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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 – UPDATE I

Introduction

1. Since the publication of UNHCR's position on returns to the Kivus and adjacent areas in November 2012, a number of new developments have affected civilians in these parts of the Democratic Republic of Congo (DRC). While some of these developments are positive, such as the defeat of M23 and spontaneous returns of IDPs to their homes in Rutshuru and Nyagarongo, other developments continue to give rise to serious concerns, including new rounds of intractable violence in the Kivus and surrounding regions that have continued to trigger further internal and external displacement.¹
2. In February 2013 the DRC and 10 other countries in the region signed the Peace, Security and Cooperation Framework, a multilateral framework for the advancement of security and stability in the DRC which was also signed by the UN Secretary-General and the Chairpersons of the African Union, the International Conference on the Great Lakes Region, and the Southern African Development Community.² The Framework provided for the creation of a specialized intervention brigade, which was authorized by the UN Security Council in March 2013, to strengthen the UN peacekeeping operation in the DRC and to neutralize and disarm Congolese rebel groups as well as foreign armed groups in the DRC.³ Also in March 2013 Mary Robinson was appointed as the UN Special Envoy for the Great Lakes region of Africa, to support the implementation of the Peace, Security and Cooperation Framework; in July 2014 the UN Secretary General appointed Said Djinnit as her successor.⁴ While progress has been made in gradually restoring security in parts of eastern DRC, notably in the form of the defeat of M23 in November 2013 and the ongoing surrender and disarmament of other armed groups, including the Forces démocratiques pour la libération du Rwanda (FDLR),⁵ such gains remain fragile and significant

¹ UN Security Council, *Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo*, 5 March 2014, S/2014/157, <http://www.refworld.org/docid/531ef5c64.html>, paras 18-28; UNHCR, *Update on UNHCR's Operations in Africa*, 24 September 2013, <http://www.refworld.org/docid/5242a3274.html>.

² African Union, *Peace, Security and Cooperation Framework for DRC and the Region Signed in Addis Ababa*, 24 February 2013, <http://www.peaceau.org/en/article/peace-security-and-cooperation-framework-for-drc-and-the-region-signed-in-addis-ababa>.

³ UN Security Council, "Intervention Brigade" Authorized as Security Council Grants Mandate Renewal for United Nations Mission in Democratic Republic of Congo, 28 March 2013, <http://www.un.org/News/Press/docs/2013/sc10964.doc.htm>.

⁴ UN News Centre, *Ban Appoints Algerian Diplomat Said Djinnit as Envoy for Great Lakes Region*, 17 July 2014, <http://www.un.org/apps/news/story.asp?NewsID=48295#.U-SW-fmSzw>; UN News Centre, *Former Irish leader Mary Robinson Appointed UN Envoy for Africa's Great Lakes Region*, 18 March 2013, <http://www.un.org/apps/news/story.asp?NewsID=44416#.U7LbxvmSzw>.

⁵ Special Representative of the Secretary-General in DRC, Mr Martin Kobler, *Statement of SRSG Martin Kobler to the Security Council*, 7 August 2014, <http://www.refworld.org/docid/53f3433a4.html>; Special Envoy of the Secretary-General for the Great Lakes Region, Mrs M. Robinson, *SESG Briefing to the Security Council*, 7 August 2014, <http://www.refworld.org/docid/53f344c64.html>.

challenges remain.⁶ The Special Representative of the Secretary-General in DRC, Mr. Martin Kobler, has noted that the improvements in the security situation are “not irreversible”.⁷

Overview

3. Despite the military defeat of M23 in November 2013 and the signing of a peace agreement between the DRC government and M23 in December of that year, the situation in the Kivus remains volatile.⁸ The region has in particular witnessed the resurgence of a number of armed groups, who have reportedly expanded their numbers of fighters, including through the recruitment of children.⁹ For some of the armed groups, children reportedly account for roughly 50 per cent of new recruits.¹⁰ Women and children in particular continue to face grave violations of human rights.¹¹

Developments in the Conflict

4. Armed conflict has been identified as the cause of more than 90 per cent of the displacement in the Kivus.¹² Although military operations against M23 were reported to have defeated the group, subsequent reports indicated a regrouping of M23 in eastern DRC.¹³ Numerous other armed groups also continue to pose a serious threat to civilians in the Kivus, Katanga, Orientale and Maniema provinces.¹⁴ Indeed, as of early 2014 there were reportedly 54 armed groups active in the eastern part of the DRC.¹⁵ These rebel groups are reported to continue to terrorize the region, leaving many civilians at risk of continuous harm.¹⁶ There have also been reports of violent clashes between these armed groups and the

⁶ African Press Organization, *African Union Commission: 442nd PSC meeting on the situation in the East of the Democratic Republic of the Congo (DRC) and the implementation status of the Peace, Security and Cooperation (PSC) Framework for the DRC and the Region*, 19 June 2014, <http://appablog.wordpress.com/2014/06/19/442nd-psc-meeting-on-the-situation-in-the-east-of-the-democratic-republic-of-the-congo-drc-and-the-implementation-status-of-the-peace-security-and-cooperation-psc-framework-for-the-drc-and-the-re/>; New Vision, *International Envoys Gather for Peace Mission in DR Congo*, 3 June 2014, <http://www.newvision.co.ug/news/656218-international-envoys-gather-for-peace-mission-in-dr-congo.html>.

⁷ Special Representative of the Secretary-General in DRC, Mr Martin Kobler, *Statement of SRSG Martin Kobler to the Security Council*, 7 August 2014, <http://www.refworld.org/docid/53f3433a4.html>.

⁸ NRC/IDMC, *Global Overview 2014: People Internally Displaced by Conflict and Violence - Democratic Republic of the Congo*, 14 May 2014, <http://www.internal-displacement.org/assets/publications/2014/201405-global-overview-2014-en.pdf>, pp. 18-19, 27; UN Security Council, *Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo*, 17 December 2013, S/2013/757, <http://www.refworld.org/docid/52d3afb4.html>; see also NRC/IDMC, *Why Now is Not the Time for UN Watchdogs to Drop the Ball on the DRC*, 14 January 2014, <http://www.internal-displacement.org/blog/2014/why-now-is-not-the-time-for-un-watchdogs-to-drop-the-ball-on-the-drc>; UNHCR, *UNHCR Monitors Returns to North Kivu from Uganda, Prepares to Help Returnees*, 1 November 2013, <http://www.refworld.org/docid/527b90864.html>.

⁹ IRIN, *Growing up in War – The DRC’s Child Soldiers*, 31 March 2014, <http://reliefweb.int/report/democratic-republic-congo/growing-war-drcs-child-soldiers>; Jamestown Foundation, *Congolese Forces Take the Offensive Against Uganda’s ADF-NALU Militants*, 20 March 2014, <http://www.refworld.org/docid/5333fc864.html>; MONUSCO, *Child Recruitment by Armed Groups in DRC From January 2012 to August 2013*, October 2013, <http://monusco.unmissions.org/LinkClick.aspx?fileticket=DazRcHfpAJJo%3d&tabid=10701&mid=13689&language=en-US>.

¹⁰ Jamestown Foundation, *Congolese Forces Take the Offensive Against Uganda’s ADF-NALU Militants*, 20 March 2014, <http://www.refworld.org/docid/5333fc864.html>, para. 11.

¹¹ UN Security Council, *Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo*, 5 March 2014, S/2014/157, <http://www.refworld.org/docid/531ef5c64.html>, para. 12.

¹² UN Security Council, *Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo*, 5 March 2014, S/2014/157, <http://www.refworld.org/docid/531ef5c64.html>, para. 29.

¹³ UN Security Council, *Report of the Secretary-General on the Implementation of the Peace, Security and Cooperation Framework for the Democratic Republic of the Congo and the Region*, 23 December 2013, S/2013/773, http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2013_773.pdf, paras 7-8.

¹⁴ See for example LRA Crisis Tracker, *Mid-Year 2014 Security Brief: January – June 2014*, <http://reports.lracrisistracker.com/en/midyear-2014/>; OCHA, *Violence, Displacement and Humanitarian Action in Katanga*, 22 May 2014, <http://www.unocha.org/drc/top-stories/violence-displacement-and-humanitarian-action-katanga>; UN Security Council, *Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo*, 5 March 2014, S/2014/157, <http://www.refworld.org/docid/531ef5c64.html>, paras 18-28; Oxfam, *In the Balance: Searching for Protection in Eastern DRC*, 27 January 2014, <http://www.oxfam.org/sites/www.oxfam.org/files/bp-in-the-balance-protection-eastern-drc-270114-en.pdf>, in particular the map on p. 4; see also the series of reports published by the Usalama Project of the Rift Valley Institute on various armed groups active in the DRC, available at <http://refworld.org/publisher.RVI..COD...0.html>.

¹⁵ IRIN, *DDR in Eastern DRC - Try, Try Again*, 4 March 2014, <http://www.refworld.org/docid/5319c98b4.html>.

¹⁶ See for example OCHA, *Violence, Displacement and Humanitarian Action in Katanga*, 22 May 2014, <http://www.unocha.org/drc/top-stories/violence-displacement-and-humanitarian-action-katanga>; see generally NRC/IDMC, *Why Now is Not the Time for UN Watchdogs to Drop the Ball on the DRC*, 14 January 2014, <http://www.internal-displacement.org/blog/2014/why-now-is-not-the-time-for-un-watchdogs-to-drop-the-ball-on-the-drc>.

DRC army, resulting in further displacement of civilians.¹⁷ Clashes between the armed forces of the DRC and Rwanda in June 2014 also led to additional displacement.¹⁸

Human Rights Developments

5. Several of the armed groups are reported to be responsible for widespread and serious human rights abuses, including mass rapes, murder, kidnapping, extortion, looting, the torching of homes and forced recruitment of both adults and children.¹⁹ They are also reported to engage in the grabbing of land, minerals and other natural resources, leading to widespread deprivation.²⁰ Of particular concern is the continued widespread use of rape and other forms of sexual violence against civilians, women as well as men,²¹ not only by members of armed groups but also by members of the security forces.²² Women and girls are reported to continue to live in fear and insecurity, unable to safely conduct basic activities such as gathering firewood or even using latrines, as they are continually threatened with sexual violence.²³

Humanitarian Situation

6. The humanitarian situation in eastern DRC continues to be cause for serious concern. Whereas the ongoing conflict and continuing insecurity prevent people from growing food, international food aid is reported to be decreasing.²⁴ The economic and living conditions of most individuals reportedly remain precarious.²⁵ There are reports of women resorting to survival sex in order to supplement their access to food and other essential goods.²⁶ Low levels of government spending on socio-economic sectors such as education, health, sanitation, infrastructure and agriculture are reportedly worsening the situation.²⁷ The Kivus and other conflict-affected areas in particular are affected by a lack of economic infrastructure. Many schools remain in disrepair from conflict damage;²⁸ while some schools in the region have reportedly reopened they are struggling due to structural conflict damage and looting of school properties.²⁹ Some armed groups are reported to be responsible for direct attacks on health centres.³⁰

Internal Displacement, External Displacement and Return

7. As of July 2014 the total number of conflict-related internally displaced persons (IDPs) in the DRC was reported to be at least 2.6 million, with up to one million people newly displaced in the course of

¹⁷ UN Security Council, *Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo*, 30 September 2013, S/2013/581, <http://www.refworld.org/docid/52d3b0f94.html>.

¹⁸ Radio Okapi, *RDC-Rwanda : Calme précaire à la frontière, selon les retournés*, 16 June 2014, <http://radiookapi.net/actualite/2014/06/16/rdc-rwanda-calme-precaire-la-frontiere-selon-les-retournes/#.U7KCOJ1Bu71>; UN Information Centre Pretoria, *In Wake of Clashes, UN Envoy Calls for Restoring Calm along DR Congo-Rwanda Border*, 12 June 2014, <http://unicpretoria.org.za/2014/06/13/in-wake-of-clashes-un-envoy-calls-for-restoring-calm-along-dr-congo-rwanda-border/>.

¹⁹ UN News Service, *Respect for Human Rights Key to Stabilizations of Democratic Republic of the Congo – UN Official*, 28 August 2013, <http://www.refworld.org/docid/52246d364.html>, para. 6.

²⁰ UN News Centre, *Respect for Human Rights Key to Stabilization of DR Congo – UN Official*, 28 August 2013, <http://www.un.org/apps/news/story.asp?NewsID=45720#U6mQ651Bu70>; see generally IRIN, *Analysis: Small Steps to Land Reform in Eastern DRC*, 23 January 2013, <http://www.irinnews.org/report/97357/analysis-small-steps-to-land-reform-in-eastern-drc>.

²¹ The Times, *Thousands of Men Suffer in Silence after War Zone Rape*, 12 June 2014, <http://www.thetimes.co.uk/tto/news/uk/article4116256.ece#tab=4>; see also UN News Service, *Respect for Human Rights Key to Stabilizations of Democratic Republic of the Congo – UN official*, 28 August 2013, <http://www.refworld.org/docid/52246d364.html>.

²² Freedom from Torture, *Rape as Torture in the DRC: Freedom from Torture Country Reporting Programme*, June 2014, <http://www.refworld.org/docid/539814554.html>.

²³ NRC/IDMC, *Global Overview 2014: People Internally Displaced by Conflict and Violence*, 14 May 2014, <http://www.internal-displacement.org/assets/publications/2014/201405-global-overview-2014-en.pdf>, p. 19.

²⁴ UN News Service, *Insecurity, Funding Shortfall Leaves Millions Hungry in DR Congo – UN Official*, 3 June 2014, <http://www.refworld.org/docid/539188d74.html>.

²⁵ UN Security Council, *Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo*, 17 December 2013, S/2013/757, <http://www.refworld.org/docid/52d3abf4.html>, para. 32; see generally UN Security Council, *Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo*, 5 March 2014, S/2014/157, <http://www.refworld.org/docid/531ef5c64.html>.

²⁶ NRC/IDMC, *Global Overview 2014: People Internally Displaced by Conflict and Violence*, 14 May 2014, <http://www.internal-displacement.org/publications/2014/global-overview-2014-people-internally-displaced-by-conflict-and-violence>, p. 19.

²⁷ UN News Service, *Insecurity, Funding Shortfall Leaves Millions Hungry in DR Congo – UN Official*, 3 June 2014, <http://www.refworld.org/docid/539188d74.html>, para. 5.

²⁸ IRIN, *Life near the Frontline in Eastern Democratic Republic of Congo*, 14 October 2013, <http://www.refworld.org/docid/525e70401.html>.

²⁹ IRIN, *Life near the Frontline in Eastern Democratic Republic of Congo*, 14 October 2013, <http://www.refworld.org/docid/525e70401.html>.

³⁰ In one incident involving an attack on a health centre, reportedly five people were killed, 36 kidnapped, patients terrorized and two nurses tied up and abducted; see IRIN, *Backlash Fears after "Islamist" Attacks in Eastern Democratic Republic of Congo*, 17 October 2013, <http://www.refworld.org/docid/526101f04.html>.

2013.³¹ Most IDPs are concentrated in the Kivus and in Katanga; as of May 2014 there were 908,597 IDPs in North Kivu, 554,981 IDPs in South Kivu and 543,540 in Katanga.³² There are also more than 432,000 Congolese refugees in the neighbouring countries, with the highest concentration in Uganda with 171,126 refugees; followed by Rwanda (72,060), Tanzania (64,167), Burundi (46,552) and the Republic of Congo (22,845).³³ Congolese nationals also continue to seek international protection in industrialized States.³⁴

8. Monitoring in return areas indicates that IDPs and refugees are spontaneously returning to some areas in Rutshuru and Nyiragongo.³⁵ However, Congolese refugees and IDPs who have attempted to return to their homes have reportedly found their homes and land occupied by former militia members or families of different ethnic backgrounds.³⁶ Other obstacles to return, beyond the security and human rights situation in the areas of origin, include the risks posed by remaining unexploded ordnance.³⁷

UNHCR Position on Returns

9. As the situation in the Kivus and adjacent areas, particularly north Katanga and parts of Orientale and Maniema affected by the spill-over of the conflict, remains fluid, 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.³⁸ In addition, many persons fleeing the DRC are likely to meet the 1951 Convention criteria for refugee status.³⁹ Depending on the profile of the individual case, exclusion considerations may need to be looked into.⁴⁰ 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.⁴¹

UNHCR,
September 2014

³¹ UNHCR, *UNHCR D.R Congo – Fact Sheet*, 31 July 2014, <http://www.refworld.org/docid/540dbad14.html>; NRC/IDMC, Democratic Republic of the Congo, undated, <http://www.internal-displacement.org/sub-saharan-africa/democratic-republic-of-the-congo/>.

³² UNHCR, *République Démocratique du Congo: Province du Nord-Kivu - Personnes déplacées internes dans les sites de déplacement (au 25 mai 2014)*, 10 June 2014, <http://www.refworld.org/docid/539ffeba4.html>; UNHCR, *UNHCR D.R Congo – Fact Sheet*, 31 July 2014, <http://www.refworld.org/docid/540dbad14.html>; see also NRC/IDMC, *Global Overview 2014: People Internally Displaced by Conflict and Violence - Democratic Republic of the Congo*, 14 May 2014, <http://www.refworld.org/docid/5374748614.html>.

³³ UNHCR, *UNHCR D.R Congo – Fact Sheet*, 31 July 2014, <http://www.refworld.org/docid/540dbad14.html>.

³⁴ UNHCR, *UNHCR Asylum Trends 2013: Levels and Trends in Industrialized Countries*, 26 March 2014, <http://www.unhcr.org/5329b15a9.html>.

³⁵ Information available to UNHCR.

³⁶ IRIN, *Obstacles to Return in eastern Democratic Republic of Congo*, 18 November 2013, <http://www.refworld.org/docid/528b3cd34.html>; see also for example IRIN, *Concern over Camp-Closure Threat in North Kivu*, 28 May 2014, <http://www.refworld.org/docid/538c54f64.html>.

³⁷ IRIN, *Concern over Unexploded Ordnance in Eastern Democratic Republic of Congo*, 8 November 2013, <http://www.refworld.org/docid/5282088d4.html>.

³⁸ 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>.

³⁹ UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, <http://www.unhcr.org/refworld/docid/3be01b964.html> and 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>.

⁴⁰ UNHCR, *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>.

⁴¹ For detailed guidance see UNHCR, *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>.