

Dynamics of conflict and forced migration in the Democratic Republic of Congo

Credit: Adrian Atbib

Experts workshop: report

30 November – 1 December 2010, Oxford



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January 2011

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This report¹ provides a summary of the main points raised in both presentations and participant discussions, organised along five inter-related themes that emerged during the workshop. Each section in the report presents some avenues for consideration in developing innovative solutions to the issues raised.

The workshop brought together practitioners, academics, and policymakers from the DRC and beyond with the following goals:

- To consider the relation between forced population displacements both within and outside the DRC, the prolonged presence of armed groups, the return of the displaced, and the continuation of conflict;
- To explore the effects of international intervention on the protection of civilians and whether humanitarian responses encompass a thorough analysis of displacement patterns; and
- To find innovative durable solutions to displacement and conflict that can be developed and supported through local, national, regional, and international approaches.

Day One focused on conflict, displacement, the return of populations, and the interaction between armed actors and civilians. Day Two explored various solutions to end the vicious cycle of violence, including sexual and gender-based violence (SGBV) and displacement.

The workshop was held under the Chatham House Rule of non-attribution, as the objective was to provide a forum in which participants could freely share their views and experience.

1. Revisions and final version by Henning Tamm. Thanks are due to Héloïse Ruauzel, Emily Paddon and Maurice Herson for their feedback and comments.

Cover photo: Magunga Camp, Goma. The population fluctuated from 60,000 to 160,000. In the background the active volcano, Mount Nyiragongo, threatened to erupt (Adrian Arbib 1995).

Background to conflict and displacement in the DRC

The DRC has witnessed two decades of persistent armed conflict and forced displacement. What began with local disputes over citizenship in the context of extreme state weakness became regionalised due to the consequences of the Rwandan genocide, culminating in two wars, the latter of which involved, directly or indirectly, more than a dozen African governments. The International Rescue Committee has estimated that 5.4 million people died due to conflict and its consequences between August 1998, when the second war began, and April 2007. As statistics collected from various international agencies show, the patterns of displacement in the last two decades can be distinguished into four major waves.

Between 1992 and 1996, inter-ethnic clashes in certain provinces (especially Katanga and North Kivu) caused displacement, often along ethnic lines. This included the displacement of Rwandan Hutu into then Zaire in mid-1994.

Between 1996 and 1997, the First Congo War involved the targeting of Rwandan Hutu refugees, amongst them perpetrators of genocide, on the one hand and of Congolese of Rwandan descent on the other. The retreat of the disorganised national army and of some of the armed Rwandan Hutu as well as the advance of Kabila's Alliance of Democratic Forces for the Liberation of Congo-Zaire (AFDL) and its foreign supporters caused displacement throughout the country.

Between 1998 and 2003, the Second Congo War pitted Angola, the DRC, Namibia, and Zimbabwe against Rwanda, Uganda, and its new Congolese allies. As the war evolved, Rwanda and Uganda shifted their support to competing Congolese armed groups and even fought each other in eastern DRC. These dynamics and several local conflicts, such as the one in Ituri District, led to further massive displacements.

In the 'post-war' period beginning in July 2003, civilians continued to endure attacks by armed groups. Fighting among armed groups – especially among the Democratic Forces for the Liberation of Rwanda (FDLR) and Laurent Nkunda's National Congress for the Defence of the People (CNDP) – and with the Congolese army (FARDC) displaced hundreds of thousands of people. After striking a secret diplomatic deal, the Congolese and Rwandan governments launched a joint military offensive against the FDLR in early 2009 (Operation Umoja Wetu). Two further FARDC military operations (Kimia II and Amani Leo), supported by the United Nations Mission in the DRC (MONUC), led to widespread human rights violations and large-scale population displacement while having limited military success.

Today, at the end of 2010, eastern DRC remains unstable, plagued by a diverse array of armed actors – foreign armed groups, local militias, and a largely undisciplined national army – that often form temporary and opportunistic alliances. With the 2011 presidential elections on the horizon, the issue of Congolese Tutsi returnees from neighbouring countries is likely further to increase local and regional tensions. Overall, the 'post-conflict' label remains inadequate, at least for the east of the DRC. In fact, in mid-2010, eastern Congolese interviewees unanimously argued that the 'war is not over yet', since

personal insecurity persists due to the continuing presence of armed groups, the lack of state capacity, and the pervasiveness of poverty.

In November 2010, the UN estimated the total number of internally displaced persons (IDPs) in the DRC at 1.7 million, with all but 51,000 of them in eastern or north-eastern DRC. In addition, estimates suggest that there are more than 200,000 refugees from the DRC in neighbouring Burundi, Rwanda, Tanzania, and Uganda. In this context, however, it has to be pointed out that humanitarian agencies face severe methodological and practical challenges in registering and monitoring IDPs and refugees, and that governments in the region have politically instrumentalised such statistics throughout the two decades of conflict and forced migration. However these numbers should be broadly accurate, and their political implications need to be taken seriously.

The politics of belonging, land, and return

Issues of belonging and of access to land are inextricably linked to conflict in eastern DRC. The political instrumentalisation of these issues has a long history. Between 1937 and 1955, for instance, the Belgian colonial administration moved an estimated 85,000 Hutu and Tutsi from Rwanda to Congo. This and other waves of migration led to tensions between ‘indigenous’ communities and people with Rwandan ancestry. After independence, a citizenship law was passed in 1971 that granted Congolese nationality to those who had migrated to Congo before 1960, thus including the 1937–55 migrants, who had initially been excluded by the October 1908 cut-off date provided in the 1964 Constitution. One year later, this date was changed to 1950; and in 1981, the 1972 law was annulled and the cut-off date was moved back even further than in the Constitution (to August 1885). Throughout the post-colonial period, therefore, Congolese of Rwandan descent were in a volatile legal position. Furthermore, national politicians often exploited this situation and manipulated local rivalries over land, resources, and political power.

The systematically militarised political use of these issues, however, dates back to inter-ethnic clashes in the context of the stalled democratisation process in the early 1990s: propaganda by self-described *autochtones* (indigenous people) against ‘Rwandan foreigners’ led to fears of ethnic cleansing and to the formation of militias. Violence first erupted in Masisi territory (North Kivu) and spread in the following years. These hostilities were further exacerbated in 1994 by the influx of more than one million Rwandan Hutu refugees at the end of the Rwandan genocide. They culminated in the two wars, which increasingly linked these local disputes to the broader regional struggle for economic control and politico-military power.

In addition to the ambiguity of citizenship rights, the distribution of land itself is not clearly settled either. While modern national laws exist, access to land is typically granted by powerful local chiefs on the basis of traditional customary law. The latter was made legally void in 1973, when all land was declared state property. As a consequence, two systems of land property rights – the traditional system based on ethnic citizenship and the modern system based on individual property rights – have existed side by side and in contradiction to each other, causing confusion and uncertainty over land ownership. Since the start of the first war in 1996, land has increasingly been turned from a source of armed conflict into a resource for its perpetuation: land has become an asset for local warlords (both rebel groups and criminal elements within the Congolese army) who control its distribution.

The Congolese Transitional Government’s 2004 law on nationality, which returned to the inclusiveness of the 1971 law by granting citizenship to persons who lived in Congo at independence in 1960, leaves several issues unaddressed. It thus creates legal loopholes and problems of implementation, which could again be instrumentalised against Congolese of Rwandan descent in the future. This potential instrumentalisation is likely to remain relevant given recent agreements regarding the return of refugees, e.g. the February 2010 Tripartite Agreement between UNHCR, the DRC, and Rwanda. Local communities in eastern Congo are disputing the nationality of the population returning from Rwanda and are questioning their identity as refugees. These concerns are fuelled

by fear of increased competition over scarce land. Tensions are further aggravated by the perception of the CNDP, which is now partially integrated into the Congolese army but remains in control over large swathes of territory in North Kivu, as pursuing an exclusively Congolese Tutsi agenda by granting favours to returnees. The return of refugees has the potential to alter sometimes fragile local balances of power with regard to the issues of belonging and land.

Suggestions

The interrelated issues of belonging, land, and return are all deeply political and thus require political solutions. Thorough analyses of local power-political dynamics should inform national political and legal reform in order to avoid the risk of perpetuating the disjunction between local and national dynamics. Existing legal ambiguities with regard to citizenship and land rights need to be addressed by national legal reform, taking into consideration the actual reality on the ground. More broadly, the issue of decentralisation is also critical to finding the right balance between the national and the local levels.

At the same time, the local implementation of legal frameworks as well as local dispute-resolution mechanisms require external support. This is already taking place to some extent: UN-HABITAT and UNHCR have been implementing a programme to prevent and mediate land conflicts in the context of return and reintegration since May 2009; local peace committees (LPCs), bringing together a diverse array of stakeholders, have been established.

The return of refugees and IDPs should be seen as a chance to end decades of exclusion: by reconsidering the meaning of citizenship through national reform, the 'social contract' between the returnees and the state could be rebuilt or strengthened.

While local actors should be further empowered in solving these political issues, national and international actors need to consider very carefully how their involvement may affect local power configurations and local perceptions of the legitimacy of these local institutions.

The politics of ‘state-building’: Security Sector Reform and Justice Sector Reform

Improving the security situation is the most important immediate requirement for alleviating the scale of forced migration in the DRC, particularly in the east. While more effective and more coordinated Security Sector Reform (SSR) is an urgent short-term need, it is necessarily also a long-term project, given the continuing weakness of the Congolese state. However, the very notion of restoring state authority – or ‘state-building’ – needs to be justified. For many years now, the population of the DRC has all too often regarded people in uniform as a threat; security forces have become a source of insecurity. In fact, many international, national, and local actors claim that elements both in the government and in the army are unwilling – rather than unable – to improve state capacity. At least from a perspective that focuses on civilian protection, the idea of ‘state-building’ therefore has to be problematised: the idea of building a state implies that it protects, not abuses, its citizens. At the same time, alternative steps such as strengthening local actors vis-à-vis national authorities are in tension with the imperative of state sovereignty. The mandate of the United Nations Organization Stabilization Mission in the DRC (MONUSCO), the successor to MONUC as of July 2010, very much illustrates this dilemma of a potential trade-off between protecting civilians and strengthening state capacity. Consequently, ‘stabilisation’ has become an ambivalent term.

The conflict of interests between the economic motivations of criminal networks within the FARDC and the army’s constitutional mandate to protect civilians is well documented, most recently in a report by the UN Group of Experts (November 2010). These networks are run by high-ranking officers who deploy loyal lower-ranking officers to areas rich in natural resources. The lower-ranking officers then control the local extraction of minerals and set up protection and taxation rackets. The existence of competing criminal networks within the FARDC has also led to insubordination, rival chains of command, the creation of special units, and a failure to actively pursue armed groups. In some cases, army officers have even supported the creation of Mai Mai militias. The interests of these criminal networks therefore need to be seen as one of the principal disincentives to reform: more effective and better coordinated SSR would alter a state of affairs that has become very profitable for some of the officers involved. When explaining the suspension of all mineral export activity in North Kivu, South Kivu, and Maniema dating from 11 September 2010, both President Joseph Kabila and Minister of Mines Martin Kabwelulu Labilo in fact acknowledged these negative effects of mafia-like groups within the FARDC.

Military operations by the FARDC against armed groups in eastern DRC have also proved to be largely detrimental to the security of the local population. Available statistics collected by OCHA indicate that the overall number of IDPs in the Kivus has actually increased from 1.18 million (November 2008) to 1.32 million (November 2010) since the beginning of the operations against the FDLR and the Allied Democratic Forces (ADF). While the number in North Kivu remained steady, the number of IDPs in South Kivu has more than doubled. Some IDPs have not been displaced by actual attacks but have fled due to fear of retribution. In this context, it is also important to note that IDPs and refugees have become resources for armed groups in several ways; for example, they provide a

source of recruitment since they often otherwise have no means of subsistence without access to land.

In an attempt to minimise misconduct by FARDC troops and to reduce the risk of being associated with human rights abuses committed by MONUSCO-supported FARDC troops, MONUSCO has been applying a policy of conditionality, that is, screening FARDC battalion commanders for human rights violations before, and monitoring them while, providing military support. However, the current policy is vague and has been implemented in problematic ways: with limited joint planning, lack of comprehensive monitoring and lack of consistent responses. As a consequence, there has been little improvement in terms of serious human rights abuses by the FARDC. The army also has not often requested MONUSCO assistance so far, probably because its support is seen as too constraining due to conditionality.

The concept of conditionality is linked to broader issues of justice and the need for coherent Justice Sector Reform (JSR). Pervasive impunity is seen both as an enabling condition for FARDC misconduct and as a source of widespread grievances. Legal experts argue that the key issue within JSR is not the lack of appropriate laws in the DRC, but rather the lack of effective implementation and enforcement of already existing laws. Moreover, these experts refer to the pervasive problem of political interference in judicial processes.

Suggestions

While the consequences of President Kabila's mineral export ban are as yet unclear, several short- to medium-term actions concerning mining can be highlighted. Illegal resource extraction and taxation must be more effectively prevented. Conditionality should be one of the key instruments to affect the cost-benefit calculations of FARDC officers. In order to create more leverage, MONUSCO's policy would perhaps be strengthened by offering more significant support – there need to be incentives as well as sanctions. Conditionality should also be linked to the judicial system in order to create a more effective deterrent and help end impunity. Finally, vetting mechanisms – processes aimed at screening public employees to determine if their prior conduct, including human rights violations, warrants their exclusion from office – should become part of the policy.

Although currently focused on human rights, conditionality could also be used with regard to illegal mining activities by FARDC officers. Similarly, incentive structures that favour legal and properly regulated mineral extraction need to be created for external actors – for the private sector as well as for neighbouring states. The Dodd-Frank 'conflict minerals bill' passed by the US Congress is an example of the former.

With regard to the justice sector, a focus should be put on making the existing judicial system more effective by supporting the implementation and enforcement of laws. In general, judicial reforms need to be endorsed and led by Congolese civil society. External actors should identify and empower actors for change within civil society rather than try to impose foreign legal frameworks.

The regional dimension of conflict and forced migration

While conflict and forced displacement across eastern DRC and its neighbours had previously had some regional dimensions, the influx of Rwandan Hutu in 1994 and the subsequent Rwandan and Ugandan invasions during the two wars acutely destabilised eastern DRC by inextricably linking local conflicts to the broader regional conflict dynamics. After the Second Congo War formally ended, Rwanda continued to support Congolese rebel groups, this time the CNDP. The rapprochement between Rwanda and the DRC in January 2009, culminating in the arrest of CNDP leader Laurent Nkunda and in joint operations against the FDLR, therefore needs to be seen as a milestone in regional diplomatic developments. Almost two years later, however, the situation in eastern DRC remains unstable. Although it is estimated that the three successive military operations against the FDLR have reduced its forces from 6,000 to 3,500, it remains an influential actor in North and South Kivu; its command and control structure remains largely intact as it continues to form alliances with local armed groups and to tax, and often prey on, the local population.

Similarly, as pointed out above, the now integrated CNDP remains in control of certain areas in a way that is very similar to pre-rapprochement times. There are also allegations that the Rwandan government is still cooperating with the CNDP, which continues to be perceived as the protector of Rwandan economic interests in eastern DRC.

In addition to the FDLR, rebel groups originating from Uganda continue to have rear bases in north-eastern Congo (the Allied Democratic Forces, ADF) or stage occasional attacks into north-eastern DRC (the Lord's Resistance Army, LRA). Although the DRC, Uganda, and South Sudan joined forces to fight the LRA in December 2008, the rebel group remains a destabilising element in the wider region, also attacking communities in neighbouring Central African Republic. Moreover, the Burundian opposition leader Agathon Rwasa is rumoured to be in South Kivu, using it as a rear base and forming alliances with local armed groups.

Suggestions

Given the negative consequences on civilian protection of operations against the FDLR, the limits of military solutions need to be acknowledged. Disarmament, Demobilisation, Repatriation, Reintegration, and Resettlement (DDRRR) measures have also only had limited results. Critics suggest that these strategies were flawed because they represented military and technical approaches towards what is essentially a political problem. A political solution would require strategies to integrate the FDLR politically in eastern DRC or elsewhere, and guarantee their security, thus providing substantial incentives to laying down their arms.

The Kinshasa-Kigali rapprochement has also led to reflections on the extent to which the international community can influence regional deals. While it seems that international actors helped set the conditions that enabled such a deal, they had little impact on the actual content, which has remained secret. The international community at large should thus realistically assess both its possibilities and limitations for exerting leverage on the

governments in the region. Proposals that are not consistent with the key interests of these actors are unlikely to be implemented.

It should also be considered whether the AU could play a more significant role in trying to reshape the incentive structures of these governments and in steering regional negotiations. Institutions such as the International Conference of the Great Lakes Region (ICGLR) already exist and could be strengthened in their attempts to find regional solutions. The AU should also encourage governments in the region to abide by the Kampala Convention – the Convention for the Protection and Assistance of IDPs in Africa – which was adopted by the AU in 2009 and provides several prevention, protection, and assistance standards.

Dilemmas of humanitarian action

Humanitarian actors ranging from UNHCR to smaller non-governmental organisations have contributed around US\$2.5 billion in aid over the past five years of the conflict in the DRC. Until this year, nearly every annual humanitarian action plan contained objectives related to reintegration and recovery, such as reviving local economies and promoting short-term community recovery. Many of the humanitarian activities that are currently taking place reflect this broad notion of humanitarian assistance – ranging from health and education interventions in return areas, to the rehabilitation of social infrastructure, to providing food security and promoting public health, and to livelihoods support to former IDPs and their host communities.

However, the capacity to deliver this aid and ensure that it reaches the civilians for the purposes for which it is intended is under-developed. While the range of tasks undertaken under the humanitarian mandate has expanded, there are questions over whether or not these agencies are actually suited to the tasks at hand. Reintegration and recovery are medium-term issues that do not fit easily into the usual scope of humanitarian assistance or the expertise of humanitarian actors. As a consequence, strategy and leadership over how humanitarian mechanisms can effectively tackle these issues has largely been lacking.

The 2010 Humanitarian Action Plan is predicated on a narrower notion of humanitarian assistance. At the same time, however, new tensions have emerged. The overall focus in the DRC is increasingly shifting towards the notion of ‘stabilisation’, as evident in the recent Congolese government’s Stabilization and Reconstruction Plan for Eastern DRC (STAREC), the UN-led International Security and Stabilization Support Strategy (ISSSS), and the change of the UN’s mission name from MONUC to MONUSCO. For humanitarian actors generally, given the integrated nature of the UN mission, this raises the question of whether the objectives of stabilisation coincide or collide with their own priorities for meeting the needs of the civilian population.

Several tensions are evident. First, the security lens of stabilisation programmes may lead to targeting that focuses on mitigating conflict, which would make it unlikely that assistance is primarily provided to the most vulnerable individuals and communities. Second, as already mentioned, there is a tension between military stabilisation activities and the protection of civilians. Stabilisation might move the UN aid agencies closer to the security agenda of the mission, thus reducing humanitarian space. Third, issues such as reintegration and recovery are first and foremost political issues; they require political solutions.

Alongside these dilemmas, humanitarian actors continue to face methodological and practical challenges in identifying and monitoring IDPs and refugees, in particular if they live in host communities rather than in camps.

Suggestions

Further efforts need to be made to coordinate the gathering of information about IDPs and refugees among various agencies and to share information more effectively. While improving techniques of assembling information is essential, these are likely to remain

imperfect, but this should not prevent greater contextual analysis in order to inform humanitarian responses.

The deeper challenge facing humanitarian actors lies in critically assessing their position within stabilisation mandates. This involves not only acknowledging potential tensions between military and humanitarian objectives, and ensuring that the latter will not be compromised, but also taking the political implications of humanitarian assistance more seriously. Critics claim that many protection approaches are too technical and effectively apolitical, thus risking the distortion and commodification of justice and the decontextualisation of violence.

Humanitarian actors and many other NGOs have short- or medium-term missions in the DRC. They should thus channel some of their support to institutions that are less transient. Such longer-term partners could include churches, which are likely to continue to operate among their communities even during open warfare.

To avoid donor fatigue, humanitarian actors need to develop better methods of recording the results and failures of their projects, and to search for cost-effective and efficient ways of delivering aid. Without the ability to assess and report on progress being made, donors could be less willing to continue high levels of funding.

Dynamics of sexual violence

The scale and scope of violence, especially sexual violence, against the civilian population in eastern DRC is staggering. Many different parties to the conflict, including the national army, have committed rapes and other acts of violence. Although the government passed two laws specifically addressing sexual violence (in 2006) and declared a zero-tolerance policy for members of its armed forces (in 2009), the impact of these laws and policies has been limited due to a lack of enforcement.

In the western media, events of sexual and gender-based violence (SGBV) are often retold in an ‘accounting’ fashion: statistics about the numbers of civilians sexually abused stand in for any discussion of the complex causes of violence; rape is typically described as a weapon of war. In the DRC, on the other hand, the topic is still often a taboo and there is a culture of denial, since many Congolese are struggling to accept the sheer scale and pervasiveness of sexual violence, claiming that ‘our youth can’t do something like that’.

Current research based on interviews with victims and perpetrators, however, suggests that rape is more than just a weapon of war. Although rape is often instrumental in the strategies of armed groups and seems to serve the purposes of inflicting humiliation and revenge, supporting the construction of powerful notions of masculinity, and eroding economic and social foundations by reducing women’s mobility and their economic role, there are additional explanations: interviewees described sexual violence as a crime of opportunity due to the lack of authority and high levels of impunity. Interviewees also referred to issues of identity, saying that their sense of order, justice, and self have all come under challenge. While rape could, to some extent, thus be interpreted as a perpetrator’s outward expression of internalised conflict – of a fight to retain or recover a sense of self – and perpetrators could accordingly be interpreted as victims in the sense that many of them have also seen their communities subject to the same violence they inflict on others, such a perspective easily risks blurring the lines between victims and perpetrators.

Previous research and advocacy has focused almost exclusively on women and girls, thus downplaying the fact that many men and boys have also been sexually abused. There are indeed very few services for male victims so that they must go to clinics designed for and often staffed by women if they make the culturally difficult decision to seek assistance after the act.

Suggestions

A concrete suggestion to humanitarian actors would be to set up clinics and outreach services targeted towards male victims of sexual violence. This requires a shift away from a ‘women’s rights’ framework towards a ‘gender’ framework for addressing sexual violence. It is also necessary to set up systems that more accurately map events and vulnerabilities.

Further progress could be made to reduce or prevent sexual violence by focusing on understanding the psychology of perpetrators and targeting outreach services towards them as well. Understanding perpetrators, however, should not be confused with

tolerating their actions; perpetrators of sexual violence need to be held accountable for their crimes.

While some will always argue that ‘it is not the right time to address justice’, mechanisms of transitional justice should at some point be considered as a means to address sexual and other forms of violence. This also relates to the UN Mapping Exercise, which chronicles massive human rights violations in the DRC from 1993 to 2003. As with the justice sector in general, such steps would need to be led by Congolese civil society.

The issues highlighted in this report and policy recommendations emanating from the special issue of FMR, ‘*DRC: Past, Present, Future?*’ are being presented and discussed in Kinshasa and Goma with DRC-based researchers, government representatives, and representatives of UN agencies, and of international and local NGOs. This provides the opportunity for further in-country dissemination and media coverage and international and national awareness-raising.

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