of Justice and Human Rights, in accordance with the Declaration of the General Assembly of 1998 on human rights defenders, and ensure its implementation.

Thanking you for your attention, we remain at your disposal to provide any additional information.

Sincerely,

Souhayr Belhassen, FIDH President Dismas Kitenge, Groupe Lotus President, FIDH Vice President Paul Nsapu, Ligue des Électeurs President, FIDH Secretary General Georges Kapiamba, Association Africaine des Droits de l'Homme (ASADHO) Vice President

