

Redefining the Role of the International Community in the DRC: Prioritizing Process, Politics and Fighting Impunity

Prepared for the DRC Affinity Group by
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This paper makes an argument for the international community to support a political process through which the Congolese themselves – the government, oversight institutions, civil society, the opposition and organized armed groups – would design and agree on a set of reforms and processes to revitalize their constitutional democracy, bring peace to the troubled parts of the country, and put an end to the impunity for violent and economic crimes, which is one of the root causes of the recurrent security crisis.

The DRC's recent history is a catalogue of illustrations of how here, perhaps even more than in other countries, moments of crisis provide the best opportunities for engineering the institutional reforms needed to keep fueling the much-sought after democratic promise. We are currently at one such moment. Barely one year after the November 2011 general elections, President Kabila and his government are at the lowest point on the legitimacy scale, largely because very few in Congo believe the electoral results proclaimed by the Electoral Commission had any credibility. This lack of legitimacy is the main reason why it has been extremely difficult for the Kabila government to get any policy done or any legislation passed, even as they enjoy a much larger majority in Parliament than in the previous Parliament. It also explains in part why, the M23 rebellion has not resulted in the spontaneous patriotic rally behind the government as has consistently been the case whenever any rebel group was suspected to be a puppet in the hand of foreign – mainly Rwandan – interests. Instead of the pouring of popular outcry and anger at Rwanda that the government had hoped for – and initially tried to ignite – the M23 crisis and the temporary occupation of Goma have been used by pro-democracy activists in civil society and by the opposition to agitate for yet another national forum to assess the status of governance and agree on a new reform compact.

Support a national governance forum

The international community (the AU, SADC, donors, international NGOs, MONUSCO, UN agencies and IFIs) should support first the organization and facilitation of a national forum similar to the one being proposed by civil society and the opposition. The international community should also guarantee its participation in the strong monitoring

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of, and financial and technical support to, the implementation of the reform agenda that such a forum would generate.

It is tempting to dismiss such a forum as yet another talk show in the same vein as the many “peace” conferences organized in the last decade. The succession of the 2008 Goma peace conference, the 2009 Ihusi (Goma) talks, and now the Kampala talks, to name just a few, can lead to the conclusion that Congolese waste too much time on extra-constitutional talks to discuss matters that are better dealt with through normal political processes. But the forum being proposed is fundamentally different from many of these talks. The *Forum National* has brought together civil society groups, parties from the opposition, and even representatives from provincial institutions, as a Congolese alternative to the externally driven talks in Kampala. It would be too cheap – indeed dangerous – to dismiss it as yet another wasteful jamboree sought for by groups and individuals who have been incapable of influencing changes through constitutionally established processes.

First, far from being an extra-constitutional forum seeking to deal with matters that are in the remit of the normal parliamentary politics, the forum would be an acknowledgement of the obvious fact that the system of normal democratic politics is broken and needs to be fixed. It would be an inclusive forum where participants would discuss in detail the root causes of the malfunction of the democratic process and the inability of institutions to carry the reform agenda, the broad terms of which were agreed upon in the 2002 Inter-Congolese Dialogue. The forum would therefore be in a long tradition of constitution-making (the 1960 founding *Table-Ronde* talks; the 1964 Luluabourg conference; the 1992 *Conférence Nationale Souveraine*; the 2002 Inter-Congolese Dialogue), constitution-fixing (the 1962 Lovanium conference; the 1994 *Conclave nationale*) and national town hall peace/reconciliation/governance dialogues (the 1961 Elizabethville conference; the 1963 Tananarive conference; the 1990 *consultations nationales*) that Congolese have perfected and which has served them well.

Second, a muted consensus is slowly building around the idea of a national forum, with President Kabila proposing the organization of a *Cadre de Concertation pour la Cohésion Nationale* which, on paper, sounds like the forum that civil society groups and the main opposition parties are pushing for. One cannot overemphasize the importance of consensus, given that lack of consensus on the main constitutional issues explains in part the current paralysis of the democratic process beginning 2009-2010.

What should NOT be done

Third, and most important, the National Forum along the lines being prepared by civil society groups would address the fundamental governance issues – the so-called root causes of the conflict – in a much more effective way than the frameworks proposed by others. For example, a roadmap that is overly focused on the use of external pressures, and debates around the strategic review of the ISSSS, do not begin to address the root causes of the conflict but instead risk repeating the mistakes in previous peace efforts despite supporting and advocating for a so called political process.

The 2009 International Security and Stabilization Support Strategy (ISSSS or 'I4S' in the UN and INGO parlance) is the framework put together by donors to coordinate the international community's efforts in support of the government's stabilization and reconstruction programme for the Eastern DRC, STAREC (*Programme de Stabilisation et de Reconstruction de l'Est du Congo*). I4S was designed to reflect the hope generated by the March 2009 agreements between the GoDRC and the CNDP and other rebel forces. The agreements, it was thought, marked the end of violent conflicts and the start of a peace process that needed "stabilization" to lead to a longer term development. That, however, was wishful thinking. It ignored the fact that the 2009 agreements actually only addressed the violent manifestation of the crisis, which was much more structural and had its roots in the poor management of democratic mechanisms and the poor handling of governance institutions and security sector reforms. There is nothing to "stabilize" when it is the whole security framework that is broken. STAREC and I4S are the best illustration of the slow but steady de-politicization of international engagement with the DRC – the fact that actors in the international community run away from difficult governance issues and prefer the comfort of more operational and technical work, like identifying and managing development projects to "stabilize" the East, which are disconnected from politics.

Externally focused frameworks mostly centered on Rwanda and Uganda, as well as STAREC and its accompanying I4S framework are lacking on another count—their geographic bias, a consequence of the prevalent and dominant eastern centric approach subscribed to by many policymakers and analysts. The justice sector, the army and other security agencies such as the police are essentially and formally of a national nature. They are not an area of devolution or shared responsibility between the central government and provinces under the decentralization framework. If the army and security agencies are dysfunctional, they are dysfunctional everywhere starting from the top in Kinshasa and the answer cannot be to address their illnesses on one twentieth of the territory farthest from Kinshasa, (which is what the Kivus and Ituri represent) and leave the illnesses to flourish in the rest of the country.

This kind of geographic bias leads to an incomplete analysis of the crisis. One misguided but prevalent recommendation, for example, is that UN or other international actors officials should be given decision-making power in key ministries and administrative offices in the Kivus and Kinshasa or that, alternatively, they should act as mere advisors to the Congolese government, but based only in the Kivus. This would not address the causes of successive security crisis in Bas-Congo (2007-2008), Equateur (2008-2009), Bandundu (2010), Nord-Katanga (currently), or Haut Uele and Ituri in Province Orientale (currently).

Fight against impunity: process not outcome, political not technical

The international community's support must focus on process and not seek to directly implement programs to achieve specific outcomes. Immediately after the 2006 elections, the international community decided to retreat from difficult "political" issues such as the fight against corruption, security sector reform, judicial reform and the fight against impunity, electoral reform, or the decentralization project. The default modus operandi for the donor community's engagement in DRC thus has been through the funding of "quick win," highly visible impact development projects, preferably in the Eastern provinces which have the

greatest concentration of international NGOs through which such projects are implemented.

The retreat from “political” issues is in part a reflection of an effort to run away from the CIAT model of the 2003-2006 transition period and avoid the criticism of a too-powerful and patronizing international community. It is now obvious that this effort has been taken to another, counter-productive extreme. At best, this no-ask-no-see attitude has downgraded the international community to the role of a mere program implementing agency – and the ISSSS is the best illustration. At worst, it has turned international actors into enablers of the deteriorating political climate and the dismantling of democratic gains by the Kabila government under the guise of “neutrality” – best illustrated by the “neutral” posture in early 2011 while Kabila was tearing down constitutional and legal guarantees for fair elections.

No area illustrates this point better than the fight against impunity. In part because of the quick-win policy, international NGOs and government agencies have reduced their fight against impunity programs to implementing operational projects that address the material administration side of justice provision (such as renovating court houses, providing legal codes, providing for justice officers’ salaries, and supporting training of justice officers) and supporting the conduct of criminal trials in the East. One such project, the *Programme de restauration de la justice à l’est du Congo* or REJUSCO, a joint program of the EU and the Belgian, UK and Dutch governments directly administered by the Coopération Technique Belge (CTB), aimed at supporting the court system in Ituri, Nord-Kivu and Sud-Kivu. From 2006 to 2010 REJUSCO provided grants to mainly international NGOs to ensure that a fairly good management of justice in the three provinces was in place and that courtrooms were equipped, investigations took place and trial hearings were held. However, by its very nature and its geographic limitations REJUSCO and other similar programs could not address the necessary institutional and legislative changes necessary for a greater independence of the justice system. Even with a budget three times bigger than the budget of the whole Congolese judiciary, REJUSCO cannot by its very nature change the many legal and institutional loopholes which officials at the Ministries of Justice and Defense in Kinshasa routinely use to sabotage investigations, threaten zealous magistrates and ultimately pick and choose who should face trial. Massive international interventions to fight impunity over the last six years have therefore contributed to generate a strange justice system which, although still fundamentally dysfunctional everywhere, is nevertheless technically functioning only in some parts of the country. Under this system, a military prosecutor in Goma, Nord-Kivu is by far better equipped to deal with M23 criminals than his counterpart in Manono, Katanga is to deal with Gédéon’s May-May criminals and can more easily deploy investigators on the scene of a massacre and more quickly convene a trial against perpetrators. Both however remain equally vulnerable to interferences from the executive and the military high command.

Any criminal justice reconstruction program in a post-conflict situation is vulnerable to influence from, and would have to respond to, specific political threats and opportunities. Yet by far the most fundamental weakness of programs such as REJUSCO and its successor *Projet d’appui à la réforme de la justice à l’est* or PARJE-‘*Uhaki Safi*’ (Swahili for “clean justice”) is their total disconnection from national political developments, such as the

fact that the Kinshasa government has made abandoning legal proceedings against the leaders of armed groups a key component of its “peace” policy. After the minister of justice instructed the Procureur général de la République and the Auditeur général des FARDC (or judge advocate general) in February 2009 not to engage in proceedings against the members of CNDP and to stop all proceedings that have already been initiated against them for the sake of peace, no amount of material support or training sessions could induce a local prosecutor to commit professional suicide by going after CNDP perpetrators. To strengthen the hands of local prosecutors against such a blatantly illegal instruction, supporters of the fight against impunity would have better use a fraction of their funds and energy to engage the national government while it was negotiating peace deals with CNDP and other armed groups.

To fight impunity requires a much more ambitious strategy than just ensuring that courts in the Kivus are equipped or putting a few army officers to trial for sexual crimes. Impunity runs throughout the whole political system, and is affected by the extent of the independence of the judiciary and its relation to the rest of the security agencies. The fight against impunity must go beyond the provision of training sessions to judges or the provision of technical or financial support to some military courts so that they can conduct a few trials in the East. What is needed instead is to support legislative and institutional reform processes. These would include, at the very minimum, (i) the adoption by parliament of a law establishing a specialized mixed court (as recommended in the UN mapping report); and (ii) the adoption by parliament of a law on the implementation of the ICC statute (a bill was drafted in 2003 and has since been languishing in parliament). Passage of these two pieces of legislation would give the courts’ jurisdiction to prosecute crimes of international character committed by both military and members of armed groups – which only military courts have jurisdiction over so far. Other urgent institutional interventions could take the form of (i) financial and technical support to the effective functioning of the Conseil supérieur de la magistrature (CSM, the Congolese judicial service commission) so that the judiciary is managed by the independent expert committee designated by the law, rather than by the executive; and (ii) concrete measures to ensure that military courts everywhere in the country are staffed by military judges of an equal or higher rank than the highest-ranking officer in their jurisdiction appointed according to the law, i.e., following nomination by the CSM rather than by the military command.

National, not local

Discussions about a revised ISSSS framework as well as the externally focused frameworks both support some variation of a “field-oriented approach” to conflict resolution, which addresses the causes of conflict between communities and empowers local communities. Peace initiatives at the local level are very important to support and there are plenty of local-level conflicts throughout Congo that need the kind of work that the international community has been supporting in the Kivus and Ituri through NGOs like Search for Common Ground, Christian Aid or International Alert. But the current M23 crisis is not a localized or mid-level conflict. It is rather a manifestation of a conflict of a national – indeed, international – nature. No amount of local level efforts will even begin to address it.

This again is a reflection of the trap that a very partial and incomplete analysis of the security crisis in DRC sets. With the exception of Masisi, very few armed groups operate on an inter-community attack/vengeance basis. In fact, the bulk of militia attacks are directed against communities that share the same ethnic background as the attacking militias – Kakule “Lafontaine” Sikuli’s group against the Nande in Sud-Lubero; Kyungu “Gedeon” Mutanga’s Maimai against the Balubakat in Nord-Katanga; “Cobra” Matata’s FRPI against balendu-ngiti in Ituri; the January 2013 attack of the mostly Nande populated city of Mambasa in Ituri by the Nande dominated Maymay of Paul “Morgan” Sadala and Hilaire Paluku Kombi, and so forth. It is unclear what “empowering local communities” would seek to achieve in these circumstances. Moreover, the risk of strengthening the capacity of communal groups to mobilize for violence is too great to ignore.

Equally, as some recent work that ranks disputes over land tenure among the “root causes” that fuel conflicts in the eastern DRC notes, land conflicts are far from being limited to the eastern provinces.² Communities regularly wage wars over fishery rights and land tenure, not just in such provinces as the Kasais and Bas-Congo where space for arable land is as squeezed as in the Kivus, but land disputes are taking increasingly violent forms in the less densely populated provinces of Bandundu and Equateur. In Northern Equateur, a dispute over fishery rights between the Manzaya and Inyele communities in Dongo tragically escalated into a poorly managed police operation which resulted in the massacre of hundreds and resulted in thousands of refugees and IDPs in 2009. Over 50% of disputes brought before low courts in Kinshasa are over land property rights. If judiciary and administration officials face common challenges in the application of the 1978 land code throughout the country, surely something else must explain that only in the Kivus and Ituri have such disputes ever resulted in protracted armed conflicts.

² Vlassenroot, Koen. “Land Issues and Conflict in Eastern DRC,” *DRC Affinity Group*, 16 January 2013, available at <http://www.ssrc.org/publications/view/Land-Issues-and-Conflict-in-Eastern-DRC/>.