

Flygtningenævnets baggrundsmateriale

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**UNHCR POSITION ON RETURNS TO NORTH KIVU, SOUTH KIVU AND
ADJACENT AREAS IN THE DEMOCRATIC REPUBLIC OF CONGO AFFECTED
BY ON-GOING CONFLICT AND VIOLENCE IN THE REGION**

1. Since the beginning of 2012, the flare-up of conflict and violence in North Kivu and South Kivu has led to the deterioration of the humanitarian situation in the eastern part of the Democratic Republic of Congo (DRC). Both North Kivu and South Kivu have recently experienced clashes between armed groups and national army troops, and fighting has been particularly violent between government forces and the rebel M23 movement in the North and between government forces and other armed groups (Raia Mutomboki, Mai Mai Nyatura) in South Kivu. The conflict has been consistently marked by widespread violence and extensive reports of pervasive human rights abuses.
2. Other armed groups in Eastern DRC are said to be taking advantage of the instability and the security vacuum left by the government as it tackles the M23, reportedly pursuing economic interests by seeking to profit from eastern DRC's natural resources.¹ Conflicts over land issues, customary authority, and ethnicity also plague Eastern DRC.
3. The violence has been marked by rape, murder and pillaging,² and has given rise to an alarmingly dire humanitarian situation.³ Reports indicate that mass rape and other forms of sexual violence continue to be committed by parties to the conflict, including during attacks on villages, often in retaliation for the victims' alleged collaboration with armed groups or the national army.⁴ The humanitarian situation is deteriorating rapidly, with increasing numbers of people in need of food aid, shelter support and health care.⁵ Tens of thousands live in UNHCR-run sites and many more

¹ Integrated Regional Information Networks (IRIN), *Democratic Republic of Congo: Army commander seeks solution to Masisi crisis*, 26 September 2012, <http://www.unhcr.org/refworld/docid/50659c512.html>; UN News Service, *At high-level meeting, Ban urges political solution to crisis in eastern Democratic Republic of the Congo*, 27 September 2012, <http://www.unhcr.org/refworld/docid/5065a7092.html>.

² See e.g. Office of the High Commissioner for Human Rights, Press Release, *Mass arbitrary execution of civilians, including dozens of children, in Southern Masisi, Eastern DRC – UN report*, 14 November 2012, <http://www.ohchr.org/en/NewsEvents/Pages/Media.aspx> (The full report is available at http://www.ohchr.org/Documents/Countries/ZR/UNJHRO_HRVMasisi_en.pdf).

³ See footnote 1.

⁴ See e.g. UN News Centre, *UN official condemns sexual violence in DR Congo by renegade soldiers*, 18 July 2012, <http://www.un.org/apps/news/story.asp?NewsID=42507&Cr=democratic&Cr1=congo>; see also Immigration and Refugee Board of Canada, *Democratic Republic of the Congo: Domestic and sexual violence, including legislation, state protection, and services available to victims* (2006-March 2012), 17 April 2012, COD104022.E, <http://www.unhcr.org/refworld/docid/4f9e5e532.html>.

⁵ UN Office for the Coordination of Humanitarian affairs (OCHA), *Rapport de situation humanitaire sur la Republique Democratique du Congo, Version Finale*, 28 September 2012, http://reliefweb.int/sites/reliefweb.int/files/resources/Rapport%20Compleet_17.pdf.

in spontaneous sites or host families. Children are particularly affected by the conflict; they get caught in the crossfire, face health risks, are at risk of forced recruitment by militias and have their education interrupted.⁶

4. The violence has caused massive displacement of the local population. 250,000 persons are reported to be newly displaced in North Kivu and 339,000 in South Kivu, resulting in a total of over 1.5 million displaced persons in the Kivus. At 30 June 2012, the total number of internally displaced persons in the DRC stood at 2,235,000 compared to 1,700,000 at the beginning of the year. Large numbers of Congolese have also fled across international borders, with over 40,000 persons having fled to Uganda and over 15,000 Congolese having fled to Rwanda.⁷ Burundi has also reported an influx of some 5,000 and a rate of new arrivals of 1,000 every month since August 2012. The total number of DRC refugees in neighbouring countries is currently estimated at some 463,000.
5. As the situation in the Kivus and adjacent areas, particularly Katanga, affected by the spill-over of the conflict, is fluid and may remain uncertain, UNHCR urges States not to forcibly return to DRC persons originating from these areas until the security and human rights situation has improved considerably. UNHCR considers that it is likely that persons fleeing the conflict in the Kivus and similarly affected areas are in need of international refugee protection in accordance with Article 1(2) of the 1969 OAU Convention.⁸ In addition, many persons fleeing the DRC are likely to meet the 1951 Convention⁹ criteria for refugee status. Depending on the profile of the individual case, exclusion considerations may need to be looked into.¹⁰ The bar on forcible return serves as a minimum standard and needs to remain in place until such time as the security and human rights situation in the affected areas has improved sufficiently to permit a safe and dignified return of those determined not to be in need of international protection. Furthermore, UNHCR does not consider it appropriate for States to return persons originating from the affected areas to other parts of DRC, unless they have strong and close links in this other location. Any such proposed returns would need to be assessed carefully, taking into account the individual circumstances of the case.¹¹

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⁶ Integrated Regional Information Networks (IRIN), Democratic Republic of Congo: Children bear brunt of conflict in the east, 25 September 2012, <http://www.unhcr.org/refworld/docid/50659bc41e8.html>.

⁷ UN High Commissioner for Refugees, *More than 3,000 Congolese flee to Uganda to escape clashes*, 27 September 2012, <http://www.unhcr.org/refworld/docid/50654cd52.html>.

⁸ Organization of African Unity, *Convention Governing the Specific Aspects of Refugee Problems in Africa* ("OAU Convention"), 10 September 1969, 1001 U.N.T.S. 45, <http://www.unhcr.org/refworld/docid/3ae6b36018.html>.

⁹ UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: <http://www.unhcr.org/refworld/docid/3be01b964.html>, UN General Assembly, *Protocol Relating to the Status of Refugees*, 31 January 1967, United Nations, Treaty Series, vol. 606, p. 267, <http://www.unhcr.org/refworld/docid/3ae6b3ae4.html>.

¹⁰ UN High Commissioner for Refugees, *Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, HCR/GIP/03/05, <http://www.unhcr.org/refworld/docid/3f5857684.html>.

¹¹ For detailed guidance, see: UN High Commissioner for Refugees, *Guidelines on International Protection No. 4: "Internal Flight or Relocation Alternative" Within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*, 23 July 2003, HCR/GIP/03/04, <http://www.unhcr.org/refworld/docid/3f2791a44.html>.