



Democratic Republic of Congo

Elections in sight: “Don’t Rock the Boat”?

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Summary

Some twenty-four million citizens of the Democratic Republic of Congo (DRC) have registered to vote in the first nation-wide elections to be held in more than forty years. The electoral process is due to begin with a referendum on a proposed new constitution on December 18 and 19, 2005. The millions who have registered want to play a meaningful role in the political process and may hope that the election of legitimate leaders in the first half of 2006 will help to establish the rule of law and respect for human rights lacking for many years.

International donors too have pinned their hopes on the process, expecting that it will allow them to begin withdrawing the costly United Nations peacekeeping operation, the U.N. Mission in the DRC (MONUC), and to see some return on the aid money invested in trying to restore a functioning state.

But Congolese political leaders are endangering the process by delaying the integration of former rebel forces loyal to them into the national army. The continued existence of such forces poses the risk that a party could intervene by force if elections do not take place or if they produce results unsatisfactory to that party. Congolese officials also risk undermining the credibility of the process by repression of the press and civil society groups and by corruption that in part feeds directly into electoral campaigns. In addition, the failure of the government to successfully address ongoing violence and other abuses against civilians by government troops and armed combatants in eastern Congo and its' inaction in creating a functioning judicial system means that some citizens will necessarily exercise their right to vote in conditions of serious insecurity, afraid of possible abuses against them and aware that such abuses will not be punished.

In the last year the government of neighboring Uganda, which once occupied parts of eastern Congo, hindered efforts by Congolese national authorities to establish order in this resource-rich area. It cited the presence of rebel groups from Uganda in eastern DRC as an excuse for ongoing meddling, including direct and indirect support to Congolese armed groups.

MONUC, authorized by the United Nations Security Council to engage in increasingly robust operations against Congolese armed combatants and foreign armed groups, has restored order in some parts of northeastern Congo, but lacked the troops and resources to do so in Katanga and the Kivus. Increasingly tasked in recent months with helping prepare for elections, it has devoted less attention to the problems of insecurity and disarmament of troops.

Caught up in the political and logistical challenges of the election process, many Congolese leaders as well as representatives of the donor community and MONUC seem to have accepted that little progress will be made on such major issues as army reform, establishing a functioning judicial system, and ending corruption until after a new government is installed. In interviews with Human Rights Watch researchers, diplomatic representatives stated it would be unproductive to push too hard such issues, preferring not to “rock the boat”.

Whether or not current Congolese political leaders welcome such initiatives, the donor community and MONUC must redouble their efforts through these next crucial months to monitor and vigorously denounce attempts to limit freedom of expression, to demand an end to corruption, and to insist on improving the security environment in which the elections will take place. Unless essential safeguards are put in place to ensure that elections are free, fair, and safe, the results of the vote will lack credibility and yet another opportunity to establish the rule of law in Congo will have been lost.

Preoccupied with the political and logistical challenges of the electoral process, international actors have done little to plan for the period after elections when such major problems as army integration and the creation of a judicial system will still have to be tackled. They must look beyond the immediate demands of the next six months and start planning in order not to lose the opportunity for effective action as soon as the new government is installed.

Background

Two successive wars, one beginning in 1996 and another in 1998, left Congo devastated, with more than 3.5 million persons dead. In July 2003, after five years of combat, parties to the second war signed an agreement that shared out posts in a transitional government and called for a new constitution and nationwide elections within the relatively brief period of two years.¹

From the beginning the transitional government was plagued by mistrust among its component parties—represented by a president and four vice-presidents—and by corruption. Apparently in no hurry to carry out elections, political leaders dawdled in passing the laws needed to begin the electoral process. Troops of the former belligerents were supposed to be integrated into a new national army, the Armed Forces of the

¹ Known as the Global and All-Inclusive Agreement, it was signed in South Africa in 2002.

Democratic Republic of Congo (*Forces Armées de la République Démocratique du Congo*, FARDC), but by late 2005 fewer than one fifth of the estimated total number of soldiers had completed the process.

With integration of the army making slow progress, soldiers of the former Congolese Rally for Democracy (*Rassemblement congolais pour la démocratie-Goma*, RCD-Goma)—themselves supposedly part of the FARDC—fought against FARDC troops in May and December 2004. Other FARDC soldiers continued combat with armed groups still resisting national control in north-eastern Ituri district and in the southern province of Katanga. Faced with these political and logistical obstacles, the transitional government postponed elections scheduled for June 30, 2005 to early 2006, and decided to hold a referendum on the new constitution in November 2005, later postponed to December 2005. According to the agreement governing the transition, elections must be completed by June 30, 2006, with no provision made for what would happen if that deadline were not met.

The proposed constitution, passed by the council of ministers and the parliament in May 2005, represents an important change in the organization of the Congolese state. If accepted by popular vote, the new constitution will decrease the power of the president. It will also provide for a more federal structure, with new powers devolving to the provinces, which will increase in number from eleven to twenty-six. Despite last minute efforts by MONUC, civil society and some members of parliament, few Congolese citizens have been provided with information about the new constitution and they have had little opportunity to debate its content.

With the dates for the December 18 and 19 referendum approaching, preparations for the vote lag far behind schedule. As if preparing excuses ahead of time, members of the government and diplomats in Kinshasa repeatedly cautioned Human Rights Watch researchers that “elections will not be perfect.”²

The Challenge of Elections

Voter registration began on June 20, 2005, was to last three weeks in each province, and was due to end in October. But, in many provinces authorities extended registration to four weeks or more because of logistical and security problems. Though twenty-four

² Human Rights Watch researchers heard this refrain in more than ten interviews in Kinshasa between September 28 and October 3, 2005.

million persons had already registered elsewhere in the nation by early December, the process was not yet finished in Equateur and Bandundu provinces. Persons who registered also received national identity cards, an important measure in a country where identity documents had not been issued for many years.

Given the lack of state infrastructure in such a large country, significant problems had been foreseen in registering citizens. But the difficulties and irregularities noted by the end of November were less than had been predicted. On November 15 the Independent Electoral Commission (IEC), responsible for managing the election process, announced that in the Kinshasa area there had been 150,199 cases of attempted fraud, most involving persons who had tried to register twice.³ As of this writing, data were not yet available from other areas.

In several cases combatants opposed to the national government turned to violence to try to halt the registration. In October 2005, a group of Mai Mai, fighters defending local interests, took six election workers hostage in North Kivu, holding some for over a week. In Ituri, militia attacked registration centers or official vehicles on three occasions, once holding three officials hostage for ten days.⁴ In some parts of eastern Congo authorities decided not to open registration centers because of insecurity in the area. Voters were unable to register in such places or were obliged to travel long distances to register elsewhere.⁵

In North Kivu, tensions between Tutsi and other ethnic communities increased as more than a thousand Congolese Tutsi who had been refugees in Rwanda came home, presumably because they wanted to participate in the elections. Congolese of other groups alleged that Rwandan citizens were registering in order to be able to pass themselves off as Congolese citizens, an allegation that appears to have been true in only a small number of cases.⁶

In some places, authorities failed to pay the salaries of election workers and some of them threatened to disrupt the referendum to call attention to their grievances. Election officials at several eastern Congo centers visited by a Human Rights Watch researcher

³ Presentation, Abée Malu-Malu, President of the Independent Electoral Commission (IEC), Brussels, November 28, 2005.

⁴ Human Rights Watch interview, John Ukunya, IEC, Head of Liaison Office, Bunia, October 27, 2005.

⁵ Ibid., presentation by Abée Malu-Malu, Brussels.

⁶ Human Rights Watch interviews, Marie Shematsi, Co-ordinator, IEC, North Kivu, October 6, 2005; Maitre Kambale Ngayiremawa, Legal Advisor, IEC, Goma, October 6, 2005; Head of Office, North Kivu, U.N. Office for the Coordination of Humanitarian Affairs (OCHA), October 5, 2005.

had been working for weeks without payment. When the president of the electoral commission visited Bunia in October, five election workers were arrested and some were injured when protesting the failure to pay their salaries.⁷ In a similar incident in December, eight workers were arrested and several of them beaten in Kinshasa when attempting to claim the pay due them.⁸ According to one election coordinator in North Kivu, officials at the election center in Sake refused to hand in their voter registration materials until they received their salaries.⁹ A South Kivu election coordinator said that only workers in the provincial capital and on the island of Idjwi had been paid and another electoral official said that unpaid workers threatened protests unless they were paid.¹⁰ Whether to compensate for unpaid salaries or simply to profit from the new opportunity, election officials and some police officers used the registration process to engage in petty corruption, including by taking money from persons who wanted to move ahead in registration lines.¹¹ Police officers in Goma fought over profits from this corruption on September 9; in the dispute three people were killed, including two police officers and one bystander.¹²

Delays in disbursing funds also hindered electoral workers in carrying out their duties. According to an electoral officer in southern Ituri, he was unable to send staff to some areas because of threats of violence from unpaid creditors awaiting reimbursements for gasoline and other supplies provided to electoral workers.¹³

Insufficient registration materials were received in Kasai province, an area that strongly supports the main opposition party, the Union for Democracy and Social Progress (*Union Pour la Démocratie et le Progrès Social, UDPS*). UDPS President Etienne Tshisekedi has opposed the election process, which he sees as flawed; he has urged supporters to boycott registration and the polls, but with only limited success. Some people of Kasai saw the shortage of materials as a deliberate effort to limit the number of voters in the area, but once MONUC officials signaled the shortage, more materials were sent and voters in numbers proportional to those registering in other areas were eventually registered.¹⁴

⁷ Human Rights Watch interview, head of Liaison Office, IEC, Bunia and MONUC officer, Bunia, October 27, 2005.

⁸ Observatoire Congolais des droits humains, Communiqué de Presse N OCDH/008/005.

⁹ Human Rights Watch interview, Co-ordinator IEC, North Kivu, October 6, 2005.

¹⁰ Human Rights Watch interviews, Gaudens Maheshe, Coordinator, IEC, South Kivu, Bukavu, November 29, 2005 and Head of Liaison Office, IEC, Uvira, November 24, 2005.

¹¹ Human Rights Watch interview, Election Centre, Masisi territory, October 9, 2005.

¹² Human Rights Watch interview, Co-ordinator, IEC, North Kivu, October 5, 2005.

¹³ Human Rights Watch interview, Head of Liaison Office, IEC, Bunia, October 27, 2005.

¹⁴ Human Rights Watch interview, MONUC official, Kinshasa, October 3, 2005.

Failure to Control the Army: Abuses against Civilians and a Threat to Elections

With army integration incomplete, formerly belligerent forces remain hostile to the transition process and each retains its' own chain of command parallel to the official FARDC structure. Some occasionally engage in combat with each other. This situation results in continuing abuses against civilians and creates risks for upcoming elections. In conditions of insecurity, voters may hesitate to go to the polls or could be influenced in their vote by pressure from armed groups. Polls conducted under the menace of potential violence from any force displeased by the results are unlikely to be seen as free and fair.

Conflict between military units has been most frequent in North and South Kivu where divisions between soldiers often reflect local ethnic divisions: soldiers of the former RCD-Goma often are supported by Congolese Tutsi (and sometimes Congolese Hutu) and soldiers of other units are more usually supported by Congolese of other ethnic groups.

In December 2004 some soldiers of the former RCD-Goma forces, supposedly part of the FARDC, engaged in combat with other FARDC troops in North Kivu. Both sides attacked civilians, deliberately killing more than one hundred and raping and wounding scores of others.¹⁵ Reflecting continuing rejection of central military authority, more than a thousand soldiers of the 12th brigade of the former RCD-Goma deserted the national army and headed towards Masisi territory on September 11, 2005.¹⁶ MONUC peacekeepers managed to stop some of the deserters and a number of others fled of their own accord, but an estimated six hundred to one thousand more continued on to remote areas where some of them may have joined Laurent Nkunda, a former RCD-Goma general who has threatened to launch a new rebellion against the government.¹⁷ In another incident on September 16, former RCD-Goma soldiers of the FARDC became angry when civilians in Rutshuru territory showed their pleasure that troops from this faction were being withdrawn from the area. They shot into a crowd of civilians, killing three boys, aged ten, fifteen and eighteen years old.¹⁸

¹⁵ See Human Rights Watch, "Civilians Attacked in North Kivu," *A Human Rights Watch short report*, Vol 17 No. 9(A), July 13, 2005.

¹⁶ They were reportedly joined by soldiers from the RCD-Goma 5th brigade and the 2nd mixed battalion.

¹⁷ Human Rights Watch interview, MONUC officer, Rutshuru, October 10, 2005.

¹⁸ Human Rights Watch interview, MONUC official, Goma, October 18, 2005.

In South Kivu, in early November, formerly RCD-Goma units of the FARDC fought against other FARDC units loyal to the Mai Mai popular combatant forces. At least three civilians were killed during the combat and hundreds of local residents fled to Burundi.¹⁹

In November FARDC units also attacked Mai Mai groups in central Katanga opposed to the transitional government and responsible for terrorizing the local population. Local church groups report that over sixty thousand people fled their homes as a result of the military operation.²⁰ An earlier operation in late 2004 by FARDC troops in the mining area of Kilwa in Katanga resulted in the killing of some one hundred people, at least twenty-eight of whom were summarily executed.²¹ One of the FARDC commanders responsible for the operation was subsequently arrested, but has not yet been brought to trial.

FARDC integration stalled

The government planned to have eighteen integrated brigades ready to provide security before elections, but as one international observer remarked to a Human Rights Watch researcher, “it will be a miracle if army integration happens at all.”²² In the face of growing difficulties, the government reduced the total number of integrated brigades to be formed from eighteen to twelve, only six of which had been created by early December. The first group of soldiers presented for integration numbered some fourteen thousand, about five thousand fewer than expected²³ and their numbers decreased further with desertions and deaths. (See below.) The situation for the next group was even worse. Of thirty-two thousand soldiers expected to be presented for demobilization or integration into new units, only six thousand had arrived at various integration centers by the end of September. Many of these were sick, handicapped or untrained and inexperienced. None of these troops brought any heavy weapons with them.

¹⁹ Human Rights Watch interviews, MONUC official, Uvira, November 21, 2005 and FARDC officer, Luvungi, November 26, 2005.

²⁰ “Fighting displaces 60,000 in Katanga province, Bishop Says,” *IRINnews*, November 23, 2005 [online] http://www.irinnews.org/report.asp?ReportID=50253&SelectRegion=Great_Lakes&SelectCountry=DRC (retrieved December 13, 2005).

²¹ MONUC Report, “Conclusions of the Special Investigation into allegations of summary executions and other violations of human rights committed by the FARDC in Kilwa, Katanga”, October 15, 2004.

²² Human Rights Watch interview, representative of European donor government, Kinshasa, October 3, 2005.

²³ It was expected that brigade size would be 3,200 soldiers but in fact the numbers for each brigade were far fewer. Presentation by Colonel Jean Marc Tafani at the World Bank review of the “*Programme Multi-Pays de Demobilisation et Reintegration*” (MDRP), Kinshasa, September 29, 2005.

The government claims to have ordered senior army commanders to send their troops for integration but some foreign observers are skeptical. One military expert noted, “These written orders are just to show the diplomats they are doing something, but the orders are not passed on to field commanders or, if they are, they [the commanders] are explicitly told to ignore them.”²⁴ The most notable group not yet sent for integration is President Kabila’s Special Presidential Security Guards (Guardes Spéciales de Sécurité Présidentiel, GSSP) a unit of some ten thousand to fifteen thousand troops largely from northern Katanga, currently deployed in Kinshasa and other cities including Lubumbashi, Kisangani, Kindu and Bukavu. Foreign military observers have concluded that not just Kabila but also other political leaders are keeping their best soldiers and most important weapons in reserve, perhaps to be used should the election results not be to their satisfaction.²⁵

Reluctant to commit their troops to army integration, politicians and military leaders have been quick to extract personal benefit from the vast sums provided by the international community for the process. As one MONUC official remarked to a Human Rights Watch researcher, “Army integration is an industry and the Congolese have become very good at making money from it.”²⁶ Vice President Ruberwa admitted that 25 percent of money allocated for salary payments each month was embezzled;²⁷ others put the figure much higher.²⁸ In some cases, military officers have defrauded the government by vastly enlarging the ranks under their command by “ghost soldiers” or non-existent troops. Parliamentarian Christophe Lutundula, who is also the chairman of a parliamentary committee examining financial contracts signed during the war years, claimed that \$30 million from the budget for the defense of the Kivus had been embezzled.²⁹ Others alleged that President Kabila attempted to profit from donor funds by appointing a family member to a key financial position inside the commission managing the disarmament process, though this attempt was eventually thwarted by donors.³⁰

As a result of corruption and mismanagement, soldiers are paid their salaries only irregularly and they frequently lack food, medicines, and equipment. In the town of Beni,

²⁴ Human Rights Watch interview, Belgian military expert, Kinshasa, October 2, 2005.

²⁵ Human Rights Watch interviews, MONUC manager, Kinshasa, September 30, 2005 and foreign military expert, Kinshasa, October 2, 2005.

²⁶ Human Rights Watch interview, MONUC official, Kinshasa, September 30, 2005.

²⁷ International Crisis Group, “A Congo Action Plan”, *Policy Briefing*, October 19, 2005.

²⁸ Human Rights Watch interview, European diplomat, Kinshasa, October 2, 2005.

²⁹ “Politicians on notice”, *Africa Confidential*, Vol. 46, No. 22, November 4, 2005.

³⁰ Human Rights Watch interviews, representative of European donor, Kinshasa, September 30; MONUC official, October 2, 2005; and international NGO representative, October 3, 2005.

for example, scores of the newly integrated soldiers died of cholera in August and September because of inadequate sanitation and medical attention.³¹ Soldiers who are poorly paid or not paid at all often lack discipline. In Equateur, poorly paid troops went on a rampage in July 2005, killing, raping, and stealing from civilians.³² In Walikali in eastern DRC, one battalion deserted the national army after they failed to receive their salaries in mid-2005, though MONUC's Indian brigade managed to convince about three hundred of them to return to their base.³³ Some soldiers saw the start of voter registration as a chance to obtain some additional funds. They began to harass citizens throughout the country who did not yet have their registration cards, extorting money from them and in some cases beating their victims.³⁴

Other rebel groups

Since early in 2005, FARDC troops, supported by increasingly active MONUC peacekeepers, have weakened some of the armed groups that have troubled eastern Congo for years, but they have not yet eradicated all pockets of insecurity.

Under pressure from the FARDC and MONUC forces, more than fifteen thousand members of armed groups in Ituri agreed to lay down their weapons in March and April 2005, but others who refused to disarm increased attacks on MONUC peacekeepers and government soldiers. Combatants refusing disarmament took control of areas near the towns of Boga, Kilo and Nioka between August and November, forcing thousands of civilians to flee their homes.

More recently FARDC soldiers supported by MONUC peacekeepers have launched operations against groups of combatants, many of them of Rwandan origin, in both North and South Kivu. Rwandan rebels known as the Democratic Forces for the Liberation of Rwanda (*Forces Démocratique de la Libération du Rwanda*, FDLR) and an FDLR splinter group calling itself the “Rastas” continued abuses of civilians, including deliberate killings, rapes, and abductions for ransom. Some of these attacks were apparently meant as retaliation for previous FARDC and MONUC military operations.

³¹ “DRC-EAST AFRICA: 236 soldiers infected with cholera” *IRIN News*, August 26, 2005 [online] http://www.irinnews.org/report.asp?ReportID=48784&SelectRegion=Great_Lakes&SelectCountry=DRC-EAST_AFRICA (retrieved December 13, 2005).

³² “DR Congo Troops in Loot Rampage,” *BBC News Online*, July 4, 2005 [online], <http://news.bbc.co.uk/1/hi/world/africa/4648109.stm> (retrieved December 13, 2005).

³³ Human Rights Watch interview, General G.V. Satyanarayana, Commander, Indian Brigade of MONUC, Goma, October 6, 2005.

³⁴ Human Rights Watch researchers heard such reports in several places, including in Kinshasa. Examples were Human Rights Watch interviews, chief military prosecutor, Bunia, October 26, 2005; MONUC official, Uvira, November 21, 2005; civil society representatives, Bukavu, November 29, 2005.

On July 9, for example, members of a Rwandan armed group herded villagers into their homes and then set fire to them, killing more than thirty people. The day before, MONUC had attacked an FDLR military camp only a few kilometers away. In South Kivu, armed groups have concentrated their abuses in Walungu and Bunyakiri territories where they have killed, abducted and raped scores of civilians. According to a MONUC human rights team, armed combatants killed fifty civilians, mostly women and children, and forced the displacement of some three thousand persons from the South Kivu village of Kabingu in late July.³⁵

Citizens and election workers will find it difficult to get to the polls in this region unless FDLR and other armed groups as well as government soldiers halt combat and abuses against civilians during this period.

Silencing Dissent

As the period of electoral campaigning approaches, threats to freedom of expression and association are growing. Officials targeted supporters of opposition parties, journalists, and human rights activists, apparently hoping to silence criticism and thus increase their chances for electoral success.

In January and again in June 2005, FARDC troops and police killed scores of demonstrators in several cities who were protesting delays in the election schedule. Abuses of demonstrators were most severe in the town of Mbuyi Mayi, in Kasai Oriental province, an area known for its' support to the opposition UDPS. According to MONUC human rights investigators, security forces summarily executed fifteen persons and injured twenty-six others, most of them shot during demonstrations. Scores of people were arbitrarily arrested, many of them UDPS party members who were specifically targeted. Some, including the local UPDS president and vice-president, were subjected to cruel and inhumane treatment.³⁶

In May 2005, over one hundred people were arrested in the southern province of Katanga, accused of plotting a secession attempt. Many of those arrested were political opponents of President Joseph Kabila, including André Tshombé, the president of the

³⁵ Ibid; U.N. Security Council, *Nineteenth report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo*, S/2005/603, September 26, 2005 [online] <http://daccessdds.un.org/doc/UNDOC/GEN/N05/518/95/PDF/N0551895.pdf?OpenElement> (retrieved December 13, 2005).

³⁶ MONUC Human Rights Section, "Report on the Events in Mbuyi Mayi", June 2005.

political party CONACO (*Confédération Nationale du Congo*) and son of former prime minister and Katanga secessionist leader Moïse Tshombé. The detainees were moved from Katanga to Kinshasa where some spent weeks and others months in prison before being released. To date little evidence has been presented to support the accusation of plotting secession and no one has been brought to trial.³⁷

Human rights activists and journalists who criticize the government have suffered from arbitrary arrest and threats from unidentified persons. A media watchdog organization, Reporters Without Borders, recorded thirty-six cases of arrest of journalists from January through July 2005, a significant increase over the previous year. On November 3, a political columnist from the Kinshasa daily newspaper *La Référence Plus*, Franck Ngyke Kangundu and his wife Hélène Mpaka, were killed by assailants who took no money or valuables before leaving the scene. Three police officers were later charged with the murders, one of whom claimed to have been tortured into signing a confession.³⁸

In some cases authorities use the provision of Congolese law that makes defamation a crime in order to silence critics, a strategy that works well given the inadequate functioning of the judicial system. In July 2005, for example, Jean-Marie Kanku was arrested on charges of criminal defamation after he published an article alleging that a state official had misused humanitarian reconstruction funds. He was released on bail and has not yet been tried.³⁹ When his newspaper, *L'Alerte*, published articles on a corruption scandal involving the security services, Kanku was arrested by security agents on October 28. He was held for several days incommunicado and then was charged with "threatening state security."⁴⁰

On July 1 the High Media Authority (*Haute Autorité des médias, HAM*), a government agency responsible for supervising media, ordered the temporary closing of the popular Kinshasa TV station RAGA after it broadcast footage of demonstrators protesting

³⁷ Human Rights Watch interviews including officials of the national intelligence agency (*Agence nationale de renseignements, ANR*), judicial officials, representatives of local human rights organizations, persons arrested, and MONUC officials, Lubumbashi, July 7 to 11, and September 20, 2005; European diplomat, Kinshasa, June 2005. See also Action Against Impunity for Human Rights (*Action Contre l'Impunité pour les Droits Humains, CIDH*), "Secession du Katanga, premier mai 2005, rapport d'enquête, Lubumbashi," May 2005.

³⁸ "DRC : Three policemen suspected of killing journalist," *IRIN News*, November 22, 2005 [online] http://www.irinnews.org/report.asp?ReportID=50235&SelectRegion=Great_Lakes&SelectCountry=DRC (retrieved December 13, 2005).

³⁹ *Ibid.*, "Democratic Republic of Congo: Cases 2005," Committee to Protect Journalists, July 28, 2005 [online] http://www.cpj.org/cases05/africa_cases05/drc.html (retrieved December 8, 2005).

⁴⁰ "Editor abducted after publishing corruption allegations," *Committee to Protect Journalists*, October 31, 2005 [online] <http://www.cpj.org/news/2005/DRC31oct05na.html> (retrieved December 13, 2005).

election delays. The authority accused RAGA of "blatantly partial" news coverage, a charge denied by local press freedom group *Journaliste en Danger* (JED). This censorship followed earlier closures of TV and radio stations owned by Vice President Jean Pierre Bemba in January 2005 and the temporary closure in May of a local radio station in Mbuyi Mayi after it reported unrest in the town.⁴¹ In October 2005, the National Press Union of Congo (*Union nationale de la presse du Congo*, UNPC) decided to suspend its participation in all activities of the state media authority to protest against the closing of media outlets and the detention of journalists.

In July, Pascal Kabungulu Kibembi, a prominent human rights activist, was shot dead in his home in Bukavu by armed men. Following an international outcry, the governor of South Kivu set up a commission of inquiry to investigate the murder. On November 28, three soldiers accused of the killing were brought to trial in Bukavu. But the military court hearing the case did not have jurisdiction over higher-ranking officers, at least one of whom appears to have been involved in the killing.

Threats to and attacks on freedom of expression risk reducing the credibility of the electoral process. Already Congolese people are voicing concerns. One woman said to a Human Rights Watch researcher, "We will not be given a free choice. Won't we be able to vote just for those who are already in power?"⁴² Others expressed concern over the vote for the referendum and the lack of publicity about the content and importance of the constitution. Whether favoring the proposed changes in governmental structure or not, anyone tempted to vote no recognizes that rejecting the constitution would end the electoral process. Because of the dawdling of political leaders in Kinshasa, there is too little time to prepare any other choice before the June 30, 2006 deadline. A local NGO representative said to a Human Rights Watch researcher, "We are being presented with a *fait accompli*."⁴³

Natural Resource Exploitation and Corruption

When parties signed the accord establishing the transitional government, they also agreed to create a parliamentary committee to examine the contracts granted during the war years to exploit the natural resources of the Congo. According to

⁴¹ "Democratic Republic of Congo: Cases 2005," *Committee to Protect Journalists* [online] http://www.cpj.org/cases05/africa_cases05/drc.html (retrieved December 8, 2005).

⁴² Human Rights Watch interview, Kinshasa, October 1, 2005.

⁴³ Human Rights Watch interview, local NGO representative, Brussels, November 28, 2005.

Christophe Lutundula, chairman of the committee, many were ‘sweetheart’ contracts that benefited senior officials, their family members and foreign associates.⁴⁴ The report identifies companies involved in fraudulent deals, recommends the ending or renegotiation of numerous contracts, and demands judicial proceedings against key individuals, including some close to President Kabila.⁴⁵ The report, detailing contracts signed between 1996 and 2003, is completed, but has not yet been published, probably because of opposition from some of those named in it.

According to a World Bank official, the number of grants for exploration rights to important mineral-rich areas has increased four-fold in the last six months. He and other international observers fear that some of these arrangements may also involve corruption.⁴⁶ Government officials can profit doubly from corruption at this point; they can line their pockets and they can also spend more to influence the outcome of the elections, whether by increased advertising, by buying votes outright or by bribing electoral officials to favor their party. This corruption is so extensive that it contributes to instability, threatens the transition, and could skew the elections.

Lack of Progress on Justice

At the end of November the Congolese parliament passed a long awaited amnesty law providing amnesty for crimes and political offences committed between August 1996 and July 2003, but excluding war crimes and crimes against humanity. The transitional government often professes its’ commitment to justice but it has made little progress on holding accountable those accused of war crimes and crimes against humanity, nor has it made progress on these and other crimes committed after July 2003. The poorly functioning judicial system fails even to deal with common petty crime or with civil cases, leaving citizens essentially with no recourse to legal action. In November 2004, judicial officials, legal experts, and foreign donors planned to create a committee to deal with reforming the judicial system, but delays within the ministry of justice meant that the committee was not even created until October 2005, making any plans for reform unlikely before the elections.⁴⁷

⁴⁴ “Politicians on notice”, *Africa Confidential*, Vol. 46, No. 22, November 4, 2005. Also, Human Rights Watch interview, Christophe Lutundula, Brussels, November 25, 2005.

⁴⁵ Ibid.

⁴⁶ Human Rights Watch interview, World Bank official, October 1, 2005.

⁴⁷ Human Rights Watch interview, representative of European donor, Kinshasa, October 3, 2005.

High profile cases in which authorities allow human rights abusers to escape punishment, or, even worse, cases where authorities actually promote perpetrators, foster the culture of impunity. It took the government until September 2005 to issue international arrest warrants for former General Laurent Nkunda and former Major Jules Mutebutsi, accused of responsibility for crimes committed by their troops in Bukavu in May and June 2004 when soldiers killed civilians and raped dozens of women and girls.⁴⁸ At the same time, the government stripped them of their ranks. It acted against these two former officers only after Nkunda once again threatened to disrupt the transitional process by launching a rebellion against the government. Despite Nkunda's frequent appearances in Goma, neither MONUC nor the FARDC troops have taken any steps to arrest him. Mutebutsi remains in Rwanda where he retreated with hundreds of his troops; to date Rwandan authorities have not handed him over.

The government has also failed to act against high-ranking officers still serving in the FARDC, including General Budja Mabe, the former regional military commander in South Kivu, whose troops killed fourteen Banyamulenge or Tutsi in Bukavu in May 2004, all of them apparently targeted on the basis of their ethnicity.⁴⁹ Armed group leaders from Ituri such as Jerome Kakwavu and Kisembo Bahumeka, accused of ethnic massacres, summary executions, torture and rape, have been promoted to the rank of general in the FARDC. The case of General Kakwavu is supposedly under investigation but no arrest has yet been made.

In some of the few cases where justice has been pursued, authorities have failed to observe international standards of due process. In February and March a number of influential armed group leaders from Ituri were arrested in Kinshasa following the killings of nine U.N. peacekeepers. Several of those arrested, including Thomas Lubanga, Floribert Njabu and Germain Katanga, were accused by Human Rights Watch and others of war crimes and crimes against humanity.⁵⁰ Authorities arrested several of them without charge and held them for weeks before bringing any charges against them, in clear violation of Congolese legal procedures. By early December, they had been in detention for ten months but there has been no effort to bring them to trial. In another case in North Kivu some thirty FARDC troops accused of war crimes committed in

⁴⁸ For more information see Human Rights Watch, "War Crimes in Bukavu", *A Human Rights Watch Briefing Paper*, June 12, 2004.

⁴⁹ *Ibid.*

⁵⁰ For more information see Human Rights Watch, "Ituri: Covered in Blood", *A Human Rights Watch Report*, July 8, 2003 and also Human Rights Watch, "The Curse of Gold", *A Human Rights Watch Report*, June 2, 2005.

Beni during fighting in December 2004, were condemned to death in trials that failed to conform to international standards of fairness and due process.⁵¹

In the absence of a functioning judicial system, persons guilty of past crimes, even extremely grave violations of international humanitarian law, can present themselves as worthy citizens deserving to be elected to office. Should such persons stand for elections and win important government posts, they will be well positioned to continue their abuses and to protect themselves from any punishment for past crimes.

The absence of an independent and effective judiciary will also make it futile for dissatisfied citizens to challenge any flawed elections in the courts.

Foreign Armed Groups and Meddlesome Neighbors

The continuing presence of Ugandan and Rwandan rebel combatants in eastern Congo (mentioned above) threatens regional stability, complicates relations between Uganda, Rwanda and the DRC, and demands much attention from an overstretched MONUC. U.N. officials consider that these armed groups present no significant threat to either Rwanda or Uganda. An unpublished assessment from the Secretary General to the U.N. Security Council, concludes that there is “little evidence that the presence and activities of Rwandan armed groups in the DRC pose a significant military threat to the security of Rwanda.”⁵² Similarly, recent assessments conclude that Ugandan armed groups present no threat to Uganda.⁵³

In 2004 Rwanda intervened or threatened to intervene three times in the Congo and in September 2005 Uganda threatened to invade Congo after some forces of the Lord's Resistance Army (LRA), opposed to the Ugandan government, briefly crossed into Congo. Ugandan authorities further criticized MONUC for taking little action to tackle the problem of other Ugandan armed groups in the Beni area. While known to be longer established in the DRC, these groups are few in number and have shown no evidence of new military activity. In the meantime Ugandan military authorities themselves facilitated a meeting of Ituri combatants just outside Kampala, thus assisting in the creation of a

⁵¹ The trial took place on December 28 and 29, 2004 in Lubero and was observed by MONUC human rights staff. For more information see Human Rights Watch, “Civilians Attacked in North Kivu,” *A Human Rights Watch short report*, Vol 17 No. 9(A), July 13, 2005.

⁵² U.N. Secretary General's Assessment, “Report of the Secretary-General: Assessment of DDRRR progress,” unpublished document, October 2004.

⁵³ Human Rights Watch interview, MONUC official, Kinshasa, September 30, 2005.

new alliance, the Revolutionary Movement of Congo (*Movement Révolutionnaire du Congo, MRC*) to fight the Congolese government and MONUC. Under pressure from the international community, the Ugandan government later expelled these 'warlords' from Uganda but took no action to arrest them. Local residents in southern Ituri reported the presence of Ugandan soldiers along with MRC combatants some weeks later in Boga and in July a Ugandan intelligence agent was arrested in the gold mining town of Mongbwalu.⁵⁴

Intervention and threats of intervention from across the border contribute to continuing activity by armed groups in this region, making it difficult for voters to be sure of the security needed to vote in peace.

Response of the International Community

The international community seeks to keep the transition on course and to keep the authorities heading towards elections, its' top priority at this time in the Congo. Donors have provided more \$400 million with the largest contribution coming from the European Union (E.U.). In fact, donors seem to want the elections to succeed more than many Congolese political leaders. One Kinshasa based diplomat observed, "We are pushing and shoving to get elections done, but we are behind on everything. Most members of this government are just not interested in elections."⁵⁵

Influential members of the donor community recognized that army integration was of great importance in ensuring orderly elections, but their initial support to reforming the armed forces was often uncoordinated and slow in arriving. Realizing that corruption in the army and the failure to pay soldiers regularly was hindering army reform, European donors, with the support of South Africa, persuaded the transitional government to agree to a census of the armed forces and to establishing a mechanism to track salary payments to the lowest level. The army census should be completed in December and the tracking of payments was due to start soon after.

Led by the British government, donor governments hoped to tackle the corruption that could skew the electoral process, but President Kabila firmly opposed a proposed joint committee including international donors meant to improve management of public finances. After he claimed the committee would infringe on national sovereignty, the

⁵⁴ Human Rights Watch interviews, MONUC officials, Kinshasa, September 30 and October 1, 2005.

⁵⁵ Human Rights Watch interview, diplomat, Kinshasa, September 29, 2005.

idea was scrapped except for appearing as an agenda item on meetings between the transitional government and ambassadors of the International Committee Accompanying the Transition (*Comité international d'accompagnement de la transition, CIAT*). One Kinshasa-based diplomat remarked to a Human Rights Watch researcher, "The idea of the commission of good governance has become a joke."⁵⁶

Although unable to move the ministry of justice to a more thorough reform before the elections, the E.U. is building on the modest success of a project it funded to revive the judicial system in Bunia in 2004 and will soon launch similar projects in the eastern towns of Goma and Bukavu.

Reacting to increasing limits on freedom of expression, the E.U. issued a statement on October 17 expressing concerns about such limits, about persecution of journalists and about the need for authorities to prevent language inciting ethnic tensions as elections approached.⁵⁷

On November 26 CIAT published a statement pressing the government to pass the electoral law, to respect the electoral schedule, and not to tolerate corrupt practices.⁵⁸ Important political leaders reacted angrily to the statement, accusing CIAT members of harboring neocolonialist attitudes.⁵⁹

Such efforts by the international community are laudable but not enough to guarantee real progress on crucial issues of army reform, justice, and corruption. Nor is international support sufficient to allow MONUC to meet the many demands made upon it with the approaching elections. Although the peacekeeping force is now the largest in the world with seventeen thousand troops, its' responsibilities cover a multitude of tasks including support for the transition, elections, security sector reform, and protecting civilians. The U.N. Secretary General has repeatedly requested additional troops for MONUC, most recently in September 2005. European governments have generally supported such requests but the United States is unwilling to provide the needed funding. In September, the U.N. Security Council authorized 841 additional

⁵⁶ Human Rights Watch interview, diplomat, Kinshasa, September 29, 2005.

⁵⁷ Council of the European Union, "Statement by the Presidency on behalf of the European Union on freedom of expression in the Democratic Republic of Congo (DRC)," October 17, 2005 [online] http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/cfsp/86622.pdf (retrieved December 8, 2005).

⁵⁸ "Communauté Internationale exhorte au respect de la date du Referendum - CIAT communiqué," *Misna news service*, November 26, 2005.

⁵⁹ Tom Tshibangu, "MONUC Press Review", December 5, 2005 [online] <http://www.monuc.org/News.aspx?newsID=9263> (retrieved December 13, 2005).

police officers and in October it provided a further three hundred peacekeepers for Katanga, but these numbers are far short of the forces requested. One senior MONUC official told a Human Rights Watch researcher, “We have been given ‘mission impossible’. We have more and more responsibilities, but too few troops and resources to do them.”⁶⁰

Elections will not by themselves bring about democracy. These elections are not the final chapter in Congo’s painful transition but only the beginning of a longer process. In the press to get the Congolese to the polls, donor nations and others in the international community must not neglect continuing efforts to establish the rule of law, freedom of expression, security, and good governance. Failure to progress in these areas may endanger the elections, risking the loss of everything thus far invested in restoring order in the Congo.

Recommendations

To the transitional government of the Democratic Republic of Congo:

- Ensure freedom of expression, press, and assembly as provided for in Congolese law and the International Covenant on Civil and Political Rights. Investigate and prosecute cases where these freedoms have been violated. Ensure that the elections are held in an environment free of intimidation, harassment and violence.
- Hold accountable those responsible for serious violations of international humanitarian and human rights law. Order troops to act on the arrest warrants for Laurent Nkunda and Jules Mutebutsi, ensuring respect for due process.
- Act immediately on the recommendations of parliament in relation to investigating cases of official corruption, including those of the Lutundula commission.

⁶⁰ Human Rights Watch interview, senior MONUC official, Kinshasa, September 30, 2005.

***To the International Committee Accompanying the Transition,
MONUC and international donors:***

- Continue to urge the transitional government to respect the rights of Congolese to freedom of expression, press, and assembly. Monitor threats against journalists and human rights activists and promptly criticize arbitrary arrests, harassment or other forms of repression.
- Urge the transitional government to immediately launch investigations and judicial proceedings, as appropriate, against those accused of serious violations of international humanitarian and human rights law, including Jerome Kakwavu, Floribert Kisembo, Laurent Nkunda, Jules Mutebutsi and Budja Mabe.
- Vigorously denounce corruption and the use of state funds for personal enrichment or in illegal forms of support for election campaigns and push for judicial proceedings against individuals accused of such crimes. Encourage parliament to debate and act on reports of official corruption, including the Lutundula report.